

Negotiations on Chapter 15

How to draft and proceed with the laws in the EU accession process: to enter the EU timely or not?

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Executive Summary

Ukraine faces the immense challenge of integrating approximately 170,000 pages of EU laws, regulations, and directives into its national framework within a short timeframe. The legislative process poses a potential bottleneck due to the country's post-Soviet legal traditions, which emphasize highly detailed and codified laws. Unlike many EU Member States that adopt a flexible legal framework approach, Ukraine's rigid and prescriptive legal drafting technique could significantly hinder its EU accession efforts. This report examines these challenges, analyzes differences in legal traditions, and provides recommendations for aligning Ukraine's legislative practices and parliamentary procedure with EU standards.

For Ukraine to meet its EU accession goals, it must substantially transform its legal drafting approach and shorten parliamentary procedure for laws transposing the EU acquis. The transition from a detailed and rigid post-Soviet legal technique to a more flexible, principles-based framework is essential for timely legal transposition. Without these reforms, Ukraine risks delaying its EU membership ambitions well beyond 2030.

Introduction

This report aims to analyse the challenges Ukraine faces in incorporating EU laws, regulations, and directives into its national legal framework. It evaluates the differences between post-Soviet and EU legal traditions, identifies potential bottlenecks in the legislative process, and provides recommendations for aligning Ukraine’s legal drafting techniques with EU standards. The objective is to offer practical solutions to the Cabinet of Ministers and to the Verkhovna Rada to accelerate Ukraine’s legislative adaptation, ensuring a smoother EU accession process by 2030.

1. Challenges in Transposition

Ukraine must incorporate approximately 170,000 pages of EU laws, regulations, and directives into its national framework in a very short time. This is a task with the potential to overwhelm legislative processes, and Verkhovna Rada might be the biggest bottleneck in the accession process, particularly because Ukraine needs to transpose not only the directives but also the regulations, which in the EU enter into force, bypassing the national parliaments. This is not only because of the complicated and lengthy procedure of adopting the primary laws but also because of the post-Soviet **tradition in legal technique**, where laws are often very detailed. An additional reason is a **mistrust** of the Members of the Parliament towards the Government and the judiciary system to prescribe more details in the secondary legislation or interpretation.

2. Comparison of Legal Techniques

The difference in legal drafting techniques between post-Soviet countries and some EU Member States (where laws are more general, with details left to secondary legislation) reflects legal traditions and approaches to governance. This difference can be attributed to these regions’ legal systems and legislative traditions, and it is often discussed in terms of **legal formalism versus legal pragmatism, civil law versus common law traditions, or codification versus delegation**.

Post-Soviet countries typically follow a **civil law tradition**, inherited from the Soviet legal system, which itself was influenced by the German and French civil law systems. In this tradition, laws are often drafted in a highly detailed and prescriptive manner. Post-Soviet detailed laws reflect a formalistic approach, while the general framework approach reflects a pragmatic, flexible style nowadays used also in some civil law countries (e.g., Germany). The EU acquis with the needed transposition of directives and direct enforcement of regulations is pushing the Member States to align their legal technique with common law tradition, at least in the areas where the directives exist. Areas where no acquis exist (tax law, administrative law, etc.) in the countries with civil law tradition, remain precisely prescribed in the primary legislation. Laws usually transpose one or a few directives together. Ukraine, which, on top of directives, has to transpose thousands of regulations, has a bad practice of transposing one directive by several primary laws. The Renewables

Directive No. 1, for example, was transposed by three laws, and No. 2 was only partially transposed into 3 laws (the Green Transformation Law, the Law on Alternative Types of Fuel, and the Biomethane Law. More needs to be adopted.

Post-Soviet legal technique characteristics:

Codification: Laws are comprehensive and attempt to cover every possible scenario within the text of the primary legislation.

Formalism: There is a strong emphasis on strict adherence to the letter of the law, with less discretion left to judges or administrative bodies.

