



April 2010

The EU–Ukraine Association Agreement: From imitation to results

by Maxim Boroda, Oleg Miroshnychenko, Ihor Shevliakov, Oleksandr Tatarevskiy

How “unreadiness” threatens implementation

The Ukrainian government has set itself an ambitious goal: to complete negotiations and sign the Association Agreement (AA) with the European Union by the end of this year. Still, signing the Agreement cannot, in and of itself, be the ultimate goal, as the AA is supposed to be an instrument for carrying out **a more ambitious objective: instituting European standards in Ukraine by fulfilling the commitments that country will take on itself within the AA.** This calls for serious reforms in most sectors of Ukraine's economy, many of which will represent major technical, managerial and financial challenges and will require the entire state machine to perform at a fundamentally new level.

Without comprehensive preparation, the AA implementation will be doomed to failure...

The way that Ukraine has failed to carry out its commitments under the previous agreements with the EU bodes ill for the probability that this one will be handled any better. The EU will be overseeing the implementation process both strictly and specifically. This means that even

a good imitation of burgeoning activity will not replace real results this time.

Should the country's and the Government's leadership fail to carry out the AA as agreed, they will have

cost Ukraine good faith on the part of the EU, nor will they be able to deliver on some serious promises they made to Ukrainian voters. For domestic business, such a failure would, at best, mean continued restrictions on access to the EU's single market and, at worst, the inability to meet European standards on the domestic market and loss of market share to competitors. Meanwhile, ordinary Ukrainians will not be able to freely travel, study and work in the united Europe, enjoying equal rights and guarantees with EU citizens. Finally, public services in this country will continue to lag far behind European levels.

While political will is a necessary requirement to properly carry out the AA, it is certainly not a sufficient one. Now, as the negotiation process continues, the country's political leadership should look realistically at the capacity of the existing state machine to organize implementation. Problems that pose a risk of failure need to be identified and measures taken immediately to remedy them in a comprehensive manner.

Association: What does success look like?

An analysis by ICPS of the way that new EU members and Western Balkan countries approached their Association Agreements shows that their Governments prepared themselves deliberately for change management in order to successfully implement their agreements. This preparation had a number of similar features in different countries. In particular, those Governments fulfilled three key tasks:

1. Setting up and setting in motion a **centralized mechanism** for both political and administrative

Readiness means: having a central coordinator,

coordinating of the Government's activities in implementing the Agreement. Most often, this was a special central executive body (CEB).

This CEB was properly authorized and provided with

institutional capacity to coordinate and communicate with CEBs, EU partners, stakeholders and interested parties both at home and abroad, and with the general public, in the course of implementing the Agreement with the EU.

At the same time, this office also took responsibility for coordinating the specific trainings and ongoing support for Government officials necessary to use new procedures, templates and standards.

2. Instituting an administrative instrument such as a **national program for implementation or NPI**. The Governments of all the studied

... a strategic national implementation program...

countries organized their work based on such strategic national documents.¹ These are highly detailed plans for carrying out commitments within the Association Agreements that follow a single template that breaks down short-, medium- and long-term priorities.

For this instrument to work, these Governments also instituted:

- ✦ uniform approaches, procedures, templates and quality standards for drawing up and executing the national program;

✦ mechanisms to ensure:

- alignment of NPIs with other program documents of their countries;
- regular monitoring of program execution (not less than once every six months), progress reports, and reviews and updates of the NPI at least once a year;
- oversight of the execution of tasks of the program's preparation and implementation by CEBs and individual officials and bringing to account in the case of failure to perform.

3. **Building institutional capacity** to develop the sectoral parts of the NPI and to execute them in all sectors covered by commitments in the Agreement with the EU. This includes all the relevant central, territorial or regional, and local executive bodies. For each sectoral CEB and related territorial and local executive bodies, three elements were established:

... and the execution capacity of the chain of command in all sectors

- ✦ specific products (tasks) that were required of them during the preparation and execution of the NPI;
- ✦ particular sub-units and officials within them responsible for making sure that these products are delivered;
- ✦ the qualifications required of such officials, that is, the presence of the necessary knowledge and skills.

