

Towards the Opening of Negotiations on the Energy Chapter in Ukraine: How to Position Ukraine?

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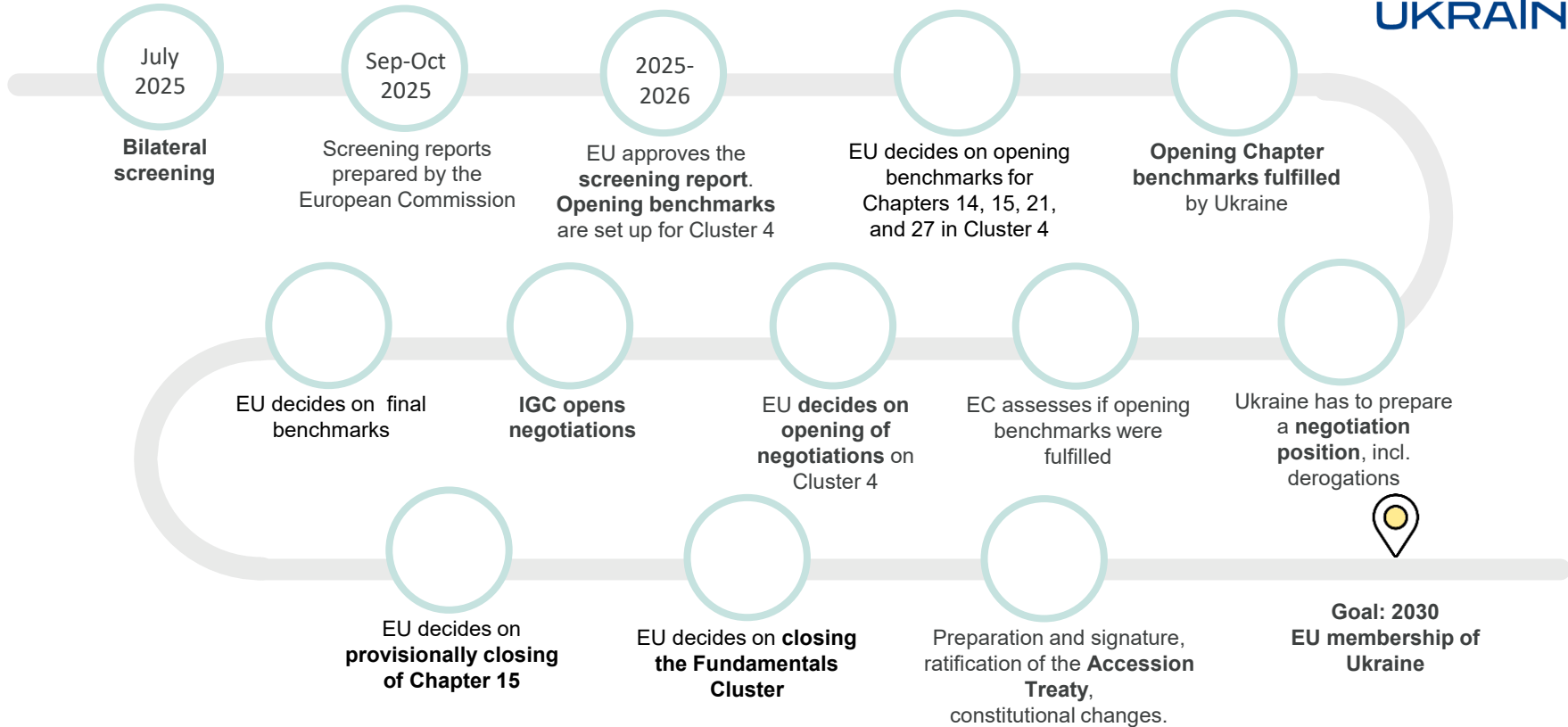
Key points

- **Negotiation process**
- **Governance and institutional capacity**
- **Content of acquis; selected examples**
- **Derogations/transitional periods**
- **Recommendations**



Negotiation process recap

Steps in the negotiation process



Being a Member State by 1 January 2030 means the negotiations on all clusters must be finalized by January – June 2028

Examples of negotiation time on energy chapter

| Country | Negotiations period |
|--|---------------------|
| Bulgaria  | 1999-2002 |
| Croatia  | 2008-2009 |
| Estonia  | 1999-2002 |
| Latvia  | 2001-2002 |
| Lithuania  | 2001-2002 |
| Montenegro  | 2015-2020 |
| Poland  | 1999-2002 |
| Romania  | 2002-2004 |
| Serbia  | 2021-until now |

The average time of negotiating the energy chapter is **2-3 years**. However, this was in a time without the Clean Energy Package and the EU Green Deal.

