

Policy brief

THE INSTITUTIONAL MODEL OF EU ACCESSION NEGOTIATIONS: LESSONS FOR UKRAINE

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The opening of EU accession negotiations was a momentous event for Ukraine, both from the geopolitical point of view and in terms of the internal process of reforming the country to bring it in line with the letter and spirit of European law and standards. As a result, Ukraine is entering the next stage of European integration, which is much more complicated regarding political, regulatory, and technical points of view than the Association Agreement. The success of accession negotiations will depend not only on the skills of the negotiating team but also on the ability of the government to create and maintain an effective internal institutional structure of negotiations – special institutions and a system of coordination for the relevant authorities involved in accession negotiations, forming and defending Ukraine’s negotiation positions.

An analysis of the experience of other EU candidate countries, both past (Lithuania and Poland) and current (Albania, North Macedonia, Serbia, and Montenegro), shows that although the elements of the negotiating structure tend to be similar, the effectiveness of their functioning depends on many factors that need to be taken into account at the start of the negotiation process. Ukraine began to form its negotiating structure in the summer of 2024 and is gradually moving towards the opening of negotiations in the Fundamentals cluster. At the initial stage of this process, Ukraine can learn from the experience – both mistakes and successful steps – of other candidate countries and polish its internal coordination mechanism, allowing for a seamless negotiation process.

Key takeaways from other candidate countries experience

Political coordination

The primary success factor of any institutional structure of negotiations is the country’s clear-cut integration strategy, supported by a medium- or long-term programme of preparation for EU membership.

Coordination of the negotiation process should be based on the right balance of political centralization and “horizontal” coordination between sectoral ministries in order to be able to use government resources and resolve disputes between sectoral authorities. In most candidate countries, political coordination of the negotiation process was performed by a temporarily established body consisting of the Prime Minister, the chief negotiator, as well as key ministers. This body acted as the main political arbiter, deciding on the final versions of the negotiation positions, and submitting them to the government for approval. The technical government body (ministry or office), which was usually headed by the chief negotiator, coordinated the processes at the level of working groups. The effectiveness and success of this coordination depended on the bureaucratic weight, authority, and resources that this body had at its disposal to properly support and influence the line ministries.

Role of the chief negotiator

The work of the chief negotiator of the candidate country is 90% focused on internal stakeholders, and only about 10% of the time is spent on communication with the EU.

The chief negotiator acts as a kind of “mediator” between different groups of influence within the country whose interests are affected by legislative and practical approximation to EU standards, and his/her most important function is to convince them to set a realistic bar of sectoral demands in negotiation positions, and thus increase the chances of success in negotiations with the EU.

Convergence of the functions of the chief negotiator and the political leader of the European integration process (e.g., Minister for European Integration) in one person is fraught with risks of weakening the coordination of negotiations – as one person cannot realistically effectively carry out these two very time- and resource-intensive areas of the accession process.

Working groups and development of negotiation positions

Negotiation positions are developed at the level of working groups, which constitute the working level of the negotiation process. Working groups are usually formed in accordance with a clearly established sectoral approach (according to the chapters of the negotiation process) with a key line ministry (or another government body) responsible for managing a particular sector. By establishing clear technical coordination of the negotiation process at the level of working groups, foundations are laid for the accession negotiations. The specific form and methods of organizing such a mechanism are not essential, what matters is that high-quality and well-founded negotiation positions should be created at the working level, which are necessary for negotiations with Brussels, as well as a quick response be given to requests from the EU.

In the best-case scenario, working groups should be protected from political changes in order to preserve the institutional memory of the negotiations and ensure the smooth operation of the negotiation process. One of the possible safeguards is the involvement of professional civil servants (non-political figures, such as state secretaries or specialists

of an interagency government body) in the management of working groups as deputy chairmen of working groups or secretaries.

Another important process is coordination and regular communication between working groups (or more precisely, between heads of European integration departments of ministries, who are often deputy heads of working groups). Otherwise, there is a risk of conflicts between the parties involved at the level of negotiation positions, their inadequate quality, or delays in their development.

“Eurointegration” civil servants

Properly trained “European integration” officials at the level of line ministries (performers) are indispensable for the success of approximation to EU regulation, its implementation, and development of adequate negotiation positions. Hence, education and training of civil servants to support the accession process and interact with EU institutions should be ensured on a systematic basis either as a separate track within general public administration reform or as a separate state policy. To maintain the core layer of such civil servants, it is necessary to apply a flexible system of bonuses and non-financial motivation, which should be stable from the very beginning of the negotiation process and protected from political populism during negotiations.