To ensure that the declarations of Ukraine's leadership regarding Eurointegration are in check with reality, the Government must use the experience of other countries as the basis for preparing itself to carry out the future EU Association Agreement.

¹ Central and Eastern European (CEE) countries developed National Programs for the Adaption of the Acquis (NPAAAs). The Western Balkans more typically used the term National Program or Plan for the Implementation of the Stabilization and Association Agreement (NPI).

Ready to imitate or ready to do?

In its recent assessment of the readiness of Ukraine's central executive bodies for change management in the process of executing future commitments under the Association Agreement, ICPS came to a dismal conclusion. Under the present circumstances, the Government cannot hope to carry out the AA properly. Should the situation not change once the Agreement is signed, the Government will be faced with serious problems in organizing its execution, both at the system level and at the level of individual CEBs. Three key problems need overcoming:

Lack of an effective central coordinating mechanism

Ukraine still does not have a single organ responsible for coordinating European integration policy. At the moment, there are a number of different activities taking place in separate CEBs, often in parallel. Most aspects of European integration policy are coordinated by the Ministry of Economy, the Ministry of Justice and the Secretariat of the Cabinet of Min-

The Government is not prepared: there's no coordinating body,..

isters, the latter represented by the Coordinating Bureau for European and Euroatlantic Integration, recently renamed into the Bureau for European Integration.

Individual coordinating functions are attached by law and are actually carried out by more than one body. As a result of this kind of overlap of functions, the entire coordination system is ineffective and no one is actually responsible for specific problems and failures.

If this situation with Eurointegration does not change, the Government will be unable to ensure proper communication with and coordination of CEBs both during the process of developing the National Program for the Implementation of the AA and during its execution.

Unreadiness to develop a national implementation program

The system of strategic, operational and budget planning, which the Ukrainian Government currently has, makes it impossible to apply a management tool such as a National Program for Implementation based on procedures and templates that have been used by all other countries implementing similar agreements with the EU.

Ukraine has a vast collection of differing procedures and templates for planning, including for Budget programs. The way that they are structured is actually in line with best European practice, but the lack of standards and quality control has led to a situation where the contents of different chapters of Budget programs are disconnected from one another. Thus, this instrument, instead of ensuring that national development priorities are supported by the Budget, became little more than a plan for how the main managers of these funds will spend public money.

... putting together an NPI is impossible,..

Even if a decision is made to put together a consolidated implementation program for the AA, the current conditions contain clear risks that:

- ✦ the NPI will not match other Government programs;
- ✦ the Government will not have sufficiently detailed action plans to execute it;
- ✦ the NPI will lack clear priorities and will not establish what resources are needed to achieve the planned objectives;
- ✦ the priorities of the National Program will not be reflected in the Budgets for related years;
- ✦ the Government will be unable to maintain the NPI in up-to-date condition, that is, with regular revisions.

Lack of institutional capacity among CEBs

At this time, CEBs have not been clearly delegated the tasks that they are supposed to fulfill for the successful implementation of programs and plans for integration into EU, nor are the products they are responsible for defined.

No one in the executive branch is responsible for all this

Indeed, their very structures are an obstacle to fulfilling such tasks and producing the necessary products. Moreover, it has not been identified who specifically will be responsible for individual products that are needed during the preparation

and execution of the NPI. Often the same functions are carried out by different sub-units, none of which is ultimately responsible for the final product. In addition, the role and mandate of Eurointegration (EI) sub-units differs considerably from CEB to CEB.

Without a clear understanding of what products are needed from different CEBs, it is impossible to determine what knowledge and skills are needed by the people working in those bodies in order to prepare them. As a consequence, there is a vicious circle, where products are not delivered because of a lack of knowledge and, yet, it is impossible to provide the necessary training because the civil servants themselves do not always understand what is required of them or what skills they might need.

