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Impact of PAR on the Association Agreement related capacities (draft)

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A4U Brief – Impact of PAR on the Association Agreement related capacities,
by Balazs Jarabik, STE

Highlights

- Since PM Groysman in office the reform process has been moving forward in absence of constant clashes between the Presidential Administration and Cabinet of Ministers as well as moving the reform implementation under the CabMin.
- Although the incurred legislative and administrative changes have been impressive in the past 3 years (especially the adoption of the PAR strategy), the legislative framework is not in line with SIGMA recommendations and standards.
- PAR followed the Ukrainian reform “standard”: the concept was drafted by mostly reform insiders and with the help of the EU the concept was adopted. However, such a tactic also causing implementation peculiarities, especially legal, financial and human resources lagging behind the reform actual ambition.
- Despite the slow start of the public administration reform (strategy adopted in 2016) the last few months seem decisive: the pilot phase (and pilot ministries) is up to speed, regulation is largely in place, salary system developed, directorates are forming, recruiting on-going and the training process kicked off.
- Enforcement of overall conceptual principles is lagging behind. This should be the key concern as well as object of a thorough monitoring. At the same time the reformers position is fragile, there is bureaucratic backlash as well as a possible slow-down as preparation for 2019 elections cycle takes priority.
- The reform success will be now depending on the quality of recruitments, their integration into the ministries, clear regulation and enforcement as well as buy-in from the civil service of the new policy-planning methods the reform brings.

Roots of PAR

Ukraine’s governance system is largely considered ineffective, internally controversial, excessively centralized and detached from the problems of an average citizen.¹

According to the 2006 SIGMA assessment, the EU should “encourage main constitutional actors to evolve towards creating a democratic institutional environment where the checks, balances and limits to the exercise of power are legally defined and enforced.” This is by all means valid today. Therefore, the implementation of the planned public administration – as well as judicial reform - is particularly crucial in this regard.

PAR actual challenges are mounting.² First, the incomplete transformation of the Cabinet of

¹ Radyszewska, Olesia, Public Administration Reform in Ukraine in Face of European Integration, *Studia Iuridica*, 2017, <https://www.ceeol.com/search/article-detail?id=584885>.

² These are based on Radyszewska study, SIGMA 2007 assessment as well as the authors interviews with experts engaged into PAR between October-December 2017.

Ministers of Ukraine into a body of political management. There is an unclear separation of policy development functions between two power centers by the President and the Government according to the current constitution. The government has limited levers to influence certain central executive authorities and also lacks strategic planning within its realms. Therefore, Ukraine policy-making often looks like “putting out fires” while both power centers are using obstructions against each other what sometimes looks like messy political infighting for external observers.

Second, inefficient organizational operation of ministries. Officials are overburdened with administrative issues, while there is no clear separation of political and administrative leadership and functions. Given the coalition logic of Ukrainian politics the ministries are often described by insiders as “patrimony”, managed in a top-down and arbitrary fashion (what SIGMA called “command administration”) lacking clear analytical capacity and coherent policy guidance. At the same time, there is an excessive organizational dependence of government agencies on the ministries.

Third, unpractical system of central executive authorities: there is an unreasonably high number of central executive authorities of the similar status and low level of horizontal coordination between ministries.

Fourth, inefficient organization of public authorities at regional and local levels: inefficient mechanisms of the government’s influence on local state administrations combined with high level concentration of public administration powers and functions in the state system.

Fifth, inefficient local self-governments and unpractical administrative and territorial system. Financial incapability of the basic local self-government unity in rural areas (one of the triggers of the decentralization reform), lack of a clear division of powers and responsibilities between local self-governance levels.

Sixth, an inefficient system of the civil and municipal service. High staff turnover and low professional level of the staff, subjectivism in the administration of the civil service and vulnerability of civil servants in the face of political influences with low level salaries and high-level corruption.

Seventh, there is a lack of parity principles in the relations between individuals and public administration. Improper legal regulation of relations between individuals and public administration prevail along with bureaucrat rights and interests, formalism, bureaucracy, and corruption. There is an improper promulgation of public information and problems of access to information despite the law on access to information. Furthermore, there is an inefficient procedure set for the appeal of decisions, actions and omissions by the public administration.

PAR Challenges

There is lack of comprehensive assessment of the current state of the public administration, more precisely the last one was made by SIGMA in 2007. The current Strategy for Reform of Public Administration for 2016-2020 is planning to conduct Baseline Measurement with engagement of SIGMA experts, what is currently launched and the full report will be released in July 2018.³ The results of this assessment will serve as a basis for the review of the strategy at the end of 2018.

³ <http://www.center.gov.ua/component/k2/item/2732-тренінг-програми-оеср-sigma-щодо-системи-paris-для-проведення-оцінки-стану-реформування-державного-управління-в-україні>

As of January 2016, the total number of the public servants in Ukraine comes to 250 thousand people⁴. At the beginning of reform the state service hiring procedure did not adhere to the principles of the transparent competition, the process of the promotion or public servants` responsibilities and rights were not clearly defined.

