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Recommendations on Selected Issues of AA implementation and PA Reform

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1. Analysis and recommendations on the draft on Rules of Procedure (RoP)

The mission in Kiev was preceded by the analysis and recommendations on the draft RoP from the AA-implementation coordination perspective. Following main comments and recommendations were made and sent to J. Zakonyi, TL A4U.

- The draft on RoP represents an important step in the improvement of the functioning of the Ukrainian government. Its implementation is expected to increase the quality of governance. This, however, will essentially depend on the pace and quality of the introduction of PAR (considered i.e. the new and special role of the State Secretaries /StS/ within the governmental decision and lawmaking processes and/or the practical implementation of rules on strategic planning and policy making).
- From the A4U Project perspective, especially its analyses and recommendations on the improvement of inter-ministerial coordination of AA/DCFTA-implementation, the most important deficit of the draft is the lack of any precise reference to European affairs coordination responsible bodies – including GOCEEI and the relevant government committee (GC-EEI) and their specific role in the governmental proceedings intended to coordinate, shape and monitor this very specific and important policy area that is declared political priority. One can assume that at least a certain part of their tasks is included in the wide range of responsibilities attributed in the RoP to the Secretariat of the Cabinet of Ministers (SCMU) as the main CM supporting body. However, according to the wording of the regulation, it is mainly the SCMU State Secretary (StS) that represents the Secretariat in the governmental proceedings/procedures covered by the RoP and who, as consequence, is foreseen/expected to play an essential role in the efficient and smooth AA/DCFTA-implementation.
- Considering this special role of the StS in the draft RoP and the fact that the tasks and role of the true leaders (DPM, DirG-GOCEEI) of the coordination and implementation of Ukrainian European obligations are described in few other non-harmonized regulations (on GOCEEI, GC-EEI, DPM) – some of the RoP provisions risk to further “cement” existing weaknesses if not further dilute existing non-effective systemic solutions analyzed in several A4U papers. To avoid this to happen it would be at least – in the first step – recommended to attribute in the RoP to the DPM chairing the GC-EEI a special role in the meetings of the CM consisting in a regular presentation of the state of the AA/DCFTA-implementation and its main actual bottlenecks. This could be accompanied by a “European assessment” of (only) controversial documents and/or issues submitted by other CM-members. This special role of the DPM could also be reflected by additional competencies in the setting up of the final agenda for the meetings of the CM. In this context it has also to be underlined that actually there is no clear procedural and timing linkage between the decisions/recommendations of the GC-EEI meetings and the agenda of the CM meeting.
- Another problem that, concerns first of all the role of the GC-EEI, which according to the RoP will still remain only one of the few governmental committees with very limited substantive and decisional competencies (i.e. § 31 decisions of the GC are adopted by way of consensus that is not the usual way how governmental committees in European countries are generally operating, especially those dealing mainly with inter-ministerial substance). Even with special tasks foreseen in the RoP for the First DPM and other DPMs (e.g. in § 4 ensuring implementation of the Program of Activity of the CM, facilitation of reconciliation of divergent viewpoints of the CM-members) the existing institutional framework for AA/DCFTA-implementation remains insufficient and different from best European (EU) practices. The legal and real position of GOCEEI/GC-EEI/DPM triangle – as described and analysed in A4U papers – remains insufficient to assure the efficient leadership of coordination of AA/DCFTA related tasks and duties.
- Today, the responsibility and competences of the AA/EI coordination system are spread among several institutions. An undefined part of the coordination process takes place beside the main coordination

track. The work on the RoP constitutes an important – if not unique – opportunity to review and reshape the existing European affairs coordination system in order to eliminate its weaknesses (this will not *per se* – as expected by decision makers – happen through the creation of SPEI-DGs in the SCMU and the LMs). It is i.e. strongly recommended to consider the complexity of the implementation of AA/DFCTA processes to channel and streamline related key and strategic decisions/processes possibly into one compact coordination framework. The amended RoP – as main regulation defining the way the government is operating – should be used for this purpose.