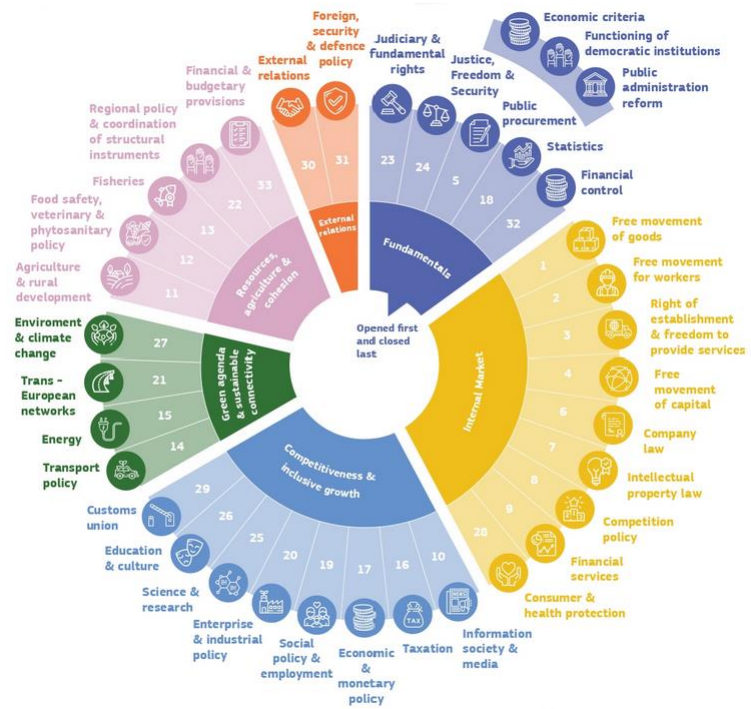


Governance and Institutional capacity

EU membership negotiation process

Revised enlargement methodology 2020

- Not chapter by chapter anymore, but in 6 thematic clusters;
- Negotiation in clusters encourages candidate countries to adopt a strategic approach, e.g., energy/climate policy (for example, asking for CBAM postponement or not?)



Internal organisation – well-prepared bilateral screenings, but for later steps, no clarity yet. Who will decide on, e.g., transitional period requests?

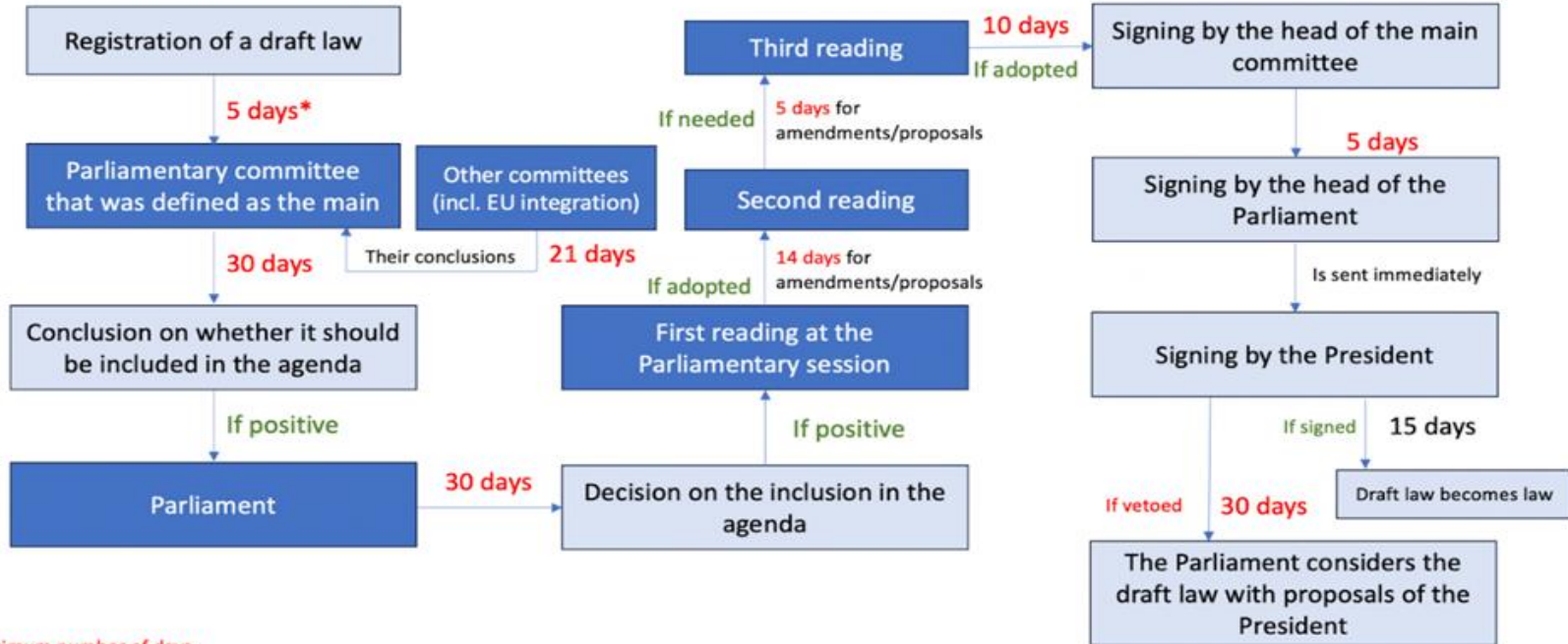
| Role or body | Function |
|--|---|
| Deputy Prime Minister for European and Euro-Atlantic Integration | Oversees EU integration policies and reforms, represents Ukraine in negotiations with EU institutions |
| Cluster coordinators of Deputy PM | Coordinate /facilitate work of ministries and stakeholders on clusters/ chapters in the cluster |
| Ministry of Energy | Responsible for the harmonization of Ukrainian laws with the EU acquis |
| Ministry working groups | Chapter responsibility? |
| Interministerial Working Group on European Integration | Overall coordination of EU-related reforms |
| Office of the President (EU Affairs Department) | Advises President, ensures political coordination on EU matters |
| Committee on European Integration in Verkhovna Rada | Responsible for the harmonization of Ukrainian laws with the EU acquis |