The candidate countries covered in the study used various motivational tools to involve professional civil servants in preparing negotiation positions. However, attempts to introduce special financial incentives for specialists of working groups were unsuccessful due to conflicts with other employees of ministries. The experience of the candidate countries has shown that the level of financial remuneration should be adequate for the entire civil service. Employees involved in working groups tend to be more motivated by investments in their education and training as well as by prospects for career growth and further work in the EU institutions (when the country acquires full membership).

The role of Parliament in the negotiation process

Parliament's involvement in endorsing/approving final negotiation positions is an important factor in ensuring the transparency and public support of the negotiation process, however, it is also important to avoid excessive politicization of the process. There are different approaches to the role that the Parliament can play in the formation of negotiation positions, but the degree of its involvement ultimately depends on the real ability of the Parliament to contribute to the technical aspect of the negotiations and on the level of its influence on the government's decision-making. The most common practice is the endorsement of negotiation positions in the parliamentary committee on European affairs. For example, in Lithuania, such a parliamentary committee was quite powerful and was headed by the Deputy Speaker. The committee included representatives of all political forces, had a sufficient number of members (26 MPs), capacity (expertise to analyse draft laws for compliance with the EU acquis), and effective regular communication with the governmental European Committee (a body under the Office of the Prime Minister that coordinated the negotiation process).

Participation of civil society

There are different models of involvement of non-governmental actors (NGO sector, business associations, etc.), but the key point is to organize an effective transfer of expertise from non-governmental players to the government while avoiding situations where this leads to conflicts or delays in the process of discussing options for negotiation positions. It is important to ensure that such stakeholders are adequately represented by selecting the most authoritative representatives in each category. Otherwise, rational proposals for negotiation positions that could strengthen the country's standing in the negotiations may be lost due to the inability to process them because of the excessive number of proposals from non-governmental actors. On the other hand, if the participation of non-governmental actors is purely formal, civil society may lose interest in participating in the negotiation process.

Negotiations on transition periods

Obtaining a transition period or an exemption from the application of EU law in a particular sector should be duly justified. It is unlikely for a candidate country to secure them from the EU through political (for example, appealing to geopolitical factors) or "package" agreements (at the expense of concessions in other sectors), nor through technical manipulations with justifications.

Assessment of current plans for building the institutional structure of negotiations in Ukraine

The process of forming the negotiating structure had begun in November 2023 and a year later Ukraine came up with a fairly centralized model, which consists of the following key elements of the institutional negotiating structure:

- A higher political coordinating body – the Interagency Working Group to support the negotiation process on Ukraine's accession to the European Union and the adaptation of Ukrainian legislation to EU law (hereinafter referred to as the IWG) was established. The IWG is formed on a broad collegial basis. The main political figure responsible for final decisions on negotiations with the EU is the Deputy Prime Minister (DPM) for European and Euro-Atlantic Integration of Ukraine, who also holds the position of Minister of Justice. The relevant DPM at the same time serves as the Chief Negotiator and is responsible for internal coordination of the activities of working groups and approximation of Ukrainian legislation to the EU acquis.
- The Government Office (under the political leadership of the DPM) has retained its position in the government system (in the CMU Secretariat) and will continue to act as the main technical office to organize and support processes at the level of working groups and implement the necessary European integration reforms.

- The Delegation to participate in the negotiations on accession to the EU was established under the leadership of the relevant DPM, who also became the Chief Negotiator for Ukraine.
- 36 working groups have been created (3 of them are “horizontal”) and will be headed by deputy (1st deputy) ministers, whereas technical support and sustainability of processes will be ensured by relevant specialists of the Government Office (secretaries of working groups).

This model involves both certain advantages and risks (analysed in detail in the analytical paper), which in one way or another will affect the manageability and quality of the negotiation process. It is still too early to draw definitive conclusions about its effectiveness; however, it is clear that its centralized and flexible nature might contribute to a quick and successful launch of the negotiation process, but the ability of such a structure to provide sustainable support for the rather complex “accession marathon” is by no means certain.

Steps to be taken to form the institutional structure of negotiations in Ukraine within the framework of the public administration reform

Public administration reform

In Ukraine, establishment of the institutional structure of negotiations takes place with a broader reform of public administration, which in itself is one of the requirements (and indicators of success) of the accession process. Therefore, obviously, this structure will be “built into” the new architecture of public administration, upon which the sustainability, capacity, and effectiveness of the negotiation architecture will depend.