The effective functioning of EI sub-units is a separate aspect of CEB institutional capacity. For now, there is no single vision as to the role and tasks of EI sub-units in CEBs:

1. European integration is something generally handled by departments that are also responsible for international cooperation. EI issues thus are handled by a relatively small number of staff, on average 2-3, in each CEB.
2. The list of functions and tasks handled by EI sub-units in different CEBs is anything but homogenous.

3. EI sub-units carry out not only the tasks of communication and coordination but also a large number of other functions, such as planning, policy development and so on, that often overlap with activities of other sub-units.
4. The scope of responsibilities and resources granted to these sub-units are generally severely mismatched: sub-units have too many assignments and too few resources, especially human ones.

Getting ready to perform: First steps

1. Build a centralized EI coordination model

The Cabinet of Ministers needs to approve a decision to establish a central coordinating body. The main purpose of such a body should be coordinating the work of CEBs in the area of European integration, in particular preparation and execution of a National Program for the Implementation of the Association Agreement with the EU.

Centralization: establish a special coordinating body

The powers of most CEBs in European integration issues need to be redistributed in order to concentrate most of them within this central coordinating body. With the exception of a handful of functions, that naturally belong to the Finance Ministry and the Main Department of the Civil Service, all system-level functions regarding implementation of the AA can be delegated to the central coordinating body.

A resolution to set up the central coordinating body should clearly establish the mechanism for it to interact with other CEBs and the duties of other CEBs as relates to EI interactions.

2. *Switch to centralized planning of AA implementation*

The Government should draft and facilitate the adoption of a legal act that designates the status and place of the *National Program for the Implementation of the Association Agreement with the EU* within the system

of state programs and plans. Given that this document is key to AA implementation, it should be given priority status in relation to other programs.

**Planning:
institute the NPI**

The Government should also establish template and quality standards for the program and the procedure of its preparation in this legal act. The procedure, for example, should clearly provide for:

- ✦ bringing national strategy and programs in line with the EUAA NPI;
- ✦ reflecting the NPI in the State Budget on an annual basis and in the medium-term prospect;
- ✦ establishing the priorities, objectives, human and material needs for implementation, and the expected results in a clear and accurate manner;
- ✦ establishing a functioning mechanism for regularly reviewing the Program;
- ✦ effective monitoring and reporting on the execution of the Program;
- ✦ overseeing the fulfillment of the tasks in preparing and implementing the Program by designated CEBs and their responsibility for any failure to perform.

In addition, in order to establish a single methodological and institutional basis for preparing the National Program, the Government should develop and approve four basic documents:

- 1) a standard template that the Ministries should use in the process of developing sector chapters of the Program;

- 2) guidelines on how individual Ministries should prepare chapters of the Program;
- 3) institution-building methodology, which includes: the procedure for assessing institutional capacity; templates, algorithms and procedures for calculating expenditures for personnel, equipment, premises and so on;
- 4) guidelines on how to put together the National Program as a consolidated document, containing: a scope of responsibilities of individual CEBs; the timeframes for all stages of the work on the document; procedure for adopting individual parts of the Program presented by the responsible CEBs.

Having prepared the necessary methodology, the Government should then task the CEB system with preparing the National Program. Moreover, it will be necessary to plan and deliver the necessary training for responsible officials and to provide ongoing support in using the new methodology.

3. *Building capacity among CEBs*

i) *Write the list of mandatory tasks and products into law*

The list of products and functions that are key to the successful implementation the Association Agreement by CEBs must be clearly outlined. The functions tree developed by ICPS experts during their capacity assessment work can be used as the basis for such a list. The standard list of products and functions needs to be approved by Government decision, specifically as part of its decision on preparing the National Program for the Implementation of the EU AA.