Centralized Control: Detailed laws reflect a historical preference for centralized control and predictability, minimizing the need for interpretation or delegation.

Contrary to the civil law traditional technique is the one in countries with **common law traditions**, practiced nowadays even in the countries where the civil law tradition was born. In common law legal technique, the drafting of the primary law has a more flexible approach. Laws are drafted in a general framework style, with details filled in by secondary legislation (regulations, decrees, or statutory instruments).

Common law legal technique characteristics:

Framework Legislation: Primary laws set out broad principles and objectives, while secondary legislation provides specific rules and procedures.

Delegation of Authority: This approach allows for greater flexibility and adaptability, as the executive or regulatory bodies can update rules without requiring new primary legislation.

Judicial Discretion: Common law systems, in particular, rely heavily on judicial interpretation to fill in gaps and adapt the law to new circumstances.

While the EU promotes a more flexible, principles-based approach to legislation, some Member States—particularly those with a civil law tradition and a post-Soviet legacy (Poland, Hungary, Bulgaria, Romania)—still use detailed, prescriptive drafting techniques. However, even in these countries, the influence of EU law has led to some convergence toward more flexible approaches, at least in areas covered by the *acquis*.

The Ukrainian post-Soviet primary laws have predictability and clarity, but they are inflexible and have difficulty in adapting to new circumstances, potential for overly complex and rigid systems, and need a lengthy procedure for adoption. Just to mention two gloomy illustrations. First, feed-in tariffs for renewable electricity generation were, for years, designed in the primary law. There is no other country on the globe that has feed-in tariffs fixed in the law. Lack of political will prolonged unrealistically high tariffs for ever cheaper solar panels and wind turbines to the extent of hundreds of millions of euros of unpaid debt to investors. A second, thank God, cheaper example was a law transposing some provisions of the REMIT regulation. The Members of the Parliament registered 2 different draft laws. The relevant parliamentary committee discussed the draft law(s) in 4 meetings. Verkhovna Rada

discussed the draft law in 4 meetings. The whole process lasted from 01 April 2021 till 10 June 2023 when the law was adopted. The law envisaged 4 secondary legal acts, which took a further 18 months to draft and adopt. All this was done in the EU by one move.

Further Ukrainian problem is the concept of a **closed system of legal amendments**. This approach means that primary laws can only be changed through direct amendments to the same law or a dedicated law with a set of amendments to different laws related to one topic (e.g., Law on Amendments to Certain Legislative Acts of Ukraine Concerning the Development of Biomethane Production) rather than being modified through provisions in other laws. It reflects a strict codification principle and legal formalism. This is again a practice of civil law tradition countries, but new complexity requires a new approach, and the Netherlands, Scandinavian countries, and many others, not to mention countries with common law tradition, have a more flexible approach.

Slovenia, i.e., a country with a civil law tradition, is practicing an interesting compromise: while still sticking to a closed system of legal amendments. Once a year, the Budget Execution Law amends tens of other laws that have an influence on budget expenditures.

European Commission, for example, has already for years launched so-called omnibus directives or regulations, amending a series of other directives or regulations at once. The latest case is an omnibus directive launched in February 2025, amending four other directives as regards certain corporate sustainability reporting and due diligence requirements.

3. Illustrative Cases

Although there are not many cases of a more flexible approach towards the legal technique in Ukraine, I would like to mention two of them, from the energy sector with which I am more familiar.