- If not, this could be also done by the adoption of a unique regulation clearly defining the: supreme coordinator reporting directly to the PM and the government, main coordination body composed of all relevant stakeholders, its competencies covering the full spectrum of AA-related matters (i.e. in relation to the parliament), tasks, deliverables and procedures, apparatus assisting the coordinator and the coordination body. However, there is no initiative of the main stakeholders to improve the current situation and its deficits.
- The RoP in its suggested version reinforces one of the sources of weaknesses of the legal and operational framework for the European coordination that does not provide an efficient system of cooperation needed to manage complex EI/AA affairs. The RoP adds to the existing framework based on few specific regulations defining separately the way of functioning, the tasks and responsibilities of its main actors (DPM, GOCEEI, GC-EEI) new stipulations that may require further explanations and/or can be used by the ministries according to their own interpretations. This results from the fact that these above-mentioned regulations have, first, a prevailing descriptive character defining tasks with almost no reference to precisely described coordination instruments/procedures. This is why it would be recommended to attribute to the GC-EEI in the RoP a higher legal status in comparison to the existing regulations and to clearly distinguish it from other GCs through the attribution of well-defined coordination powers and a special legal authority. It is also important to regulate the competencies of other essential European key players, such as the deputy ministers on European integration (DPEI) if they are still supposed to play a key role especially in the reformed line ministries.
- The RoP foresees that *“issues referred to joint competency of several government committees can be considered at a joint meeting”*. The current Ukrainian practice is that many issues fitting this description are rather treated by separate committees, chaired by different DPMs or line ministries themselves. As a result, there is no complex European coordination managed by one precisely defined governmental body.
- A further RoP draft provision stipulates in § 10 that *“when implementation of a task is assigned to several ministries, organization and coordination of work to deliver it (...) shall be ensured by Minister identified as the first on the list of implementers”*. The practical application of this paragraph in the AA-implementation in case of cross-cutting chapters/issues and view the expected coordinative role of DG-GOCEEI/GC-EEI is not obvious. The general observation regarding chapter 2 (Inter-ministerial coordination) is that it does not indicate forums and procedures for settling of inter-ministerial problems/disputes that very often are accompanying the elaboration of agreed governmental positions in the AA-relevant policies/issues.
- It would be recommended to include into the list of obligations of the SCMU StS vis-à-vis a newly appointed Prime Minister the provision with information/analytical materials on the current state of AA/DCFTA-implementation (§ 15).
- The importance of the European Integration process – as it is (used to be) the case of several AA-implementing or EU-membership negotiating countries – is almost not anchored and defined as basis for any legislative, strategic planning, policy initiatives in the RoP. The only, decidedly non-sufficient, reference is made in § 69 providing a list of European requirements that have to be included when drafting a resolution of the CM. The conformity check which has to be assured by GOCEEI playing a crucial role in legislation process – is in the RoP (as many other supporting functions) attributed in

general to the SCMU (§ 74). It is worth considering including by the occasion of this task the name of DG-GOCEEI, to formally reinforce the institutional position of the Office that has become one of five Directorates General within the SCMU.

- It is also recommended to attribute to the GOCEEI/GC-EEI/DPM triangle special competencies regarding the cooperation with the Verkhovna Rada (Chapter 2) and/or establish a special path/procedure underlining the importance of all the European – AA-implementation relevant – legislation. Such a step could be used in order to enforce inter-ministerial coordination in this essential area that today constitutes one of the major weaknesses of the existing institutional/organizational proceedings. This can be done i.e. on the basis of regulations existing in EU-member states and/or aspiring countries as well.

2. Regulations on newly created DGs and their role in the strengthening and building of effective European/coordination structures and procedures - guidelines for a common approach

- The analysis of available regulations regarding competences attributed to the new DGs shows, first of all, that from the formal side the process of creating new structures and describing their tasks is based on model regulations adopted by the government. Generally, ministries almost literally and without major changes implement the model provisions on both types of DGs, while some others are trying to a certain extent to adapt them to the specifics of their institution. In cases where such “individual” adaptation takes place – within the same ministry – the regulations concerning individual DGs sometimes differ significantly.
- This situation has to be attributed to several factors: a) the lack of precise guidelines, b) the unfinished and/or incoherent methodologies of functional reviews made separately by all the involved institutions in the preparatory phase, c) the lack of clear, coherent strategies how and when to transfer old entities into new DGs, d) the undefined time perspective for finalization of the first phase of the reform including the 10 institutions and no clear attitude towards the remaining, mostly heavy weight LMs.
- Some of those gaps are being filled – already after the introduction of DGs – by new, additional regulations adopted in December (“*Concept optimization of the system of central executive authorities*” that is i.e. indicating the terms of implementation of the institutional reform including new elements described in the *Concept* and i.e. stating that the second wave of the reform encompassing the remaining ministries will start in August 2018 with functional studies and reviews based on the experiences of pilot ministries) or currently discussed (the draft law on “*Strategic planning*” supposed to define proceedings, instruments, documents so far only generally mentioned in the regulations on DGs).
- From the A4U Project perspective, the biggest weaknesses visible in this phase of the reform (the creation of DGs and regulation of their functions) are resulting from the fact that different functional reviews which have been made were concentrated rather on the analysis and isolated perspective of single ministries without taking into account essential horizontal, intra-ministerial processes – as it is the case of the AA/DCFTA-implementation (with the exception of budgetary and strategic planning issues).
- The majority of AA relevant references included in the DGs-regulations have very limited and general (especially in case of strategic planning and European integration units – SPEI-DGs) or partly technical but not uniform character (in case of substantive DGs, i.e. referring to particular legal acts). As it is the case of a substantial part of Ukrainian European systemic legislation the descriptive, often very detailed part prevails over the necessity to regulate

