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OF REFORMS

Reforms under the Microscope

As of April 2017

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Team of contributors:

Andriy Baranov, Natalia Best, Tetiana Boiko, Olha Hamankova, Andriy Hevko, Volodymyr Dybrovskyi, Artem Zakharov, Yevhen Krapyvin, Roman Kuibida, Oleksandr Liemienov, Ivan Lukerya, Vadym Miskyi, Roman Nitsovych, Serhiy Ponomariov, Olena Prokopenko, Yevhen Radchenko, Maria Repko, Igor Rozkladaj, Dmytro Romanovych, Ksenia Serdiuk, Serhiy Soroka, Tetiana Tevkun, Taras Tkachuk, Yulia Cheberiak, Zoriana Chernenko, Ruslan Chornyi, Anna Shumeiko, Dmytro Yablonovskyi, Oleksandr Yabchanka.

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In this publication, experts of the Reanimation Package of Reforms – Ukrainian coalition of non-governmental organizations – analyze the key tasks that Ukraine is facing on its path towards institutional, economic, and social reforms, as well as assess the status of their regulatory support and implementation over 2016 and in early 2017. Overview of each reform includes the description of its progress and stakeholders' participation, as well as presents recommendations for the authorities for further action.

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Foreword

In more than three years after the Revolution of Dignity, the progress of reforms is obvious in various spheres of public policy. Experts of the Reanimation Package of Reforms not only prepare dozens of draft laws, but also encourage the authorities to execute them in a timely and sustainable manner, ensuring the implementation of reforms.

The period under review has been marked by the following achievements: ensuring full-fledged operation of the National Anticorruption Bureau and the Specialized Anticorruption Prosecutor's Office; launching the e-declaration system; transferring all public procurement to the Prozorro system; launching the judicial reform through adoption of the constitutional amendments on justice; further amalgamation of territorial communities within the decentralization reform; establishing a public broadcaster; appointing first state secretaries. Rehabilitation of the banking system and deregulation are in progress; a number of important laws in the sphere of energy and environmental protection, bringing Ukraine closer to the European standards, have been adopted.

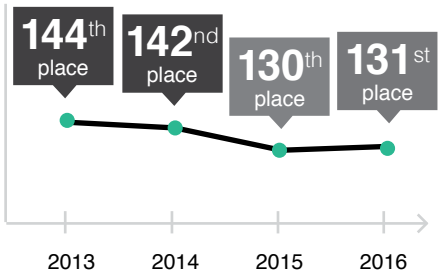
Relentlessly fighting for a proper implementation of reforms, the RPR has counteracted the attempts to roll back the key changes, particularly, in the anticorruption sphere: to change the regulations on the crimes to be investigated by the National Anticorruption Bureau, to introduce countless amendments to the law on the prevention of corruption, etc. However, politicians have been unnerved by the civil society which demonstrated its determination in the protection of anticorruption regulations and achievements of the Revolution of Dignity: the parliament has adopted discriminatory amendments to the law "On the Corruption Prevention". According to these changes, leaders and all members of anticorruption non-governmental organizations, their contractors and even participants of anticorruption campaigns initiated by these NGOs shall submit declarations of persons authorized to perform the functions of the state. Ukrainian civil society and the international partners of xUkraine have strongly condemned the introduction of discriminatory regulations, non-existing in any civilized country, and continue to demand that they are abolished.

We call on the responsible authorities to focus their efforts on the continuation of the initiated reforms: to properly implement the constitutional amendments on justice, to form a bona fide Supreme Court without any discredited officials, to continue improving the judicial system, to establish a system of anticorruption judicial institutions as the last link in the system of prosecution for high-level corruption, to set up the State Bureau of Investigation and to delegate investigative functions to it, to unblock the land market, to implement the healthcare and the pension reforms, to introduce an open list proportional electoral system in the process of parliamentary election, to ensure proper financing of a public broadcaster, to continue the reform of public administration and decentralization, to develop competitive electricity and heat markets, and to improve the energy efficiency of housing sector.

We are looking forward to continuing an effective cooperation in order to achieve tangible changes.

Best regards,
the Team of the Reanimation Package of Reforms

Anticorruption reform



Ukraine's ranking in *the Corruption Perception Index*

56%

of Ukrainians consider corruption one of the major problems in the country *(Transparency International, November 2016)*

«Barrier No.1 to investments»

– this is how foreign investors assess large-scale corruption in Ukraine *(Dragon Capital and EBA, November 2016)*

Challenges and goals of public policy

More than 70% of Ukrainians are convinced that the level of corruption in the country has not decreased, and the government does not want to expose corrupt officials. This is demonstrated by the survey "The World Corruption Barometer – 2016" conducted by the anticorruption organization Transparency International[1]. Of all the respondents, 56% consider corruption one of the main problems in the country. Almost half of the respondents have no doubts that governmental decisions are influenced by oligarchs. Finally, 86% of survey participants have a negative attitude towards the attempts of Ukrainian authorities to eradicate corruption.

According to the portfolio investors and strategic foreign investors, polled by Dragon Capital and the European Business Association[2], large-scale corruption and a lack of trust in the judicial system are the biggest obstacles to capital inflow to Ukraine. Since the Revolution of Dignity, Ukraine has ascended only 13 positions in the global annual Corruption Perception Index – from being 144th in 2013[3] it became 131st in 2016[4]. There is little dynamics; and in fact, in 2015 this indicator was better than in 2016.

Over the past three years, a number of laws and regulations have been adopted enabling the launch of a real anticorruption reform in Ukraine. First of all, it is worth mentioning the development of an anticorruption strategy for 2014-2017, the adoption of new laws "On the corruption prevention", "On the National Anticorruption Bureau", "On the State Bureau of Investigation", amendments to the law "On the Prosecutor's Office" (concerning the Specialized Anticorruption Prosecutor's Office), and laws "On the National Agency of Ukraine for identification, search, and management of assets derived from corruption and other crimes", "On public procurement", "On the prevention of and counteraction to political corruption," etc.

According to the presidential "Strategy 2020"[5], the main goal of the anticorruption reform is to significantly reduce corruption in Ukraine, minimize the losses of the state budget and businesses caused by corruption, and improve Ukraine's position in international ratings assessing the level of corruption. At the same time, this strategy mentions the need to overcome political corruption by reforming the political financing system. The presidential Strategy focuses on two anticorruption agencies – the National Anticorruption Bureau of Ukraine (NABU) and the National Agency on Corruption Prevention (NACP). According to the Government's Action Plan – 2016[6], the Specialized Anticorruption Prosecutor's Office is also one of the cornerstones of the anticorruption reform along with NABU and NACP.

A lack of independent judiciary is a key challenge in the process of combating corruption. The newly established NABU has already proved its capacity of investigating high-level corruption. In particular, its effectiveness is confirmed by its tense relations with the "old" investigative agency – the General Prosecutor's Office of Ukraine – which worsened in August 2016. The amendments to the Constitution regarding justice and the new law "On the judiciary and the status of judges", adopted in June 2016, provide for the establishment of the High Anticorruption Court as a specialized court of first instance to consider the cases within NABU's jurisdiction. However, the procedure for selecting judges and the guarantees of their independence shall be established by a separate law.

The State Bureau of Investigation (SBI), which, in accordance with the law, shall investigate all cases against law enforcement officers, judges, and high-ranking officials (other than crimes of corruption which are under the jurisdiction of NABU), should have been granted authority back on March 1, 2016, but it has not been established yet. Thus, the cases of this category are still being investigated by the Prosecutor's Office.

Formation of an effective system of preventing corruption in the public sector in 2016 was marked by the transition from establishing agencies to launching specific mechanisms. For example, developing the system of electronic declarations of public officials was one of the key achievements of the reform in 2016. However, the launch of this system met enormous resistance from several state institutions and was completed only due to mounting pressure from civil society and international partners of Ukraine. The collegial form of NACP management proved ineffective, so it is advisable to revise the way the NACP leader is selected, making him/her bear sole responsibility for the agency's activity.

As to the prevention of political corruption in 2016, parliamentary parties have for the first time received payments from the state budget for their statutory activities. However, the current impractical form of reportivng needs further improvement, so that this instrument becomes not only a way to finance the party from the state budget, but also a method for effective monitoring of its revenues and expenses.

Several attempts to downplay the achievements of the reforms were a major challenge to the anticorruption policy. In particular, it concerns the amendments to the law "On the corruption prevention" which obligates anticorruption activists to submit electronic declarations, while lifting this obligation from certain categories of public officials. There were also attempts to limit or abolish NABU's exclusive investigative jurisdiction related to high-level corruption crimes. Since there is a lack of political will to quickly implement the reform, the attempts to disrupt its various elements are gaining momentum and need special attention from civil society, authorities, and Ukraine's international partners over the next few years.

Implementation of public policy

When assessing the progress in preventing and combating corruption, it should be mentioned that it occurred in spite of, not thanks to, the stand of the country's top leaders. First of all, we are talking about the election of four members of NACP, which made it possible to launch the system of electronic declaration of public officials' assets and to start financing political parties from the state budget. As of early February 2017, the NACP already had 67.8% of its planned staff, ensuring its proper functioning.

For over six months, MPs have been trying to amend the law "On the corruption prevention". Their goal was to postpone the launch of the e-declaration system, to make the declarations unavailable to the public (thus restricting public access to information about the property, income, and liabilities of representatives of state authorities and local self-government), and to abolish administrative and criminal responsibility for those who intentionally declared false information.

Despite these efforts, the system was launched. During the first stage – from September 1 to October 30, 2016 – about 107,000 electronic declarations were submitted. According to the Report[7] on the progress and the results of the implementation of the Government's Action Plan – 2016, they were filed by:

418	MPs;
65,642	public servants of A and B categories;
1,053	local self-government officials;
7,019	judges;
10,198	prosecutors;
11,078	investigators;
78	officials of the Cabinet of Ministers.

There were 746 notifications about changes in the property status and 2,276 declarations of candidates running for public offices.

To ensure that NACP officials fulfill their functions, i.e. monitor declarants' lifestyle and control and fully verify e-declarations of civil servants, access was provided to nine state registers and information databases. The NACP shall get access to at least 13 more databases.

In 2016, NACP received first financial reports from the parties which shall be published on the agency's official web portal. By the decision of NACP, the government allocated 167,645,000 UAH to the following political parties:

Narodnyi Front	50,272,000 UAH;
Petro Poroshenko Bloc "Solidarnist"	49,543,000 UAH;
Samopomich Union	44,475,000 UAH;
Oleh Liashko Radical Party	16,907,000 UAH;
All-Ukrainian Union "Batkivshchyna"	6,448,000 UAH.

The political party "Opposition Bloc", entitled to financing from the state budget, refused to use this opportunity. Sixteen protocols on administrative infringements have been drawn up for delays in submitting financial reports.

In 2016, the law "On the State Bureau of Investigation" also came into force. The process of establishing a new law enforcement agency to investigate high-level corruption outside NABU's jurisdiction was launched in the summer. However, there was a big delay in selecting the SBI leader, which has taken over six months. As of early March 2017, the competition was still in progress.

Another important achievement of the year were amendments to the Constitution which allowed the detainment of judges seized during or immediately after committing a grave or an especially grave crime. This anticorruption novelty makes it much easier to bring to responsibility judges who have until recently enjoyed exclusive immunity and thus evaded responsibility.

The law "On the judiciary and the status of judges", adopted in summer 2016 with a number of innovations, launched the reform of the judicial branch of power, and ensured the institutional capacity of anticorruption judicial institutions.

In the course of the year, the Parliament adopted a number of laws which enabled the establishment of the National Agency of Ukraine for identification, search, and management of assets derived from corruption and other crimes. A head of the National Agency was elected for a five-year term through a competition. An action plan to ensure that the National Agency fulfills its executive functions was approved in December 2016. Finally, the Cabinet of Ministers determined the maximum number of employees in the National Agency's Secretariat: 130 people.

Stakeholders and their impact on policy implementation

President of Ukraine Petro Poroshenko. The role of Petro Poroshenko was reduced to resolving pressing issues related to the implementation of the anticorruption reform. First of all, it involved imposing a veto on the amendments to the law "On the corruption prevention", which the President did, being pressured by civil society and international partners. Poroshenko offered his own version of the amendments, coordinated with other parties, which allowed the launch of the electronic declaration system. However, in hindsight, it is hard to say whether the President did his best to contribute to the proper functioning of this system.

The Verkhovna Rada. It is important to mention both negative aspects of MPs' activity (introduction of amendments by MPs Derkach and Mysyk on New Year's Eve to delay the launch of e-declarations) and positive ones (adoption of amendments to the Constitution and the law "On the judiciary and the status of judges"). Moreover, some MPs have appealed to the Constitutional Court demanding that a number of provisions of the law "On the corruption prevention" be recognized as non-constitutional.

Verkhovna Rada Committee on Corruption Prevention and Counteraction has been playing a decisive role in the implementation of the said reform. The committee chairman, Yehor Soboliev, and committee members, in particular, Viktor Chumak, Serhiy Leshchenko, and others, repelled attacks against the electronic declaration system, demanded reports from the heads of newly-established anticorruption bodies, and proposed relevant legislative improvements, contributing to the reform's progress in Ukraine.

Cabinet of Ministers, as the supreme body of executive power, has played a very uncharacteristic role of a reformer. There were both successes and failures. The new leader of the government, Volodymyr Groysman, played an active role in all aspects of anticorruption activities: from the launch of the NACP and the e-declaration system to the formation of agenda to select the leaders of SBI and the National Agency of Ukraine for identification, search, and management of assets derived from corruption and other crimes.

Head of NABU, Artem Sytnyk, demonstrated his desire to independently investigate cases of corruption in the actions of high-ranking public officials and their accomplices. To date, more than 90 cases have been referred to court, 264 proceedings have been launched, and the total amount of offenses in question is almost 83 billion UAH. However, the investigation is not progressing smoothly. First of all, NABU does not have the right to retrieve data from information transport networks, which makes it, to some extent, dependent on the Security Service of Ukraine. There is another factor which prevents Sytnyk and his team from properly executing their functions – absence of communication with Nazar Kholodnytskyi, head of the Specialized Anticorruption Prosecutor's Office (SAP).

Prosecutor General of Ukraine Yuriy Lutsenko, appointed in 2016, has had the following "achievements" in less than a year of work: scandals related to the investigation against the former Deputy Prosecutor General of Ukraine Vitaliy Kaskiv, deterioration of communication with representatives

of the expert community and the general public, “collapse” of the case against Mykola Zlochevskyi, Minister of Environmental Protection during the Yanukovych presidency, “act of grace” in favor of MP Oleksandr Onyshchenko, subject of the “gas case” investigated by the NABU, etc. The only positive achievement of Yuriy Lutsenko’s department is the initiation of several criminal proceedings – on the demand of public activists – against local self-government officials and prosecutors. However, the results of those proceedings are not yet clear. In addition, despite his promises, Yuriy Lutsenko has neither completed the investigation of any corruption cases against Yanukovych and his entourage, nor referred them to court.

Head of the Specialized Anticorruption Prosecutor’s Office, Nazar Kholodnytskyi, has fruitfully cooperated with the head of NABU for a certain time. As a result of this cooperation, the Verkhovna Rada gave its consent to detain MP Oleksandr Onyshchenko in the “gas case” against him. However, in autumn 2016, communication between SAP and NABU broke down. At the same time, public activists suspected Kholodnytskyi of putting on hold the case against the owners of Ukraine International Airlines, failing the case against the management of the Zaporizhzhya Titanium and Magnesium Plant, delaying the approval of charge sheets to be served to the head of the Central Election Commission Mykhailo Okhendovskyi and the head of the State Fiscal Service Roman Nasirov.

Head of the National Agency on Corruption Prevention, Natalia Korchak, has become the biggest “obstacle” to the progress of the anticorruption reform. Paradoxically, following her election as the NACP chair, she was hailed as impartial and unbiased by most representatives of the public. However, all hopes for a lawful settlement of the situation were dispelled when Korchak started to play up to the leadership of the State Service for Special Communications and Information Security when the launch of the e-declaration system was intentionally blocked due to the lack of a certificate of a comprehensive information security system. Korchak later endorsed the biased decisions against MP Serhiy Leshchenko (in the cases concerning his apartment and teaching at the Ukrainian Catholic University) and the ex-head of the Odesa customs Yulia Marushevska (in the case concerning a 500 UAH bonus). There was also an issue with groundless payment of incentives to NACP members for their performance. The delay in adopting procedures for complete verification of e-declarations, in which both the NACP members and the leadership of the Ministry of Justice is involved, should also be mentioned as one of Korchak’s failures.

Leading non-governmental anticorruption organizations have acted as guides of the anticorruption reform in all its directions: the launch of NACP and the e-declaration system, communication with NABU and SAP, establishment of the National Agency of Ukraine for identification, search, and management of assets derived from corruption and other crimes, and the coverage of the SBI leadership selection.

International partners of Ukraine have supported all relevant anticorruption initiatives for the past two years. Moreover, some of them, particularly the United Nations Development Program, have made a significant contribution to the launch of the electronic declaration system. The activities of the US Embassy and the EU Delegation are also highly appreciated, since these partners help to implement the anticorruption agenda not only financially but also institutionally.

Recommendations for further action in 2017

The ongoing anticorruption reform will remain on the agenda for many years to come. Moreover, it shall not stop halfway, because in this case, the expected results will not be attained despite the huge amounts of money spent on the functioning of the newly established anticorruption agencies. At the same time, high-ranking politicians should realize that only a full-fledged anticorruption reform can help them improve social standards, quality of life, and economic indicators in the country.

Formation of a comprehensive system of prosecution of corruption offenses. In addition, it is important to authorize NABU to wiretap based on a court ruling, to launch the National Agency of Ukraine for identification, search, and management of assets derived from corruption and other crimes, to form the SBI, and to maintain NABU's exclusive jurisdiction over the investigation of high-level corruption.

Formation of an effective system for preventing corruption in the public sector. The NACP and its secretariat are not adequately staffed to function properly in all areas of its jurisdiction (conflict of interest regulation, e-declarations, anticorruption restrictions, etc.). However, at this stage it is advisable to amend the legislation and replace the collegial form of NACP management with a one-person management, and to ensure that a new NACP leader is selected as soon as possible. Moreover, the issue of the uninterrupted functioning of the Unified State Register of declarations of persons authorized to perform functions of the state or local self-government is again on the agenda. The draft law on whistleblowers' protection and disclosure of information about damage of or threat to the public interests has yet to be adopted.

Effective counteraction to political corruption. This area covers the following tasks: to provide access to information about the activities of the Verkhovna Rada, its committees and MPs; to formalize the responsibility for non-personal voting in the Parliament; to control the public financing of political parties; and to have the political parties publish their financial reports.

It should be noted that the strategic documents developed by the government over the last few years – in particular, the Anticorruption Strategy for 2014-2017, the Sustainable Development Strategy "Ukraine-2020", the Government Action Plan, the Association Agreement between Ukraine and the EU, and the Memoranda with the IMF – are no longer fully reflecting the challenges in the anticorruption sphere. Therefore, the goals and public policy actions should be updated in constant communication with the expert community.

How should the High Anticorruption Court look like?

Jurisdiction

The High Anticorruption Court (HAC) shall have an exclusive jurisdiction regarding the cases investigated by NABU and the prosecution supported by SAP.

Pertinent amendments shall be introduced to the criminal procedural legislation to ensure that in its activities the HAC relies on a proper legal and procedural basis.

Selection of judges

Candidates for judicial offices at the HAC shall be selected through an open competition with the use of fair, transparent, and objective criteria. It is necessary to provide guarantees to prevent any third-party influence on the selection process and to implement the principle of judges' independence. This makes it necessary for the Public Integrity Council to determine whether the candidates meet the criteria of integrity and professional ethics.

Formal qualification requirements for the candidates should be formulated in such a way that as many judges, lawyers, and scholars as possible could take part in the competition.

To prevent abuse and delays, deadlines for selection and appointment of judges of the High Anticorruption Court shall be established.

Since the HAC judges shall adopt decisions in important and high-profile cases, there is a risk of potential third-party influence. Therefore, an additional filter should be introduced for a limited period of time to ensure international participation in the process of judges' selection, which will guarantee that the public trusts the results of the competition and firmly believes that the candidates are highly competent and scrupulous.

To ensure public confidence, the selection procedure should be based primarily on the assessment of professional competence and integrity of the candidates and the firm belief that each of them has always adhered to high ethical standards in their professional activities and public and private life.

To this end, the High Qualification Commission of Judges of Ukraine (HQCJ) shall set up an ad hoc panel in charge of competitive selection of candidates to the High Anticorruption Court. Most of its members should be nominated by the international donors assisting implementation of anticorruption programs in Ukraine. All members of this panel shall have an equal right to vote. The panel shall adopt decisions by a simple majority of votes.

The High Qualification Commission of Judges shall take into account the decisions of the ad hoc panel. The former has no right to recommend candidates to the HQCJ, unless they have passed a background check and have been approved by the panel.

The Secretariat of the High Qualification Commission of Judges shall provide administrative and organizational support to the ad hoc panel.

Structure of the High Anticorruption Court and appealing against the decisions of the HAC

The place of the HAC in the judicial system of Ukraine shall guarantee that everyone can realize their right to a fair trial and that everyone is equal before the law.

The decisions of the HAC shall be reviewed by the Chamber of Appeal established under the High Anticorruption Court. The Chamber of Appeal shall be located in a separate building, other than the one where the HAC is operating.

Any person whose case is considered by the High Anticorruption Court shall have a constitutionally guaranteed right to appeal against the decision adopted by the HAC at the court of appeal or – in the cases stipulated by law – at the court of cassation.

The decisions of the HAC shall be reviewed under the procedure of cassation by the Criminal Court of Cassation within the Supreme Court.

Additional guarantees for judges and security measures

The salaries of the HAC judges should correlate with additional job requirements, as these officials will consider high-profile cases related to the top-level corruption and might, therefore, be pressurized.

Additional security measures, including special guarantees of physical protection of both judges and their family members.

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Judicial reform

84%

of Ukrainians believe that the judiciary needs cleansing *(GfK, August 2016)*

10%

of Ukrainians trust the Ukrainian courts fully or partially, while 83% distrust them *(Ilko Kucheriv Democratic Initiatives Foundation, December 2016)*

64%

of Ukrainians think that the judicial reform is being implemented contrary to public demands *(GfK, August 2016)*

Challenges and goals of public policy

According to a number of public opinion polls, the trust in courts is at a critically low level of 8-10%[1] – lower than in other public institutions. Such a low level of trust is due to the presence of at least three key problems.

The first one is **corruption**, which has, unfortunately, penetrated into the judiciary and is convenient not only for judges, but also for those who resort to corruption to "settle" their issues in courts, notably, the oligarchs. It is a shame that mutual cover-ups and corruption in the judiciary do not allow to effectively combat this phenomenon.

The second problem is the **political dependence of judges**, arising from legislative mechanisms and the system of informal practices. Judges are very sensitive to the political dimensions of cases. Many judges are used to this system and see their role in serving the interests of representatives of political power rather than in protecting human rights and asserting the rule of law. A number of judges owe their careers to former members of Yanukovych administration and remain their agents of impact, even though they fled to Russia after the Revolution of Dignity.

The third problem is **the inefficiency of courts**, which requires optimizing human and material resources and simplifying the judicial system and its related procedures.

An additional issue is the inadequacy of Constitutional Court as **an independent body of constitutional jurisdiction**. It is still incapable of fulfilling its task of ensuring the supremacy of the Constitution of Ukraine – and, therefore, should be reformed.

The coalition agreement of parliamentary factions "European Ukraine", concluded in 2014[2], meets these challenges, stating: "We shall create a non-corrupt, effective, and independent judicial system to ensure the right to a fair, impartial, and unbiased trial." The agreement contains a clear-cut list of legislative changes necessary to achieve these goals. More specifically, it includes the formation of the Supreme Court of Ukraine and the Constitutional Court of Ukraine from the pool of well-known legal experts in accordance with legally determined criteria and with a public discussion of candidates.

Despite the reformatting and the weakening of the coalition in 2016[3], the Parliament tried to implement the measures specified in the coalition agreement. The provisions of the new Government Action Plan approved in April 2016[4] also facilitate these goals, although they are less specific than those of the coalition agreement. The year before, the President approved a strategy of the judicial reform[5] which lists as many as 32 problems and identifies 13 areas to be reformed. However, the document uses vague terms such as "ensuring", "increasing", "strengthening" or "improving" which has weakened its significance as a policy manifesto.

At the same time, the Reanimation Package of Reforms has voiced[6] the following goals of the judicial reform to be reached by the end of 2017:

- To reboot the judiciary and to increase the responsibility of judges;
- To ensure real independence of judges;
- To introduce new technologies for organizing the work of judges and the judicial proceedings; to introduce a full-fledged jury trial;
- To establish an anticorruption court to handle high-level corruption cases;
- To diversify the mechanisms for settling commercial disputes;
- To introduce international standards in legal education and the regulation of legal professions.

Implementation of public policy

Achievements and failures of the judicial reform in 2016

- The competition to fill the offices at a new Supreme Court was launched, engaging not only judges, but also attorneys and researchers;
- The Public Integrity Council was established;
- Qualification assessment of all judges was introduced;
- Judges' immunity was restricted;
- The judges are now obliged to prove that their property has legal origin;
- The political bodies have been gradually deprived of the right to make decisions related to the judges' careers;
- The legal foundation was laid to introduce the institute of private enforcers.

- The High Council of Judges and the High Qualification Commission of Judges let judges evade responsibility;
- Considerable delay in adopting laws required to implement constitutional amendments;
- Attorneys' monopoly was introduced at the constitutional level;
- Ratification of the Rome Statute of the International Criminal Court was delayed;
- The Prosecutor General is still appointed and dismissed in a purely political manner;
- Failure to ensure continuity of justice in some districts; failure to recruit judges;
- Lack of transparency in the competitive selection of employees of the High Qualification Commission of Judges;
- The activities of the Constitutional Court related to the review of constitutional complaints were blocked;
- Lack of a competitive procedure for selecting candidates to fill the offices at the Constitutional Court.

Introduction of amendments to the Constitution regarding justice played a key role in rebooting the judiciary and strengthening judges' independence. The constitutional amendments were initiated by President Poroshenko and prepared by the Constitutional Commission he set up. A complicated procedure of amending the Constitution finished on June 2, 2016, with the adoption of the law which came into force on September 30, 2016.

To reboot the judiciary, all judges shall be subjected to a qualification assessment, and failure to pass it will be considered as grounds for dismissal. Moreover, judges shall be dismissed in case they cannot prove the legal origin of their property. The path to forming new courts on the basis of competition was paved by another provision – in case of reorganization or liquidation of a court, a judge can either retire or run for office in a new court.

The law introduced appointment of judges for an unlimited term. Moreover, the President and the Parliament were completely suspended from the decision-making related to the dismissal of judges, which became the responsibility of the High Council of Justice. For the next two years, the President maintains his right to transfer judges from one court to another, as recommended by the High Council of Justice. After this period, these issues will be tackled by the High Council of Justice. The Venice Commission has acknowledged that the President can temporarily keep this right due to national security considerations, most probably envisioning a situation when the High Council of Justice (whose members are mostly judges) might try to promote those judges who discredit their occupation.

Starting from 2019, the majority of members of the High Council of Justice will be judges elected by their peers (11 members out of 21). The Council shall keep its current composition, where judges prevail, but are appointed by different entities (judges, the President, the Parliament, researchers, prosecutors, and attorneys).

The President is authorized to establish, reorganize, and liquidate courts. However, on January 1, 2018, this authority will be transferred from the President to the Parliament.

Judicial immunity is restricted. In the past, the Parliament had to give its consent to detain or arrest a judge (it often failed to respond to such situations promptly and adequately, letting the judges flee), while today this consent is given by the High Council of Justice. Their consent is not necessary if the judge is caught at the moment of or immediately after committing a grave or an especially grave crime.

Thus, the constitutional level provides good opportunities for a full-fledged reform, however, the actual results will emerge only after the constitutional amendments on justice are implemented, which might take another three to five years. The positive outcome depends not only on the goodwill of the state, which is not yet sufficient, but also on the perseverance of civil society and international partners. The most active judges and politicians will do their best to ensure that no legislative changes impact their influence, and herein lies one of the major present-day challenges.