There have been no human resource services or on the job training provided. The salary structure is not balanced and this results in the turnaround of staff. There is no gender equality in the public service either. While 75% of public servants are women, only 13% take the key decision-making roles.

The PAR strategy defines the following problems with the public administration:

- Lack of leadership and coordination of state administration on political level
- Lack of capacity for complex reform of the public administration
- Lack of capacity for strategic planning in Cabinet of Ministers of Ukraine
- The quality of the state policy in different areas is poor - including lack of the detailed research, citizens' engagement, lack of planning of actions
- Lack of the mid-term budgeting based on the strategic priorities
- Lack of the highly qualified personnel in management positions that are key for national reform implementation
- High level of corruption that influence the effectiveness of the governance
- Gender misbalance
- Human resource management in ministries is not organized and not automatic
- Often the functions and responsibilities are duplicated by ministries or other central government bodies
- No clear principles of the public service provision and lack of e-governance tools for the services to be provided

PAR Concept & Timeline

The Strategy for Reform of the public service for 2016-2020 outlines the following main directions for reform:

- **Policy development:** increasing capacity of the Cabinet of Ministers for strategic policy making; improving the quality of the state policies, including improving the requirement of the budget planning, impact assessment, coordination, citizens' engagement and system of electronic documents; improvement of the strategic planning and monitoring and evaluation.
- **Reforming public service and human resource in state government:** forming highly competent experts on the issue of reform; defining the optimal number of the state servants based on functions and organizational structure; ensuring adequate salaries for public servants; creating the human resource departments in ministries and other

⁴ Break it down to sectoral and regional level

bodies; creating integrated system of the human resource management; reform of the professional education for state servants; increase of the level of the institutional capacity of the National Agency for Public Service.

- **Government accountability:** development of the clear accountability system of the central government bodies; defining of the missions and areas of responsibilities, functionalities and tasks of the ministries and other central government bodies; reforming their organizational structures.
- **Administrative Service Provision:** establishing administrative procedures in accordance with the EU practices that will define principles of the customer-focused administrative services; decreasing administrative burden and simplifying procedures; increasing quality of services; e-governance.
- **Management of Public Finance:** ensuring a system of mid-term budget planning, strategic planning, introducing financial impact policy analysis in public administration.

The strategy follows the Principles of Public Administration as outlined by SIGMA. The Strategy implementation plan includes: baseline measurement based on SIGMA methodology; reform coordination and communication; development of the capacity for the implementation of reform; creation of the unit responsible for the reform implementation within the Cabinet of Ministries; financial support for reform; development of the strategic capacity of the Cabinet of Ministries and creation of the system of strategic planning, monitoring and evaluation; introduction of the competition, minimum qualifications and reformed payment scheme that will provide the high quality public servants; optimize the number of public servants; creating the human resource management; reforming education for civil service.

To implement the Strategy the government approved the series of legislative changes including Law on State Service, the Concept on Introducing of the Reform Experts in ministries and others.

The Concept of the Reform Experts introduced the two levels of the so-called reform experts: (1) State Secretaries of the ministries and their deputies, (2) all employees of directorates of the ministries.

The reform of the ministries foreseen the following stages:

- Until November 2017 conduct competitions and select at minimum 20 Reform Experts – **status: TBA**
- Before December 2017 select at minimum 200 Reform Experts – **status: TBA**
- Starting December 2017 handing over the functions to the newly created General Directorates and announce additional competitions for vacancies. **Status: TBA**

Current State of PAR:

The reform started its implementation in 10 pilot ministries that are responsible for the key reform issue:

Key reform issue	Ministry
Pension reform	Ministry of Social Policy

Health reform	Ministry of Health
Land reform	Ministry of Agrarian Policy
Reform of education	Ministry of Education
Ensuring financial support for reforms	Ministry of Finance
Decentralization as support for reform of education and health	Ministry of Regional Development
Energy development	Ministry of Energy
Infrastructure development	Ministry of Infrastructure
Development of culture	Ministry of Culture
Rule of law, anti-corruption and human rights	Ministry of Justice
Reform coordination	Cabinet of Ministries of Ukraine

During the first stage of the reform of the Ministries the working group that include experts and international advisors will conduct the Functional Assessment of each ministry aimed to define functions and new structure, define policy areas for which ministry reports, ensure rational division of functions inside the ministries, remove duplicating functions. These assessments intend to develop ministries that accumulate knowledge for the policy issues that they are working on, develop evidence-based policies, monitor and assess policy implementation.

The supporting structure for the ministries functions will have to ensure the mid-term planning and resource management, define ministries mission and responsibilities, have unified departments for strategic planning, coordination and European integration. The restructuring of the ministries also removes “abnormal” functions such as direct management of the state enterprise and state property, control and inspection, and provision of administrative services.

