Summary
The Verkhovna Rada of Ukraine (VRU) tends to focus on the legislative rather than the oversight aspect of its role. When the COVID-19 pandemic hit in spring 2020, Ukraine enacted over 27 pieces of emergency legislation to enable the government to respond to the crisis. In a context where the scrutiny of laws is already insufficient, this particular batch of legislation was rushed through and received even less attention from parliament than would normally be the case. Supported by this British Embassy funded-programme, the Committee on Economic Development conducted a post-legislative scrutiny (PLS) pilot to assess the effectiveness and the impact of COVID-19 emergency legislation and presented its findings to the government in a PLS report.
Context
As is the case in many post-Soviet democracies, the Verkhovna Rada of Ukraine (VRU) focuses primarily on creating laws. Relatively little time is spent scrutinising and evaluating the implementation of existing laws. WFD’s assessment is that where legislative issues are identified, they are usually dealt with by creating or amending legislation, rather than conducting oversight of the implementation of existing laws. The public – through civil society organisations (CSOs) – are engaged with the work of parliament, but again, this tends to be focussed on the creation of new legislation. Moreover, parliament is governed by strict Rules of Procedure (RoP) that don’t allow for much flexibility in how the VRU operates.

When the COVID-19 pandemic hit in spring 2020, Ukraine enacted over 27 pieces of emergency legislation to enable the government to respond to the crisis. In a context where the scrutiny of laws is already insufficient, this legislation was rushed through and received even less attention from parliament than would normally be the case. However, in this case, the government’s use of public funds for COVID-19 relief and response received criticism from citizens, who generally have very low levels of trust in the government. For example, a local CSO, State Watch, like many other CSOs, challenged the efficiency of the government’s use of specially established COVID-19 funds.

Taking into account the lack of oversight this important legislation had received from the parliament and the criticism it had received from across society, WFD, in partnership with the VRU and the British Embassy in Kyiv, decided that it would provide a good opportunity to introduce PLS mechanisms to the VRU through a pilot PLS inquiry.

What’s changed?
With the support provided through this project, the Committee on Economic Development (the Committee) conducted a PLS pilot to assess the effectiveness and the impact of COVID-19 emergency legislation and presented its findings to the government in a PLS report.

What is Post-Legislative Scrutiny?
As parliament is responsible for adopting legislation, it also has a role in monitoring the implementation of legislation and evaluating whether the laws it has passed have achieved their intended outcomes. Because implementation is a complex task which does not happen automatically, parliament needs mechanisms to effectively monitor the implementation of legislation. Parliaments and elected representatives often have little information on what happens after a law is adopted. The focus is often on getting legislation made, not on checking how well it is being implemented and if it is being implemented at all.

Post-Legislative Scrutiny (PLS) is the practice used to monitor and evaluate the implementation of legislation, ensuring laws benefit constituents in the way originally intended by lawmakers. PLS is often carried out by parliamentary committees and is a prominent feature of UK parliamentary democracy.
First, the Committee identified a subject for inquiry; the effectiveness and impact of the measures adopted by the government to support small and medium enterprises, private entrepreneurs, and employers and employees who were facing severe difficulties as a result of the restrictions on society, introduced to prevent the spread of COVID-19. This topic was chosen by the Committee in light of the acute challenges that small businesses experienced during the pandemic and the perceived inadequacy of the government’s response to those challenges. The Committee then issued a press notice containing a Terms of Reference (TOR), which outlined what it was looking into and what it saw as the key questions and issues to be addressed. The Committee aimed to explore the following:

- Have the measures adopted by the government to support SMEs, private entrepreneurs, employers and employees provided them with sufficient support and financial guarantees given the severity of the economic downturn caused by the COVID-19 pandemic and the restrictions introduced to help to control it?
- How effective have these measures been in maintaining employment and reducing job losses?

During the PLS inquiry itself, the Committee reviewed information from government ministries, civil society, and academics, as well as from open data sources. It received some of this information through a call for evidence, which it issued to the public to request input into the inquiry, a key component of PLS. Seven CSOs submitted evidence through this method. When the Committee had collated and assessed this data with support from WFD, it held a committee hearing, to pose questions raised by the inquiry to the ministries on economics, trade and agriculture, finance, social policy, and state agencies on tax, customs policy, statistics and the Ombudsman representative.