The law "On the judiciary and the status of judges", adopted simultaneously with the constitutional amendments, has significantly reinforced the measures taken to eradicate corruption in courts. The position of a judge has become more attractive – it is planned to considerably increase the salary of judges to attract the best lawyers from beyond the judicial system. The salaries of incumbent judges will be raised only provided that they successfully pass the qualification assessment.

Now, the judges have to indicate in their declarations all relatives employed by the courts, the bar, the prosecutor's office, or in high-ranking positions. This mechanism allows to identify conflicts of interest, when judges consider cases involving their relatives. In addition, a detailed electronic declaration of the property and income of all civil servants and judges was introduced in the second half of 2016.

Those judges who do not pass the qualification assessment of competence, fair practices, and professional ethics will be immediately dismissed without re-training at the National School of Judges. Given these conditions, almost one thousand judges have resigned. It is possible

that many of them did not want to draw close attention of the qualification agencies and, especially, the public.

It is important that the public acquired a legitimate instrument for participating in the process of assessment through the Public Integrity Council. It has been set up by professional NGOs from a pool of lawyers, human rights activists, and investigative journalists. The PIC collects information about fair practices of judges and their conduct and submits its conclusions to the High Qualification Commission of Judges. Its opinion is later attached to the judges' dossiers and considered by the commission. The High Qualification Commission of Judges can override a negative conclusion of the Public Integrity Council only by 11 votes out of 16.

The law "On the judiciary and the status of judges" has provided for a radical reform – establishment of a new Supreme Court instead of the acting one and formation of three higher specialized courts which used to be the courts of cassation. Thus, the legislator has taken into account the recommendations of the Venice Commission and the requirements of the Reanimation Package of Reforms concerning a three-tier system. The category of supreme courts shall include the Supreme Court in charge of intellectual property cases and the High Anticorruption Court, which will, apparently, act as the first instance in relevant cases, not as the court of cassation.

The changes in the judicial system are top-down. A new Supreme Court will be formed in 2017 based on competitive selection. The acting judges of the Supreme Court and the higher courts have the right either to resign or take part in the competition. Legal researchers and attorneys have for the first time been allowed to run for these offices, whereas previously the higher level courts used to include only judges. The competition is conducted by the High Qualification Commission of Judges in partnership with the Public Integrity Council.

The legislator followed the path of establishing a large Supreme Court of up to 200 judges with an internal division into four courts of cassation and the Grand Chamber. This is not the best way to organize the court of the highest instance. However, if a small Supreme Court is to be formed, most cases will end up in the courts of appeal which might be reformed in the long term. Therefore, there was a need to set up a bigger Supreme Court to ensure that it can consider as many cases as possible.

When this material was being prepared, the competition to fill the Supreme Court offices was still ongoing, so it is too early to assess whether it was fair. Nevertheless, public representatives, in particular, the Reanimation Package of Reforms and the Public Integrity Council, have already repeatedly stressed that the High Qualification Commission of Judges fails to ensure proper transparency of the competition. The procedural codes have not been amended yet, so one might only guess how the new institution of cassation will look and how effective it will be. There might be another problem: after the new Supreme Court is established, the cases that have not been considered by the higher courts or the Supreme Court of Ukraine, shall be transferred to the new Supreme Court. This might put an unbearable pressure on the newly established agency, especially given that the judges of old courts of the highest instance do not hurry to consider the cases, knowing that they would be able to pass them over to a new court.

The Reanimation Package of Reforms has initiated a discussion on the need to complete the formation of a system of anticorruption agencies by establishing a brand-new corruption-free anticorruption court (courts). The law "On the judiciary and the status of judges" has, indeed, provided for the establishment of the High Anticorruption Court to deal with cases of high-level corruption, yet it postponed it for an indefinite term – until a special law is adopted.

On the day when the constitutional amendments on justice were approved, the parliament also adopted **two laws to improve the enforcement of court rulings** which came into force on October 5, 2016. The laws provided for the de-monopolization of governmental activity related to enforcing court rulings. The first private enforcers will start to operate alongside the governmental enforcement service in 2017 and will be guided by the same procedural

regulations as the governmental ones. The occupation of a private enforcer will be self-governing: it is planned to set up an association of private enforcers. In general, introduction of the institute of private enforcers might become a very important reform, because, according to various estimates, around 80%-98% of court rulings are not executed in Ukraine[7]. Competition should reduce corruption in this sphere and make enforcement of court rulings more effective. However, it is also important that the government does not intentionally impede the development of the institute of private enforcers.

After the implementation of constitutional amendments on December 21, 2017, the Verkhovna Rada adopted, albeit belatedly, **the law "On the High Council of Justice."** The High Council of Justice is a key human resources agency in the judicial system. It recommends candidates to the offices of judges to the President. It also establishes special chambers to settle disciplinary cases against judges. This agency has taken over the President's and the Parliament's powers to dismiss judges. The High Council of Justice was set up from the pool of members of the High Council of the Judiciary which had significantly fewer powers. In March 2017, the convention of judges elected four members of the Council and shall elect another two from the pool of judges. At the same time, there is a great danger that this agency might preserve the problems in the judicial system, should the emergency mechanisms for rebooting the judiciary, incorporated in the amended Constitution, fail to yield the expected result.

Implementing the reforms in the judicial system, the Ukrainian authorities did not pay much attention to the development of legal education, ignoring the fact that it is the main cause of many problems in the industry. However, in 2016 the Ministry of Education and Science **launched an experiment, requiring applicants to master's in law programs in nine leading universities to take an external independent assessment**. The experiment was successful, because all the applicants were objectively assessed by the same criteria and a rating was compiled, giving them an opportunity to choose an educational institution. Thus, corruption at the level of university management during the enrollment in the master's in law programs is being targeted with initial success. In 2017, this experiment will be extended onto all law schools. In the future, a similar mechanism can be used to assess the graduates.

After the constitutional amendments on justice were adopted in June 2016, separating the Constitutional Court from the courts of general jurisdiction and reforming constitutional proceedings, it was necessary to adopt a new law to regulate the status of the Constitutional Court by September 30, 2016. However, such a law has not been adopted—on April 11, 2017, the Verkhovna Rada rejected the draft law[8] prepared by the Council on the Judicial Reform. A number of comments submitted by the public were not taken into account when preparing this draft for the second reading. Subsequently, the Constitutional Court is not considering constitutional complaints, since there is no relevant procedure, which should have been laid down by law. Two judges of the Constitutional Court are completing their terms of office in June 2017, which means that only 13 judges will remain. It is impossible to appoint new judges when there is no legislative regulation for the competitive selection of candidates to the Constitutional Court. Such a situation might block the activities of the Constitutional Court and lead to the same state of affairs as in 2005-2006, when this court was not actually functioning.

There were the following problematic moments in the course of the judicial reform in 2016 – early 2017: a significant delay in the adoption of the laws necessary to implement the constitutional amendments; introduction of the lawyer's monopoly at the constitutional level; postponement of the ratification of the Rome Statute of the International Criminal Court; preservation of a purely political procedure for appointment and dismissal of the Prosecutor General; failure to ensure continuity of judicial proceedings in some areas; failure to recruit judges; a sense of impunity in the judiciary due to the passiveness of the High Council of Justice and the High Qualification Commission of Judges during disciplinary proceedings; a lack of transparency in the competition to fill the offices in the new Supreme Court.

Stakeholders and their impact on policy implementation

The President and his Administration. They have formally undertook all the policy-making in the sphere of judicial reform. Their activities in this field are marked by balancing between public needs, requirements of the international institutions, and judges' interests. The Council for Judicial Reform is often used as a platform, although major preparations are carried out by the Presidential Administration and involve a narrow circle of other stakeholders. The key legislative changes in 2016 are actually products of the work of Presidential Administration. Despite the fact that the President's influence on the judicial system has been formally limited, the mechanisms of informal impact and certain powers of the transitional period (concerning the transfer of judges, establishment and liquidation of courts) are still present.

The Verkhovna Rada. Having adopted a number of laws, the Parliament has given impetus to a large-scale judicial reform. It is a platform where different, primarily political, interests clash and reconcile. In 2016, the Parliament endorsed key legislative initiatives of the President in the field of judicial reform. To achieve this, the President, likely, had to resort to behind-the-scene agreements with representatives of other factions whom he could not influence directly. As a result, the real cost of these arrangements is not yet clear.

The Ministry of Justice. Although the Ministry does not lead the judicial reform, it bears a significant impact on key decisions. The minister is ready for radical changes in the judicial system and can influence Parliament's final decisions through the second largest parliamentary faction. When it comes to certain matters, the Minister of Justice supports the proposals of public experts.

Non-governmental organizations. They are mostly agents of impact acting on behalf of the society, advocating moderate, yet fundamental measures in the sphere of judicial reform. Most of the actions taken in 2016 to reboot the judiciary are the results of advocacy on the part of public experts. In many cases, international organizations partner with NGOs, and are guided by both the stand of governmental structures and the opinion of the expert community.

International organizations and programs of technical assistance to the Government of Ukraine. The Council of Europe, the European Union, the International Monetary Fund, the United States of America, and programs of a number of other countries promote the judicial reform and eradication of corruption in Ukraine. Developing its policy towards Ukraine, the European Union is usually guided by the opinions of the Council of Europe. Besides, it often turns to the Venice Commission to assess the adopted and the prospective legislation in this field.

Judiciary. Overall, the judges are not interested in the judicial reform, except when it concerns the improvement of work environment and an increase of salaries or formal strengthening of their independence. They are afraid of cleansing and rebooting of the judiciary. Having important levers of influence and supported by media owned by members of the previous government, the judges are the biggest opponents of the reform. This is evidenced by their actions to initiate proceedings on the

non-constitutionality of certain provisions of the reform and their court rulings and judgments in the Constitutional Court. Moreover, members of the judiciary are well represented in the Constitutional Commission and in the Council for the Judicial Reform and can lobby for decisions that are advantageous to them. At the same time, the judiciary is quite heterogeneous and includes many groups of impact with different interests.

The High Council of Justice and the High Qualification Commission of Judges of Ukraine. After the constitutional amendments on justice came into force, the judicial self-government assumed a much greater role in restoring confidence in the judiciary. The High Council of Justice was endowed with disciplinary powers, as well as the obligation to ensure judges' independence and the authority of justice. The High Qualification Commission of Judges of Ukraine (HQCJ) is holding a competition to fill the offices in the new Supreme Court, while the competition for local courts started on April 3, 2017. These agencies have not yet demonstrated the level of transparency sought by the public. Moreover, there are dangerous indicators that those positive changes might roll back. Formation of an honest judiciary at the Supreme Court and other courts, as well as public confidence in the judiciary as a whole, depend on the level of transparency of the ongoing competitions. At present, when it comes to fundamental decisions, these two agencies are balancing between the interests of the judiciary and the Presidential Administration, taking little account of public interests.

Recommendations for further action in 2017

The year of 2017 should become the period of implementation of the constitutional amendments on justice. The laws necessary for their proper fulfillment should be adopted. Presumably, there will be attempts to neutralize a number of progressive constitutional provisions through legislation or legal practice. To prevent this, the following actions should be urgently taken:

New Supreme Court. There are 653 candidates taking part in the competition[9] conducted by the High Qualification Commission of Judges. Their profiles are being checked by the Public Integrity Council.[10] Maximum transparency is key for the success of the competition. However, this issue largely depends on the actions of the High Qualification Commission of Judges.

The public places high expectations on the new Supreme Court. It shall not only replace three higher specialized courts and the acting Supreme Court, but also set high standards of justice for the entire judicial system through fulfilling its authorities related to cassation.

It is important not to undermine the role of the new Supreme Court, "dumping" on it tens of thousands of cases amassed in the higher courts. It is this mechanism that is provided by the law. Yet, the new Supreme Court might not survive the strain of all these cases. Therefore, the law should be amended so that only new cassation appeals shall be submitted to the new Supreme Court. The higher specialized courts shall either consider all those cases before their liquidation, or pass them over to the courts of appeal, which is undesirable.

It is important that the High Qualification Commission of Judges and the High Council of Justice become agents of qualitative changes. If, despite favorable legislation, the judiciary is not rebooted, the system might reproduce itself with all of its shortcomings – corruption, mental dependence, mutual cover-up. Formation of a new Supreme Court will become the key test for these agencies. If the public and the international community recognize this as a success, the judicial reform will get its first real achievement.

Qualification assessment. It is important that the judges appointed for five-year terms and the judges of the courts of appeal should undergo the qualification assessment in 2017. It is also possible to launch the process of reorganizing the courts of appeal and form new appellate courts through competitions open to not only judges. A pool of candidates for the offices of judges of local courts shall be formed.

The viability of the new constitutional regulation obliging judges to prove legal origins of their property shall be put to test, if judges who cannot comply with this provision will be dismissed.

Introduction of anticorruption courts. The Law "On the judiciary and the status of judges" has provided for the establishment of the High Anticorruption Court, yet delayed its launch until a separate law is adopted. The efficiency of the National Anticorruption Bureau and the Specialized Anticorruption Prosecutor's Office might be reduced to non-existent unless this law is adopted and the anticorruption courts are set up.

In addition to the High Anticorruption Court as a court of first instance, a special department in charge of appeal hearings shall be created in the Supreme Court. Moreover, it might be necessary to establish several regional anticorruption courts. The law shall lay down a special procedure for selecting judges to these courts, where the decisive vote would belong not to political bodies or acting judges, but to international organizations and representatives of the public.

If this law is adopted in early 2017, there is a chance that anticorruption courts will be launched in 2018. However, there is yet no political will to adopt a high-quality law. The authorities might try to "drag through" a version of the law that will allow them to select loyal judges. However, the public will obviously defend[11] the establishment of truly independent anticorruption courts.

Reform of the constitutional proceedings. It is necessary to adopt a new law "On the Constitutional Court" to lay down the competitive procedure for selecting candidates for the offices of judges (to set up a single competition panel for all applicants). This will ensure competitive principles of choosing candidates to the Constitutional Court and minimize applicants' influence on the process of selection. The new law should fully regulate procedures of the competition panel and the competitive selection. It is necessary to formalize the applicants' obligation to acknowledge the results of the selection and to guarantee that Constitutional Court judges will be appointed only from the pool of candidates recommended by the competition panel. The constitutional amendments – if properly implemented at the level of law – will reduce political influence on the Constitutional Court and gradually move towards building an independent and authoritative Constitutional Court.

E-court. Judicial proceedings will be much more accessible if communication with the court is fully converted into electronic format. It will be much more convenient for people who prefer to communicate by email instead of going to court in person.

The e-court will not only save financial and human resources, but also speed up the settlement of cases and reduce the burden on courts. Some technical capacities for the introduction of e-court have already been developed, although it is still necessary to amend the procedural legislation to launch it.

Revision of sentences for the arbitrarily convicted. According to reports of human rights activists, dozens of people sentenced to life imprisonment are serving sentences for crimes committed by other people[12]. In Ukraine, there is no mechanism for reviewing the sentences of such persons, if they were imposed a long time ago. Many of the convicted died without a chance to have their sentence reviewed.

The Parliament adopted a draft law[13] that allows to review a case in the first reading. Unfortunately, it has not been considered in the second reading in the past year due to lobbying by prosecutors and judges and the doubts that the present-day judicial system, which is unwilling to admit

its mistakes, can review the cases effectively. However, these doubts can be dispelled in 2017, once this process is controlled by the new Supreme Court. Therefore, there is a good chance that this law will be adopted.

Jury trial. A greater public engagement can help to restore the trust in the government and in the courts. There is such a judicial institution as a jury trial. It works in criminal cases, but in an abridged version – in essence, this court looks exactly like it did before with two judges and three people's assessors who decide on both the issues of fact and the issues of law. At the same time, the classical model of a jury trial envisages a jury, which decides whether a person is guilty on the basis of evidence provided by the defense and the prosecution, and a judge who either acquits the person or finds him/her guilty based on the jury's verdict.

There is obviously a need to introduce this particular model of jury trial. The scope of its competence should also be expanded. A legislative framework for the gradual introduction of jury trial can be shaped in 2017.

It is absolutely possible today to introduce the institute of jury trial to settle commercial disputes. Moreover, the law "On the judiciary and the status of judges" mentions this, although, in slightly different terms[14]. It presupposes that disputes involving large amounts of money shall engage authoritative lawyers selected by the parties from a pool of individuals delegated by the business community. Such a model can eradicate corruption in the economic courts and strengthen investors' confidence in the Ukrainian judicial system. The procedural law has to be amended to implement it.

Launch of the institute of private enforcers. Unfortunately, a poor level of execution of court rulings also affects the authority of the judiciary. The state has a monopoly in this sphere. These functions are implemented by the state executive service. However, when there are only 4,500 governmental enforcers and millions of enforcement proceedings each year, there is a big risk of corruption.

The institute of private enforcers has been introduced to complement the state executive service.[15] Private enforcers will execute court rulings following the same procedure as the governmental ones. Now the plaintiff will have a choice – to turn to the state executive service or to a private enforcer. Under such competitive conditions, it is expected that the quality of performance will improve and the risk of corruption will decrease.

It is expected that the first cohort of private enforces, selected on competitive basis, will start working in the first quarter of 2017. Of course, one should not hope that this year there will be enough private enforcers to compete with the state executive service. Yet, in due course, the share of state executive service in this sphere should lessen or disappear altogether.

The following is a list of most anticipated actions in the area of judicial reform in 2017: formation and launch of a new Supreme Court; start of a primary qualification assessment of judges according to new rules and with participation of the Public Integrity Council; formation of a legislative framework to set up the High Anticorruption Court; launch of electronic legal proceedings; introduction of a mechanism for reviewing sentences of the arbitrarily convicted; start of work of the first hundred private enforcers.

Timeline of the Judicial Reform

2016

September 30, 2016

1

amendments to the Constitution regarding justice and a new Law *"On the judiciary and the status of judges"* come into force

from **September 30, 2016**

2

powers of the Minister of Justice and the Prosecutor General of Ukraine as members of the High Council of Justice are terminated

October 5, 2016

3

the Law *"On agencies and persons in charge of enforcement of court rulings and decisions of other agencies"* and the Law *"On executive proceedings"* come into force

by **October 30, 2016**

4

judges submit e-declarations on their assets

July 2017

14

a new Supreme Court is established, its judges being selected on a competitive basis; the judges of local courts submit declarations on family relations and and integrity declarations

from **January 6, 2017**

13

a unified register of debtors and regulations of the law on activity of individual entrepreneurs come into force

by **January 6, 2017**

12

an interim qualification commission of private executors is set up

by **October 1, 2017**

15

the High Court on intellectual property is established

by **October 6, 2017**

16

the Ministry of Justice conducts constituent meetings of private enforcers in the regions; their key agencies are established

by **December 31, 2017**

17

wages of judges working at courts of all instances increase

DURING AN INDEFINITE PERIOD OF TIME:

establishment and formation of the **High Anticorruption Court** within 12 months after the relevant law comes into force

development of an **Integrated Judicial Information System** to ensure automated document flow and analytical procession of statistical information

from **January 1, 2020**

27

only prosecutors or attorneys can act as representatives of authorities and local self-government bodies at the courts; wages of judges working at courts of all instances, except for Supreme Court, increase

2020

by **December 31, 2019**

26

wages of judges working at courts of all instances, except for Supreme Court, increase

* Law “On the High Council of Justice” / Law “On the Constitutional Court of Ukraine” / Law “On anticorruption courts” / Amendments to the procedural codes / Law “On access to legal profession” / Law “On public defender’s office and activity” / Amendments to the Law “On prosecution”

November 11, 2016

5 the Public Integrity Council is formed

by **November 29, 2016**

6 the judges of high courts submit declarations on family relations and integrity declarations

by **December 1, 2016**

7 competitive selection of judges to the new Supreme Court starts; an automated system for creating and keeping judges’ portfolios is launched

from **January 6, 2017**

11 only prosecutors or attorneys can act as representatives at the Supreme Court and the courts of cassation

by **January 1, 2017**

10 six members of the High Council of Justice are elected at the judges’ congress

by **early 2017**

9 a number of laws and amendments to the procedural codes are adopted*

2017

by **December 29, 2016**

10 the judges of courts of appeal submit declarations on family relations and integrity declarations

from **December 31, 2017**

18 the Parliament (instead of the President) is empowered to set up, reorganize, and liquidate courts

2018

by **January 1, 2018**

19 the Court Protection Service is launched

from **January 1, 2017**

20 only prosecutors or attorneys can act as representatives at the courts of appeal

from **September 30, 2017**

21 the High Council of Justice (instead of the President) is empowered to transfer judges from one court to another

from **June 30, 2019**

25 Ukraine might recognize the International Criminal Court on the basis of the Rome Statute

by **April 30, 2019**

24 new members of the High Council of Justice, mostly elected by judges, are appointed

from **January 1, 2019**

2019

23 only prosecutors or attorneys can act as representatives at the courts of first instance

by **December 31, 2018**

22 wages of judges working at courts of all instances, except for Supreme Court, increase

Timeline of the last stage of the Supreme Court competition

21 April – 26 May 2017

the second stage of the qualification assessment: four specialized panels of the High Qualification Commission of Judges (HQCJ) conduct **interviews** with the candidates and assess their profiles (dossiers)

6 June – 21 July 2017

HQCJ makes **final decision** on the conclusions of the Public Integrity Council (PIC) it disagrees with by 2/3 votes at its special plenary session

27 July 2017

HQCJ **shortlists** the candidates and determines the winners of the competition

August 2017*

HQCJ submits its **recommendations** on the appointment of candidates to the offices of the Supreme Court judges to the High Council of Justice (HCJ)

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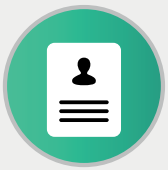
September 2017*



Having considered the HQCJ recommendations, HCJ decides to recommend that the President should appoint particular judges, **filing the profiles** (dossiers) of those judges along with its petition

September 2017*

The head of the HCJ sends the **petition** to the President of Ukraine with a request to appoint the judges of the Supreme Court

October 2017*

The President signs the **Decree** on the appointment of the judges of the Supreme Court; the Decree is officially published

December 2017*

The Supreme Court holds a plenary session and adopts a **resolution** on its launch which is then officially published

*** approximate date**

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Public administration reform

87
winners

determined by the Civil Service Senior Corps Commission in 108 competitions *(as of December 27, 2016)*

allocated by the EU to implement the Public Administration Reform Strategy in Ukraine in 2016-2020

1/3

of Ukrainians considers the Government the driving force of reforms (33.5%), while almost the same percentage of people – 31% – think it is slowing down the reforms *(Ilko Kucheriv Democratic Initiatives Foundation, December 2016)*

Challenges and goals of public policy

The public administration reform is crucial in countries with transition economies implementing comprehensive reforms in various areas of public policy. An effective public administration system is one of the main factors in a country's competitiveness. The Cabinet of Ministers of Ukraine will be able to efficiently develop public policy in various spheres only when there is a professional, accountable, efficient, and effective system of central government bodies. The country will rank higher in global competitiveness ratings once the administrative burden of government regulation is reduced, the quality of administrative services is improved, and the legality and predictability of administrative actions are ensured. In addition, an effective public administration system is one of the main prerequisites for democratic governance based on the rule of law.

To reform the public administration means to satisfy the public demand for good governance, entailing effective, responsible, and open institutions of executive power and local self-government.

The goal of the reform is to form an effective public administration system to provide high-quality public services to citizens in line with European standards; to ensure the best use of public funds; to guarantee a timely and adequate response to socio-economic and foreign policy challenges; and to shape effective public policy with due consideration of global trends and future challenges.

Article 3 of the Association Agreement between Ukraine and the EU defines good governance as one of the principles essential for strengthening relations between the parties. Ukraine shall continue political, socio-economic, legislative, and institutional reforms necessary for the effective implementation of the Association Agreement.

Improving the quality of public administration and public services is one of the seven strategic priorities in the Government's Priority Action Plan for 2016.[1]

The public administration system of Ukraine satisfies neither the country's need for comprehensive reforms in various areas of public policy nor its European choice or European standards of good governance. Ukraine ranks low in global competitiveness ratings related to public administration.

According to the indicators of the Global Competitiveness Index of the World Economic Forum (2015-2016)[2], Ukraine ranks 130th (among 144 countries) in the criterion of public-sector performance, 103rd in transparency of government policy-making, and 115th in the burden of government regulation. Ukraine's position in the World

Bank's Doing Business 2017 ranking[3] is somewhat better: Ukraine ranks 80th overall. There has been a significant improvement when it comes to starting a business – Ukraine has climbed from the 70th place in 2015 to the 20th place in 2017.

The following are the reasons behind this situation:

1) Incomplete transformation of the Cabinet of Ministers of Ukraine into a body of political management;

2) Lack of continuity in the government;

3) Irrational system of executive bodies at the central level. An unreasonably large number of central executive bodies which have almost equal status with the ministries; unclear classification and excessive variety of central executive authorities results in frequent and unjustified changes in their status and in the overall instability of the system. Incomplete separation of functions related to formation and implementation of public policy, such as state property management, supervision and control, provision of administrative services, etc; incomplete separation of political and administrative management in the ministries; poor coordination and interaction between the central executive authorities. Underdeveloped and ineffective mechanisms of accountability, supervision, and control with regard to central executive bodies guided and coordinated by the ministers. A lack of clear legislative definition of the status, the competence, and the basic principles of activity of independent regulators, resulting in vulnerability of the national commissions in charge of natural monopolies regulation, which are exposed to political interference. A sectoral principle of formation of many central executive bodies and, consequently, conflicting functions and excessive organizational fragmentation of responsibility for public policy. Great uncertainty regarding the internal distribution of responsibilities and functions among the central executive authorities which leads to overlapping of activities, dispersion and misallocation of human and financial resources.

4) Ineffective organization of executive power at the local level: ineffective mechanism of interaction between the Cabinet of Ministers and local state administrations; ambiguous status of heads of local state administrations; indistinct separation of powers between the local state administrations and the local self-government bodies and defective mechanism of their interaction.

5) Ineffective public service, in particular: high turnover and poor professional level of the employees; biased management of public service; assignment of political functions to public servants; public servants' vulnerability to political influence. Moreover: low wages and faulty mechanism of labour remuneration; poor level of professional training and development of public servants, especially amongst local self-government officials.

6) A lack of a single legitimate center in charge of implementing public administration reform, which would ensure political management and coordination in all areas of the reform.

These and other issues impede not only the public administration reform, but also, indirectly, other reforms due to institutional and personnel inadequacy of the executive authorities, which has been criticized by Ukrainian and international experts for three years already. Unfortunately, little has changed in those three years except that a number of important systemic legislative acts in the field of reform and public administration functioning have been adopted. Practical implementation of the reform is impeded by the lack of political will to implement it and poor institutional capacity of executive authorities with regard to systematic reform.

Unlike anticorruption, land, pension, and other reforms, public administration reform has never raised much public interest due to its complexity and long-term nature, the lack of results, and little social consequences for average citizens. Thus, despite its systemic and significant impact on the functioning of all governmental institutions, the reform remains in the sphere of interests of a rather narrow circle of politicians, civil servants, Ukrainian and international experts, and journalists. Given the low level of public support, the expert community plays a decisive role in promoting public administration reform in Ukraine.

Implementation of public policy

A number of important legislative and regulatory acts were developed and adopted in late 2015 and in 2016 to outline and implement the public administration reform strategy:

1. The law of Ukraine "On civil service" and a number of by-laws to implement it, including key resolutions of the Cabinet of Ministers "On approving the procedure for holding a competition to fill a civil service office", "On approving standard requirements for candidates for A-category civil service offices", "On approving the Regulation on the Civil Service Senior Corps Commission", and "On the issues of labor remuneration of civil servants", as well as the decrees of the National Civil Service Agency "On approving the procedure for determining special requirements for candidates for A-, B-, and C-category civil service offices" and "On approving the procedure for selecting representatives of non-governmental organizations to the competition panels set up to select civil servants."

2. The decree of the Cabinet of Ministers "Some issues on reforming public administration of Ukraine" – Public Administration Reform Strategy for 2016-2020 (Strategy).

