

The European Union's ENPI Programme for Ukraine

Support for the implementation of the EU-Ukraine Association Agreement / A4U Project

Project Identification No.
EuropeAid/137074/DH/SER/UA
Contract N°: 2015/370-128

A4U Guidelines N9

Regulations on Directorates General - Comments, Recommendations for Actions and Guidelines for a Common Approach

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February 2018



This project is funded by
the European Union



A project implemented by Consortium led by
GFA Consulting Group GmbH

Regulations on Directorates General (DGs)
in the context of their role in the strengthening and building effective European,
coordination structures and procedures in pilot line ministries (LMs)
– comments, suggestions of actions and guidelines for a common approach
(based on available texts and translations)

Introductory observations

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 at least to be attributed to several factors:

- a) the lack of precise guidelines how to further develop the model template and describe the tasks of the new ministerial entities;
- b) the unfinished and/or incoherent methodologies of functional reviews made separately by all the involved institutions in the preparatory phase aimed at defining the core tasks of the pilot LMs to be reflected in the new ministerial setup;
- c) the lack of clear, coherent strategies how and when to transfer old entities into new DGs resulting in a variety of scenarios of co-existence of newly created and non-reformed structures;
- 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*” which is supposed to define proceedings, instruments, documents so far only generally mentioned in the regulations on DGs).

From the A4U Project perspective, the biggest weaknesses that appear 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. As often underlined by A4U in its papers – for the success of the ambitious reformatory undertaking it is not only necessary “*to eliminate functions and processes that are not necessary to focus on strategic priorities and improve the quality of public service*”, but also to review and remodel existing processes in the form of new regulations.

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 concrete 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 problem in overcoming 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 number of created DGs actually varies from 2 in the Ministry of Justice and Ministry of Agrarian Policy to 7 and 8 respectively in the Ministry of Education and Ministry of Social Policy) – the longer the interim setup last 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 law was elaborated and is been currently discussed among stakeholders. This can be done as well in the form of a separate law (however this would preferably require the accomplishment of the institutional reform and the existence of equivalent structures /units and levels of management/ in all LMs) or – in a minimalistic approach – 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 that has 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.

Selected comments and recommendations on DGs provisions referring to AA-implementation

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. Taking into account the expectations of “better governmental coordination” accompanying the introduction of DGs, this way of proceeding and the parallel

existence of new and old instruments can lead to an even further dilution of the coordination procedures/mechanisms and, consequently, against the intentions of the reform, further weaken the institutional capacity to implement European commitments of the government. However, this issue has to be further analyzed and highlighted in direct contacts with LMs representatives (preferably at the DGs level).

As one of the expected key results of the introduction of SPEI-DGs has to be reflected in the raising the quality of administrative standards and proceedings, the new regulations should as much as possible absorb, replace and re-define the content of existing written and non-written ministerial regulations and coordination practices. This absorption process – in comparison to the previous in governmental institutions privileged descriptive form of setting tasks with very often no precise reference to implementation instruments – should consist in limiting the number of regulations and making their content reflect internally and externally applicable proceedings. As mentioned above, in this context the consequences of coexistence over a span of time of two administrative realities (reformed and unreformed ministries) described in the A4U papers are to be remembered.

Usually the AA/DCFTA coordination perspective is in the case of coordinative SPEI-DGs indicated in few short descriptive paragraphs stating about the:

- *“coordination of work of other directorates of the ministry regarding the formation of state policy (...), ensuring its compliance with the goals and priorities (...) and provisions of the AA (...);”*
- *“verification of draft state policy documents and acting legislations in other directorates for the purposes and priorities defined by (...) the provisions of the AA (...);”*
- *“monitoring of international obligations in spheres of competency of the ministry in accordance with the AA (...);”*
- *“interaction with structural subdivisions (...) while planning their implementation and reporting work (...) related to the AA”.*

However some of the regulations go beyond this general formulations stating (according to the available working translations) i.e. about: a) provisions of financial and economic calculations of resources necessary for the implementation of state policy in the sphere of European integration (MinEdu), b) coordination of the international activities of the ministry including Euro-Atlantic integration (MinCult, MinFin, SCMU). This formulations reflect the fact of taking over tasks of international cooperation/relations and (macro-)economic departments.

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 task 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. This concerns, for example, the following tasks:

- a) performing analysis of the state of implementation of the Government action plans;
- b) preparing analytical and informational materials on key issue economic processes and influences on governmental decision process;
- c) preparing materials for the participation of the PM, DPMs (...) in meetings with EU representatives,

- d) conducting expert examination of draft state policy documents and draft legislative acts submitted for consideration by the Cabinet of Ministers.

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 one of its conclusions that general formulations do not provide the Office and its management with necessary instruments allowing better coordination of inter-ministerial activities neither of line ministries nor of DGs.

The DG-GOCEEI regulation poses questions about the ability/quality of the Office planned to deal with strategic analysis and planning in the sphere of European affairs. This capacity is crucial for the Office not only in view of the enforcement of competencies and management in this regard of (selected) line ministries through the creation of strategic directorates and the management of their coordinative tasks. It is essential for the proper assessment and planning of medium- and long-term planning of the Ukrainian European policy that should be i.e. based on a broad horizontal analysis and the establishment of common priorities going beyond the horizons of sectoral plans of ministries. To properly manage these tasks and avoid their doubling it is recommended to precisely divide competencies of both SCMU DGs in this sphere, and in addition, to reinforce the existing European expertise capacity in this respect. The same applies to a lot of horizontal tasks that are foreseen as DG-GOCEEI tasks. This primarily concerns such tasks as: *“coordination of conceptual fundamentals of the state policy”*, *“coordination of preparation of draft programs and documents in the field of European integration”* but also those requiring specific knowledge like *“analysis of budget financing in the sphere of European integration”* or *“methodological support (...) in the development, financial justification, assessing the impact of measures aimed in implementing the agreement”*.

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.

Few additional summarizing guidelines on the content of regulations establishing SPEI-DGs, defining their coordinative competencies, instruments/proceedings to be used within the AA-implementation coordination activities

It is recommended to consider and/or include in the 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 taking into account 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 to the issues already addressed in this text 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” Director Generals. 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 ministries. This will 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.

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