The hearing was attended by the relevant ministerial officials, which is sometimes difficult to secure in the Ukrainian context, as well as other stakeholders, and was recorded and shared online. During the hearing, the Committee probed and interrogated points made in the written evidence from the public. For example, it was stressed that measures within the COVID-19 legislation were not adequately communicated to businesses, who were therefore not able to benefit from them. On the whole, the Committee gave a largely positive assessment of the COVID-19 measures. However, they did find that:

- Not all categories of people involved in business activities received equal support
- All citizens had equal access to the response measures envisaged by the State Programme, however no additional support or compensation was offered to vulnerable groups, for example women entrepreneurs
- Geographical coverage of the support measures was uneven
- Financial support measures, including relief payments, were insufficient. The “Affordable Loans 5-7-9%” Programme was underfunded.

Summing up the hearing, Dmytro Natalukha, Chair of the Committee, stated that: “Based on the findings of the hearing, it seems that the situation (i.e. the financial support to SMEs, private entrepreneurs, etc.) is less negative than had previously appeared to be the case. In fact, the interaction of society is the most important reason for the absence of significant economic and social losses during quarantine restrictions. Our most critical remarks are concerning the interaction between society, government and business, and how legislative changes and innovations are communicated to the public and the business community.”
The Committee summarised the results of its inquiry in a final PLS report and published it on the Committee’s website. It contains written and oral evidence, and 10 findings and recommendations for the government. The analysis was strong and showed good engagement from the Committee. It exposed the issues that have hindered the implementation of the COVID-19 support measures and dealt with the effectiveness of these measures and their impact on business. However, the general conclusions were that the implementation of the examined legislation had not been as bad as expected. The next step will be for the parliament to take forward the recommendations to the line ministries for their implementation. From the positive feedback received in response to the programme, there is reason to expect that these follow up actions will be taken. Indeed, the Committee Chair himself said: “This is only the first step our first experience of monitoring the effectiveness of the implementation of legislation, and we’d like to continue this work.” The committee has also delegated one of its staff to attend an online advanced PLS course in July, which is a clear indication of the Committee’s commitment to conducting PLS.

What contributed to the change?
WFD delivered three activities to contribute to this outcome. Our in-house expert on PLS delivered a training workshop on the subject to the Committee. The training provided an introduction to PLS, and covered the required steps to conduct PLS processes, discussion with members on the scope of planned PLS activities, and their objectives and timeframe. Several meetings between WFD and the Committee helped prepare the TOR, which clarified the scope of the inquiry for the Committee members. WFD helped the Committee’s secretariat to publish the call for evidence, and engaged a local expert to advise them on the language of the TOR. Additionally, WFD provided support in preparation for the PLS hearing – developing the agenda, identifying participants, and drafting MPs’ questions as well as ensuring participating CSOs could effectively present their evidence to the Committee.

WFD also showcased PLS processes and what they can achieve to parliamentary staff representing other parliamentary committees. This was accomplished through a presentation on this programme’s PLS pilot, given at a workshop taking place as part of the USAID RADA parliamentary programme (which WFD is currently co-implementing) at the end of March 2021.

The introduction of PLS in the VRU is not only the result of this WFD programme, but previous programmes as well. Under a former Foreign, Commonwealth and Development Office (FCDO) Inclusive and Accountable Politics (IAP) grant, WFD commissioned an assessment to identify the barriers that impede VRU committees from engaging effectively with the public and CSOs. The findings and recommendations are detailed in the report which will be further considered and referred to in the course of future PLS work with the VRU.

Under that same IAP programme, which ran from 2019-2021, WFD worked to build many of the foundations that have made this programme’s outcome possible. Under the IAP programme, WFD worked with the VRU secretariat on a concept note to conduct an assessment of existing legislation. The hope was that the parliament would work with this concept note to develop parliamentary provisions for PLS, but this wasn’t achieved by the end of the programme. However, because of this work, the VRU was already aware of PLS and its potential benefits for enhancing oversight. Moreover, it was also during this programme that the issues with the RoP (discussed in more detail below) were identified. Having learnt from the previous programme, we were able to integrate this learning into the current programme’s design and approach, enhancing the programme’s chances of success.
In addition to WFD’s endeavours, there were other factors that contributed to the outcome being achieved. The UK-Ukraine Friendship Group, which is made up of MPs from across party political lines, was very supportive of carrying out a PLS pilot. Keen to understand how House of Commons oversight procedures could be applied in Ukraine, they approached the British Embassy and initiated this project. This meant that there were already a number of committed participants at the start of the programme. Finally, we can also hypothesise that the context of the heightened focus on the implementation of policies that the COVID-19 pandemic had created, may have helped to generate more interest in the inquiry among MPs.