3. The decree of the Cabinet of Ministers "On approving the Concept introducing the offices of reform experts."

The law "On civil service" and the Public Administration Reform Strategy for 2016-2020 are the key documents necessary to implement the public administration reform. Unfortunately, although the Verkhovna Rada and the Cabinet of Ministers adopted these fundamental documents, their implementation leaves much to be desired. According to experts, in late February 2017, the scope of the Strategy implementation did not exceed 20-30%, while respondents of an expert poll[4] conducted by the Ilko Kucheriv Democratic Initiatives Foundation claimed that the progress of the civil service reform is a complete failure.

According to the "Reforms Progress Monitoring – 2016"[5], prepared by the National Council of Reforms, over the past year the Civil Service Senior Corps Commission has conducted 108 competitions to fill the A-category civil service offices, including those of state secretaries of the ministries, heads of local state administrations, and heads of central executive authorities. The Commission has determined winners of 87 competitions, including those for the offices of heads of Mykolaiv, Kharkiv, Kyiv, and Zhytomyr regional state administrations, heads of the State Statistics Service, the State Service of Medicines and Drug Control, the State Forest Resources Agency, the State Water Resources Agency, and others.

More specifically, 26 competitions were conducted and 21 candidates for the offices of state secretaries of the ministries have been shortlisted. The government appointed nine state secretaries to: the Ministry of Internal Affairs, the Ministry of Economic Development and Trade, the Ministry of Ecology and Natural Resources, the Ministry of Social Policy, the Ministry of Foreign Affairs, the Ministry of Regional Development, Construction and Housing, the Ministry of Justice, the Ministry of Infrastructure, and the Cabinet of Ministers of Ukraine Secretariat.

The following factors continue impeding the public administration reform in Ukraine:

- a lack of real political leadership over the public administration reform;
- institutional inability of the Cabinet of Ministers, the ministries, and other central executive authorities to reform. The Strategy outlines a clear-cut system of coordination, monitoring, and assessment of its implementation status. Unfortunately, as of February 2017, the groups in charge of specific areas of the reform were not working, the Coordination Council was not fulfilling its functions stipulated by the Strategy, while the ministers were not involved in the implementation of the reform and knew little about it;

- resistance and sabotage of mid-level civil servants, most of whom are afraid of the reform, do not understand it, and see no career prospects for themselves. Poor professional competence and motivation of civil servants;

- outdated command and administration system of management in governmental authorities; bureaucratization and irrationality of working processes;

- corruption of the authorities, who view civil service offices as a source of illegal income. Unable to perform the tasks and the actions provided for by the Strategy, the civil service resorts to perfunctory implementation or sabotage. For example, the competitions to fill the offices of state secretaries in the ministries have revealed a number of shortcomings which resulted in superficial implementation of the law "On civil service", namely:

- Absence of media coverage of the competitions to fill the offices, and, as a result, little public interest in the process;

- Subjective and, possibly, prejudiced approach of some members of the competition panel of the Civil Service Senior Corps Commission to the assessment of professional competencies of the applicants. Most members of the panel do not have any skills in organizing competitions and there is no training provided;

- Inconsistent implementation of the Strategy. As a result, the state secretaries took offices in unreformed ministries without clear distribution of powers between the ministers, their deputies, and the state secretary. In such a situation, there is a risk that the powers of the secretary of state in many ministries might be narrowed down to the management of the ministry secretariat ("mop management", as aptly noted by one state secretary);

- Flawed procedure for holding competitions in terms of special requirements for candidates running for the offices of state secretaries and the instruments for their assessment;

- Unclear and non-transparent system of remuneration of state secretaries on the basis of efficiency and effectiveness of their work.

The above-mentioned issues and defects should be addressed, but it is not clear who will be responsible for the preparation of relevant documents, organization, and monitoring of implementation of the tasks and actions envisaged by the Strategy if there is no working group to implement this particular aspect of the reform.

Stakeholders and their impact on policy implementation

Public activists and experts in the sphere of public administration reform. It seems that along with the EU and donor organizations, this group of stakeholders is the most active and interested in this reform. Unfortunately, this is a small group, which is partially compensated for by its professional and media activity.

Politicians are mostly uninterested in the reform's success, since the present-day political system in Ukraine is used to take advantage of state property, governmental cash flows, artificially created industry monopolies, etc. There is a relatively small group of politicians who are not only interested in the success of the reform (for example, the deputy group "Eurooptimists"), but are also actively implementing it (only a few MPs and government members belong to this group).

Civil servants either sabotage the reform or are actively resisting it. A very small group of civil servants faithfully supports the reform (these are leading specialists and some heads of structural units). Even state secretaries can barely be characterized as real supporters of the reform, although the Strategy presupposed that they would lead the reform of the ministries. Corrupt civil servants are the main opponents of the reform.

International organizations and technical assistance programs to the government of Ukraine – the EU, the UNDP and others – provide financial, professional, and systemic support of the reform. Without their assistance and pressure on the Ukrainian authorities, the public administration reform in Ukraine would come to a standstill.

Business structures either resist the reform (businesses affiliated with authorities or politicians), or take no action (small and medium-sized enterprises – SMEs). Although, SMEs should be interested in promoting this reform, since it should directly or indirectly result in deregulation of business, improvement of the quality of administrative services, demonopolization of markets, access to public finance through tender procedures, tax reform, etc.

Professional media covering the progress of the reforms. The role of media and investigative journalists is particularly important in the assessment of candidates running for key civil service offices.

According to the Strategy, the Coordination Council on the Public Administration Reform and the working groups in charge of specific areas of Strategy implementation (civil service reform, strategic planning and policy analysis, the reform of the CMU and the system of central executive authorities, the reform of the administrative services and procedures) should become the platforms for interaction between key stakeholders and reform headquarters. Unfortunately, these platforms are inactive. Coordination of interests and documents related to the reform is tackled by informal ad hoc groups.

Recommendations for further action in 2017

To ensure that the public administration reform is successfully implemented, it is important to guarantee that the reform institutions envisaged by the Strategy – the Coordination Council, the working groups, the relevant units of the Secretariat of the Cabinet of Ministers – are functioning. Without these institutions and real political will and leadership of the prime minister, the reform will go around in a circle.

Given the fact that the government and the ministries lack highly qualified employees to ensure the implementation of the reform, the use of unified methodological approaches,

and consistent realization of the Strategy, it is advisable to set up “headquarters” of the public administration reform. It should be headed by the prime minister and should include government members, MPs, and Ukrainian and international experts who are already engaged or are ready to engage in the reform’s implementation.

The experience of administrative reforms in other countries shows that success can hardly be expected unless the prime minister leads the reform. The Minister of the Cabinet of Ministers can become the deputy head of such “headquarters”, focusing his work on this reform.

The main task of this “headquarters” would be to launch the reform, organize and coordinate its implementation, prepare key regulatory and methodological documents and coordinate them with key stakeholders, monitor implementation of the Strategy and the Action Plan to fulfill the Concept introducing the offices of reform experts.

The main objectives of the public administration reform for 2017 are as follows:

1. To have the government approve the standard structure of a ministry and standard ministry regulations;

2. To determine the missions, the spheres of responsibility, and the tasks of all central executive bodies;

3. To conduct structural, functional and horizontal assessments of the ministries; to prepare proposals concerning new organizational structures of the ministries as a follow-up of the assessment;

4. To reorganize the ministries’ secretariats in line with the standard organizational structure and the above-mentioned proposals;

5. To implement the Concept introducing the offices of reform experts;

6. To develop and implement a system of strategic planning and policy analysis in the ministries;

7. In the sphere of administrative services and administrative procedure: to boost preparation of the laws “On administrative procedure” and “On administrative fee”; to support administrative services centers, especially in amalgamated communities; to facilitate decentralization and integration of new services;

8. To update the procedure for holding competitions to fill the civil service offices, taking into account the results of the first competitions of this type;

9. To harmonize the laws on the Cabinet of Ministers and the central executive authorities with a new law “On civil service”, in particular, to determine the functions of state secretaries and to separate the functions, the tasks, and the responsibilities of the ministers and those of the deputy ministers and state secretaries (draft law No. 4526d is pending adoption);

10. To improve communication of the reform.

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Secretary of State

Comparison of functions: Secretary of State vs. Minister

REANIMATION PACKAGE OF REFORMS

MINISTER

manages the Ministry

SECRETARY OF STATE

subordinate to the Minister

Main objective

to shape policy,
to initiate reforms.

to develop the ways of implementation of minister's initiatives, to secure continuity, institutional memory, and lawfulness of ministry's activity.

Functions

is a member of the Cabinet of Ministers, participates in its meetings

is a member of a governmental committee(s)

civil servant, who manages the system of Ministry (in general)

cannot act for a minister at the meetings of the Cabinet of Ministers (it's a function of a political deputy of a minister)

makes decisions about 'political appointments' (submits his candidacies for deputy ministers, forms an executive support service)

supports execution of minister's instructions

represents the ministry as an 'agency' in the relations with other governmental agencies

represents the ministry as a legal entity (in civil law relations)

issues regulatory acts of the ministry

Can initiate dismissal (change) of the Secretary of State

approves individual acts regarding civil officers, as well as organizational acts

tackles the issues of public service in the ministry (appointment, dismissal, conferral of rank, etc.)

is an administrator of 'pre-programmed' finances of the ministry

is an administrator of finances to support activity of the ministry's secretariat

Local self-government and decentralization reform

More than **20%**

of amalgamated communities have been formed (of the total number planned)

32%

of Ukrainians are ready to take part in local problem-solving in case the authorities of local self-government bodies are extended *(Ilko Kucheriv Democratic Initiatives Foundation, August 2016)*

16.2%

of citizens feel that decentralization has changed the situation for the better *(Ilko Kucheriv Democratic Initiatives Foundation, August 2016)*

49.3%

increase in local budget revenues compared to 2015 *(Ministry of Finance)*

Challenges and goals of public policy

The reform of local self-government and decentralization of power is expected to overcome the challenges facing the country, particularly: dependence of local governments on central authorities; infrastructural and financial weakness of local communities; degradation of rural areas; excessive subsidizing of local communities; poor investment attractiveness of local territories, etc.

Decentralization is the transfer of powers, resources, and problem-solving competencies to the local level where this can be done in the most effective manner (according to the principle of subsidiarity). Community level is basic for decentralization. Local communities shall be responsible for a range of key social areas: preschool and basic secondary education, culture, primary medicine, law enforcement, utilities, local infrastructure, welfare, etc. However, these powers can be transferred only to those who are able to fulfill them: communities must be capable in terms of organization, financial and human resources, and infrastructure.

Fiscal decentralization should be carried out alongside decentralization of power. Local communities should receive most of local tax revenues, have stable sources of income, and manage their budgets according to their objectives.

The general course of the local self-government reform and the objectives of public policy in this sphere have been determined by the Concept of local self-government reform and territorial organization of power in Ukraine approved by the Cabinet of Ministers on April 1, 2014.

According to this Concept, local self-government reform should stand on three pillars: transfer of powers from central authorities to the lowest possible level; transfer of financial resources to match the delegated powers; governmental control over the activities of local self-government, and citizen participation in local decision-making.

After the Concept was approved, during 2014-2015 all necessary basic legislation supporting voluntary amalgamation of local communities was adopted; inter-budget relations were reformed; the sphere of construction control and provision of administrative services was decentralized; the laws on governmental regional policy and financing of regional development based on EU formula, approaches, and best practices were adopted; and the process of changing the administrative-territorial division was launched.

Decentralization of power in Ukraine is unique inasmuch as the local self-government, the territorial organization of power, the administrative-territorial division, and the governmental regional policy are all being reformed at the same time.

The Reanimation Package of Reforms has outlined the following top-priority goals for 2016-2017 in line with the approved course of local self-government reform and decentralization of power[1]:

- to shape such a system of administrative and territorial structure that would be best for Ukraine;
- to create appropriate material, financial, and organizational conditions to ensure that local self-government bodies can properly fulfill their inherent and delegated powers;
- to ensure that communities participate in local decision-making;
- to improve the mechanism for financing regional policy in Ukraine;
- to ensure the availability and the quality of public services provided by local self-government bodies;
- to ensure governmental control over the activities of local self-government bodies.

According to the determined policy goals, the present-day challenges are as follows:

Mismatch between the amalgamated territorial communities (ATC) formed and the long-term plans concerning the formation of capable communities in the regions. The process of formation of amalgamated territorial communities was voluntary. As a result, the boundaries and the composition of ATCs did not always match the long-term plans concerning the formation of capable communities in the regions. The problem is that, according to the effective law and the Budget Code of Ukraine, an amalgamated territorial community can be transferred to direct inter-budget relations and governmental support can be provided only if all the territorial communities mentioned in the long-term plan have been united in one ATC. However, a large percentage of local communities have not amalgamated in accordance with the relevant long-term plans (in particular, in cases when one or two communities have not decided to establish an ATC). On the other hand, by all other financial, infrastructural, and institutional criteria, such communities can be considered capable.

Given this situation, long-term plans concerning the formation of capable communities in the regions have systematically been updated to ensure proper financing of ATCs. This prevented the preparation and approval of sustainable long-term plans for entire regions in line with the Methodology of formation of capable territorial communities.

The absence of a mechanism for new communities to join existing amalgamated territorial communities. The fundamental law of Ukraine “On the voluntary amalgamation of territorial communities” has not determined the procedure for integrating new communities into those already established. At the same time, positive achievements of ATCs have already influenced the stand of many communities unwilling to join their neighbors, especially urban territorial communities. Now dozens of such communities are turning to the established ATCs with a request to join them. However, the ATCs do not want to initiate the amalgamation procedure anew and call another election, while there is no other mechanism of integration.

To solve the above-mentioned challenges, the Verkhovna Rada adopted draft law No. 4772 on the voluntary integration of territorial communities. According to the law, the government can recognize an amalgamated territorial

community as capable on condition that it unites at least half of the residents of the territorial communities which should have joined that community in accordance with the long-term plan. This removes the barrier to recognizing communities as capable, ensures proper governmental support, and provides an opportunity to transfer those communities to direct inter-budget relations.

In addition, ATCs can integrate neighboring communities without calling elections in all territories within that community. This provides additional opportunities to form truly capable territorial communities matching the long-term plans.

The draft law on the voluntary integration of territorial communities, adopted by the Verkhovna Rada on February 9, 2017, was signed by the President of Ukraine. Now the challenge is to ensure its proper implementation and to prepare and adopt long-term plans concerning the formation of capable communities in the regions.

Formation of amalgamated territorial communities around the cities of regional significance and ATCs including communities from different regions. So far, the cities of regional significance have actually been excluded from the process of amalgamation due to the stand of the Central Election Commission (CEC) which believes that the boundaries of the district surrounding these cities shall be changed before an ATC is formed.

Neither is the Central Election Commission calling elections in ATCs including communities which belong to other districts.

To address this challenge, draft law No. 5520[2] on the specificity of voluntary amalgamation of territorial communities located in the territories of adjacent districts was prepared and adopted. The law lays down the procedure and the conditions for calling elections in amalgamated territorial communities or changing the boundaries of the districts, if necessary. In addition, the law specifies a mechanism for the communities to join the cities of regional significance, which does not require calling an election in the entire territory of the city or mayoral election. Now the task is to properly implement this law and to monitor the Central Election Commission in terms of calling elections in ATCs.

The process of formation of amalgamated territorial communities is not comprehensive – there is no reform on the level of districts. The challenge is that when it comes to the formation of amalgamated territorial communities, the capability of districts is extremely low. There are cases when 80-90% of district population have been united into an ATC, while the remaining communities have limited financial resources and, as a result, unbalanced network of budgetary institutions.

Given the poor financial capacity of such districts, the State Budget for 2017 provides additional subvention to balance the network of such regions, which, in turn, slows down the progress of the reform.

Moreover, further implementation of the reform faces explicit or implicit resistance from district councils which lose their authorities following amalgamation. Even if an amalgamated territorial community covers the whole district, liquidation of district councils, which are actually deprived of their functions, contradicts the Constitution. At the same time, if such districts are liquidated and do not join others, the principle of the ubiquity of the executive power is violated.

Thus, there is a need to regulate the procedure of reorganizing the regions at the legislative level. The Verkhovna Rada needs to regulate the procedure for creating, liquidating, establishing, and changing boundaries of districts. This will form a rational sub-regional level of administrative and territorial division consistent with the provisions of the Concept of local self-government reform and territorial organization of power in Ukraine approved by the Cabinet of Ministers.

Expansion of jurisdiction of local self-government bodies of ATCs onto the whole territory of the amalgamated community. According to the Concept of local self-government reform and territorial organization

of power, the jurisdiction of the local self-government bodies of an amalgamated community shall extend onto all of its territory. ATCs occupy a fairly large area of 100-400 sq. km. However, the local self-government bodies of ATCs still have limited jurisdiction over it: they cannot lay out their entire territory, as the system of urban planning documentation is organized in such a way that the councils of territorial communities can commission and approve planning documentation only within the boundaries of population centers. Development of urban planning documentation beyond these boundaries is within the competence of the district.

In 2016, these problems were especially acute for those ATCs which implemented infrastructure projects between population centers which belonged to their community: they had to contact regional state administrations and district councils to commission urban planning documentation for the territory which belongs to their community, yet is located beyond the boundaries of a population center. The amalgamated communities have no right to tackle issues such as land improvement in territories located between population centers or to impose fines on those who destroy the natural environment within the community, but outside the boundaries of population centers.

An ATC cannot prepare urban planning documentation within the entire territory it owns, which is a huge barrier to attracting investors and managing land resources. Thus, the powers of territorial communities should be legally extended onto all of its territories and the system of planning documentation prepared by the territorial communities should be regulated.

Governmental support of the amalgamated territorial communities has been cut. The law of Ukraine "On the voluntary amalgamation of territorial communities" provides governmental support to established ATCs. In particular, in 2016, 1 billion UAH was allocated to support and develop infrastructure in 159 ATCs. In 2017, 366 ATCs were created, however, only 1.5 billion UAH is allocated from the state budget for their needs, of which only 0.5 billion UAH is granted from the general fund of the state budget. Thus, compared to last year, governmental support for developing ATCs' infrastructure has been cut. Therefore, it is necessary to ensure that infrastructural development of ATCs is financed from the general fund of the state budget in the form of subvention.

Poor efficiency of local taxes and duties. Due to complex administration and ineffective formulas for calculating local taxes and duties (in particular, real estate tax, when 60-sq.m. apartments and 120-sq.m. houses are taxed), local tax systems are ineffective. It is necessary to simplify the administration of real estate tax without providing any benefits (each square meter should be taxed). Transport tax should also be restored.

Local budgets should cover additional expenses to finance the delegated powers. In 2017, local budgets assumed the obligation to cover the costs of utilities and energy (consumed by educational and healthcare establishments), payroll of the non-teaching staff in secondary schools, etc. As a result, development budgets of local self-government bodies have been curtailed, while most local councils cannot finance the delegated powers without additional subsidies from the state budget.

Implementation of public policy

Implementation of the administrative and territorial reform was one of the priorities in 2016. To reform the administrative and territorial structure and to develop a new territorial foundation for governmental authorities, a powerful basic level of local self-government – territorial communities – has been formed. In particular, the law of Ukraine "On the voluntary amalgamation of territorial communities" was being implemented over the past year and capable amalgamated territorial communities were being established.

In compliance with the law of Ukraine "On the voluntary amalgamation of territorial communities" and resolution

No. 214 “On approving the methodology for the formation of capable territorial communities”, approved on April 8, 2015 by the Cabinet of Ministers, regional state administrations have developed and regional councils have approved long-term plans to form capable communities in 23 regions. For political reasons, the long-term plan for the formation of communities in Zakarpattia region has not been approved as of March 30, 2017.

Hundreds of local self-government bodies have passed the procedure of voluntary amalgamation in the course of 2016. As a result, elections to the amalgamated territorial communities were being called throughout the year: in March, April, July, and August 2016. In December 2016, elections were called in another 182 amalgamated territorial communities. In 2016 only, 207 capable amalgamated territorial communities were formed, which is more than 20% of long-term forecasts.

Owing to the new legislation, those territorial communities which have amalgamated in accordance with the long-term plans are receiving financial resources and powers on equal terms with cities of regional significance.

The process of voluntary amalgamation of territorial communities is propelled by two important incentives provided to ATCs by the government. First, these are additional financial resources – both from the government in the form of subventions, and from the new sources of revenues to the local budgets – which ATCs are entitled to in their new status. Second, local self-government bodies now have much greater independence when it comes to decision-making and local problem-solving using their own resources. The experience of the first ATCs, which gained access to new resources and powers starting from January 1, 2016, has become another important factor contributing to the amalgamation of communities. In particular, the survey of the Ilko Kucheriv Democratic Initiatives Foundation[3] cites experts and representatives of district state administrations claiming that the ability of the newly established ATCs to use new resources efficiently has changed the opinion of many heads of rural and township communities who protested against amalgamation. This factor became even more pronounced by the end of the year, when residents of ordinary communities witnessed the first results of the work in neighboring ATCs. In addition, in 2016, the process of formation of amalgamated territorial communities was blocked by the Central Election Commission that failed to call elections in 33 ATCs which passed all necessary legal procedures. In particular, the Central Election Commission refused to call elections in ATCs that included communities located in different districts, and in those that united around cities of regional significance (the cities of Slavuta, Netishyn, Bakhmut). Now that the law removing all grounds for further blocking has been adopted, the CEC is obliged to call elections in all ATCs.

The CEC has also called elections in another 40 amalgamated territorial communities in 15 regions scheduled for April 30, 2017. Thus, 406 amalgamated territorial communities – or nearly 30% of those envisaged by long-term plans – will have been created in Ukraine by mid-2017.

Another important priority of 2016 was to boost regional development in Ukraine, financing investment projects of local self-government bodies. The policy in this sphere was being implemented within the legal framework adopted in 2014-2015. In particular, on August 6, 2014, the Cabinet of Ministers approved a new State Regional Development Strategy – 2020. In late 2014, the Verkhovna Rada amended the Budget Code, notably, article 24-1 “On the State Fund for Regional Development.” In early 2015, the Verkhovna Rada adopted the law “On the fundamentals of state regional policy”. It determines the goals, main principles, and priorities of the state regional policy; the principles of coordination of public authorities with the purpose of regional policy development, etc.

Legislative amendments allowed to implement the reform of regional policy in Ukraine. More specifically, regional policy received financing from the state budget and a transparent mechanism for financing regional development projects has been specified. Local self-government bodies got an opportunity to apply for financing from the State Regional Development Fund (SRDF), particularly, within investment projects and programs. According to

article 24-1 of the Budget Code of Ukraine, when preparing the draft State Budget of Ukraine and the forecast of the State Budget of Ukraine for the next two fiscal periods, it is to be stipulated that the State Regional Development Fund shall constitute no less than 1% of the anticipated amount of revenues of the general fund of the state budget for the given fiscal period.

In 2016, the State Budget allocated 3 billion UAH for the financing of the SRDF. All these funds were granted to local self-government projects according to a transparent formula. The regional development fund distributes its financing among the regions in the following manner:

- **80% of the funds** – according to population size of a particular region (for example, if the population of Kharkiv region equals 5% of the entire population of Ukraine, the level of financing from the regional development fund will be 5% of the resources (of those 80%);

- **20% of the funds** – according to GDP per capita (for regions where GDP is less than 75% of the average in Ukraine, i.e. for 15 regions of Ukraine as of 2016).

However, when the State Budget for 2017 was being approved, the financing of the State Regional Development Fund was cut, while the Budget Code of Ukraine was amended in part of SRDF financing.

In particular, the regulation whereby SRDF shall be financed at the level of 1% of the general fund of the state budget has been suspended. Therefore, this year the total amount of SRDF financing is not 7.3 billion UAH (approximately 1% of the general fund of the state budget of Ukraine), but only 3.5 billion UAH.

In addition, the sources of financing of the State Regional Development Fund are unstable. It has been determined that only 1 billion UAH is allocated from the general fund of the state budget, and 2.5 billion UAH – from the special fund (returns from special confiscation).

In addition, local self-government bodies applying for SRDF funding are now subject to certain restrictions, as quotas for particular types of projects have been introduced. In particular, at least 10% of the financing from the State Regional Development Fund shall be granted for implementation of investment programs and regional development projects aimed at creating sports infrastructure and energy efficiency of state-owned and municipal educational and healthcare institutions.

The procedure for selecting and approving the projects of local self-government bodies was also changed. In particular, the commission under the Ministry of Regional Development for assessing and selecting programs and projects now includes members of the Verkhovna Rada Committee on Budget, as decided by this committee (by at least 50% of its members). In other words, MPs will now have a political impact on the process of assessment and selection of regional development projects.

It should also be noted that the State Budget for 2017 provides a subvention to local budgets to support socio-economic development of local communities. Such a subvention is not provided for by the fundamental law. Neither is the distribution of subventions regulated at the legislative level (in fact, such a subvention envisages “manual” allocation of funds without any criteria). The subvention shall amount to 4 billion UAH, of which 1.5 billion UAH shall be allocated from the general fund of the state budget, and another 2.5 billion UAH – from the special fund.

Thus, financing of local self-government projects and implementation of state regional policy through the State Regional Development Fund in 2017 have been considerably limited. At the same time, the amount of financing which is distributed “manually” through a subvention to local budgets for socio-economic development has been increased.

Fiscal decentralization, conducted in late 2014, continues to support the growth of local budgets. The following taxes provide the revenues for local budgets (those of

cities of regional significance, districts, amalgamated territorial communities): 60% of personal income tax, 5% of excise tax on the sale of excisable goods, 100% of single tax, 100% of property tax (on real estate, land, transport), 100% of land fees, 100% of profit tax of municipal enterprises, 100% of administrative fees, and 25% of environmental tax. Financing of healthcare and education has been delegated to the regional level and the level of the cities of regional significance through direct subventions from the state budget in accordance with approved standards. As a result, the Ministry of Education and the Ministry of Healthcare bear the responsibility for financing those spheres. At the same time, the remainder of the state subvention funds are not withdrawn at the end of the year, but remain in local budgets and can be used to improve the material and technical infrastructure of educational and healthcare facilities.

The general fund of local budgets received a total of 146.6 billion UAH, or 116.3% of the annual revenue anticipated by the local councils (excluding transfers). Compared to 2015 (in analogous conditions and not considering the territories not controlled by the Ukrainian authorities), the revenues to the general fund have increased by 49.3% or 48.4 billion UAH. The rate of growth of the actual receipts of personal income tax until 2015 is 147.3%, of land fees – 161.2%. At the same time, the growth of these receipts in 21 and 6 regions respectively exceeds the average for Ukraine.

Excise tax, which contributed up to 11.6 billion UAH to the budget in 2016, was an important resource for local self-government bodies. The real estate tax, however, is still ineffective and is yet to reveal its full potential. In particular, the local councils anticipate 1.2 billion UAH to be received from the real estate tax in 2016, whereas the actual receipts amounted to 4 billion UAH.

On the other hand, when approving the State Budget for 2017, MPs delegated additional powers to local budgets without reviewing the system of revenues. In particular, local budgets are now responsible for utilities and energy (in the spheres of education and healthcare), payroll of the non-teaching staff in secondary schools, etc. In addition, cities of regional significance shall now finance vocational schools, although the property of those establishments is still state-owned. Another problem is that certain privileges established by the government – in particular, reduced fare for specific categories of population – shall now be financed from local budgets, as well.

Amending the tax legislation, MPs abolished the retail excise tax on fuel, which was an important source of revenue in the structure of local budgets. These losses have been compensated: 13.44% of the excise tax on fuel produced and imported into Ukraine shall be forwarded to the budgets of local self-government. However, this mechanism for financing local budgets is unsustainable and might be revised.

Therefore, development budgets of local self-government have shrunk, while most local councils are unable to finance their delegated powers without extra subsidies from the state budget.

An important objective of the reform is to prepare a new version of the law on service in the local self-government bodies. This law should help to make service in local self-government bodies more attractive and to increase the professional level of civil servants. The local self-government bodies should receive greater autonomy with regard to payroll to attract professional employees. The staff shall be selected on a competitive basis, while the leaders shall be competent city managers creating conditions to ensure stability and professionalism in local councils.