and/or to reflect systemic inter- and intra-ministerial proceedings. As a result, this approach makes developed governmental provisions (laws/regulations) declarative and often perceived as not binding. The aim of the ongoing institutional reform is i.e. to change this obvious weakness of the old strategic policy planning system, but the DGs regulations are rather following this outdated approach.

- The successful overcoming of the above-mentioned shortcomings in a short or medium-term perspective requires different measures to be taken at different governmental/ministerial levels. The issues that have to be settled in a rather short term perspective are: a) transformation of remaining “old” ministerial units into DGs in pilot LMs where the reform process was engaged – the longer the interim setup lasts the more it influences the effectiveness of workflows; b) decision on the speeding up of the start of the institutional reform in the remaining LMs and/or at least their broader inclusion in the preparations/analyses/discussions on the reform; c) analysis and development on concept(s) of readjusted European integration coordination institutional framework following the example of the approach to the strategic planning issue where, as mentioned above, a dedicated draft law was elaborated and is been currently discussed among stakeholders. This can be done as well in the form of a separate law or taken into account and reflected in the broadly consulted new version of the Rules of procedure (RoP). Several proposals for both scenarios were developed by the A4U Project in its papers.
- Another issue to be considered and precisely defined is the division of coordinative tasks between the GOCEEI-DG and the SPEI-DG within the SCMU, which are both – at least theoretically – entrusted with broadly designed European integration coordination issues encompassing also the strategic planning dimension of related processes. The lecture and analysis of both regulations do not provide answers about the systemic interconnections and proceedings neither with other LMs and their DGs nor between both DGs themselves.
- Available regulations - especially those concerning the SPEI-DGs – do not contain procedural explanations how the implementation of AA/DCFTA obligations in the ministries will be coordinated. This matter is likely to be regulated at the level of “other” internal regulations or left to the “working arrangements” as it is/was the practice in the majority of ministries before the introduction of the institutional reform.
- Surprisingly, the only SPEI-DG whose regulation do not contain any literal reference to the Association Agreement is the one expected to be the core strategic planning unit within the SCMU. However, several of its tasks understandably go beyond the competencies of all the other SPEI-DGs but also correspond to those that should be fulfilled by DG-GOCEEI as the main governmental AA-implementation coordination structure and analytical European back office of the government. Another specificity of the SCMU SPEI-DG lies in the fact that it is so far the only coordinative ministerial unit to include into its task the preparation of materials – “in matters that belongs to its competence” – for consideration of the government committees’ meetings. This is another issue where competencies of both coordinative DGs placed within the Secretariat have to be clarified – not only in the form of informal arrangements – and made transparent for LMs involved in the AA-implementation process. This clarification is also needed in the view of the previous A4U analysis of the DG-GOCEEI regulation and its conclusions.
- Concerning the substantive LMs DGs, the description/mention of tasks related to the implementation of AA obligations varies in the available regulations not only depending on

the quality and frequency of their involvement into the practical AA-implementation. In case of some of the ministerial units, specific implementation obligations are not only mentioned but also precisely defined, while for some others this is not the case. However, there is no coherent approach raising from purely descriptive forms, via indication of AA chapters to the mentioning of concrete European directives that have to be implemented.