Political coordination

The establishment of the IWG headed by the Deputy Prime Minister is a useful but additional tool, since it does not play a major role in terms of policymaking and fulfilment of commitments. It is important that this body should function transparently and accountably and its activities be aimed at ensuring the coordination of efforts of various public authorities in the negotiation process.

Technical coordination of the negotiation process

It is necessary to “modernize” the Government Office for the Coordination of European and Euro-Atlantic Integration in view of the new conditions for accession negotiations (its functionality was created to implement the Association Agreement with the EU) and upgrade its role to that of a Directorate responsible for ensuring the coordination of European and Euro-Atlantic integration in the structure of the Secretariat of the Cabinet of Ministers of Ukraine.

The effectiveness of the negotiation process on Ukraine’s accession to the EU will also depend on reformatting and establishing a clear structure of public policy on EU accession negotiations. In view of its objectives, the CMU areas of competence should be detailed, ministries that will be responsible for policymaking within these areas and directorates that will take care of each policy component should be created (or reformatted). This approach will cover all areas of public policy, help avoid gaps due to the lack of a responsible body, and ensure consistent policymaking in each area.

The institutional capacity (support) of the negotiation process should be urgently strengthened since the insufficient number and low efficiency of the work of policy directorates in ministries create serious obstacles to negotiating with the EU and fulfilling commitments undertaken within the accession process. In particular, the system of policy directorates in the ministries should be rebooted:

- they must be established in all ministries,
- an effective system of coordination between the policy directorates of the different ministries and other stakeholders should be created,
- it is necessary to establish a comprehensive government system for monitoring and evaluating progress in the implementation of European integration measures.

The current convergence of the positions of (I) the Deputy Prime Minister for European and Euro-Atlantic Integration, (II) the Chief Negotiator, and (III) the Minister of Justice should be avoided. It is an excessive burden for one person and generates significant risks to the effectiveness of the negotiation process. Specifically, the following measures would be more effective:

- creation of a separate full-fledged institute of the Chief Negotiator and deputy CN,
- optimization of the structure of the Ministry of Justice,
- at the level of working groups, it is advisable to make the directors of the Policy Directorates of relevant ministries responsible for performing the functions of the deputy chairman of the working group on the implementation of EU law to ensure the sustainability of this important technical process that is key for negotiations.

It is necessary to optimize the work of existing institutional structures and strengthen their role in the coordination of cross-sectoral matters of European integration. This can be done by including representatives of all ministries responsible for specific policies in sectoral groups with potential cross-sectoral matters and organizing joint meetings of sectoral groups to address issues that go beyond one area (negotiation chapter).

Effective communication between the delegation for negotiations on Ukraine's accession to the EU and the working negotiating groups should be ensured at the level of the heads of such groups. In particular, the chairmen of all working groups should be included in the main interagency working group in order to be able to effectively coordinate their activities after the opening of negotiations in other sectoral clusters, which will take place after the opening of the Fundamentals cluster.

Participation of Parliament

The best option for involving the Parliament in the negotiation process is to focus on the active participation of relevant parliamentary committees in the discussion of negotiation positions. However, it is also necessary to avoid excessive politicization of negotiation positions through "deep" involvement of MPs, which can prevent working groups from achieving compromises. Also, in the process of negotiations, the Parliament should perform its own (essential) function of parliamentary diplomacy with individual EU Member States that have a significant impact on the approval of decisions to "green-light" / block the progress of candidate countries at the level of the Council of the EU.

Conclusions

Technical negotiations on accession to the EU require that Ukraine build a rather complex institutional negotiation structure under the conditions of severe resource constraints and crises in public administration caused by a long war. The newly established national negotiating structure will likely cope with the primary task of opening negotiations (in the Fundamentals cluster) but its capacity to effectively conduct technical sectoral negotiations with the EU seems to be questionable.

Based on the already accumulated experience of other candidate countries and the broader goals of public administration reform, it is advisable to further rethink the role and functionality of the institutional structure of negotiations. It is necessary to take urgent steps to strengthen its capacity before the opening of purely sectoral negotiation clusters following the cluster of Fundamentals.

The accession process should receive clear political leadership at the highest level and, at the same time, be safeguarded from the influence of populism. The institutional structure should be protected from shock changes and act as a safeguard against significant interruptions/delays in the accession process and loss of the EU's trust (based on the experience of some Western Balkan countries' accession).

Given the challenges (lack of resources and specific expertise) faced by the government and the current system of public administration, the EU should provide substantial and rapid expert, technical, and financial support aimed at completing the public administration reform in Ukraine and strengthening the capacity of ministries and other CEBs to support the negotiation process at the working group level.

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