Stakeholders and their impact on policy implementation

There were the following key stakeholders determining policy in local self-government and decentralization reform:

Prime Minister of Ukraine. The Prime Minister bears public political responsibility for implementing the reform of local self-government and decentralization of power. He supported legislative implementation of the reform by endorsing relevant draft laws in the Verkhovna Rada; supported local self-government by adopting decisions of the Cabinet of Ministers; ensured financing of elections in amalgamated territorial communities; provided financial support to local self-government; transferred all amalgamated territorial communities to direct inter-budget relations with the state budget in 2017; provided other important political support.

Minister of the Cabinet of Ministers of Ukraine. Supported adoption of draft laws necessary for the reform.

Vice Prime Minister – Minister of Regional Development, Construction, and Housing and Utilities of Ukraine, his deputies and the Ministry's team. The Ministry is the main central executive body responsible for implementing the reform of local self-government and decentralization of power. The Ministry was properly implementing the reform throughout 2016: executed laws, adopted resolutions of the Cabinet of Ministers, coordinated international technical assistance, and cooperated with the Verkhovna Rada to adopt relevant draft laws.

The Verkhovna Rada. It is necessary to promptly adopt relevant draft laws in order to continue implementation of the local self-government reform. Throughout 2016, the Parliament was blocking all the necessary draft laws related to local self-government. The parliamentary factions "Narodnyi Front", "Petro Poroshenko Bloc", "Samopomich", as well as a faction of the Radical Party and most non-affiliated MPs have systemically supported the local self-government reform. The factions of the political party "Batkivshchyna" and the Opposition Bloc have given the least number of votes to support decentralization laws.

VR Committee on State Building, Regional Policy, and Local Self-Government. Provided prompt support and lobbied for legislative acts necessary for the reform.

International partners of Ukraine. International organizations and foreign missions have assisted adoption of draft laws in specific areas, as well as supported the implementation of the reform by providing technical assistance. They have set up a joint donor coordination center to support implementation of the local self-government and decentralization reform.

Civil society organizations. Provided expert, advocacy, and communication support in the reform's implementation, having facilitated adoption of the necessary legislative acts and resolutions of the Cabinet of Ministers.

Media. Played an important role in the implementation of the reform, covering the Parliament's activities, providing legislative support for the reform, and communicating successes of local self-government and benefits of decentralization.

Recommendations for further action in 2017

The following action should be taken to continue the local self-government and decentralization reform:

1. To continue the reform of administrative and territorial structure through voluntary amalgamation of territorial communities.

2. To prepare and adopt the draft laws "On the fundamentals of administrative and territorial structure" and "On the administrative and territorial structure."

3. To ensure the ubiquity of local self-government, to have the land resources beyond the boundaries of population centers managed by local self-government bodies, and to monitor the use of land resources.

4. To create conditions for proper planning of community development: to simplify the procedure for developing and approving urban planning documentation by local self-government bodies; to introduce local community planning drafts.

5. To legally regulate the procedure for the formation, liquidation, establishment and change of district boundaries; to regulate the issue of establishing a representative body of a district community when an amalgamated territorial community is formed.

6. To improve the mechanism for financing regional policy. In particular, to amend the Budget Code, stipulating that 1.5% of the general fund of the state budget shall be allocated to finance the State Regional Development Fund, while part of these finances (0.5%) shall cover the implementation of the State Regional Development Strategy in the regions until 2020. Additionally, it is imperative to remove the political component in the assessment and selection of projects and to ensure that these processes are transparent.

7. To specify the procedure for distributing funds allocated as a subvention to local budgets and aimed at local socio-economic development. In particular, to regulate the distribution of funds by introducing a special procedure (selection of projects according to certain criteria and priorities), as well as to ensure that the process of assessment and selection of projects to be financed by subvention is transparent.

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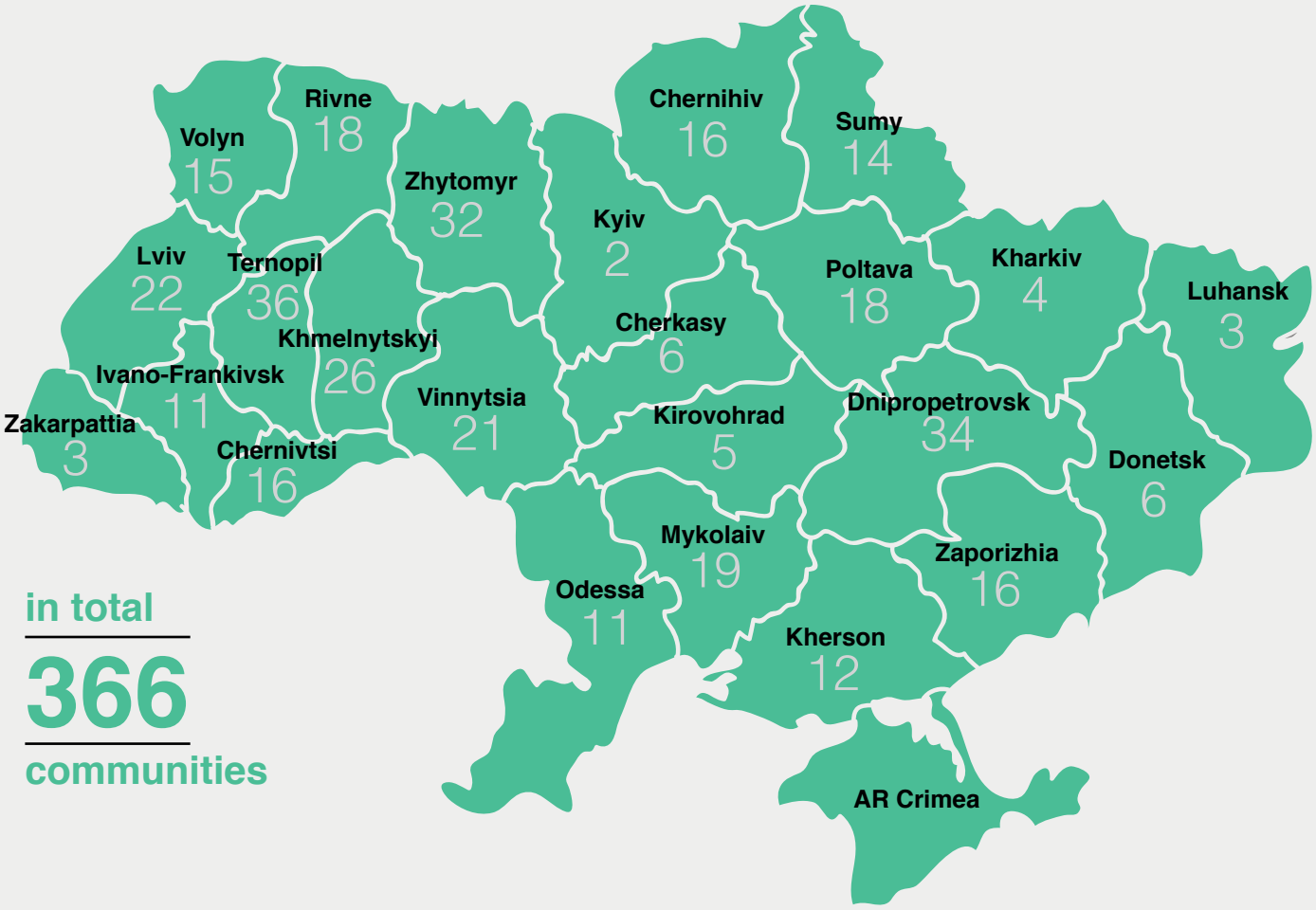
Decentralization: amalgamation of territorial communities is in progress

REANIMATION PACKAGE OF REFORMS



in total

366

communities

Source:
Monitoring of the reform progress 2016[4]

Electoral reform

84%

of people do not see any progress in the reform of electoral legislation *(TNS, November 2016)*

Proprity **No. 4**

in the reform urgency rating, according to experts, is the electoral reform, especially, introduction of a proportional electoral system with open lists *(Ilko Kucheriv Democratic Initiatives Foundation, December 2016)*

1,033 days

the length of time by which 12 out of 15 members of the Central Election Commission exceeded their term of office *(as of March 31, 2017)*

Challenges and goals of public policy

The Ukrainian election legislation is one of the most volatile in Europe. Six of eight parliamentary election campaigns were conducted under new laws. Moreover, four different electoral systems were used. A similar situation occurred with local elections.

In most cases, new versions of laws or significant amendments to them were made just before elections, which made it impossible for experts, political parties, and other stakeholders to participate in a full-fledged debate on the reform of electoral legislation. This frequent change of electoral laws and the lack of an inclusive dialogue spawned most of the problems with the legislation and elections that exist in Ukraine.

Unfortunately, electoral reform is not a priority for the Ukrainian authorities. Moreover, it is only due to the active involvement of civil society and international organizations that electoral reform has not disappeared from the agenda.

According to the survey of TNS[1] conducted in November 2016, 84% of people do not see or almost do not see any progress in the reform of electoral laws. This figure increased by 9% compared with November 2015. At the same time, the level of public awareness about the reform went down to 8% in 2016 from 30% in 2015.

The main problems to be resolved by the electoral reform are concentrated in the following areas:

Election system. Elections in Ukraine have never been held based on electoral systems meeting Ukrainian realities. Thus, in 1994, elections were held based on a two-round majority system involving mandatory 50-percent turnout. Because of voter absenteeism, six rounds of elections were held from March to December 1994. Even so, 45 MPs (10% of the Parliament) were not elected.

In 1998 and 2002, elections were held under a mixed electoral system. Half of all MPs (225) were elected based on the proportional electoral system in a nationwide constituency for closed lists of parties and blocs of parties, and the remaining 225 were elected using the plurality system. This mechanism was the cause of appearance of “two kinds” of deputies. In 2006 and 2007, elections were held under the proportional system in a nationwide constituency for closed lists of parties and blocs of parties. The use of this system led to numerous complaints about deputies falling out of touch with voters.

It was under this pretext, that in 2012 the electoral system of 2002 was used again with some modifications, namely, the possibility to form election blocs was abolished and the election threshold was raised from 3 to 5%. The real reason for these changes was the desire of the then-President to prevent the opposition from uniting into a single bloc and to use the majority component to lift to power self-nominated non-party MPs that would be loyal to the government.

Therefore, the electoral system has never contributed to party structuring of society or to establishment of effective communication between MPs and voters.

In modern Ukrainian conditions, the only such system seems to be a proportional election system in regional constituencies with open lists. According to an expert survey of Ilko Kucheriv Democratic Initiatives Foundation conducted in February 2017[2], the top five most urgent steps that should be taken by the current government included implementation of electoral reform; specifically, the introduction of a proportional electoral system with open lists.

Stability of electoral legislation. Since independence, Ukraine has adopted and enforced six laws on parliamentary elections (dated 27.10.1989, 18.11.1993, 24.09.1997, 18.10.2001, and 25.03.2004 as amended on 07.07.2005 and 17.11.2011). During this time, 38 laws were approved to introduce amendments and additions. It is obvious that the country needs a stable and predictable electoral legislation. Experience shows that continuous volatility of electoral laws can pose a threat to legal security, constitutional traditions of legal succession (continuity) of law principles, and implementation of voters' expression of will. This problem can be solved by codifying electoral legislation.

The inevitability of punishment for violating election laws. In Ukraine, a significant number of violations during elections is commonplace. Often these are minor procedural violations, but large-scale fraud has repeatedly occurred too. The most striking example of this was during the 2003-2004 Presidential election. In another instance, the CEC was unable to establish the results of the parliamentary election in five constituencies in 2012.

According to the monitoring of investigations of criminal proceedings on the basis of 2015 local elections that was carried out by OPORA, 69 people were found guilty of offenses against electoral rights, although police officers initiated 422 criminal proceedings. No person was sentenced to restriction and deprivation of freedom. Obviously, the Criminal and Procedural Codes of Ukraine have to be improved.

Powers and activities of the Central Election Commission. 12 CEC members were appointed in 2007 and their term of office ended in June 2014. In February 2017, the term of another member of the Commission came to an end. However, the President and the Parliament of Ukraine delay appointment of a new CEC. These problems are not properly reflected in documents that list the state's goals and policies. The only document outlining the areas of electoral legislation reform is the Coalition Agreement of the Parliamentary Factions 'European Ukraine'[3]. It outlines the following tasks that had to be fulfilled back in 2015:

- Introduction of the proportional electoral system with open lists for parliamentary and local elections (except for village councils);
- Enshrining in legislation responsibility for violations of electoral law during the electoral process.

In addition to the Coalition Agreement, a reference to electoral reform is contained in the President's Strategy for Sustainable Development "Ukraine – 2020"[4], but the document provides no detail of the reform.

In 2016, there were no changes concerning the problems and challenges of the electoral reform in official government documents. Moreover, there are attempts to ignore almost all of the above-mentioned issues. Draft laws on parliamentary elections in Ukraine were registered in November and December 2014, while draft Election Codes were registered in September and October 2015.

However, they were not considered by the Committee on Legal Policy and Justice until after February 22, 2017.

Meanwhile, the Reanimation Package of Reforms drew up an electoral reform agenda and identified the following short-term goals of the reform:

1. Stable and transparent electoral and party systems that ensure circulation of political elites, development of intra-party democracy, and prevention of excessive factional fragmentation. To achieve this, it is necessary to:

- Introduce the proportional electoral system with open lists for parliamentary elections;
- Update legislation on local elections to ensure effective political representation at the local level;
- Launch public funding of political parties and ensure transparency of political financing.

2. Inevitability of punishment for violating election laws. To achieve this, it is necessary to:

- Establish an effective system of legal liability for violations of electoral laws, eliminating the possibility for vote-buying and use of administrative resources;
- Strengthen control over ensuring the inevitability of punishment for violating election laws.

3. Effective and integral Central Election Commission. To achieve this, it is necessary to:

- Institutionalize cooperation between the public/expert community and the Central Election Commission by establishing a Public Council under the body;
- Contribute to improving the staff capacity of the CEC and quality of its decisions;
- Ensure constant monitoring of the efficiency and integrity of the Central Election Commission;
- Eliminate the possibility of indefinite occupation of posts by members of the Central Election Commission.

Implementation of public policy

Changing the electoral system. In April 2016, Andriy Parubiy, the Chairman of the Verkhovna Rada, established a working group with this area of focus. It had to launch a systematic, transparent, and inclusive dialogue between politicians and experts about the key objectives to be achieved during transition to the proportional electoral system with open lists at parliamentary elections, as well as about the basic elements of this system (constituency size, electoral threshold, possibility of self-nomination, form of the ballot, way of voting, procedure for converting votes into deputy seats). The working group included leading Ukrainian experts, academics, representatives of all parliamentary factions and international organizations. The group held seven meetings and discussed all registered drafts of electoral laws and codes. Based on the results of the group's work, the Chairman of the Verkhovna Rada called on Parliamentary factions to decide whether they support one of the draft laws. As of late 2016, the decision was taken only by the Samopomich faction. This goal has not been achieved for several reasons. First, the Chairman of the Verkhovna Rada failed to grant official status to the working group under his direction. Second, the parliamentary factions, except one, failed to come up with basic parameters of the electoral system that could be put to the vote in Parliament. Third, the specialized Parliamentary Committee did not consider the registered draft laws at its meeting.

Stability of the electoral legislation. As mentioned earlier, there are two draft Electoral Codes registered in the Verkhovna Rada that have not been considered by the specialized committee for over two years. The authorities conducted no activity whatsoever. The refusal of the Verkhovna Rada to vote on the draft Election Codes arises from the fact that the factions failed to reach consensus concerning the introduction of any electoral system for the parliamentary election. Without such consensus, adoption of the Electoral Code seems inappropriate, since the Code also governs the electoral systems to be applied in local elections. Some deputies and experts believe that before introducing the Code it is necessary to test the electoral system during the next parliamentary election, to analyze its effectiveness, and only after such a trial should it be extended to the level of oblast, city, and regional councils.

Inevitability of punishment for electoral offenses. The governmental authorities did not conduct any independent open action, neither did they offer their own legislative initiatives. A partial exception to this is the Ministry of Internal Affairs that joined a working group of NGOs (OPORA, the Institute of the Future) trying to improve the legislative framework for electoral crimes and the inevitability of punishment for their commission. The results of this working group's efforts will be presented in spring 2017. As governmental authorities did not implement any independent work, their inaction is the main reason for the lack of progress in this area of reform.

Effective and integral Central Election Commission. In 2016, there were some developments aimed at changing the composition of the Central Election Commission. However, the activation of political forces occurred a little earlier – namely, after the President's statement on October 30, 2015. He stressed that after the results of local elections he expected parliamentary factions to submit proposals for holding consultations on new CEC members. In early November 2015, the Chairman of the Verkhovna Rada Volodymyr Groysman instructed the factions to nominate candidates for the Central Election Commission within a week. This deadline, however, was not met. On November 16, 2015, the Supreme Administrative Court of Ukraine ruled illegal the President's inaction concerning the failure to make nominations to the CEC. During that autumn, the factions nominated 30 candidates for consultations with the President, which lasted almost six months.

In April 2016, the Opposition Bloc faction withdrew its six nominations in favor of just one candidate. On June 3, the President announced nominations to the CEC[5], but they did not include candidates of the factions of Batkivshchyna, Radical Party, Opposition Bloc, and the Volya Narodu group. On June 7, the People's Front faction criticized the President's nominees, because out of the four people proposed, only two were considered by the faction, while only one out of the three candidates proposed by the faction was taken into account. Therefore, the faction of People's Front decided not to support the President's nominations, an example followed by the faction of Batkivshchyna. There were no more changes since then, except for the fact that in February 2017 the term of office of another member of the CEC came to an end. The measures taken by the authorities have not led to any changes that would achieve the reform's objectives.

The appointment of a new CEC is a complex, multi-stage process that requires major coordination between the President, parliamentary factions/groups and the Parliament. To appoint new members of the CEC, parliamentary factions and groups nominate candidates, the President holds consultations with the factions and groups and submits a request to dismiss old CEC members and appoint new ones, the specialized parliamentary committee considers this request, and the Parliament votes on each candidate individually. Under these conditions, voting can be effective if the interests of each faction and group are taken into consideration, even though the President is not obliged to take into account the factions' proposed candidates. The inadequately conducted consultations of the President with factions/groups were the main reason for delaying the change in CEC's composition.

Stakeholders and their impact on policy implementation

President of Ukraine. Primarily interested in adopting electoral legislation (especially the electoral system) that will help retain President's influence on the Verkhovna Rada – in other words, will make it possible to form a pro-presidential majority. Therefore, the President is interested in a CEC where most members are not openly opposed to him. During 2016, after long consultations, the President submitted a proposal to replace 11 CEC members, but its consideration is delayed by the Parliament. The interaction with other stakeholders cannot be viewed as effective, since there has not been any significant advancement in achieving the objectives of the electoral reform.

Chairman of the Verkhovna Rada Andriy Parubiy. In 2016, he initiated the creation of a working group. It had to maintain a dialogue among politicians and experts about the key objectives to be achieved during transition to the proportional electoral system with open lists at parliamentary elections. The group was, in fact, the only permanent platform for interaction between stakeholders. This platform, however, can hardly be called effective because the group failed to work out draft decisions that would be adopted by other stakeholders.

Committee of the Verkhovna Rada on Legal Policy and Justice. This committee focuses on draft laws relating to electoral issues. During 2016, the Committee postponed consideration and submission of electoral draft laws to the Parliament. In February 2017, it took the decision to unfreeze the reform, but failed to come up with a conclusion on the merits of any of the draft laws. It ended up withdrawing from advancing the reform and recommending that the MPs "decide on each draft law by voting".

Parliamentary factions. Interested in establishing an electoral system most favorable for their parties, and in placing their own representatives in the CEC. During the year, the Verkhovna Rada factions did not put forward any new legislative initiatives in the electoral field, since the registered draft electoral laws were not considered by the specialized committee. However, in 2016, the factions submitted their CEC nominations for consultations with the President. Only one faction, Samopomich, manifested a good level of cooperation. It agreed to nominate the candidate proposed by civil society and held an open discussion of draft electoral laws with experts and the laws' authors. It also fulfilled the order of the Chairman of the Verkhovna Rada, choosing one of the electoral laws to be supported, and held a meeting with candidates for CEC posts.

Majoritarian MPs. Since, under the current law, 225 MPs are elected in single-member constituencies by plurality, such deputies are interested in keeping the plurality component of the electoral system. The vast majority of majoritarian MPs show no desire to reform the electoral legislation. The main reason for the passivity and lack of interaction with other stakeholders is their interest in preserving the status quo.

NGOs. The most active agents of the reform advancement included mainly the organizations united in the electoral legislation reform group of the Reanimation Package of Reforms[6] . These include civil network OPORA, Internews-Ukraine, Ukrainian Centre for Independent Political Research, Electoral Law Institute, and Human Rights Platform. NGOs are interested in carrying out the electoral reform based on the parameters determined by civil society. In 2016, RPR experts launched a number of initiatives, including the establishment of a working group by the Chairman of the Verkhovna Rada (almost all of them were included in this group) and holding factional debates concerning draft laws. Civil network OPORA filed a petition to the President[7] concerning change of the CEC members. Furthermore, the member-organizations of the RPR group held a series of round tables, conferences, international conferences, and public discussions devoted to elections and electoral laws, and have repeatedly made joint public statements and addresses.

International organizations. Interested in Ukraine's compliance with its international obligations in the field of elections. The most active participants in the discussion of the reform were International Foundation for Electoral Systems (IFES) and the Council of Europe Office in Ukraine (the Venice Commission). Just like NGOs, international organizations interacted with other stakeholders by participating in the working group under the Chairman of the Verkhovna Rada, organizing and maintaining platforms for discussing various aspects of the reform, arranging meetings between international experts and Ukrainian politicians and experts.

Recommendations for further action in 2017

Given the fact that the President and most MPs are content with the current electoral system, the existing laws on parliamentary and local councils elections, and the current members of the CEC, the only ones interested in the election reform are citizens, NGOs and international organizations. With this in mind, the main efforts in promoting the reform should focus on advocating the registered draft laws, rather than on developing and discussing new draft laws.

The main measures to be undertaken in 2017 should be aimed at:

- Organizing a broad public coalition to support the proportional electoral system with open lists;
- Developing and implementing a broad awareness raising campaign about the specifics of the electoral system with open lists;
- Arranging advocacy campaigns aimed at MPs and the President;
- Intensifying work with the media to explain the essence of the reform.

However, it is important to take into account the fact that as of early March there are two possible scenarios of progress in the electoral reform.

In the first, none of the draft electoral laws registered in the Parliament will receive a majority vote, which means that all activities to promote the electoral reform must begin anew. Under these conditions, civil society and experts should be ready to start their work from scratch.

In the second scenario, the Parliament will delay voting for electoral laws ad infinitum. Although the major stakeholders

in the Parliament readily declare their support for open lists, the decision-delaying tactics cannot be ruled out, as evidenced by the experience of the three-year failure to appoint new members of the Central Election Commission. Under these conditions, it is necessary to plan and implement direct action measures.

Since the imperfect electoral legislation serves as a foundation for political corruption in Ukraine, it is strongly advisable that implementation of the commitments to reform electoral legislation is monitored by a wider range of international organizations and foreign programs of technical assistance.

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Reform of law enforcement bodies

7.7%

of former police officers are to be dismissed from service based on accreditation, others continue to work in various positions in the National Police *(National Police, October 2016)*

Proprity No. **5**

in the reform urgency rating, according to experts, is the reform of law enforcement and prosecution system *(Ilko Kucheriv Democratic Initiatives Foundation, December 2016)*

46%

of Ukrainians have confidence in the new patrol police. The other police agencies are trusted by 23% of the population, while 12% trust the Prosecutor's Office *(Ilko Kucheriv Democratic Initiatives Foundation, December 2016)*

Challenges and goals of public policy

The system of law enforcement in Ukraine is going through a long transformation from the Soviet system of internal affairs agencies aimed at protecting national security to European model of law enforcement agencies that provide public services and prevent violations of human rights.

After the Revolution of Dignity, society, experts and academics were waiting for the political will to implement necessary reforms. However, despite significant gains in some matters, the law enforcement system as a whole is not only unreformed, but opposes attempts to address systemic problems and overcome the negative factors that lead to human rights violations.

The 2014 reform of militia was more focused on the interests of the agency itself, rather than the needs of the public. On July 2, 2015, the Verkhovna Rada adopted a new law "On the National Police" (to replace the 1990 law "On Militia") that entered into force on November 7, 2015. The law contains many positive provisions, particularly on the de-politicization of the police, service nature of its work, and so on. The Council of Europe experts described the law as "detailed and complex, especially concerning personnel matters". Through their daily work, the new patrol service that appeared on the streets of Ukrainian cities restored citizens' faith in the possibility of true systemic change in the country. However, the new law on police also contains a number of significant shortcomings noted by experts and the Council of Europe. These include lack of competitive selection for all positions, maintaining quasi-military ranks in the police system, etc.

There remain acute problems in the criminal justice system, such as low efficiency of pre-trial investigation agencies and systematic violations of human rights. Key measures – introduction of the institution of detectives, criminal misdemeanors, a new system for evaluating effectiveness of investigative units, bringing operational and covert investigative activities within the Code of Criminal Procedure in line with the European standards stipulated in public policy documents – have not been fulfilled, and public authorities have not taken any practical steps towards these

aims. Introducing the notion of criminal misdemeanors will influence the work burden of investigative and operational units, efficiency of the criminal law, compliance with the principle of inevitability of punishment, and, hence, the overall effectiveness of criminal justice agencies.

Reform of the prosecution agencies has remained one of Ukraine's unfulfilled obligations to the Council of Europe since 1995. For a long time, the 1991 law "On Prosecutor's Office" remained in force; it preserved the centralized, militarized structure of the post-soviet prosecution with internal unconditional subordination of prosecutors to their superiors and efforts to establish continuous supervision over all aspects of human, social and state life. The new law "On Prosecutor's Office" was adopted on October 14, 2014. It, inter alia, deprives the prosecutor's office of the function of general surveillance, transfers preliminary investigation to a new body (the State Bureau of Investigation), stipulates holding competitions for positions in the newly created local prosecutor's offices across the country, and envisions emergence of prosecutorial self-government agencies.

However, two years after the adoption of the new law, the aim of full-fledged prosecution reform has not yet been reached. As a result of the competition held in 2015, 84% of former heads of regional prosecution offices were again appointed by the Prosecutor General to head the newly created local prosecution offices. The prosecutorial self-government agencies retain high loyalty to the Prosecutor General, thus the prosecution office remains but a tool in the hands of the government. The acquisition of authority by these agencies was postponed until April 15, 2017, and prosecution, as a public agency, is shut to any possible reforms.

The prosecutor's office remains a politically biased body made of old cadres. It simulates reform by introducing weak and inefficient prosecutor's self-government agencies. Moreover, the conducted examination of prosecutors' integrity brought no real results.

The State Bureau of Investigation (SBI) has not yet been formed and launched, and the competition for the positions of director and his/her deputies is accompanied by a number of violations of the law, calling into question the legitimacy of the future leadership of this body. Thus, cases against police officers, judges and senior officials are still investigated by the investigative agencies of the prosecution office. The low efficiency of these investigations has been repeatedly emphasized by international institutions, because conducting pre-trial investigation and procedural control within a single agency is fraught with systemic conflict of interest.

For many years, the government policy on law enforcement has been proclaiming its movement towards European standards and institutions. This course is reflected in the key documents of law enforcement reforms of recent years, which include:

1. Coalition Agreement of the Parliamentary Factions 'European Ukraine' dated November 27, 2014.

2. CMU decree No.1118-p dated October 22, 2014 "On the Reform of Internal Affairs Agencies, which approved the Strategy of Development of the Internal Affairs Agencies of Ukraine and the Concept of Priority Measures to Reform the System of the Ministry of Internal Affairs."

3. Presidential decree No. 92 / 2016 dated March 4, 2016, which approved the Concept of Development of the Security and Defense Sector of Ukraine.

4. National Strategy for Human Rights, approved by Presidential decree No. 501 / 2015, and decree of the Cabinet of Ministers of Ukraine No. 1393-p, which approved an action plan to implement the National Strategy on Human Rights for the period until 2020.