It is recommended to consider and/or include in the DGs regulations:

- A precise definition/indication of the area(s) of responsibility of the LMs within the AA-implementation. This might be done not only for informative purposes but also as an additional, formal confirmation of the coordinative role of the ministerial SPEI-DGs. A step forward would consist in the indication of ministry relevant AA-implementation sensitive issues/areas to be obligatory reflected/taken into account in every strategic, policy planning activity of the LM.
- Precise definitions of deliveries (documents) to be internally prepared on regular basis and coordinated by the SPEI-DGs for the coordination, monitoring, strategic planning and reporting purposes of the GOCEEI, the relevant Government Committee and the Council of Ministers. These definitions should be based on the provisions of the currently discussed draft law on strategic planning that is supposed to provide an operational framework for inter-ministerial cooperation in the area of strategic planning.
- A special emphasis in the regulations should be put on the cooperation with the SPEI-DG and DG-GOCEEI within the SCMU. This can be done only after the clarification of distribution of competencies between both DGs considering that both entities have been attributed competencies in the sphere of European integration. This concerns especially the SPEI-DG as described above. The assessment and recommendations on the DG-GOCEEI regulation made by A4U were presented in another, previous position paper.
- In addition, it has to be reminded that, in parallel, the remaining ministries which are not yet participating in the reform will retain their current structures. The competencies and knowledge of “old” directors/deputy directors might differ from those attributed and/or expected from the newly appointed chiefs of expert groups in “new” ministries. The same applies to the relations of “old” deputy ministers with “new” DirGs. It is to expect that both SCMU DGs – but also the DPM and/or the supervising State Secretary – will be confronted with additional coordination challenges resulting from the above described inequivalences. It will be (is) inevitably the role of the SCMU to manage and/or resolve any organizational problems that might further negatively enhance the coordination of AA/DCFTA-implementation. A clear and legible for all potentially involved external partners provision/mechanism responding to this justified apprehension would certainly be an important asset for the functioning of both DGs.
- Clear indication of the highest ranking ministerial AA-implementation coordinator (this question might not be as obvious as in the case of still non-reformed LMs) responsible for intra- and inter-ministerial coordination (Director General, State Secretary or Deputy Minister for EI – DPEI), preferably the DPEI supervising the SPEI-DGs and main AA-implementation relevant ministerial DGs. If this is the case where this will be the adopted model, the need for specifying in the regulations precise workflows decreases in comparison to any different institutional setup where main systemic proceedings and/or mutual dependencies have to be at least mentioned.
- All these issues should be discussed under the auspices of the SCMU in order to develop coherent, clear and common institutional solutions encompassing all the LMs. Such approach would prevent the process of at least temporary institutional fragmentation, which may further weaken the AA-implementation abilities. The A4U presented a number of proposals in this respect that might be used in this process.

3 Summary of first mentoring meetings with DirGs

- Five meetings with 5 DirGs took place. All meetings lasted more than 75 minutes, two meetings were two hours long. At all meetings two A4U STEs – T. Draskovics, R. Hykawy – were present as “mentors”.
- The Directors are “lost”. The SPEI Directors do not have – in their own opinions - precisely defined expectations/visions what their tasks/role should be. It is a bit clearer for the policy directors. They receive no or very little support, neither from the SMCU, nor from the StS in their respective ministries. According to all Directors the StS have no visible role/weight in the ministries as it was foreseen in the introductory phase of the institutional reform
- The SPEI DirGs do not understand (so far) their EI role, they have only very vague and inconsistent ideas. They consider their role/tasks concerning AA-implementation coordination as rather technical than substantive. At the moment (and probably in the months to come), SPEI DirGs concentrate their attention on broadly understood strategic planning activities. The SPEI DirGs are very much concerned about their role (if any) in the annual budgeting process.
- There are no plans in any of the ministries for how the functions of the “old” departments will be taken over by the DGs and what will happen with the rest of the functions. However, in some of them preliminary deadlines for further institutional changes have been established.
- The mentoring program is very much needed, should be continued and expanded. However, that cannot replace the support/guidance to be provided by SMCU. Most probably it would be useful for the state secretaries too.
- From the perspective of the A4U Project, the importance of AA-implementation issues (including coordination problems) does not belong to the tasks of special interest of the SPEI DGs that were supposed to eliminate existing weaknesses.

4 Workshop for Senior and Associate Fellows – “How to utilise better the outputs of the Project”

During the meeting brief presentation of Component 3 outputs was made by J. Zakonyi, TL A4U and A4U STSs (B. Jarabik, T. Draskovics, R. Hykawy) with the main purpose to draw the attention of the Fellows to documents prepared within the Project and main issues/problems (including AA-implementation coordination) analyzed by experts but also their related activities, comments, guidelines, etc.

Several ideas were discussed how to better use outputs of the Project and how to develop better synergies in the cooperation between KEs, STEs with the Fellows. It is important to continue such meetings on regular basis and deliver necessary expertise and/or organizational assistance to Fellows.