Internal organisation of negotiations

- Is there an appointed negotiations team (apart from the Working Group and presenters in the bilateral screening)?
- Example: Montenegro had three negotiators for Chapter 15 (the chief negotiator plus two)

The European Commission expects that negotiators are public officials, not employees of state-owned companies or even consultants!

Long Parliamentary Procedure



*maximum number of days



Restrictive legal technique

Post-Soviet legal technique:

- Codification
- Formalism
- Centralized control

Common law legal technique:

- Framework legislation
- Delegation of authority
- Judicial discretion

Ukraine has to transpose also regulations, not only directives (170.000 pages of acquis).
Ukraine has a tradition of transposing one directive into several laws.

Example: Slovenia transposed all energy acquis in one law and all environmental acquis in 4 laws (nature, water, environment, ETS)

Learning from others on internal organisation

- Government institutions need to have **sufficient experts**
- Consultants are needed **as support** to public bodies
- Legal technique – **general laws**, more should be covered in secondary legislation.
- Special **parliamentary procedure** for the laws that are transposing the acquis
- Awareness campaigns beneficial
- NB: EU accession structures are the basis for membership in the first years of post-accession

Example: Poland's number of EU team

Office for EU integration ca 400

Chief negotiator 30

EU departments ministries ca 500

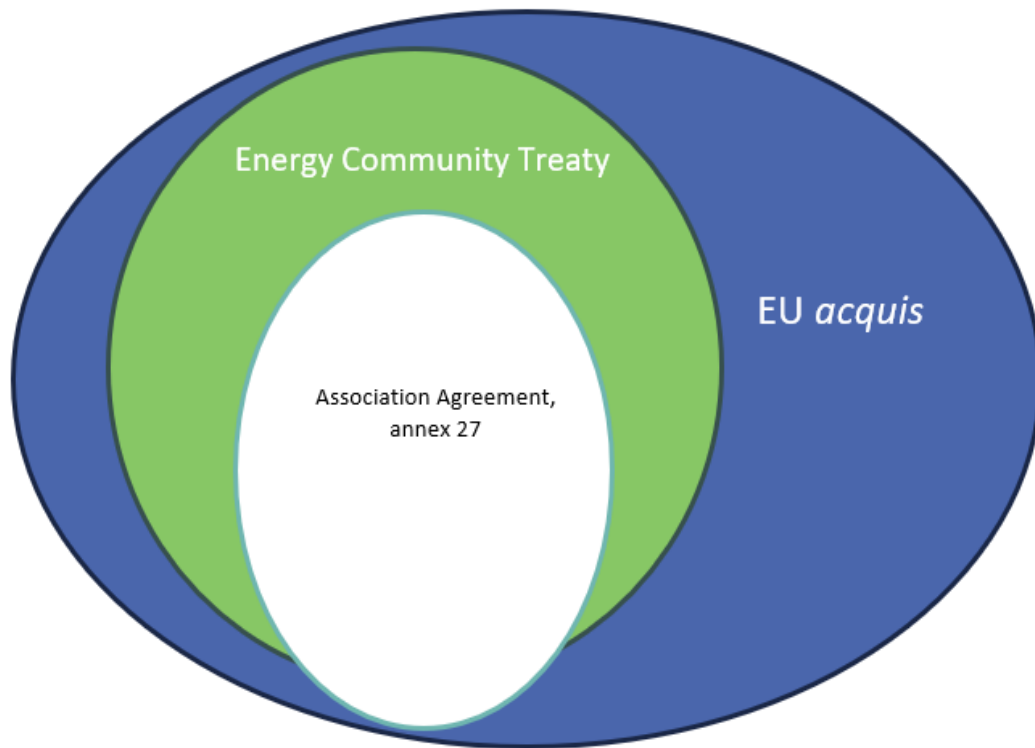
Agencies ca 200

Total ca 1200 staff



Content of acquis

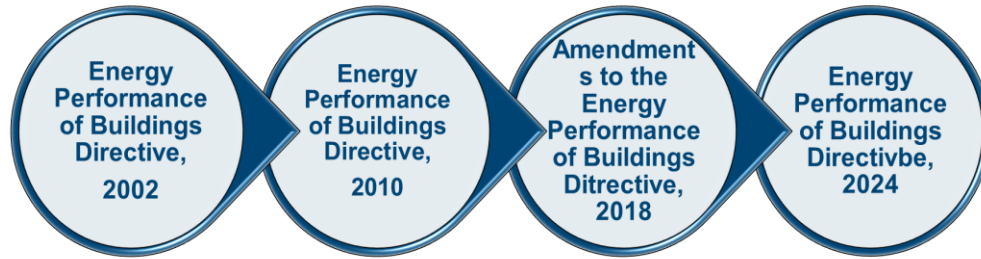
Acquis means ALL acquis



Examples:

- Renewables III Directive.
- Energy Performance of Buildings Directive (twice revised compared to the Energy Community version).
- REMIT Regulation.
- New Electricity Market Design (one Directive and several Regulations) etc.

Example – Energy Performance of Buildings Directive



EU Acquis versus
Energy Community: efficient?



Missing Elements: Energy Community vs EU Acquis

1. Electromobility and Smart Charging Infrastructure