5. The Concept of Reforming Criminal Justice of Ukraine approved by the decree of the President dated April 8, 2008, and decree of the Cabinet of Ministers of Ukraine No. 1153-p dated August 27, 2008 "On Approval of Action Plan to Implement the Concept of Reforming Criminal Justice of Ukraine" and Section 1, Chapter X of the Final Provisions of the Criminal Procedure Code (2012).

Implementation of public policy

Reform of internal affairs agencies. Police reform in 2016 was not systematic due to absence of a single systemic and integral document with detailed, step-by-step roadmap for reform implementation[1]. In addition, the action plan of the head of the National Police – the concept of "100 Days of Quality of the National Police of Ukraine" – was not even 30% implemented during the specified period that covered the first months of the year, or during the entire year, for that matter[2] .

The following measures should be recognized as key in the field of public policy:

a) *Approximation of legislation in the field of policing with European standards.* The main remarks of the Council of Europe concerning the law "On the National Police" include: lack of competition for all positions in the police; equivalents of military ranks in the police and non-transparent procedure for their assignment; disproportionate use of certain police activities, such as checking of personal identification documents, seizure of property, restriction of movement of persons, entry into private property, use of firearms and riot control weapons, unlimited information storage periods in police databases, and others (29 comments). In early July, draft law No. 4753 was registered—it aims to implement the recommendations contained in the comments of the Council of Europe Directorate General of Human Rights and Rule of Law[3]. However, MPs block the adoption of this draft law, while police representatives tend to speak of such legislative initiatives as the "presumption of rightness of police officers" (Arsen Avakov), rather than human rights and approximation to European standards of policing.

b) *Police accreditation (performance assessment).* The above-mentioned documents provide for the establishment of a new system of accreditation of police officers based on international experience, which was partially implemented in 2016. Unfortunately, due to a number of organizational problems and shortcomings of legal regulation, only 7.7% of police officers were dismissed based on the accreditation results, demonstrating low efficiency of the performance assessment and inefficient use of expended resources. Furthermore, some of the dismissed officers were able to return their positions through the court, relying on a loophole in the normative decree No. 1465 of the MIA of Ukraine, based on which the dismissal decisions were made[4].

c) *Reform of the pre-trial investigation and criminal investigation police agencies.* This is the most difficult part of the police reform, as it is in interdependence with other bodies in the criminal justice system and remains the most Soviet institution with its actual performance efficiency based on violations of human rights. Therefore, the above-mentioned strategic documents provide for a number of changes, the main of them being the introduction of the institution of detectives (a combination of an investigator and a special investigating agent).

In 2016, senior police management announced its intention to establish the institution of detectives, but no significant steps, concepts or other actions were taken. Meanwhile, to tackle the problem, considerable institutional effort is required, especially with regard to reducing the burden on investigators and introducing a new system of evaluating the effectiveness of investigative units. Despite the repeal of decree No. 334 of the MIA of Ukraine that established the Soviet system of evaluation (with its key parameter being crime "solving" dynamics, which in reality results in using illegal practices), the system continues to exist in the police[5].

It is also worth noting that paragraph 1.2, Section V of the Coalition Agreement provides for the delimitation of operational investigative activities outside criminal proceedings and in the framework of criminal proceedings (overt and covert investigative (detective) actions) that became the subject of debate in the academic and expert community. In 2016, MPs did not approve draft law No. 4778

"On operational activities", because despite declaring the synchronization of investigative and procedural activities carried out under the CPC, it was not based on European standards and contained a number of threats to human rights and freedoms. In April 2017, a similar draft law No. 6284 was registered in the Parliament; its authors intend to save the Soviet institution of operational investigative activity for many years to come. Unfortunately, this draft law does not meet European standards of covert operations and generally does not solve the existing problems in the area.

d) *Creation of the National Police Agency for Enforcing Human Rights and the Rights of Detainees*. In 2016, Agency for Enforcing Human Rights (AEHR) was created; it aims to monitor the observance of human rights in the activities of police departments, divisions and units, special agencies and guard departments, and individual police officers. Today, AEHR faces a series of tasks aimed at establishing coordination of work with complaints from citizens and internal security, personnel inspectorate, prosecutors, as well as informational, analytical, educational and other activities. Also, the public policy documents mentioned above provision introduction of additional measures to enforce the rights of detained and arrested persons in accordance with European standards, including the practice of video recording the first interrogation of detainees and a single electronic protocol (custody records), as well as individual packages for storing detainees' belongings. Unfortunately, in 2016 these tasks were not fulfilled, although the corresponding concept was announced by the police and a lot of groundwork has been done.

e) *De-politicization of police.* The formation of the National Police in 2015 as an independent executive authority in the system of the Ministry of Internal Affairs was a significant step in the de-politicization of the police. According to European standards of law enforcement, the new law "On the National Police" was based on a model of delineation of functions of the Minister as a politician and those of the Head of the National Police as a manager. However, the law includes regulations that severely limit the powers of the Head of the National Police, since appointment to key positions (heads and deputies of departments of the central office, heads of local offices) must be approved by the Minister. This led to a number of non-transparent appointments to senior positions in the police during 2016[6].

f) *Police education reform*. The tasks of: developing a modern European police training model based on the grade principle with colleges as key educational institutions; reorganizing the system of higher education in MIA institutions; and other measures to reform the training and education of police were not fulfilled. Meanwhile, except for patrol police, new staff and departments continue to be trained using old programs and methods, resulting in low levels of police training and unwillingness to fulfill their tasks properly.

g) *Anticorruption issues.* The police reform strategy involves replacing the current 3-component payment structure (salary, seniority payments, premium / bonuses) with a 2-component one (salary and seniority payments) to eliminate subjective components in determining wages and to increase personnel's independence from the management and corruption schemes. However, this was not implemented in 2016. In addition, despite the Coalition Agreement, the security police was not eliminated, continues to monopolize security services provision, and remains a channel for a number of police corruption schemes.

Reform of the prosecution office. On June 2, 2016, there was an important event for prosecution reform, i.e. adoption of constitutional amendments regarding justice that significantly limited the functions of the prosecution. It was deprived of non-characteristic functions, making it possible for prosecutors to focus on increasing the efficiency of their mainstream work – supporting public prosecution. According to paragraph 9 of the Transitory Provisions of the Constitution, after the establishment of the State Bureau of Investigation, the prosecution office will be released from its investigative functions and the relevant investigating units will be eliminated.

In 2016, prosecution self-government bodies were created – the National Conference of Prosecution Officials was

held; the Council of Prosecutors of Ukraine and the Qualification and Disciplinary Commission of Prosecutors were elected. They were supposed to be independent from the prosecution management. However, their independence cannot be achieved without replacing the staff of prosecution bodies through open competition or accreditation, as the delegates to the conference of prosecutors are appointed by the Prosecutor General's Office. The heads of regional and local prosecutors' offices were appointed by Prosecutor General Viktor Shokin back in December 2015[7], but their basic structure has remained unchanged since Yanukovych's government.

In 2016, Yuriy Lutsenko was appointed as the new Prosecutor General of Ukraine, pledging to reform the prosecutor's office. More specifically, he announced plans to revise the results of competitive selection of local prosecutors that would allow outside employees into the system. However, nothing has been done to these ends during the year.

Besides, to implement the new law "On Prosecution", the Qualification Disciplinary Commission of Prosecutors (QDCP) was supposed to start its work on April 15, 2016. This body is meant to hold all competitions for positions in the prosecution, including the highest ones, and dismiss prosecutors by bringing them to disciplinary responsibility. However, the launch of this body has been postponed until April 15, 2017.

Speaking of "façade reforms", we cannot avoid mentioning the institution of checking prosecutors' integrity introduced in 2016. It involves filling in a questionnaire with seven points with a declaration that the prosecutor: *has not committed actions which discredit the prosecutor's office; promptly declared property in the prescribed manner; the standard of his/her life corresponds to the available assets and income; did not commit unlawful interference with the work of another prosecutor*. Filling in such integrity questionnaires is a common practice in public, and especially law enforcement, agencies in Canada, Europe and the US. In these countries, such forms consist of several dozen sheets of very specific questions – in addition to detailed questions about the individual's (and his/her family's) financial condition, there are also questions about places where they vacation, sources of payment for their vacations, the average dose of alcohol consumption per week, cases of driving a car while intoxicated, unlawful hunting and many other details concerning private life[8].

Unfortunately, the Ukrainian version of this institution is but a declaration, rather than a real mechanism for combating corruption and abuses in prosecution agencies. The result of almost six months of work checking the integrity of more than ten thousand prosecutors came down to five severe reprimands.

Establishment of the State Bureau of Investigation. An important reform in the field of law enforcement should involve establishment of the State Bureau of Investigation as the main regulator of all police officers, officials and judges. The investigators of this new body will investigate all offenses (except for serious corruption cases) committed by any law enforcement officers, including NABU detectives. This, in particular, includes the abuse of power, torture, car accidents leading to serious consequences, etc.

In 2015, the law of Ukraine "On the State Bureau of Investigation" was approved, but this agency has not yet started operations. In 2016, the competition committee for the selection of the SBI director and his/her deputies started its work, which is accompanied by direct violations of the law. This can prevent timely and transparent SBI formation, for any decision adopted by the current members of the Commission can be appealed in court[9]. For instance, two members were unable to confirm whether they have a higher legal education, which is a mandatory requirement for the Commission members. Their participation in the interviews and further decision-making will throw into question the legitimacy of the whole process of appointing SBI management.

Other violations include non-disclosure of autobiography and property declarations of the competition's candidates, lack of free access to information about candidates, etc. It is the SBI director and deputy directors that should be the guarantors of independence and non-partisanship of the

SBI; they are responsible for the recruitment of employees and formation of the body's structure, and hence, transparency of the competition is vital.

Introduction of the institution of criminal misdemeanors. The introduction of the institution of criminal misdemeanors is included in most of the above documents and is meant to distinguish minor offences as a separate category of offences investigated under a simplified procedure. This will lessen the work burden of prosecutors and investigators, and enable them to spend more time working on complex cases, and to investigate simple ones without spending too much time on unnecessary bureaucratic procedures[10].

Although the management of law enforcement agencies keeps declaring its intentions to speed up the introduction of the institution, the corresponding draft law No. 2897 still remains frozen in the Verkhovna Rada. In 2016, both the Minister of Internal Affairs and Prosecutor General proclaimed that this area of reform is a priority, but such declarations have not translated into concrete actions – no working groups were created, no consensus in the academic and expert community was sought, etc.

Stakeholders and their impact on policy implementation

Government and law enforcement authorities. A significant challenge in reforming law enforcement is the lack of a single platform for discussion and coordination of reform strategies in various departments. Neither the Parliament, the Cabinet, nor the Presidential Administration assumed responsibility for developing and implementing a comprehensive vision of reform. A lack of a consensual "advocate" of reforms leads to sporadic actions and turns the reform area into a struggle between different political forces. Thus, the management of the Ministry of Internal Affairs and Prosecutor General's Office focused on the political situation rather than actual management and reform of their respective departments. Despite international technical support, the quality and efficiency of the measures undertaken by these bodies is low – "imitation of reform" became their key activity.

International institutions. International institutions, especially the European Union Advisory Mission (EUAM), were involved in large-scale reform of law enforcement. However, they were used as a tool to "imitate reforms" rather than a real actor determining the rate and extent of reforms. Moreover, their idea of the status of reforms is largely formed by the same authorities who do not want to pay attention to solving real problems. Meanwhile evaluation of documents developed and approved by various government bodies remains largely unaddressed by Council of Europe experts.

Experts. The expert community is probably the only source of a comprehensive vision of the reform of criminal justice and law enforcement. Thus, last year, experts of the working group on the law enforcement reform of the Reanimation Package of Reforms were involved in the development of the vast majority of progressive legislative changes. Additionally, thanks to the efforts of civil society and international partners of Ukraine, a number of harmful legislative changes developed by different authorities were blocked.

Recommendations for further action in 2017

To the Verkhovna Rada of Ukraine:

- to approve the draft law No. 4753 on amendments to the law of Ukraine "On the National Police" (to implement the recommendations contained in the comments of the Council of Europe Directorate General of Human Rights and Rule of Law), dated June 2, 2016;
- to adopt draft law No. 2897 "On amendments to certain legislative acts of Ukraine with regard to introduction of criminal misdemeanors", dated May 19, 2015;
- to replace the member of the competition committee for the selection of the SBI Director appointed by the Parliament with an individual who meets the legal requirements and is supported by civil society and experts.

To the Cabinet of Ministers of Ukraine:

- pursuant to Art. 11 of the law of Ukraine "On the National Police", to adopt a resolution that will set up a new system for evaluating effectiveness of police work based on the level of public trust;
- to change the salary structure of the police from a 3-component (salary, seniority payments, bonus / premium) to a 2-component one (salary, seniority payments);
- to develop a strategy and action plan aimed at withdrawing security police from the structure of the police, eliminating security police as a territorial body of the National Police, and settling the issue of security service provision by government agencies;
- to replace the member of the competition committee for the selection of the SBI Director and Director Deputies appointed by the Cabinet of Ministers with an individual who meets the legal requirements and is supported by civil society and experts.

To the Ministry of Internal Affairs and the National Police of Ukraine:

- to prepare and submit to the Cabinet of Ministers a draft law that will make it possible to combine the functions of an investigator and a special investigative agent in one detective;
- to properly arrange the work of accreditation, police, and disciplinary commissions (specified in the draft law "On the Disciplinary Statute of the National Police");
- to introduce a new system for evaluating the effectiveness of police work, especially in investigative units;
- to provide sufficient powers and guarantees of independence to the Agency for Ensuring Human Rights so it could carry out its tasks;
- to develop a strategy (in cooperation with other bodies engaged in operational investigative activity) and launch the reform of police training.

To the Prosecutor General's Office of Ukraine:

- to allow real work and independence of the prosecutors' self-government after April 15, 2017 in accordance with the law;

- to develop and introduce a new system for evaluating the effectiveness of the prosecutor's work;
- to develop and implement a real institution of secret integrity checks of prosecutors;
- to renew the personnel of local and regional prosecutor's offices and Prosecutor General's Office based on open and transparent competitions for all positions, including managerial ones.

To the State Bureau of Investigation:

- the director and deputy directors of SBI should form the structure of the body and recruit professional staff in the manner prescribed by law as soon as possible after their election.

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The purpose and the activities **of the State Bureau of Investigation (SBI)**

REANIMATION PACKAGE OF REFORMS

Central executive authority that identifies, detects and investigates most dangerous crimes and crimes commited by specific subjects

Crimes within the jurisdiction of the SBI:

most dangerous crimes

Crimes of criminal organizations

Crimes connected with terrorism

Especially grave violent crimes

crimes commited by specific subjects

Torture and related crimes committed by investigation officers of internal affairs agencies, the Security Service, the NABU, and prosecutors

Corruption crimes committed by the employees of the NABU and prosecutors of the SAP

Military crimes

Apart from investigating crimes, the SBI is empowered to:

Prevent organized terrorism, terrorist and other especially grave violent crimes in order to ensure personal and social safety

Identify the crimes of torture and corruption crimes committed by the investigation officers and prosecutors in order to ensure fair trial

Public and governmental control over the activities of the SBI:

Annual psychophysiological check-up of the employees with the use of a lie detector

Activities of the internal control departments and prosecution supervision

Disciplinary commission of the SBI and the Public Control Council under the SBI

Annual written report on the activities of the SBI is submitted to the President, the Verkhovna Rada, and the Cabinet of Ministers and published in media

Everyone can freely obtain information about the activity of the SBI

Reform in the media and information spheres

1,008 days

passed since the law "On public broadcasting" entered into force and PJSC NSTU was registered as a legal entity

244

state and municipal newspapers and magazines were included in the first "pilot" stage of privatization of the press

75%

of the statutory finance amount was allocated for public broadcasting in 2017

Challenges and goals of public policy

Since independence, there have been several rounds of reforms in the sphere of Ukrainian media and information, associated both with the country's evolutionary development and with its political situation, censorship and revolutions of 2004 and 2014. The foundations for information and media legislation were laid in 1992–1997, when basic laws were adopted: on information, on television and radio broadcasting, on advertising, on the procedure of coverage of the activity of state authorities and local self-government bodies, on the state support for media and journalists, and on the system of public broadcasting. The latter, however, has never been enacted.

The second stage can be described as "Kuchma to Yanukovych" period from 2003 to 2009. During this time, amendments were introduced concerning protection from excessive defamatory claims; a new but senseless version of the law on television and radio broadcasting was adopted; significant changes were introduced to the law on advertising; and another unsuccessful attempt was made to adopt a law on public broadcasting. The last important document of this period was the adoption of the Doctrine of Information Security[1], which back then already mentioned external information attacks, the problem of media attacks and cyber security. The third stage covers 2010–2011. During this time, a law on personal data protection was adopted together with a law on access to public information and a new version of the law on information.

After the Revolution of Dignity, the media legislation began to develop rapidly. For instance, the law "On public broadcasting"[2] was among the first adopted initiatives, and legislation concerning access to public information was harmonized. Within the year, the law on public broadcasting was supplemented with a mechanism that made it possible in January 2017 to create a public broadcaster as a legal entity. The law "On access to public information" was supplemented with provisions on publicly available data; and a law on transparency of public funds was adopted. In 2015, the law "On reform of state and municipal print media"[3] was approved; and within one year the first regional outlets were successfully converted to private

newspapers (one of the first such newspapers was “Obriyi Iziumschyny”). That same year amendments to the law “On television and radio broadcasting” were approved, provisioning disclosure of final beneficiaries[4] of audiovisual media. In addition, the Parliament adopted a law on regulating international broadcasting, which was the first system of this kind. In 2016, quotas on Ukrainian songs in the content of radio stations were imposed, and the sanctions that may be applied by the National Council of Television and Radio Broadcasting of Ukraine (the regulator) for violating this law were strengthened.

On December 29, 2016, the National Security and Defense Council passed a resolution “On the Information Security Doctrine of Ukraine”. After a two-year vacuum (the previous version of the Doctrine was abolished in early 2014), this document outlined Ukraine’s national interests in the sphere of information, threats to their implementation, and **areas and priorities of the public policy.** Thus, for the first time in three years, an attempt was made to reconsider the challenges faced by Ukraine after the Russian occupation and to define the national priorities in the media and information sector.

Among the media tasks for 2015 the Coalition Agreement[5] identified defense of the national information environment, full-fledged launch of public broadcasting, privatization of print media, increased responsibility for obstructing journalistic activity, ensuring transparency and de-monopolization of media ownership, offshore ban on media ownership, and creating international broadcasting. The President’s Strategy for Sustainable Development “Ukraine – 2020”[6] identified the vector of “pride” for information and media development and promotion of Ukraine in the world.

The Draft Mid-Term Plan of Priority Actions of the Government by 2020 includes the launch of fully public television and radio broadcasting in Ukraine by the end of 2017. The Plan envisions informational reintegration of Donbas and Crimea through TV and radio signal coverage, development of a strategic communications system, and global promotion of Ukraine. It is assumed that these aims can be achieved by developing a legal framework for the media and freedom of expression; providing the most complete public information on the activities of authorities; promoting international broadcasting; and strengthening Ukraine’s presence at international events and informational platforms.

Council of Europe’s resolution 1466 (2005) on Honoring of Obligations and Commitments by Ukraine urged Ukrainian authorities to transform state broadcasters into public broadcasting channels in line with relevant Council of Europe standards; begin privatization of printed media founded by public authorities; guarantee transparency of media ownership; create equal conditions for all media by revising the 1997 law “On governmental support of the media and social security of journalists”; ratify the European Convention on Transfrontier Television; ensure that the new version of the law “On television and radio broadcasting” is in line with Council of Europe standards and recommendations of its experts.

Chapter 15[7] of the Association Agreement between Ukraine and the European Union encourages cooperation in the audiovisual field, both in terms of product promotion and in journalist training. It is also expected that within two years from the date of entry into force of the Association Agreement Ukrainian legislation will be approximated to directive No. 2010/13/EC (Audiovisual Media Services Directive).

Despite the rapid development of media legislation, some issues remain as relevant as in previous years. Some are related to implementation of already adopted laws; others are due to reluctance to change on the part of political parties or stakeholders.

The establishment of public broadcasting – a reform of public television and radio broadcasting has been a blatantly overdue obligation of Ukraine since 2003. It was delayed for another year because of the outright failure of fiscal and law enforcement authorities to address sabotaging activities of the state enterprise USTF Ukrtelefilm. This enterprise and regional state broadcasting companies had to become part of the legal entity of public broadcaster

– public joint-stock company "National Public Television and Radio Broadcasting Company of Ukraine" (further in the text - UA:PBC). This resulted in a nine-month delay in the registration of the public broadcaster, which took place on January 19, 2017.

Significant risks to the newly created public broadcaster include under-funding (it received only 75% of the amount allocated by law in 2017) and debts inherited from the former state television. UA:PBC, as the successor of the National Television Company of Ukraine, lost the appeal case filed by the French corporation Euronews SA concerning debt collection under the license agreement of October 21, 2010. As a result, UA:PBC's debt amounts to 10,591,224 EUR, or 251,076,179 UAH, which is a quarter of the broadcaster's budget for 2017. Although the court's decision can be appealed, the probability of a negative outcome for UA:PBC is quite high. To prevent this debt from hindering the reform process and activities of public broadcasting, UA:PBC, in cooperation with the Cabinet of Ministers (which initiated the emergence of the debt in Yanukovych's times), has to decide on possible solutions for its repayment.

Privatization of print media – due to the lengthy procedure of forming a consolidated list of the print media to be reformed, and the adoption of regulations, the first stage of the reform was completed as late as at the end of 2016, which, in fact, broke the logic of the law. The law was also adopted under conditions of parliamentary instability, resulting in a number of drawbacks that need remedying before adequately implementing the second phase of the reform (2017–2018).

New version of law on audiovisual media – the adoption of the new version of law on audiovisual services is a key component of the media reform. The law seeks to resolve the issue of independence, sustainability and efficiency of the regulatory authority; changes the concept of licensing; and settles the problem of digital broadcasting. However, in the absence of political support for the adoption of a new version in 2016, the Parliament adopted a number of pinpoint amendments that determined the extent of political compromise on sensitive issues such as language quotas, sanctions of the regulatory authority, and limiting the circulation of products of the aggressor state.

Protection of journalists' activity and access to information – despite amendments to article 171 of the Criminal Code adopted in February, the situation with protection of journalists' rights when trying to access information deteriorated, because refusal to provide information to a journalist can now become a basis for national police to check for signs of a criminal offense. Because of other terms stipulated in the Code of Administrative Offenses, it is impossible to bring to justice those who violated the right to information. Still unsettled is the issue of recovery of the so-called "progressive scale" of court fees, which protected media and journalists from excessive lawsuits, especially during election campaigns.

Transparency of media ownership – the adoption of amendments concerning transparency of media ownership has become one of the most important developments in the media field. This makes Ukraine one of the most developed countries in the context of transparency in media ownership[8]. However, expert recommendations stressing the need for the regulating authority to adopt short-, medium- and long-term plans for the implementation of the law have not been fulfilled yet. A separate matter is the transparency of media funding. Actual control of the media not only depends on ownership and management, but also on financial control, which can be opaque and hidden by various mechanisms, including fictitious loans and "black cash" finance.

Political advertisement and propaganda – media activity during elections remains a stumbling block in the media sector. Political forces do not support efforts to ban or severely restrict 30-second political advertisements that operate on an emotional level and contain no real information for the voter.

Implementation of public policy

Creation of public broadcasting. The most successful reform in the media field is the reform of public broadcasting. Its first, "uniting" phase lasted until September 2016 and involved bringing together under the umbrella of the National Television Company of Ukraine (NTCU) a number of public broadcasters – oblast and regional TRCs, the National Radio Company and TRC Kultura. Some indicative figures to help imagine the scale of change are as follows: as of October 2016, the united NTCU employed 7,124 staff and possessed 274 immovable property objects (administrative buildings, garages, hostel, cinema building, warehouses, production facilities, bomb-proof shelter) with the total area of 193 thousand sq. m; 39 plots of land with the total area of 34 hectares; 162 licenses, including 73 television licenses and 89 radio licenses.

However, the process of uniting public broadcasters into a single legal entity faced resistance from state enterprise USTF Ukrtelefilm. This challenge was promptly addressed by a specialized parliamentary committee and on March 15, 2016 it registered draft law No. 4232 "On changing the procedure of incorporation of Ukrtelefilm by the public broadcaster." In two months, the Parliament passed the law, thus unlocking the process of uniting oblast public broadcasters (OSTRC). However, in autumn of 2016 a new problem emerged with eliminating former OSTRC as legal entities, namely the closing of Crimean companies. As it turned out, the government failed to resolve the issue of transferring the public treasury from the peninsula, making it almost impossible to close the enterprises registered in Crimea. The problem was resolved only after Reanimation Package of Reforms addressed the Prime Minister of Ukraine. Since October 1, 2016, the second phase of the reform has been under way, i.e. the transformation of NTCU into UA:PBC. At this stage, the UA:PBC Statute was developed, with participation of members of the Supervisory Board, and discussed with the public. The Statute was approved by the government in late December 2016. Moreover, the State Property Fund conducted a market assessment of the company's property (excepting property in the temporarily occupied territories) and determined the amount of its share capital as over 2,5 billion UAH. On December 24, 2016, the Parliament adopted the State Budget for 2017, which did not provide adequate funding for public broadcasting. Despite legal provisions allocating 0.2% of the state budget to public broadcasting (last year this amounted to 1.28 million USD), in 2017 the broadcaster is set to receive only 75% of the allocation, which significantly complicates upgrading and producing quality content. Further delay was caused by the late registration of the legal entity (January 19, 2017[9]), which is when the UA:PBC Supervisory Board acquired its powers.

On February 3, 2017, the Supervisory Board of Public Broadcasting announced a competition for the position of the Chairman of UA:PBC. Eight candidates took part in the competition, and in April, Zurab Alasania, supported by most NGOs, was chosen for the position[10]. He is expected to begin work in May, at the same time as the Supervisory Board will elect six members of the UA:PBC Board as proposed by its Chairman. New members of the Board should ensure implementation of the mission of public broadcasting, approved[11] by the Supervisory Board: "To protect freedoms in Ukraine. To provide the public with accurate and balanced information about Ukraine and the world community; to establish a public dialogue aimed at strengthening public confidence, developing civil liability, the Ukrainian language and culture, personality and the Ukrainian people".

Attempts of political interference in public broadcasting were made already in its first weeks of existence – namely, an attempt to withdraw the Board member Vyacheslav Kozak, who was appointed at the proposal of the faction of Lyashko's Radical Party[12]. Although the law prohibits following instructions of a political party in office, as well as establishes an exhaustive list of grounds for dismissing a member of the Supervisory Board, the faction leader sent a letter to the regulator requesting to replace the member delegated by the faction with another, without reference

to any statutory grounds. However, Oleh Lyashko publicly confirmed that he "withdrew" Vyacheslav Kozak because of the results of his vote during the election of the Chairman of the Supervisory Board[13]. This attempt sparked backlash from the members of the Supervisory Board, the Reanimation Package of Reforms, the National Union of Journalists of Ukraine, Special Advisor of the Secretary General for Ukraine Regis Brillat, Ambassador of Sweden to Ukraine Martin Hagström, EU Delegation to Ukraine and other diplomats. The regulator refused to consider the issue until the faction specifies statutory grounds for the termination of the member's office. Undoubtedly, the attempt to replace a member of the Supervisory Board during the country's first open competition for the office of the head of Public Broadcasting was fraught with risks of interference in the competitive process and the future activity of the company. Nevertheless, thanks to the proactive attitude of civil society and the international community, no negative precedent was created.