This same decision must require CEBs to bring their provisions in line with the standard list approved by the Government.

ii) Reform the internal structure of CEBs

Functions must be clearly delegated and responsibility for products attached to individual sub-units of CEBs. Localization of functions should be ensured by eliminating any evident problems, such as overlap of functions, unclear distribution of responsibility, and so on.

iii) Change the role of EI sub-units under CEBs

Executive capacity: designate and train those responsible

CEB sub-units for European integration should become the coordinating centers for other sub-units during the development and execution of the NPI. They should also ensure proper and permanent communication with other CEBs and the central coordinating body.

This means changing the functions that are currently being carried out by EI sub-units in CEBs. The Government will have to develop and approve a **standard regulation**² on such sub-units, after which all CEBs will have to bring their regulations on those sub-units in line with the standard.

iv) Determine professional requirements of personnel

Once the list of products, tasks and functions for AA implementation by CEBs has been drawn up, the necessary human resource capacity needs to be developed. This need is present in all CEBs, which means that it will be necessary to:

1. Determine the knowledge and skills that responsible officials should possess in order to successfully carry out the delegated tasks and produce the required products.
2. Enshrine the relevant requirements in **standard professional job descriptions for civil servants**.

² Such a decision was adopted in Ukraine at one point regarding legal departments, when standard provisions were drafted and approved for them. This largely helped bring the work of these sub-units up to a single standard.

This will provide the basis for improving the system of professional development for civil servants in the sphere of European integration.

3. Develop a workable method for assessing the needs of civil servants in terms of knowledge and skills related to European integration.
4. Institute a system of performance assessments or examinations for civil servants to properly check whether they actually possess those knowledge and skill sets that are required by their standard job descriptions.

Institutional Europeanization as strategic goal

The decisions noted here are only a part of the reform of the state machine that is needed, both at the preparatory stages and during the execution of the Association Agreement. They could constitute the beginning, since they will not demand radical institutional changes, major financial resources, or much time.

Still, this is obviously too little to ensure the full-fledged execution of all of Ukraine's commitments under the Agreement. This can only be ensured by the proper institution of an integrated system of European standards of democratic governance in Ukraine's public administration system. This means:

- ✦ establishing a system-wide, independent state oversight over the activities of civil servants;
- ✦ instituting in law the concept of punishment for violating the rights and duties of other individuals;
- ✦ establishing a mechanism for checking the incorruptibility of draft laws and regulations;
- ✦ instituting punishment for drawing up norms and rules that legitimize corruption;

Without democratic reform of the Government, European integration will not happen

- ✦ separating the functions of oversight and administration;
- ✦ establishing a democratic civil service and instituting democratic standards of public services provided to ordinary citizens, private business and politicians.

Wanted: Foreign aid

International donors who work with the Ukrainian Government constantly run into the problem of determining what priority areas of their assistance to offer and what the needs of their Ukrainian partners are. The completion of democratic reforms and comprehensive preparation of the Government to execute the AA should be clear signposts for the international technical and financial assistance offered by Ukraine's partners. This should above all

interest the European Commission and Government and non-government donors from EU member states.

The European Commission and other European donors should launch a political dialog with the Government regarding its preparations to implement the AA and focus priorities for future TA and other instruments on this, especially the Comprehensive Institution Building Programme (CIB).

This combination of demanding interest and assistance instruments from the European side could go a long way to ensuring that the two sides avoid unpleasant surprises and get the best possible results out of their joint efforts.

European donors must take a more pro-active position

Maxim Boroda is Head of Social Economy program at ICPS.

Oleg Miroshnychenko is an analyst at the EU-Ukraine Association Agreement program at ICPS.

Ihor Shevliakov is a senior analyst at the Democratization and Good Governance program at ICPS.

Oleksandr Tatarevskiy is a senior analyst at the Democratization and Good Governance program at ICPS.

e-mail: office@icps.kiev.ua
www.icps.com.ua