2. Smart Readiness Indicator
3. Indoor Environmental Quality
4. Phasing Out Fossil Fuel Heating Systems
5. Mandatory Minimum Energy Performance Standards for existing buildings
6. New Zero-Emission Building Standard - from 2027/2030



Transitional periods/ Derogations (very rare)

Requests for transitional periods (typically for up to 3 years)

Justify with **high costs of implementation**, e.g.:

- Emission Trading Scheme Directive (Chapter 27)
- Renewables Directive – biofuels in transport
- Oil Stocks Directive
- Energy Efficiency Directive – art. 26 on cogeneration, % of renovated public buildings, etc.






or due to the **situation where fulfilment of obligations is not possible in the short or medium term (SUPPORT OF THE POPULATION!).**

Strategy around transitional periods

- Elaborate justification (e.g., costs)
- No influence on a single European market
- Only some provisions – never the whole act
- Convincing, detailed implementation plan
- Don't copy-paste derogatory comments from other countries (Croatia) as it backfires
- Closely monitor the emerging acquis
- Think about consequences of the backfiring of transitional periods (for example, delayed ETS prevents receiving funds from the Social Climate Funds or the Modernisation Fund)



Accelerated integration

| Acquis based inst. | UA | Comment |
|--------------------|---|----------------------|
| ACER |  | Only Working Groups |
| ENTSO-E |  | |
| ENTSO-G |  | Can only be Observer |
| All Nemo |  | |
| EU DSO Entity |  | Can only be Observer |



Recommendations



Recommendations for Ukraine

1. Effective internal organization of the negotiation process
2. Stable team of experts – public officials
3. Duration of parliamentary procedure
4. Legal technique
5. Capacity to follow the new emerging acquis – strong presence in Brussels
6. Transposition is easy; implementation is a real challenge
7. Seeking consensus or at least support to implement acquis in Ukraine will become the most important part of negotiations (e.g., mandatory minimum Energy Performance Standards for existing buildings).

Read more in our papers:



Thank you for your attention!