Privatization of print media. In the context of reforming print media founded by state authorities and local governments, the situation was less successful. This was due to the weak stance of the State Committee for Television and Radio Broadcasting, the central executive authority responsible for reforming print media. In addition, the adopted law on privatization contained many flaws, because it did not gather much political support and was approved "as is" without important proposals from the Council of Europe experts. According to the law, reform of print media should take place in two stages. The first year after the adoption of the law is a pilot year, when reform is applied only to the media willing to undergo the reform in the first stage, and they are included in the list approved by the Cabinet of Ministers. The second stage is to unfold in 2017–2018, when the rest of the print media will undergo the reform. The first problem emerged when, despite the terms for determining the method and phase (January-March 2016) and adoption of decisions by the founders (April 2016), on February 29 the State Committee on Television and Radio Broadcasting approved the order to make up the list of the first phase of reform, setting the date of receipt of the documents as July 1 rather than early May, delaying the entire first stage. This stance seemed somewhat strange, because it formed the regulatory framework rather quickly. The roadmap[14] was drawn up on January 18, 2016; and on March 10 the procedure for making a consolidated list[15] was approved. This tardiness combined with problems of sabotage by some local governments resulted in the fact that the list was approved[16] as late as November 23 – five weeks before the first phase was to be completed. It actually undermined the entire logic of the first phase. As of early 2017, more than 600 periodicals are subject to reform.

Another issue is the reform of the print media of central executive authorities (CEA). So far, experts are studying the scope of such periodicals, as some CEAs are unaware that they are founders of certain media.

Regulation of television and radio broadcasting. A major problem of the media environment is the old law "On television and radio broadcasting" that prevents resolution of a number of issues, including transition to digital broadcasting, regulatory authority's sanctions, and responding to new challenges in content distribution channels. The strategy of small changes chosen by the specialized committee has already yielded the first positive results. In 2017, the regulator imposed a fine of 1.6 million USD[17] on a channel for showing programs that could harm children. However, the issue of digital broadcasting failed to gain traction. The activity of the regulatory authority, the Ministry of Information Policy, and RRT Concern focused on frontline broadcasting, namely on providing temporary permits for broadcasting in the ATO area and licensing broadcasting in Donetsk and Luhansk regions. In addition, the tower on Mount Karachun (Donetsk region) was re-built (it began operation in December 2016), as well as the tower on Chongar[18] covering northern Crimea (opened on March 17, 2017). However, this activity is a tactical response to the war and occupation. The strategic issues associated with the monopoly of terrestrial digital broadcasting have not yet been settled. The weak point of the Doctrine and of the activity of the Ministry of Information Policy (MIP) is its direct dependence on other economic and security ministries and agencies. Only after developing a roadmap, as

well as short- and long-term objectives, can the MIP start effectively working to overcome the informational blockade by Russia and its Crimean satellites. The roadmap can also serve as a guide for providing various services that would facilitate reintegration of the population and getting public services.

Transparency of media ownership. In March 2016, for the first time, Ukrainian broadcasting organizations released information about their ownership structure as of the end of 2015, information on changes in the ownership structure during the year, and information about all persons that directly or indirectly owned a substantial share in that organization during the year. These details were published on the broadcasters' websites and submitted to the National Council on Television and Radio Broadcasting. Late or failed submission of information by a broadcaster or provider was to be fined in the amount of 5% of the license fee for all licenses owned by the offender. In the matter of media ownership transparency and prevention of financial influence, especially by the aggressor state, the police turned out to be the least effective agency. The case[19] against the founder and former owner of the notorious Vesti newspaper Igor Guzhva, suspected of tax evasion, was launched in May 2014[20], but it came to trial only in 2016 and is still pending.

Stakeholders and their impact on policy implementation

The Verkhovna Rada and the specialized committee. The main player on the legislative level is the Committee on Freedom of Speech and Information Policy of the Verkhovna Rada. Since December 2014, it has been headed by an ex-journalist and representative of the third sector, Viktoria Siumar, and actively carried out quality legislative work. This is a feature of the time, and a result of a better quality of the Committee. According to the monitoring[21] report of civil network OPORA, the Committee on Freedom of Speech was in the top five for enacted draft laws, transparency, attendance and other indicators. Advances in legal and regulatory support for the public broadcasting reform, privatization of media, strengthening of the regulator's powers, limiting informational products of the aggressor state, and introduction of quotas for Ukrainian songs – are primarily the result of this Committee's work. The Committee remains open to legislative initiatives and considers most high-profile issues associated with the reform and protection of journalists' rights. More specifically, the Committee regularly considered[22] the case of the SBU attack on Radio Liberty journalists Mykhailo Tkach and Kyryl Lazarevich. In general, the Parliament supports the Committee's legislative initiatives, but so far there is no support for the new law on audiovisual services.

National Council of Ukraine on Television and Radio Broadcasting (the regulator). The current teams of the regulator and the parliamentary Committee are the most effective in the past 10 years. It was the National Council that initiated blocking Russian propaganda, developing the Ukrainian FM radio[23] network, and applying sanctions[24] to broadcasters, which attests to the positive dynamics of the body. However, the regulator lacks systemic stability. This is due to the lack of guarantees for sustainable financing and the non-transparent scheme of appointment of the regulator's members by the President. This makes the regulator vulnerable in the event of negative developments.

State Committee on Television and Radio Broadcasting. Restored on the proposal of President Leonid Kuchma in January 1995, and later mentioned in the Constitution, the State Committee on

Television and Radio Broadcasting remains essentially a Soviet rudimentary body that must be eliminated after the reform of public media. Nevertheless, experts of the State Committee on Television and Radio Broadcasting completed a significant amount of administrative and financial work associated with the admission of OSTRC to the National Television Company and its subsequent conversion into PJSC National Public Broadcasting Company of Ukraine. With regard to press privatization, the State Committee on Television and Radio Broadcasting took a more cautious stance, which resulted in a general delay of the reform.

Ministry of Information Policy. The Ministry of Information Policy provided support at certain stages of the reform of public television. In particular, Minister Yuriy Stets facilitated the passage of Cabinet of Ministers acts when making the Statute of PJSC National Public Broadcasting Company. In addition, the Ministry initiated denunciation of two agreements with Russia on TV and radio cooperation, the application of which would be imprudent given the information aggression by Russia. The Ministry primarily focused on developing international broadcasting and restoring broadcasting in the occupied territories. However, in the context of international broadcasting, it is still necessary to identify the target audience and the broadcaster's focus.

President of Ukraine. As a media owner, President Poroshenko is well aware of media's role in modern society. On the one hand, it provides the President with an understanding of the risks and threats faced by the media and journalists in Ukraine, as well as the threat posed by information attacks from various sources. On the other hand, as an interested party, and considering the lack of finance in the state budget, he is prevented from implementing a more aggressive policy, particularly in addressing complex problems such as terrestrial digital broadcasting. His appointment[25] of Valentyn Koval to the National Council was unexpected and opaque, because he had not filled the vacant post using his quota for a long time and finally appointed a candidate who was to be elected[26] by the Parliament. Nevertheless, the appointment of a media professional is a positive signal. In general, the President's policy stance on media reform can be assessed as neutral. All of the adopted laws were signed by him.

Personnel of public media. The experience of reforming public broadcasting demonstrates four groups of stakeholders. The first group includes outspoken opponents. These are employees who are either in favor of the state media as a phenomenon or intended to retire with the benefits provided under the law[27] "On state support of mass media and social security of journalists"; or have become uncompetitive in the market due to their expertise level and age. The second category includes skeptics and neutral-minded employees. This category has first-hand experience or knowledge of different transformations of public broadcasting and have witnessed the lack of qualitative results of such changes. The third category includes optimists. These employees – either due to their faith in the idea of public service broadcasting, or because of fatigue from the current situation – are ready to support reforms despite the financial losses resulting from the process. The fourth category includes the management of public broadcasters. The conversion process and products produced by different branches depend on their decisions and actions. In this respect, the Sumy branch headed by the young director Mykola Chernotytskyi is in the lead. In 2016, it began broadcasting[28] under the logo UA: Sumy to distinguish the quality of its informational products. And in March 2016, it was the first to

have eliminated the legal entity of the former OSTRC. However, the policy of regional leaders towards reform is usually reserved and, at times, negative.

In the area of reforming public and municipal print media, the situation is similar to that of radio and TV, allowing for specifics of the work of print media as such. Some teams expected the law to give them independence; others are trying to buy time before the conversion – two thirds of all media outlets applied to be in the second phase of the reform. This reform also involves a separate category of stakeholders, i.e. founders – local council, heads and local administrations. Their delay to decide on privatization indicates a reluctance to lose a media resource that was traditionally actively used in elections. In particular, local councils have tried to influence the reform process, by changing editors [29]or trying to shut down media[30] .

NGOs in the media sphere are the main driving force of reform. It is the coordinated efforts of NGOs that made the adoption and implementation of reforms possible. Specialists of media NGOs play an important role by providing advice and assistance in the courts, preparing appropriate legislative proposals, making statements, and criticizing projects that threaten freedom of expression.

Private media are active mainly through associations or as representatives of big media groups. Their main field of interest pertains to legislative innovations in the context of quotas and regulatory authority. Despite the presence of business interests, there is a tendency towards cooperation and reaching consensual decisions, particularly in matters of child protection, language quotas and so on. A successful example of their cooperation with the public broadcaster is the Eurovision song contest.

Hromadske media – a separate category includes Hromadske Radio and Hromadske TV. The former produces programs broadcasted by the Ukrainian radio, while the latter developed into a channel preparing high-quality programs of investigative journalism and political satire.

International partners. Reforms in Ukraine, particularly in media, could not have been implemented without pressure and help from several key partners – the Council of Europe, European Commission, embassies of Sweden, Norway, Denmark, Czech Republic, and others. By providing institutional and expert support, and making statements concerning the slow-down of reforms and unacceptability of attacks on freedom of expression, these stakeholders significantly contributed to the progress of reforms.

Recommendations for further action in 2017

In general, the public and the authorities coincide on many issues on the media and information policy agenda, especially with regard to creating public broadcasting, privatization, and defense from information aggression. The main problems that hinder reforms include excessive bureaucracy of the process, low capacity of authorities to quickly respond to the situation, and dependence on the person who heads the body rather than on rules and public interest.

In 2017, various stakeholders are to collaborate on the following key issues of media reform:

1. Full-fledged launch of public broadcasting, conducting audit of companies, optimizing the structure and personnel, and starting to change content.

Another challenge is getting additional financing to the minimum statutory amount that will make it possible to begin upgrading public broadcasting.

Moreover, we cannot let the debt to Euronews block the reform process and operation of public broadcasting: to this end, National Public Broadcasting Company of Ukraine in cooperation with the Cabinet of Ministers has to decide on possible solutions for its repayment.

2. Submission to the Parliament and adoption of amendments to the law on privatization of print media, taking into account recommendations of international experts and the results of the first phase. This will make it possible to account for flaws and efficiently carry out the second stage of reform.

3. Registration and approval of the law on audiovisual services, to move beyond blind regulation to a sound public policy on regulating audiovisual content and media.

4. Introduction of legislative amendments that will improve access to public information, particularly in the context of access for journalists, and strengthen the powers of the Ombudsman.

5. Improvement of legislation on the activity of journalists – eliminating flaws in the Criminal Code, restoring the progressive court fee scale, normalizing provisions on the right of reply and refutation.

6. Preparation of amendments to the legislation governing political advertising.

Another issue is to develop a comprehensive state policy on media and on reintegration of occupied territories. This task requires the involvement of many stakeholders, including the authorities responsible for finance, infrastructure, education, and so on.

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Public broadcasting

REANIMATION PACKAGE OF REFORMS

Public broadcasting instead of state-owned (The National Public Television and Radio Broadcasting Company of Ukraine will incorporate the former National Television Company of Ukraine, the former National Radio Company of Ukraine, a number of state-owned broadcasters, and the Ukrfilm studio)

Introduction of financial control

(external independent financial audit to be introduced for the first time; its results to be published)

The supervisory board becomes a management body

(it used to be an “honorary” body with limited functions)

Supervisory Board becomes independent and is formed by the public and factions

(previously it used to be formed by the Cabinet of Ministers; some offices were occupied by governmental officials)

Chair of the Board of the public broadcaster is appointed by the Supervisory Board (chair of the National Television Company of Ukraine used to be appointed by the Cabinet of Ministers)

Independent program policy

(due to micro-managed government contract, the state dictated which programs to produce)

Public broadcasting to serve the interests of the citizens, not the government

(previously the public broadcaster used to cover the activities of the governmental bodies as its main duty)

Advertising quota has been cut threefold: to only 3 min per hour

(advertising quota used to reach an average of 15% per hour, i.e. 9 min.)

More sustainable financing: 0.2% of the state budget revenues

(previously the Government used to determine this amount at its own discretion)

Healthcare reform

57%

of Ukrainians are expecting improved quality of medical care as a result of the healthcare reform *(KIIS, June 2016)*

saved to purchase additional medicines to treat tuberculosis and orphan diseases, vaccines and HIV tests *(Monitoring the progress of reforms, December 2016)*

more than **75%**

of Ukrainians consider the high cost of medication and treatment to be a major problem in healthcare *(KIIS June 2016)*

Challenges and goals of public policy

Current problems in Ukraine's healthcare system are caused by both the general state of public health and the ability of the healthcare system to provide services timely and accurately. Ukraine is gradually going down in international rankings: socially dangerous diseases continue their spreading dynamics, and diseases cause financial losses for households.

According to results of the nationwide survey "Health Index"[1] conducted in the summer of 2016 by the Kyiv International Institute of Sociology, 57% of Ukrainians believe that the primary task of the healthcare reform is to improve the quality of healthcare, while 52% of respondents expect reduction of treatment cost for patients.

The loss of confidence in Ukrainian doctors accounts for the low figures of people seeking medical help at early stages of disease and in prevention. More than half of Ukrainians do not go to the doctor regularly (62% have not visited a doctor for over a year), while the incidence of diseases does not decrease. For example, in 2016 the incidence of tuberculosis increased by 8%[2]. What is more, Ukraine has the highest infant and maternal mortality rates among EU countries[3].

The 2014 Coalition Agreement of the Parliamentary Factions 'European Ukraine' outlines the steps that are most important at this stage of reforming the system – namely, structural reorganization of the healthcare system, provision of high-quality and affordable health services, creation of a system for quality healthcare provision and maintenance, implementation of rational pharmaceutical policies at macro and micro levels, promotion of healthy lifestyles, and development of a public health system.

The Association Agreement between Ukraine and the EU[4] also identified an important aspect of focusing on increasing patient access to healthcare through primary care doctors. Other important steps include determining ways to counter socially dangerous diseases, creating a system of blood service, and strengthening control of tobacco consumption.

During 2016, there were no official changes in the identified strategic areas of healthcare reform. Public authorities mainly supported populist discourse and refrained from unpopular steps that could help set the reform in motion, such as the introduction of public control over the activities of municipal and state owned public health institutions or

increased control over compliance with the labor rights of healthcare workers.

In 2016, the Reanimation Package of Reforms announced[5] he following short-term goals of the healthcare reform: provision of autonomy to health institutions, introduction of professional self-governance, quality care provision, access to medical products of European quality, new public health system, and implementation of public control in healthcare institutions.

Implementation of public policy

Public health and introducing European standards. In 2016, the Government approved the Concept of Development of Public Health System in Ukraine (decree No.1002-p dated November 30, 2016), which aims at developing and implementing effective public policies to promote health, prevent disease, increase active and working age, and promote a healthy lifestyle through joint efforts of the entire society. However, the Center of Public Health that was created in May has not become fully functional, and its tasks are being performed by other government agencies, such as the State Service of Ukraine on Food Safety and Consumer Protection[6].

At the beginning of 2017, the Healthcare Ministry's Center of Public Health was launched. Its main task is to develop the area of public health and create a stable system of epidemiological surveillance in Ukraine. However, the recommendations of the European Commission to establish a single institution for public health have not been fully met, since the Center has not yet begun to fulfill a number of its functions.

As of March 2017[7], the Ministry of Healthcare conducted practically no work to approximate the national legislation with EU requirements dealing with infectious disease. To harmonize Ukraine's legislation on transplantation with the requirements of EU directives, the Parliament has to pass draft law No. 2386a-1 "On amendments to certain legislative acts of Ukraine on healthcare and organ transplantation and other anatomic human materials." At the same time, draft law No. 2820, dated May 13, 2015, aimed to implement directive 2014/40/EC and directive 2003/33/EC is being ignored by the deputies and was not considered in the first reading.

In March 2017, draft decree of the Cabinet of Ministers "On approval of the National Action Plan on Noncommunicable Diseases to achieve global aims of sustainable development"[8] was released for public discussion. The purpose of the National Plan is to implement the Concept of Development of Public Health System[9], achieve UN sustainable development goals set by 2030, and implement the principles of the European policy "Health 2020". However, it remains unclear when the plan will be approved.

Autonomization of health institutions. To improve the system of support of health institutions, in November 2016, the Cabinet of Ministers simplified the procedure for drawing up estimates for medical institutions, which was a significant step towards autonomy in their financial planning. Now estimates will be drawn up based on a simplified economic classification that contains only two codes – current and capital expenditures. Heads of institutions can promptly redistribute funds between items, and make more flexible and better managerial decisions. Expenditure reports will be submitted for all codes of the economic classification. However, proposals to introduce public control and effective control of trade unions over reorganized institutions have not been taken into account. Neither was personnel training conducted for managers of such institutions under the new conditions.

In 2016, the Ministry of Healthcare abolished exemplary staff standards for healthcare institutions[10]. This was done to allow managers of health institutions greater autonomy in taking decisions on the development and approval of staff charts based on their functions and scope of medical aid.

In April 2017, the Parliament adopted draft law No. 2309 a-d on increasing autonomy of healthcare institutions[11]. The new law will launch comprehensive healthcare reform, by creating a network of state and municipal healthcare institutions with sufficient independence to provide effective and timely medical aid to the public. However, for these new mechanisms to function properly, it is necessary to amend the Tax and Budget Codes.

Reform of the procurement of medicines and vaccines. Procurement of medicines and medical products by the Ministry of Healthcare has always been a sensitive societal issue. In the public domain, there are many reports and journalistic investigations that prove corruption in the procurement processes.

According to the Security Service of Ukraine[12], overcharging for medicines in public procurement in 2012-2014 amounted to 40%. In order to combat corruption, expand fair competition and ensure the quality of medicines procured with public funds, in 2015, the Parliament passed a law to transfer procurement of medicines to international organizations[13] and made amendments to the Tax Code regarding tax exemption of certain medicines and medical devices[14]. This allowed specialized international non-profit organizations to purchase medicines, vaccines and medical products using state funds. Already during the first year of the law's enactment, by transferring only half of the procurement funds to UNICEF, UNDP, and Crown Agents (2,2 billion UAH), Ukraine managed to save about 620 million compared with the costs incurred by the Ministry of Healthcare in 2014.

In addition to significant savings in procurement, this reform has helped to: attract a greater number of producers to participate in tenders (67.5% of all producers participated this year); enhance market competition (40% of tender winners are new registered trade names of medicines and vaccines); expand access to quality generic brands (medicines and vaccines purchased by international organizations are usually pre-qualified by the World Health Organization); and create a precedent for overcoming the patent monopoly, thus laying the foundation for legislative change. This reform helped to significantly increase patients' access to medicines and vaccines in Ukraine. Thus, even though the total state funds allocated for the purchase of medicines and vaccines were reduced by 17 million USD, the overall number of the purchased doses of vaccines and medicines increased by 113 million.

During its implementation, this anticorruption reform faced a number of obstacles: for example, after the adoption of relevant laws by the Ukrainian Parliament, the Ministry of Healthcare and the Cabinet of Ministers spent eight months to develop and adopt appropriate regulations. This resulted in a delay in the procurement process and, therefore, a lack of medicines in Ukrainian hospitals. Additionally, the purchase of medicines and vaccines involving international organizations is still facing strong pressure from MPs (mostly ex-regionals) accompanied by planted articles.

Simplified registration of medicines. The system of registration and quality control of medicines in Ukraine always involved high levels of corruption, non-transparency and inefficiency. As a result, Ukraine is critically lacking a full range of medicines. Only 10,000 medicines are registered in Ukraine, compared with, for example, France's 16,0000. Often patients have to buy medicines abroad and smuggle them across the border, or on the black market, risking their own health. Manufacturers were not interested in entering the Ukrainian market because of the corrupt and bureaucratic registration procedure that can last for years.

In April 2016, to overcome these obstacles in access to treatment, the CMU developed and submitted to the Parliament a draft law to simplify state registration of medicines[15] that are already registered in countries with high regulatory requirements – i.e. Australia, Canada, EU member states, Japan, Switzerland, and the United States. Overcoming opposition forces that tried to block simplified registration of medicines and thanks to public support, the Parliament passed this version of the draft law in less than a month and a half. As a result of this law, medicines from countries with strict regulations will be registered in Ukraine in 17 days. The law will also increase competition in the

domestic market of medicines and is a powerful mechanism to combat corruption.

Necessary regulations were developed within six months of the law's adoption, and on January 1, 2017, simplified registration of medicines was launched de facto. This reform is crucial for Ukrainian patients, but, unfortunately, officials of the State Expert Center responsible for its quality implementation hamper it. The law was initiated at the highest level and finally cascaded to the very same officials who, for years, perpetuated the old corrupt system of medicine registration.

Reimbursement. To create conditions for effective patient access to medicines, on April 1, 2017 the Cabinet of Ministers and the Ministry of Healthcare initiated the reimbursement program "Affordable Medicines". Reimbursement is one of the most effective mechanisms that is closest to the patient-oriented medicine provision that has proved successful in more advanced countries. In Ukraine, the pilot stage of the reimbursement program in 2017 covered three most common diseases in Ukraine – cardiovascular diseases, type II diabetes and asthma. For the first year of the "Affordable Medicines" program, the Government allocated 500 million UAH. The mechanism is quite simple—a doctor writes a standard prescription (indicating the INN), which the patient takes to a participating pharmacy and receives the medications for free or at a small surcharge. After that, local authorities reimburse the pharmacy for the dispensed medicines. It is expected that financial compensation at the local level will be done every two weeks. Over 2,800 pharmacies throughout Ukraine joined the program in its first three weeks. The positive aspect is that any pharmaceutical institution can participate in the program. In addition, the government set reference prices for medicines chosen for reimbursement. This means that the price of medicines in pharmacies cannot exceed the median price of European reference countries.

Provision of medical aid. During 2016 no changes in regulatory control were implemented[16]. Introduction of decentralization measures in amalgamated territorial communities caused problems with the provision of primary healthcare. However, the government has not made the necessary changes to eliminate difficulties associated with organizing primary care in ATCs[17].

There is a risk that there will be no announcement about conclusion of a contract with family physicians beginning January 1, 2018, since it can be introduced only by law, which has not yet been submitted to the Parliament. Also, given that the majority of primary level healthcare workers are employed by public healthcare institutions, their salaries cannot increase to the declared level without the introduction of autonomy and other changes.

In 2016 the Government approved the Concept of Reform of Financing the Healthcare System of Ukraine (decree No. 1013-p, dated November 30, 2016). The aim of the concept is to introduce a new model of healthcare financing, providing clear state guarantees of healthcare, better financial protection for citizens in case of illness, efficient and equitable distribution of public resources, and reduction of informal payments.

Stakeholders and their impact on policy implementation

Verkhovna Rada and the specialized committee. In 2016, the Parliament did not prove itself as a driving force behind the reform. Nevertheless, in April 2016, it adopted a draft law on increasing autonomy of healthcare institutions; in May, it approved a law on the simplified registration of medicines; and in April 2017, it adopted the draft law "On amendments to certain legislative acts of Ukraine to improve healthcare legislation." The Parliamentary Committee on Healthcare held round tables devoted to specific problems in healthcare, but the communication of the committee with the relevant ministry was insufficient.

Ministry of Healthcare. The new team of the Ministry of Healthcare introduced a number of initiatives, setting the reform in motion. The Minister of Healthcare Uliana Suprun began the development and adoption of the Concept of Healthcare Financing Reform and the Concept of Development of Public Health System. The Ministry also introduced solutions designed to facilitate the work of healthcare institutions. However, without proper methodological support, they often face problems from other government agencies. Finally, the Ministry initiated the "Affordable Medicines" reimbursement program, which in 2017 made it possible for patients with cardiovascular disease, type II diabetes and asthma to receive medicines free or for a small surcharge.

Government. Primarily interested in swift positive changes in the healthcare system. During 2016, the government launched a number of initiatives, including the creation of hospital districts, introduction of reference prices for medicines, and the reimbursement system. Difficulties in communication with the specialized parliamentary committee prevented the government from submitting healthcare draft laws to the Parliament, thereby delaying systemic changes.

NGOs. During 2016, the Reanimation Package of Reforms served as a platform for consultations among stakeholders and held a series of thematic discussions about aspects of healthcare reform. Despite their lack of comprehensive information, NGOs working on healthcare tend to act as drivers of change in some aspects of the reform, such as procurement of medicines, combatting the harmful effects of tobacco, and reducing alcohol consumption.

Employees of state and municipal healthcare institutions. Mainly interested in provision of appropriate conditions and wages. During the year, representatives of the medical community held separate events and street rallies and issued public statements, mostly from doctors and medical associations. Employees of state and municipal healthcare institutions have no faith that the government shares their interests and point to insufficient common ground for cooperation in the reform process.

Pharmaceutical companies. Primarily interested in establishing clear and appropriate rules for the pharmaceutical market. Representatives of the pharmaceutical companies twice initiated postponing the deadlines to introduce reference prices for medicines.

Recommendations for further action in 2017

Increasing the confidence of patients in health professionals and medicine depends on the clarity and consistency of actions of the Government and the Ministry of Healthcare. Medical workers, as representatives of a profession that is undergoing significant changes, have the right to understand the reform's intentions and adjust their own professional plans accordingly. Therefore, it is important to timely and clearly inform both healthcare professionals and the public of the changes in the healthcare system.

The increase in the incidence of socially dangerous diseases and problems with vaccinations require that the newly established public health bodies focus on their immediate tasks.

To further advance the healthcare reform in 2017, it is necessary to accelerate the adoption of the following decisions:

1. Establishment of a guaranteed medical aid package – free therapeutic procedures and medications that every patient is entitled to;

2. Formalizing the formula for calculating the cost of medical care at the secondary level of healthcare;

3. Amending the current legislation and creating conditions for the development of primary healthcare—determining who has the right to provide medical care, outpatient or inpatient care, evaluation criteria for proper work of a family doctor, specifics of salary accounting, etc.;

4. Approving the necessary documents for decision-making by local authorities concerning establishment of hospital districts—enshrining in legislation the concept of a multi-field intensive treatment hospital, and types of secondary care to be provided within the district;

5. Amending the system of remuneration of health professionals;

6. Approving the criteria for quality of healthcare and establishing a healthcare quality control system;

7. Approving the plan of work for the Center of Public Health;

8. Legislatively ensuring information security for patients;

9. Establishing a transparent contest for the positions of Deans of Medicine in state and municipal health care institutions;

10. Tasking professional medical associations with preparation of training standards;

11. Implementing standards of EU directives with regard to Chapter 22. Public Health;

12. Approving the National Action Plan on Noncommunicable Diseases for achieving global sustainable development;

13. Considering and adopting two draft laws on tobacco control No. 2820 and No. 4030-a that were delayed because of opposition from the tobacco lobby.

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Hospital districts

What is important to know? How to raise public awareness of these changes?

What is a hospital district?

A functional association of healthcare institutions in a specific territory which ensures provision of secondary (specialized) medical aid to the residents of this territory.

What does it mean?

All healthcare institutions providing specialized medical aid in a district are incorporated into a single network. They coordinate their activities according to the medical functions: that is why this association is called ‘functional.’

One or several hospitals, chosen by the residents as ‘hub hospitals’, will become much stronger. Others will change their core activities.

Why is this necessary?

First of all, due to healthcare considerations, although there are also financial reasons.

To ensure that specialized treatment is of high quality, doctors must work hard: this is a medical fact. Surgeons performing just a few operations a week will never be able to do their job properly – they will not have enough practice. It is clear that a good hospital is a hospital with many patients.

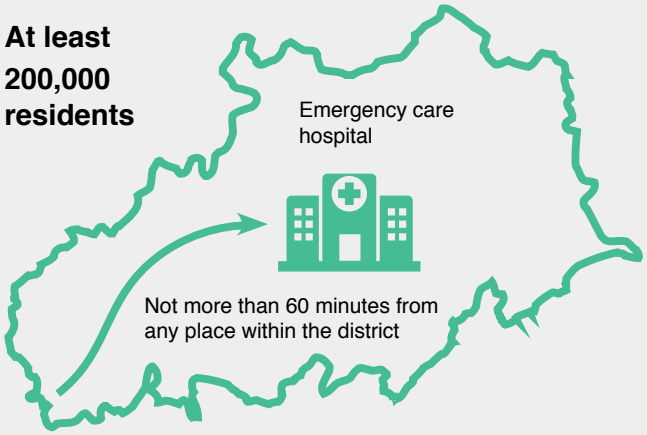
We are also switching to the healthcare insurance system. Each patient will bring an insurance payment to the hospital. Therefore, hospitals with few patients will be underfunded, while the doctors working there will receive much lower salaries. In some cases, the hospital load might be too little to ensure patients’ safety.