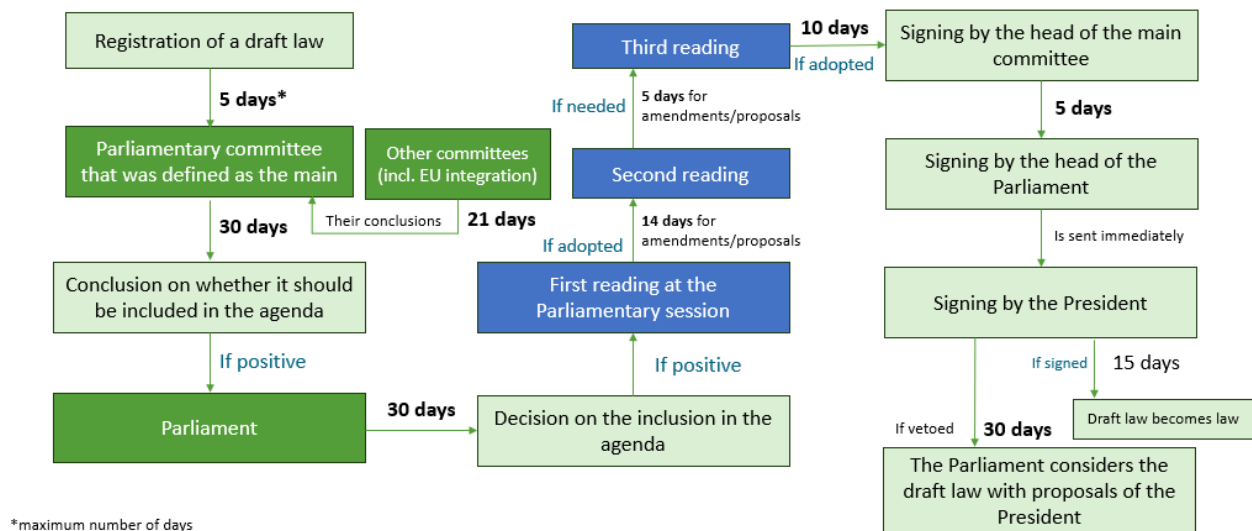
The first law drafted in the common law tradition adopted in Ukraine was the Law of Ukraine No. 329-VIII "On the Natural Gas Market" (adopted on 9 April 2015). It was drafted by the Energy Community Secretariat and mainly copied the provisions of Directive 2009/73/EC. I remember it was strongly opposed by the Ministry of Justice, which is responsible for monitoring the consistency of legislative drafting and compliance with the legal framework. Only the strong pressure of the IMF conditionality to adopt that particular draft law helped to make its way to the Verkhovna Rada and through it. It was a test that it is possible in Ukraine as well.

Another, almost anecdotal, example was a transposition of the EU gas Network Codes. In autumn 2019, when the European Commission moderated discussions with Gazprom on the possible continuation of the gas transit through Ukraine, Putin publicly promised a new

transit contract under the condition that Ukraine fully respects all EU gas-related rules on its territory. He was sure that Ukraine would not manage it. Regulator – NEURC, which would need to transpose five technically and organizationally challenging Network Codes written on hundreds of pages, solved the issue with a short half-page decision (no. 2586) on 29 November 2019, simply declaring them transposed. Implementation was indeed limping for years after that, but if there is a will, there is a way.

4. Parliamentary Procedure

Ukraine has a complicated parliamentary procedure which is securing a balance of power in the Verkhovna Rada. While this might be securing a democratic approach in a once polarized country between East and West, it is an obstacle for the transposition of the EU acquis, particularly for regulations, which should be just copy-pasted. Verkhovna Rada can adopt some 150 to 170 laws per year. A draft law can be discussed from several weeks (in urgent cases) to several months. Usually, the procedure takes more than 100 days, as shown on the graph below.



Several EU Member States have in the statutes of their Parliaments a provision on expedited legislative procedure, which is used for less complex changes of the legislation. Transposition of the acquis is usually perceived as such less complex change, since it was already decided. Such a procedure usually skips the first reading and lasts only around a month or so.

5. Recommendations

Ukraine should avoid a bottleneck in the Verkhovna Rada, which could delay its fast-track EU membership and therefore:

- Shorten parliamentary procedure for primary laws that transpose EU directives and copy-paste regulations;
- Shift towards a more flexible legal framework using a framework legislation approach, leaving details to secondary regulations.