**Lessons learnt**

Reflecting on this programme, there are a number of lessons that we’ve learnt from implementing a PLS pilot in Ukraine, that we can take forward in future programming.

Firstly, there are challenges in how parliament and civil society interact. There is a lack of guidance to effectively ensure stakeholders’ cooperation within parliamentary oversight processes, and so the engagement of the public remains minimal. New oversight legislation was passed by the VRU in early December 2020, but it focuses mainly on issues of working with the executive, and does not address the roles of non-government stakeholders. For PLS processes to work effectively, the VRU should consider how to engage external stakeholders more widely in parliamentary inquiries. In addition, it appears that external actors do not feel completely comfortable and trusting of parliament. The majority of the respondents to the call for evidence from both the business and civil society sectors did so anonymously, which seems to demonstrate that many people and organisations believe they could be subject to punitive action if they publicly criticise the government.

Secondly, we’ve learnt that PLS inquiries at the VRU can only be run through committees with specific powers in the parliamentary RoP. The VRU does not have specific regulations on conducting PLS and so parliamentary oversight is regulated by existing legislation, namely the legislation on committees and the RoP. According to the legislation, the responsibility for carrying out parliamentary oversight is with the committees only, not with political factions or MPs’ groups either formal or informal. Alongside political will and the necessary regulations, parliamentary administrative resources are needed to efficiently proceed on implementing PLS at the VRU. And if VRU committees are to begin to exercise PLS, their members and secretariat staff should have enough knowledge and confidence to be able to deploy PLS procedures without external advice and support.

Finally, by adapting PLS processes to the needs of the VRU, this programme has been able to demonstrate effective innovation. The PLS pilot was launched by members of the UK-Ukraine Friendship group but the programme had to adapt to national rules and so a beneficiary committee had to be identified for this programme. PLS terminology had to be significantly adapted to oversight related terminology as prescribed by the RoP and national legislation. For example, we had carefully translated words such as inquiry and call for evidence, among others which are often misinterpreted.

There were also some changes to the standard PLS processes in the hearing stage, which demonstrated flexibility in the PLS approach but also that there is further work to do to fully embed it. For example, to facilitate discussions within the Committee hearing, the expert engaged by the programme drafted questions for the Committee members to put to the government officials. Having received the questions, however, the Committee secretariat
forwarded them to the government rather than retain the questions for the hearing, suggesting they didn’t aim to put participants on the spot. Additionally, the PLS hearing was held in a format which resulted in the Committee inadvertently allowing the ‘witnesses’ to dominate the proceedings, while the Committee itself took a back seat. For example, statements and presentations given by witnesses were not really questioned by the Committee chair or members. As there were no questions from the Committee members, the discussion was mainly held between the engaged experts and the governmental officials who responded to questions and concerns flagged in the experts’ speeches. However, through this approach, the Committee still ended up receiving answers to many outstanding questions.

In future programming on this topic, we will apply this learning and carefully consider how we can address some of the deeper challenges discussed.

Significance of change
By the end of this programme, the Committee on Economic Development had the skills and resources to hold the Government of Ukraine accountable for the implementation of COVID-19 related legislation. Over the coming months, the Committee can decide what action they want to take as a result of their inquiry and the resulting report and recommendations. And while this programme has closed, the WFD team will be on hand to offer advice and expertise.

Under this programme, the VRU conducted PLS for the first time, and it has been shown that PLS is a useful tool. This is highly significant because previous efforts to make progress on introducing PLS into the VRU have shown WFD just how difficult it is to achieve. The fact that the Committee has been able to find a way to pilot PLS within the rigid RoP demonstrates both their enthusiasm for increasing oversight within the VRU, and bodes well for the future development of PLS within other committees.

A note on evidence:
Outputs created by this programme and mentioned in this case study, are recorded and linked on WFD's internal Evidence and Impact Hub. The PLS hearing was recorded and is available online. WFD collected informal feedback from the Committee Chair which demonstrates the contribution of the programme to the change, and this is quoted within the case study. All WFD activities, results and participants are recorded on our online monitoring tool.
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