Where else does such a system operate?

Overall, this model has demonstrated its efficiency in Finland – there are 20 hospital districts serving 5.5 million people living in a sparsely populated territory. This is an average of 275 thousand people per district.

For example, the hospital district of Helsinki and Uusimaa unites 24 municipalities and 20 hospitals, most of which are located in Helsinki.

There are also small hospital districts with only one hospital. For instance, in the Lapland hospital district, there is only one hospital with an emergency care unit.



Does it mean that a hospital in my neighborhood will be shut down?

No, this is prohibited by the Constitution. Ukraine has a great demand for medical-social and social services. These are rehabilitation centers, hospices, senior homes, etc. – but there is no infrastructure to support them.

Reprofiling of healthcare institutions definitely calls for retraining their staff and ensuring social security for the professionals who will change jobs.

So what will happen to it?

Hospitals belong to the communities. Hospital districts are necessary to coordinate the activities of healthcare institutions, although all the property is owned by the local community and it is the communities that will adopt final decisions.

How many districts will be established?

About 100 districts. Thus, each region will have three to five hospital districts depending on the number and density of the population.

How will these hospital districts be organized?

A hospital district can cover the territory with 200 thousand - 1,5 million residents. As an exception, a hospital district with a population of 120 thousand people can be established if the population density is low.

Each district includes at least one multidisciplinary emergency care hospital and other healthcare establishments: specialized hospitals, diagnostic centers, rehabilitation centers, hospices.

It shall take not more than 60 minutes to get to an emergency care hospital from any population center within the district. Thus, the radius of the service area is about 60 km.

A population center with a second-level multidisciplinary emergency care hospital shall become the administrative center of a hospital district. As a rule, it is a town with more than 40 thousand residents.

It is the hospital board that shall decide how exactly a hospital district will be organized.

Why do we need hospital boards?

To ensure that interests of all the residents of the district are taken into account.

A hospital board is an advisory body and a negotiating platform set up by the participants of the hospital district to identify the issues and coordinate actions, to arrange and finance medical care.

A hospital board includes representatives of towns of regional significance, districts, and ATCs delegated on the basis of the resolution of a local council in proportion to the number of population.

Can I only go to hospitals in my hospital district?

Definitely not. Nobody can limit your choice of a medical facility. However, there might be situations when you need a hospital urgently and close by.

Hospital districts are established to make sure that all the people, no matter where they live, can get to a high-quality emergency care hospital in no longer than one hour.

FORMATION OF DISTRICTS

Formation plan:

1. Regional state administrations propose specific boundaries of the districts based on the technical criteria of district formation – the number of population, the size, the minimum hospital load, etc. (Resolution of the CMU “Procedure of formation of hospital districts”)
2. The Cabinet of Ministers of Ukraine approves the boundaries and the composition of each district.
3. A hospital board is formed from among the representatives of towns of regional significance, regions, and ATCs in proportion to the number of population.
4. A hospital board draws up a five-year district development plan.
5. The overall plan shall be approved by all the members of the district: by each district and municipal council and each ATC board.

A district development plan to-do list:

- decide how many healthcare institutions of different types will be in a district;
- decide which healthcare establishments need extra equipment or staffing and which ones will change their core activities (reprofiling);
- determine how patients will get to the healthcare institutions (the routes);
- calculate the amount of investments necessary to implement a long-term plan – how much money it needs.

How to raise funds?

TO GET INVESTMENT SUBVENTION FROM THE GOVERNMENT FOR THE PURPOSE OF REINFORCEMENT AND REPROFILING

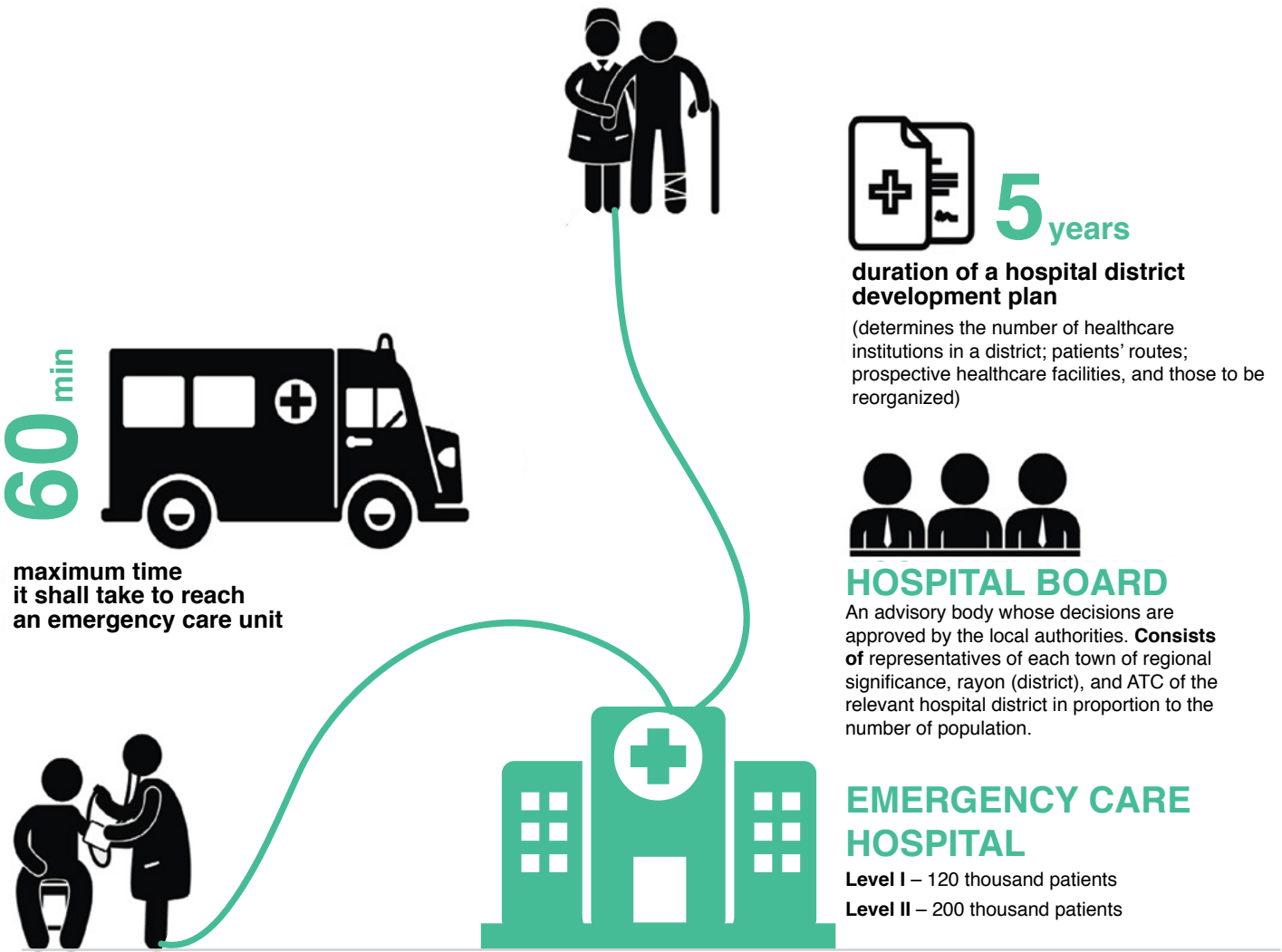
The government decided to allocate investments to purchase equipment and hire extra staff – these funds will be transferred to those institutions where a large flow of patients is expected.

The government also allocates investments for reprofiling of hospitals.

In order to receive these investments, a hospital board will have to agree on how the healthcare institutions in a hospital district will develop and to put this down in their long-term plan.

Hospital districts

What do you need to know? How to raise public awareness of the changes?



Source: Ministry of Healthcare of Ukraine

Tax reform

67% of tax experts

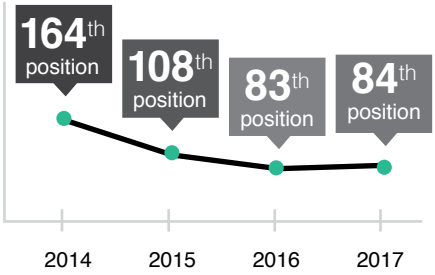
believe that tax regulations in Ukraine are absolutely unsatisfactory, in need of comprehensive review, insufficiently competitive and insufficiently neutral *(EBA, May 2015 – May 2016)*

51% of industry leaders

mentioned simplification of tax administration and accounting as a measure important to improve doing business *(Institute for Economic Research and Policy Consulting, February 2017)*

48% of citizens

say that stimulation of economic development and creation of favorable conditions for doing business is one of the top 5 key issues for the government to focus on *(Ilko Kucheriv Democratic Initiatives Foundation, December 2016)*



Ukraine's position in the ease of doing business ranking of the World Bank in terms of paying taxes

Challenges and goals of public policy

Ukraine's tax system suffers from several interrelated problems that make it the largest (based on surveys of enterprises[1]) obstacle to business resulting from the economic policy.

The high level of tax burden associated with excessive redistribution of GDP through public finance[2] slows down economic growth and leads to widespread tax evasion. The pervasiveness of violations results in selectivity (discretionary nature) of punishment.

Meanwhile, the tax structure does not correspond to the national specifics and development goals: too important a role is assigned to income and labor taxes that are especially vulnerable to corruption and tax evasion, while the role of taxes on property and land is negligible. The corporate culture of the tax agency is rather repressive, inclined to politicization and corruption. Despite this, the agency is allowed to develop tax policy and legislation, and give explanations concerning their application. Laws change frequently and unnecessarily, are contradictory and confusing, contain many rules of indirect action and discretionary opportunities, while tax administration is overly complicated[3]. Tax inspectors' discretion in the application of tax laws and the ability to interpret them at will makes payments unpredictable, creates opportunities for corruption, and distorts competition.

The combination of these factors suppresses growth, leading to a high level of shadow economy – according to the MEDT, 35% in 2016 (slightly smaller than in previous years, due to such factors as the introduction of tax reforms, particularly reduction of the unified social tax) – and corruption in the tax authorities: according to the study "Level of Corruption Perception through the Eyes of Business"[4], 26.7% of companies faced corruption in tax institutions, which is an absolute record among other government agencies.

The objectives of state policy[5] in 2016 partly contributed to solving these problems, including:

- ensuring financial stability through a more consistent and predictable fiscal policy in the medium term, strengthening fiscal discipline, improving the efficiency of fiscal spending and introduction of medium-term budget planning in 2018;
- ensuring the enhancement of expenditures efficiency;
- improvement of Ukraine's investment climate by simplifying the tax system and tax administration;
- combating tax evasion through offshore jurisdictions and fighting corruption schemes carried out through offshore zones, improving control over transfer pricing;
- creation of a single public register of applications for VAT refund;
- settlement of the existing inconsistencies and gaps in the Tax Code of Ukraine concerning VAT administration;
- enshrining in the law the right of taxpayers to use the service "Taxpayer Account";
- coordination of the unified social tax and income tax databases for individuals and providing the opportunity for individuals to submit a single report for the unified social tax and income tax and pay them as one sum;
- consolidation and ordering of tax clarifications; completing the comprehensive reform of the State Fiscal Service (SFS) aimed at reducing the time spent by taxpayers on interaction with tax authorities and restricting opportunities for bribery on the part of tax authorities. Optimization of the structure of the SFS and reducing the number of staff units, which will help save budget funds provided for the SFS. Identifying the key performance indicators for SFS. Repudiation of tax collection plans as the only indicators of SFS work;
- elimination of the Tax Militia. Formation of a new body for combating financial crime (Financial Investigation Service);
- integration of databases of the SFS, Ministry of Finance, and Treasury.

The Memorandum with the IMF additionally provides for the introduction of indirect methods of control of personal income tax, customs post-audit and a "fundamental reform of the simplified taxation".

However, a number of key issues and proposals from the civil society remain unattended, including:

- reduction of redistribution through public finance to 37% (mainly due to further reduction of the burden on wages);
- reforming the tax on income of enterprises – transition to the tax on withdrawn capital;
- improving taxation of land and real estate – especially that of businesses;
- reducing erosion of enterprises' working capital in the system of electronic administration of VAT by introducing dual overdraft, increased period for registration of tax invoices, etc.;
- introduction of a single account for paying taxes other than VAT;
- ban on opening criminal proceedings with respect to taxpayers before finalization of tax liabilities and actual failure to pay the finalized tax liabilities to the budget.

Besides, the SFS reform involved only restructuring and downsizing, which, in our view, is not sufficient – it is necessary to "reset" it based on the new principles that can change the corporate culture of this public authority; deprive it of the functions that conflict with the primary one (forming public policy); strengthen its accountability, transparency and responsibility to the society. In this context, we regard the measures specified in the additional memorandum with the IMF as premature and, therefore, counterproductive at this stage of reform – at least before such "reset" of the SFS is implemented.

Implementation of public policy

In 2016, the new team of the Ministry of Finance changed for the better approaches to forming public policy, including tax legislation. Instead of the traditional involvement of the SFS (which for the latter implies an undisguised conflict of interest), public experts and representatives of business were invited. They also employed a number of useful innovations from draft law No. 3357 prepared in 2015 similarly involving the public. As a result, during the year they managed to develop and adopt the Law of Ukraine "On amendments to the Tax Code of Ukraine to improve the investment climate in Ukraine" (No. 1797-VIII dated December 21, 2016) that mostly encompassed the above public policy objectives, obliged the CMU "before July 1, 2017 to develop and submit to the Verkhovna Rada of Ukraine a draft law on the introduction of the tax on withdrawn capital", and incorporated a number of other proposals. In general, at the legislative level the following objectives were achieved:

- development and approval by the Ministry of Finance of KPIs for SFS aimed at transforming the SFS into a customer service;
- forthcoming elimination of the Tax Militia and creation of an analytical body – the Financial Investigation Service (or the Financial Police) subordinate to the Ministry of Finance of Ukraine;
- change of the terms and conditions of individual tax consultations. Introduction of a unified base of individual tax advice;
  legislative formalization of the features of the taxpayer electronic account;
- altering the function of local control bodies – district STIs retain only service functions, while the function of control and inspection is assigned to the regional level;
- creation of a single public register of applications for VAT refund;
- creation of new mechanisms to identify schemes used to resale tax credit for the purpose of VAT evasion and mitigation of other taxes;
- improved procedures for registration of tax invoices, minimizing the erosion of enterprises' working capital;
- introduction of a mechanism for correction of taxpayers' technical errors in tax invoices;
- protection of tax credit by preventing the right to deprive buyers of goods or services of this credit.

Since the said changes were approved only in the late 2016 and their practical implementation is conducted throughout 2017, it is too early to evaluate the results. As always, much will depend on the active position of civil society in monitoring the implementation of these progressive changes. During the first quarter of 2017, only the open register of VAT refund was introduced and a draft law on the financial investigation service was developed.

Also in 2016, there were attempts to impose indirect methods of control over expenditures of individuals and narrow the application of simplified taxation, which were prevented.

However, a number of critical objectives have not been achieved, in particular:

- integration of databases of the SFS, Ministry of Finance, and Treasury;
- completion of the comprehensive SFS reform; factual, rather than declarative, elimination of the Tax Militia and creation of the new Financial Investigation Service;
- synchronization of bases of unified social tax and income tax for individuals and enabling submission of a single report for the unified social tax and income tax for individuals and their payment as one sum;
- combating tax evasion through offshore jurisdictions and fighting corruption by schemes implemented through offshore zones, improving control over transfer pricing.

In addition, some regulatory decisions taken at the end of 2016 on the initiative of the social section ministries of the CMU and some MPs worsened the situation for taxpayers and went against the reform strategy. First of all, an increase in budget expenditures, especially setting minimum wages at 3,200 UAH led to an increase in the overall tax burden: the percentage of redistribution through public finance increased from 41% to almost 44%[6]. Related increase in the administrative burden on employers who are unified social tax payers caused considerable resentment in the society; while the introduction of the mandatory payment of the unified social tax by individual entrepreneurs even when they do not conduct business as well as increasing the tax burden led to the termination of registration of more than 300 thousand individual entrepreneurs. Besides, without any prior public and expert discussion and without adopting the necessary regulations aimed at liberalization and de-monopolization of the cash register market, it was decided to extend the scope of mandatory use of cash registers, which increases the cost of doing business, complicates administration for the relevant categories of entrepreneurs, and increases vulnerability to corruption.

Special attention should be given to the fact that all of the above measures worsened the situation of small businesses and self-employed persons, while the actions that could create obstacles to large-scale violations remain unfulfilled – in fact, according to Global Financial Integrity[7] each year almost 10% of Ukraine's GDP is withdrawn to offshores, while all small businesses together produce 15.7% of GDP.

Thus, the overall result in 2016 can be assessed as positive. There have been significant advances in reforming the VAT administration. In particular, we expect to get rid of the large-scale extortion associated with VAT refunds, discretion during inspections, etc. Some important steps were made to streamline the tax administration in general, the tax militia was declaratively abolished, and a political decision was taken to replace corporate income tax with the tax on withdrawn capital. However, we must first of all note the fundamental change in the development of tax legislation: the SFS was deprived of this function, while extensive consultations with business associations were introduced and public experts were involved directly to work on legislative changes. This opens the way for further reform.

However, reform is not yet complete. The SFS successfully counters the "resetting", and the critical amount of reforms that have to be made for it to be successful has not yet been accumulated. Moreover, the issue of database administration has not been addressed (it had to be transferred to the Ministry of Finance or an independent structure); technical issues of improving the administration of land tax are unresolved; the SFS work remains opaque and beyond the control of the public.

Stakeholders and their impact on policy implementation

Ministry of Finance of Ukraine. An influential stakeholder that is interested in the reform. The team of the Ministry of Finance was formed in early 2016, it has political ambitions to implement tax reform. Unlike its predecessors, it has involved representatives of taxpayers (business associations and experts) in the development of tax legislation, which made it possible to generate a package of tax changes that is popular among taxpayers and positive for the economy as a whole, taking into account the results of the work of the respective parliamentary committee and with the support of the Presidential Administration.

State Fiscal Service (SFS). Given its special status in the system of the government that has emerged historically, as well as a powerful resource for pressure and bribery (due to corruption revenues), the SFS plays a major independent, even if not always public, role in shaping public policy. Moreover, its

interest lies in expanding opportunities to put pressure on taxpayers, since these opportunities help generate corruption proceeds as well as acquire informal political influence. This interest naturally makes the SFS the most consistent opponent of the liberal and anticorruption tax reform. Instead, the service is interested to promote changes that continue to expand the field for inspections and discretionary opportunities, diverting attention from the main sources of illicit enrichment in the tax system and widespread evasion, such as "conversion centers". The SFS does not have the right of legislative initiative, and in 2016 it also lost the possibility to promote its interests through the Ministry of Finance. However, the relevant proposals in its interest were made by individual MPs and promoted through initiatives of the Ministry of Social Policy.

International creditors. The institutional interest of Ukraine's creditors (first of all IMF) is to maintain fiscal stability, avoid social and political tension, and ensure other conditions for economic growth. The Ministry of Finance proposed a tax reform that is fully consistent with these objectives. However, in the external relations the country is represented, among others, by politicians and officials who are not interested in reforms, while international experts at times lack deep knowledge of the Ukrainian realities and time to study them. During 2016, the fiscal situation in Ukraine was improving, and the proposed tax reform did not contain fiscal risks. This is why the position of creditors was mostly approvingly neutral, except for the issue of the transfer of the SFS database under the management of the Ministry of Finance. However, further progress of the reform ran into resistance of some foreign advisers.

Taxpayers and tax agents. Since these are enterprises that act as tax agents in paying VAT, unified social tax, tax on income of individuals, and other taxes of individuals, citizens (hereinafter – payers) mostly do not deal with the tax system directly. The vast majority of enterprises – payers and tax agents – united in business associations and coalitions of associations demand that administration be simplified, opportunities for pressure be narrowed, extortion and arbitrary will on the part of tax service officers be terminated, taxes be reduced and competition conditions and all sorts of benefits be equal (breached largely due to the discretionary approach of tax service officers). This is a relatively influential group of stakeholders with a high level of interest in the reform. However, further progress of the tax reform met resistance of some large enterprises, financial and political groups that have significant influence on public policy in the field of taxation and actively apply schemes of "aggressive tax planning" with extensive use of offshore operations. Some consulting companies that help in the creation and maintenance of such schemes may also be subsumed in this category. In reforming the legal regulation of the land/property tax, this group can expand to include those who today enjoy the benefits related to the said tax, and local governments that distribute these benefits.

Populist politicians, who are often actually associated with big "oligarchic" businesses, resist the reform and try to satisfy the interests of the poor at the expense of the middle class and medium business, turning the blow away from the super-rich. In particular, one of such steps was the doubling of the minimum wage. They are likely to resist attempts to cut state spending, instead they will try to increase it in a way that would allow them to maintain and expand the opportunities for corruption and destroy competitors under the guise of concern for the poorest.

Civil society. This is quite an influential stakeholder with a high level of interest in the reform. In the issue of the strategic reform of fiscal policy in 2016, civil society was represented mainly by two groups – the expert group on tax and budget reform of the Reanimation Package of Reforms and informal team of the co-legislators of the liberal tax reform (draft law No. 3357) united around the head of the Parliamentary Committee on Tax and Customs Policy Nina Yuzhanina. These groups partly overlapped, and their members belong to the Public Councils of all government agencies involved in this process. During 2016 and the first quarter of 2017, the RPR Taxation and Budgeting Reform group actively participated in the development of the tax policy, while the leaders of the parliamentary committee, in contrast to 2015, took a more passive stance. In 2017, the group of the co-legislators of draft law No. 3357 (on liberal tax reform) actually disintegrated, as most participants opposed the persistent efforts of its leader Nina Yuzhanina to restore the legitimacy of the tax militia accidentally canceled due to an error in the law.

Recommendations for further action in 2017

The group Taxation and Budgeting Reform of the Reanimation Package of Reforms identified the following steps for 2017:

Reforming the budget process, including the improvement of the program target funding method and transition to the medium-term budget planning; implementing fiscal policy aimed at reducing public expenditure share of GDP to 37% by 2020; review of expenditure items to optimize their structure and scope of expenditures.

Implementation of the legislation with regard to creating a single electronic register for VAT refunds; further improvement of administration to reduce the erosion of working capital of enterprises (double overdraft); implementation of the principle of personal responsibility of taxpayers – elaboration of criteria for blocking tax invoices with signs of fraudulent activity.

Transition to the model of taxation on withdrawn capital involving minimization of audits, but strengthening and improving control over certain types of foreign economic relations (including transfer pricing, investment, and credit using thin capitalization) and implementation of OECD guidelines taking into account the specifics of Ukraine.

Further reducing the tax burden on the payroll budget, including through reform of social security funds, reducing their functions and costs.

Modification of the existing property tax in order to mitigate its discretional nature and make it fairer, thus increasing revenues for compensation for possible budget losses associated with transition to withdrawn capital taxation and minimizing the burden on wages.

Introduction of a single account to pay taxes (excluding VAT); reducing the number of forms of primary documents, offering more opportunities to use them in electronic form, and making accounting less time-consuming; analysis of penalties in taxation and reporting in terms of their feasibility and achievement of their objectives, compliance with legislation without a depressing effect, and making the appropriate changes; prohibition of criminal proceedings before finalization of tax liabilities and actual failure to pay finalized tax liabilities to the budget.

Distribution of legislative, service and regulatory functions of the State Fiscal Service among separate institutions; ensuring the SFS openness by publishing summary information regarding the activities of the service and taxpayers; creation of a single data center consolidating all government resources and databases of regulatory authorities, under the administration of the Ministry of Finance of Ukraine; elimination of the tax militia and creation of a separate state body – Financial Investigation Service (financial police), with the head and staff selected according to procedures similar to the procedures for NABU selection, a significant increase in their salaries, eliminating duplication

of functions; strengthening the state's responsibility to taxpayers for damages as a result of acts or omission. Further steps in reforming the SFS ("reset") should be fulfilled after a radical reduction of the discretion in the tax legislation.

Reforming the simplified tax system can be brought to the agenda only after the implementation of a comprehensive anticorruption liberal tax reform. In 2017, it is proposed to develop and promote only the measures aimed to alleviate the condition of taxpayers, as well as pinpoint restrictions regarding large-scale abuses by big business. Namely, these involve introducing new forms of taxation of individual entrepreneurs (patents), which will simplify registration, accounting, tax reporting and termination of business for individuals; determining the categories of taxpayers who evade paying taxes on a large scale when selling goods, developing a concept of effective methods of combating abuse, broadening the scope of application of cash registers for the identified categories of evaders; encourage voluntary use of cash registers and receiving fiscal checks verifying their registration (lottery, financial encouragement of consumers, etc.); demonopolization of the market of vendors and service providers in the use of cash registers, elimination of corruption factors and the possibility of extortion by regulatory authorities, elimination of discretion and transition to the comfortable use of cash registers by business; introduction of electronic services for taxpayers (electronic receipt register, register of excise stamps, digital cash registers) (draft law No. 4117 – digital cash registers).

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What should the Financial Investigation Service look like?

REANIMATION PACKAGE OF REFORMS

1

Transparent competitive recruitment

2

High salaries, and hence recruitment of new high-qualified professionals

3

Workforce downsizing

10,000 → 3,000

4

Changing work tools: transition from punitive functions to investigation and analytics

5

The Financial Investigation Service is not authorized to audit businesses

6

Determining a clear list of grounds when the Financial Investigation Service can *initiate* audit of businesses to be conducted by the authorized agencies

7

Elimination of the overlap of the governmental agencies' functions: State Security Service, Ministry of Internal Affairs and State Fiscal Service are no longer authorized to investigate economic crimes

8

The Financial Investigation Service is subordinate to the Ministry of Finance and shall annually report to the parliament

9

Reducing administrative pressure on businesses and eliminating corruption risks

Reform of the financial sector and pension system

77%

of citizens do not trust the National Bank of Ukraine and only 12% trust it. Such indicators make the NBU one of the leaders of public distrust *(Ilko Kucheriv Democratic Initiatives Foundation, December 2016)*

49%

of Ukrainians point out the obvious deterioration of the situation with pension coverage throughout 2016 *(Ilko Kucheriv Democratic Initiatives Foundation, December 2016)*

71%

of citizens deem the central government's policy on ensuring the hryvnia's stability completely unsuccessful, while another 21% of respondents view it as unsuccessful *(Rating sociological group, December 2016)*

Challenges and goals of public policy

Stock market. The reform of the stock market did not take place last year despite the fact that both the regulator and the MPs were working on legislative initiatives (particularly, on the law on derivatives and regulated markets containing a number of provisions concerning different aspects of the capital market and the split, i.e. the distribution of powers among different regulators), adoption of the laws was postponed. The main policy challenge in the sector was an almost complete lack of activity on the market. Almost 95% of trading on the stock market[1] involved state bonds and NBU certificates of deposit (deals mainly within liquidity management area). Total yearly turnover of company shares and bonds market on all nine registered exchanges amounted to only 2 billion UAH or 0.1% of the GDP. For reference, share market turnover on the Warsaw exchange in Poland reached 43.3 billion EUR. The problem was not addressed and the situation was worsening. According to the Global Competitiveness Index, 8th pillar: Financial market development,[2] in 2014-2015 Ukraine occupied 107th position, in 2015-2016 it went down to 121st position out of 140, and in 2016-2017 it went further down to become 130th out of 138.