Based on the functional assessments developed in July 2017 for the first pilot ministries, the new structure and job descriptions are created and transparent competition is conducted. Each of the Ministries have created from 2 to 7 directorates, where there are directorates responsible for certain policy area and required department for strategic planning and European integration. At the second stage of the reform, all other ministries will be reformed based on the piloted model.

Forthcoming: more data on recruitment & analysis of the data

Impact on AA Implementation

The importance of public administration reform has been highlighted the context of the EU enlargement of European Union in 2004 with the CEE country accession as one of the key factors⁵. While Ukraine’s has no membership perspective at this point, the required adaptation of legislation and procedures under Association Agreement requires a much stronger

⁵ Nunberg, Barbara, Ready for Europe, Public Administration Reform and European Union Accession in Central and Eastern Europe, World Bank, 2000, <http://documents.worldbank.org/curated/en/516621468770121356/pdf/multi-page.pdf>

administrative capacity, better coordination of the policy process and planning with longer perspective.

At the same time the lack of membership perspective have negative impact on the recruitment, qualified professionals are not particularly attracted to the new positions given the unsecured future. Compare to the CEE member states, this is also limiting the impact of the EU policy and administrative framework enshrined in the Association Agreement.

In the framework of the reform, each ministry now foresees the creation of Directorate for Strategic Planning and European integration. This department will have the authority to develop recommendations for the priorities of the ministries, analyse all developed policy drafts as to correspondence to the key documents including Association Agreement and other international commitments. The Directorate provides analysis and recommendations that are obligatory for consideration by other departments of the ministry. The Directorate will be also responsible for coordination and reporting on all activities that the Ministry implements in the framework of Association Agreement implementation. In addition, the Directorate is key player in the ministry in regards of the State Budget development from the side of the corresponding ministry.

Due to the intensive and transparent competition, the Ministry will now employ the more qualified staff that will be able to implement reforms better. According to the report of the Ministry of the Regional Development, for example, the competition for their vacancies in Directorates was high. To December 2017, out of 1799 applicants only 30 people were selected and almost half of the candidates were not from the civil service but external candidates.

Among the pilot ministries, key Ministries for Association Agreement Implementation including Ministry of Finance, Ministry of Agrarian Policy, Ministry of Energy and Ministry of Infrastructure. Other ministries such as Ministry of Social Policy, Ministry of Health and Ministry of Education play a role in implementation certain provisions of the Association Agreement.

Risks (Based on Tibor`s previous papers)

Conceptual issues:

- How much the actual concept fit to Ukraine state service? The original concept has some design discrepancies - for example experts in horizontal way of organizing, State Secretaries independent from ministers - what I would call risk of disruption instead of adding capacity/value.

Political will:

- Although the work on defining the basic role of the DGs (CMU resolution No. 644) and recruiting the directors and experts are on-going (big step forward and demonstrate the commitment of the CMU) there are several elements neither defined nor aligned, what still calls the political commitment into question.
- On the regulatory side those elements are: Law on civil service, Law on Cabinet of Ministers and Central Public Executive Authorities, clarifying budget code, Rules of Procedures of the CMU (RoP), internal rules of the ministries, strategic planning system of the CMU.

Technical Issues:

- While the actual regulations are available on the career.gov.ua for all the positions, these do not have enough clarity, consistency and transparency necessary for such an overhaul.
- The outputs of the DGs should be shaped by the overall direction of the CMU and the ministry developed and expressed in strategic documents. Comprehensive description of the strategic planning system is still missing, at the same time this is in the implementation plan in the later stage.
- Strategic and budget planning should be an integrated process and the DGs' role in that process clearly defined. Budgeting is overall in the DGs' responsibilities (for strategic planning and EU integration) but should be more detailed for financial limits of their policy-making effort as well as their responsibilities. Not all the necessary links are in place and the proposed changes to the Budget Code, although moving in the right direction will not cover everything that is needed.
- The (large) differences by ministries (salaries) and/or DGs held the risk to disrupt the reform process.

Recommendations:

- ***Need to finalize the Law on Local Public Service in Local Self-Governance:*** the law was approved by Verkhovna Rada in February 2017 but vetoed by the president and now is in review by the VR committee. This legislation should introduce the competitive selection to the local self-governance bodies and define three categories of the public servants in local government.
- ***Introduced changes to the legislation removed certain positions from the competitive selection process:*** The changes that were introduced to the certain laws on public service have removed the heads of local administration from the provisions of the Law on State Service and thus they are now do not have to go through open and transparent competition but rather be appointed. Similarly, the ministers' deputies are removed from these provisions and now can be appointed by the minister.
- ***Implementation:*** PAR is now a work in progress and focus should be on monitoring of its implementation and help the reformers to advance the reforms as well as to support the actual implementation process via training and mentoring.

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