The description of the main problems and challenges has not changed since 2015 when the Comprehensive Program of Ukrainian Financial Sector Development by 2020[3] was adopted, determining the reform's goals. Financial service market remains very fragmented, with thin capitalization due to unstable business conditions, insufficient protection of property rights and poor standards of corporate governance. By virtue of its overregulation and specifics of its jurisdiction, Ukraine is not a player on the global capital markets (in spite of separate cases of SPV-share or eurobond issue). Despite this, the isolation that has lasted for 25 years since Ukraine's independence has not facilitated the establishment of a strong local market. Citizens have virtually no access to secure financial instruments for savings (except deposits, foreign cash, and purchasing real estate). Accumulation of funds in non-state-owned pension funds, which plays a decisive role in the pension reform, is impossible. Additionally, citizens have no access to European finance companies or foreign finance market instruments, and the share of foreign portfolio investors on the Ukrainian stock market is negligible. Finally, Ukrainian companies have no possibility to attract share capital to Ukraine.

In its Reforms Progress Monitoring 2016[4], the National Reform Council presents the achievements of the financial sector reform (mostly the result of cooperation with IMF), data on economic stability, and changes in the banking sector.

Insurance market of Ukraine faces the following first-priority challenges:

1. Development and support of insurance types that are of greatest importance to the citizens. For example, the share of the agrarian sector in the country's export reaches 42.5%; nevertheless, only 1.16% of the total area of crops is insured[5];

2. Few long-term investments into Ukraine's economy rely on long-term reserves of insurers from life insurance. As of September 30, 2016, life insurance reserves amounted to 7.5 billion UAH; out of them a little more than 0.01% was invested into the country's economy[6];

3. Poor effectiveness of state supervision of the operation of insurance companies due to limited powers and independence of the National Commission for Regulation of Financial Services Markets (NCRFSM); low standards of solvency and liquidity management of the insurance companies. Under the law "On insurance", the requirements to the solvency of insurers only partially correspond to Solvency I requirements, while the EU is already implementing Solvency II requirements;

4. Absence of protection guarantees of the insurance users' rights. From the legislative perspective, these rights are governed by the law "On financial services and state regulation of the financial service market"[7] and the law "On insurance"[8] that were adopted in 2011. Since then, some of the legislative provisions have become obsolete and irrelevant.

Policy goals formulated by the government in the Strategy for Sustainable Development "Ukraine 2020"[9] and the Comprehensive Program of Ukrainian Financial Sector Development by 2020, concerning the development of the insurance market, correspond to the challenges and problems outlined above. However, the adoption of the main regulatory acts aimed at reforming the insurance market has been postponed until 2017-2019, while in 2016 the goals of public policy dealing with developing the insurance market were ignored by state bodies. Within its powers and capabilities, the NCRFSM focused on only two areas of activity: improving the transparency of the insurance market and clearing the insurers' balances of impaired assets.

Social agenda aimed at resolving the main challenges requires updating the legislation on insurance market, ensuring transparency and openness of quality information, solving the issue of an independent regulator and its powers (the presently suspended issue of the split), as well as comprehensive introduction of European standards of supervision and regulation on capital markets in accordance with article 137 of the Association Agreement.

Banking market has been facing a number of challenges under the present circumstances. Due to low-quality assets and insufficient capitalization together with scheme operations, the risks in the banking system remain high. S&P rating agency described Ukraine's banking system as high-risk: "the economic risk in the Ukrainian banking system remains one of the highest in a global comparison, as reflected in our score of '10' [the highest-risk systems], despite some improvements in the macroeconomic environment in 2016 and expected further improvements in 2017"[10]. In an attempt to lower systemic risks, the NBU closed 21 banks in 2016, not counting PrivatBank. As of end of 2016, 93 solvent banks remained[11]. A serious problem of PrivatBank that threatened to become a non-payment crisis all over the country was created by a great amount of credits issued to persons affiliated with the bank, for which, the NBU believes, no adequate reserves to the collateral were shaped, combined with the dominating share of the bank on the Ukrainian payment market. With the consent of the IMF, the NBU and the government nationalized the bank preserving its capacity to service payments, and in December 2016, 107 billion UAH were added to its capital.

The Deposit Insurance Fund (DIF) lacked funds to settle its obligations. According to DIF, the total amount of the approved accepted claims from the creditors of 73 banks under liquidation amounted to 243.84 billion UAH as of early 2017 (124.80 billion UAH at the beginning of 2016)[12]. The state lost 7.94 billion UAH in support of the fund, as well as provided it with credits from the budget; a mechanism to sell the fund's assets through ProZorro was developed, but its effectiveness remains to be seen. "The pressure from the street" became an additional challenge for the system – depositors of the Mykhailivskyi bank managed to obtain guarantees for deposits that were not subject to such guarantees, placing further burden on the fund. As of February 2017, the fund filed 3,835 claims with law enforcement bodies on criminal offenses amounting to 295.5 billion UAH. However, large-scale funds recovery through courts has not taken place yet and this challenge remains topical for the coming year.

There is a critical need to cooperate with IMF. The state of gold and forex reserves, financing of other donors, and investors' trust depend on this cooperation. The government can replace much more expensive loans on the open market with cheap IMF financing. The main risk of this was the fact that IMF conditions for financing apply to all sectors of public policy, and failing to achieve important structural milestones delays the disbursing of tranches. Following IMF's conditions, the NBU carried out a diagnostic examination of the second and third dozen of banks, determined additional capitalization schedules, and nationalized PrivatBank last year.

Protection of creditors' rights remained weak, and crediting was not developing. In 2016, no positive changes occurred in the area of creditor protection. The issue is not regulated at the legislative level. The respective laws, namely draft laws No. 4592 "On amendments to several legislative acts of Ukraine to promote lending in Ukraine" and No. 3132 "On amendments to several laws of Ukraine (to make bankruptcy procedures more efficient)" were not considered. Only law No. 1414-VIII "On financial restructuring" was passed, coming into force in October, 2016, but has not yet been implemented.

NBU's main list of goals is included in the Comprehensive Program of Ukrainian Financial Sector Development by 2020, the Program of Cooperation with the International Monetary Fund[13], The Strategy of the State-Owned Bank Development, and the Principles of State Banking Sector Strategic Reforming[14].

Pension system. The main short-term challenges in the pension sector are as follows:

1. Dramatic increase of the Pension Fund of Ukraine (PFU) deficit in 2016: while in 2015 the PFU deficit was 92 billion UAH (25% of the total PFU budget)[15], in 2016 it amounted to 143 billion UAH (56% of the PFU budget)[16]. State budget funds are used to cover this deficit. The main reason for the increase in the PFU deficit was the amendment of the law of Ukraine "On collection and reporting of the unified social tax" under which the UST rate was lowered from 38% to 22% to decrease tax pressure on businesses and encourage the reporting of real salaries[17]. As a result, the amount of the UST collected decreased by 65 billion UAH, becoming the main challenge for the pension system in 2016.

2. Low level of pension coverage: the replacement rate (the ratio of average retirement pension to average salary) in 2016 was very low and amounted to 0.33%[18]. To put this number in perspective, according to the standards of the International Labor Organization, it cannot be lower than 40%. The increase in the minimum salary to 3,200 UAH from January 1, 2017, which the government views as an element of pension reform (because it intended to use all additional incomes from this step to increase pensions)[19] without similar increases in minimum pensions will worsen the replacement rate, and therefore make this challenge more relevant.

3. There is a general loss of credibility of the banking sector, following the large-scale shutdown of banks[20], and a lack of other possibilities for the broad public to invest their savings and save their own pensions.

Long-term problems are much more acute and require attention. While the demographic prognosis for the next

5-10 years is more or less neutral, in 30 years, when the generation of today's 30-year-olds will retire, the working population will be significantly smaller due to low birth rate and high mortality rate, even if there is zero migration (which is highly improbable)[21]. Therefore, this issue requires additional consideration and development of a long-term public policy.

The goals of the pension reform formulated in the Action Program of the Cabinet of Ministers[22], namely: reforming the system of special pension assignment, decreasing the deficit of PFU, quarterly reconsideration and increase of the minimum pension, creation of preconditions for introducing a defined-contribution pension system, meet the abovementioned challenges. However, the main goal – to decrease the PFU deficit – was not achieved. What is more, in comparison to 2015, it increased by 50 billion UAH. Quarterly increase of pensions did not happen in 2016 either, even though they were reconsidered twice – in May and December. The laying of foundations for the defined-contribution pension system, following the measures stipulated by the Comprehensive Program of Ukrainian Financial Sector Development by 2020, was not initiated. The idea of developing a defined-contribution component itself was not confirmed in the latest Memorandum between Ukraine and IMF. Thus, the government's activity regarding pension reform in 2016 was focused on current issues of balancing the PFU and developing options for future reform whose configuration remains unknown so far.

Implementation of public policy

Stock market. As a regulator, the National Securities and Stock Market Commission (NSSMC) was mainly dealing with local issues within its competence and participated in preparing large systemic legislative acts that may be adopted in 2017. In 2016, the NSSMC was solving the problem of pseudo-public joint-stock companies (when the shares of an issuer who does not want to be public are listed at an exchange). As a result of this activity blue chips were delisted and now the stock index of the Ukrainian stock exchange includes five securities. The commission also made some targeted changes in the mechanisms of registration, supervision, procedures, etc. With an almost complete lack of an active capital market, these steps changed the formal rules of the game but did not increase the number of players or instruments on the market. In addition, the commission started preparing, with technical assistance from EBRD, a project to reform the depository system and is working on enhancing cooperation between Ukraine and the IOSCO (International Organization of Securities Commissions), but these steps remain in their initial stages so far. With an apparent lack of MPs' interest in reforming financial markets, the regulator worked to include the issues of NSSMC's powers and regulation of the stock market into the Memorandum between the Government of Ukraine and IMF to generate external pressure[23].

The main reasons for the weakness of Ukrainian financial market are the lack of protection of property rights, corruption and distrust in the judiciary[24], and almost complete closure from foreign capital markets – they are under influence of other regulators and representatives of bodies of power. The judicial reform, which could have created a level playing field for everyone and ensured protection for investors, has not been finished yet. Finally, NBU's responsibility to liberalize capital flow, which could have opened Ukraine for foreign investors, has not been accomplished.

Insurance market. In 2016, the National Commission for Regulation of Financial Services Markets (NCRFSM) started clearing insurers' balances by establishing mandatory criteria of sufficiency, diversification, and asset

quality[25]. By June 30, 2016 the insurance companies should have brought their activity into conformance with these requirements. As a result, insurers' investments in corporate securities (shares and obligations) decreased, while their investments in bank deposits and government securities increased. In addition, the NCRFSM aimed great efforts at enhancing transparency of the Ukrainian insurance market by setting requirements for:

- The operation of nonbank financial groups (NBFG), procedure of their identification and recognition, requirements to the person responsible for such a group and the procedure for approving a candidate for this position. They also established procedures for notification of changes in the NBFG's ownership structure, termination of recognition, and filing of accounts[26]. As a result, the NCRFSM recognized nine NBFGs for the first time, and information about them was published on the regulator's web site. This will allow the NCRFSM to supervise the operation of these companies on a consolidated basis.

- The amount and procedure of adding information about financial institutions into the publicly available database and on their own web sites[27]. All financial organizations should have developed their own websites by September 6, 2016 and filled them with information prescribed in the provision.

- Procedures and conditions for NCRFSM's approval of acquisition by a legal entity or an individual of a significant share in a financial institution or its enlargement, where the abovementioned entity or individual would directly or indirectly own 10%, 25%, 50% and 75% of the statutory (authorized) capital of such a financial institution or the voting authority of the purchased shares in its management bodies; requirements to business standing and financial status of such a person[28].

Banking market. Equal conditions for competition in the financial sector and free capital flow, both necessary to secure financial stability and dynamic development of the financial sector, were not created. Likewise, the infrastructure to ensure effective accumulation and exchange of information on credit record of the lenders and an institute of rating agency were not developed. Control over and responsibility for transactions with associated persons were partially tightened with new regulatory acts, but real liability has not been incurred yet. In addition, the NBU tightened the requirements for solvency and liquidity of financial actors, with special regulations for capital, liquidity and other indicators, but, in fact, most of the banks had not been meeting them (especially in terms of capital) and were granted a respite. To build institutional capacity of the financial sector regulators the NBU received a high degree of independence, and an effective Financial Stability Council (under NBU) was established. However, 2016 was not marked by effective steps to increase efficiency of the regulators and the DIF in their work on impaired assets in the financial sector.

In the area of consumer rights and investors protection, the task to promote financial literacy and a culture of saving among the population failed. Complicating the matters, the precedent of post-factum guarantees for Mykhaylivskyi bank deposits distorted the motivation of depositors. The legislation on protecting consumer and investor rights was not updated. However, the standards of information disclosure in the interests of consumers of financial sector investors were partially raised – the banks were transferred to the International Financial Reporting Standards (IFRS), and Basel framework is being introduced. In regards to the strategy of state-owned bank development, the issue of establishing supervisory councils for state banks still remains legislatively unregulated. After PrivatBank nationalization and potential entry of Ukrposhta into the financial services market, it is apparent that the necessary steps concerning policy of the owner towards state-owned banks must be taken.

In 2016, the National Bank was dealing with liquidating impaired banks and fighting loan services to the persons associated with them. Purification of the system and improvement of regulatory legislation was necessary but

painful for the banking system. Nevertheless, the banking sector did not experience significant improvements—protection of creditor rights, improvement of enforcement proceedings, simplification of merger and acquisition were postponed until 2017.

In 2016, the Verkhovna Rada adopted five laws aimed at reforming the state banking and financial systems (two of them were submitted by the President): "On assurance of large-scale export expansion of Ukrainian producers by insurance, guarantees, and cheapening of export crediting"; "On consumer crediting"; "On financial restructuring"; "On amendments to several laws of Ukraine regarding compensation to individuals of damages incurred by them as a result of abusive activity in the banking and other financial services sector"; "On amendments to the law of Ukraine "On banks and bank operations" regarding state guarantee of retail deposits".

Pension system. The state policy measures aimed at dealing with the challenges in the pension sector were mostly limited to attempts at lowering the deficit of the Pension Fund, by decreasing the amount of pensions paid. This found its reflection in the amendments to the law "On compulsory state pension insurance"[29] and the law "On amendments to several legislative acts of Ukraine"[30], namely:

- The amount of maximum retirement pension was limited to 10,740 UAH; annual increase of the pension amount reflecting the growth rate of average salary in Ukraine compared to previous year was suspended; indexation to account for the inflation rate was suspended; payment of monthly allowance to certain categories of working pensioners (stipulated by the laws of Ukraine "On public service", "On Prosecution Service", "On the judiciary and the status of judges") was suspended; taxation of pensions of working pensioners was prolonged (pensions were paid in the amount of 85% from the set amount but in the amount not less than 150% of the subsistence rate determined for persons who lost their ability to work).

  Simultaneously, in order to extend the unified social tax base, the government was developing a policy of increasing the minimum wage to 3,200 UAH in 2017 and introducing a unified social tax payment for small businesses that operate based on the simplified taxation system;

- In order to normalize the expenditures of PFU under the resolutions of the Cabinet of Ministers of Ukraine (No. 136, No. 137 of February 18, 2016; No. 168 of March 14, 2016; No. 185 of February 11, 2016) regarding verification of social payments, the Ministry of Finance held an audit of pension payments. As was expected, it revealed large amounts of illegally received pensions, the cancellation of which should have decreased PFU's expenditures by 5 billion UAH, according to expert estimates[31]. However, the audit did not reveal large-scale violations[32], therefore this factor failed to balance the PFU;

- In 2016, minimum pension was raised twice for pensioners who do not work. The pension rate was established at the level of the minimum living wage that was raised by the law "On the State Budget of Ukraine for 2016" for the respective category of persons: beginning on May 1, 2016 – 1,130 UAH (increased by 5.2%); beginning on December 1, 2016 – 1,208 (increased by 6.9%)[33]. This increased the nominal incomes of pensioners, but at the same time deepened the PFU deficit.

Proceeding from present-day realities, the memorandum between Ukraine and IMF, rather than focusing on structural changes of the pension system, envisions further governmental steps to change the parametric rules of solidarity level functioning aimed at decreasing the PFU deficit, such as: gradual correction of the compulsory retirement age and further reduction of the list of persons who are entitled to early retirement; establishment of stricter requirements for the right to receive a minimum pension; consolidation of pension legislation, which at the moment is represented by about twenty legislative acts; assurance

of a single principle of pension assignment without privileges for any professions (except the military); extension of the unified social tax payers base; ensuring just taxation in the area of pension coverage; strengthening the connection of pensions with the payment of the unified social tax to ensure declaration of real amounts of income. In addition, it is planned to separate supplemental pay from retirement pensions and transfer their financing from the Pension Fund to the state budget, as well as reinforce their targeting starting from 2017 to make the system more fair and release resources for more effective reduction of poverty rate.

Stakeholders and their impact on policy implementation

President of Ukraine is a very influential stakeholder, interested in issues of the financial sector. In 2016, he was the most "active" in regard to two challenges: he suggested adopting laws on compensation to depositors of "Mykhailivskyi" bank[34] and on strengthening guarantees of deposits in state-owned banks[35]; and he ensured that NBU Council began its work in November 2016 after a long delay.

Specialized committee of the Verkhovna Rada is an influential stakeholder interested in reforms. Several important laws were adopted (particularly, "On financial restructuring" and "On consumer crediting"). It needs to communicate more effectively with the NBU, as a state regulator, for full-fledged implementation of reforms.

The Cabinet of Ministers, central bodies of executive power (Ministry of Finance, Ministry of Social Policy, NSSMC, National Commission for Regulation of Financial Services Markets, Pension Fund) is another influential group of stakeholders, but they are mostly not interested in progress of the reforms. Theoretical interest in establishing a strong local financial market does not translate into real actions. In the context of pension reform, this stakeholder group is interested in financing from the IMF and balancing the deficit of the Pension Fund of Ukraine. However, restructuring of this system (like increasing the retirement age) is an unpopular political step and successful verification could lead to reduction of financial flow and legal consequences for functionaries, which is why they resist the reform. In the field of insurance, the efforts of the NCRFSM should be mentioned. Despite its limited powers, possibilities and assistance from other governmental branches, it was trying to adopt certain regulatory acts to ensure transparency of the insurance market and solvency of the insurers.

NBU is an influential stakeholder interested in the reform. The main initiative of 2016 – continuation of the bank system purge – brought both positive and negative results. It is too early to speak of the stability of the banking sector since the capital of the banks does not meet the new regulations yet. NBU's main partners are IMF and the Government. It is critical that NBU improves communication with the specialized committee of the Verkhovna Rada, as well as with the public.

Market players are an interested but not an influential group of stakeholders. The stock market is witnessing a gradual reduction in the number of actors, as experts that used to work there move abroad, shift to the public sector or to the real sector. Throughout last year, specialized insurance associations and companies were advocating for amending Ukraine's Tax Code regarding the procedure of

insurance company taxation and promoting bureaucracy reduction for currency transactions. For their part, the main efforts of the Motor (Transport) Insurance Bureau of Ukraine (MTIBU) were focused on promoting mandatory third-party insurance reform, which presupposes improvement of the procedure of insurance payout, introduction of electronic certificate of insurance, and shift to direct indemnification. In the field of pension coverage, non-state pension funds and other market players kept advocating the compulsory second level of pension reform. In the banking sector, despite the banks' activity, their unity (through the National Association of Ukrainian Banks and other associations), cooperation with the VRU and NBU, and a number of initiatives, the achievements of 2016 were limited to successful advocacy of an insignificant number of new reform-oriented laws mentioned above.

IMF is a very influential stakeholder interested in the reform. Its activity on the stock market in 2016 was limited to the requirement to split the functions of the NCRFSM between the NSSMC and the NBU. In the pension sector, IMF made Ukraine's next tranche provision directly dependent on the pension reform with the goal of balancing the budget of the Pension Fund of Ukraine.

The media is an influential stakeholder, but they are not interested enough. They are used to the idea that the financial market is limited to topics of pension reform (considering its visibility), banking regulation and exchange rates, while all other related topics are perceived as complicated and unfamiliar to the public.

The public is neither influential nor consolidated, it has no culture of following the financial market and lacks financial literacy. The depositors and borrowers of banking institutions should be classified into a separate category. They have become more influential after consolidation, but other agents were manipulating their interests. One of the victories of the depositors was the law on compensation to the depositors of Mykhailivskyi bank, which closed the issue of returning deposits solicited through financial intermediaries. Currency borrowers, despite the intense pressure to pass the law "On US dollar being worth 5 hryvnias" at the Verkhovna Rada, have not achieved a positive result yet.

Investors are a category of stakeholders that is both uninterested and not influential. At this stage, they tend to keep free funds outside Ukrainian jurisdiction because of multiple risks connected with investing in Ukrainian economy. As there are no explicit prospects for mobilizing resources domestically, this group of stakeholders is looking either at external markets (through SPV in other jurisdictions) or at bank credits. Since Ukraine lacks a culture of relations between the minority and majority stakeholder, and there are multiple examples of raidership, entrepreneurs prefer having total control of their companies.

Recommendations for further action in 2017

Stock market. The National Reform Council's plan for 2017 includes adopting a law on derivatives and regulated markets, passing a framework law on consolidation of functions of state regulation of financial services market ("split"), and creating new currency legislation of Ukraine. However, in our opinion, Ukrainian business and public can receive the full benefits of a developed financial market only in case of Ukraine's full-fledged integration into global capital markets.

Thus, it is necessary: to begin reforming the capital market as envisaged by "Strategy 2020"; go beyond merely adopting a framework law on new currency regulations and conduct a real currency liberalization, thereby giving Ukrainian citizens and entrepreneurs the possibility to interact with world markets; conduct judicial reform to ensure rule of law and end raidership, fictitious bankruptcies, etc.

Insurance market. The main recommendation to improve public policy on the insurance market is for the Verkhovna Rada, the Cabinet of Ministers and the NCRFSM to adopt the following statutory instruments:

- the law of Ukraine "On insurance", which should: provide better rights protection to insurance service consumers; approximate Ukrainian insurance legislation to EU legislation; improve monitoring of insurer activity and tighten control over their compliance with solvency and financial stability requirements and state regulation; introduce European standards in classification of risks in insurance; improve insurer licensing procedure; raise the demands to regulatory capital formation; introduce international norms of corporate governance and prudential supervision, better protection of insurers, and development of long-term life insurance;

- the law of Ukraine on the division of NCRFSM's functions between the NSSMC and the NBU, which would improve the quality of supervision over insurance companies, credit unions, and other non-banking markets. This was included in the memorandum of cooperation between Ukraine and IMF;

- amendment of legislation regarding mandatory third-party insurance coverage. Innovations can target improving the indemnification procedure from the funds of the MTIBU instead of recognizing insurers as bankrupt; introducing electronic certificates of insurance; and shifting to direct indemnification of damages under mandatory third-party insurance coverage agreements;

- creation of preconditions for developing voluntary medical insurance within healthcare reform to expand people's choice in providing their own medical coverage;

- transformation of agricultural insurance to extend the boundaries of insurance coverage in general, and particularly in small and medium businesses. Creation of preconditions for protecting agricultural producers by developing agricultural insurance.

Banking market requires immediate resolution of a number of problems in 2017. First and foremost, it is necessary to start solving the problem of state monopoly in the banking sector. Nationalization of PrivatBank resulted in a multi-billion growth of budgetary expenditures and debt burden on state finances, concentration of more than 50% of banking sector assets in the hands of the state and its considerably larger shares in the market of transfers and payment cards, a blow to competitors in the market of deposits and payment services for individuals (74% of all cards, 77% of terminals, 60% of outlets belong to state-owned banks), and potential legal and reputational risks for Ukraine, connected with compulsory conversion of Eurobonds into bank equity. It is necessary to make amendments to the "Principles of State Banking Sector Strategic Reforming" and shape a new ownership policy concerning state-owned banks, preferably one that would envisage gradual retreat of the state from all main markets where healthy competition of private banks is feasible. The main challenge of the future is that sale of PrivatBank in its current state has a potential risk of market monopolization by the new owners. It is worth mentioning that under law No. 5553 (still not signed by the President) PrivatBank and Ukreximbank will gain a competitive advantage over other commercial banks, a privilege currently enjoyed only by Oshchadbank, securing 100% state deposit guarantees to private clients. Such a guarantee hinders the competitive environment and should be eliminated in all state-owned banks.

Furthermore, it is necessary to simplify the additional capitalization and reorganization of banks. The respective law was passed in the first reading in February 2017. It should be finalized addressing the issues of: converting shares of merging banks according to their real and not nominal value; protecting creditors' rights of banks that merge; and some other legal matters.

Of equal importance is changing deposit guarantee rules for individuals. It is necessary to raise and differentiate the contributions of fund participants according to the risks of their activity and scoring of the banks; to involve Oshchadbank in payment of contributions, thus eliminating the 100% deposit guarantees; to consider the possibility of increasing the guaranteed amount and cancel guaranteeing interests on deposits, which would lower the "moral risk" characteristic of developing countries (when a "vacuum cleaner bank" collects deposits at excess interest, withdraws the funds, but people do not pay attention, knowing that both their deposits and interest are guaranteed).

To improve protection of creditor rights, it is necessary to give consideration to draft laws "On amendments to several legislative acts of Ukraine to stimulate crediting in Ukraine" and "On amendments to several laws of Ukraine (to make bankruptcy procedures more efficient)". These issues are stipulated in the program of cooperation with IMF.

The law "On restructuring of foreign currency debt service obligation" should finally alleviate the problematic issue of growing outstanding debt of individuals. It will decrease citizens' debt burden and release additional resources to credit the economy.

Adoption of the law "On currency regulation and currency control" should bring the currency legislation into conformance with current international practices, getting rid of outdated limitations; regulate all possible currency transactions; update the public currency policy considering the principles of financial stability; and create favorable conditions for investment activity in Ukraine.

Pension reform cannot take place as "a thing in itself", without consideration of social and economic realities of the present. It requires systemic changes in several areas:

- Expansion of the basis of the unified social tax charge due to economic growth, creation of new jobs in the country, de-shadowing the labor market and salary legalization. The main path to it is through deregulation, creation of a level playing field, economic system of open access, and adherence to the rule of law. It is necessary to be careful with the labor market policy, because increasing the minimum wage in 2017 to encourage reporting of real salaries, could end up decreasing employment[36], at least officially. Thus, there is a risk of further deterioration of the Pension Fund situation.

- Reform of pension coverage aimed at long-term stability of pension payments with consideration of demographic tendencies. Measures in this respect could include increasing retirement age, changing pension accrual rules, reconsidering the system of supplementary pensions – there is a huge gap between the minimum pension (1,208 UAH) and maximum one (10,740 UAH)[37], etc. It is imperative to create an electronic register suitable for further verification procedures and development of e-government on its basis.

- Working on ways to develop the voluntary savings component of the pension system through active preparation, joining the rules of internal financial services market of the EU (foreseen in the Association Agreement), and harmonizing domestic regulations with European standards.

However, the main challenges of Ukraine's pension system and, consequently, response to them, remain in the plane of the real sector of economy: creating new jobs, de-shadowing the economy, and increasing real wages.

This will lead to increased collections into the PFU and speed up its balancing. Simultaneously, it is necessary to ensure that people have the possibility to save their pensions through voluntary contributions.

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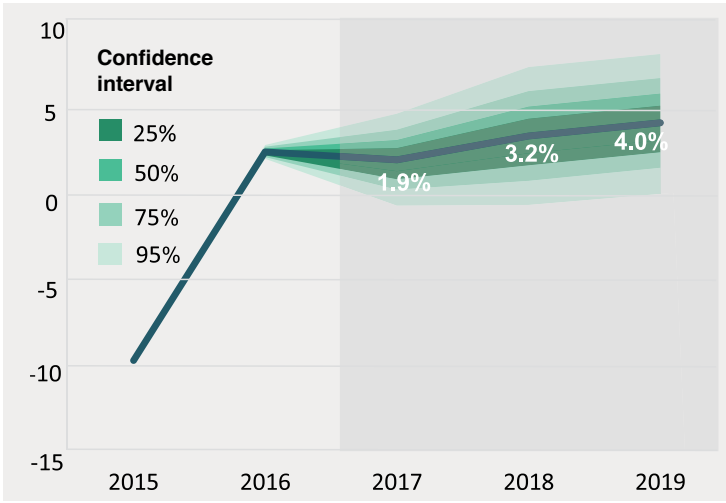
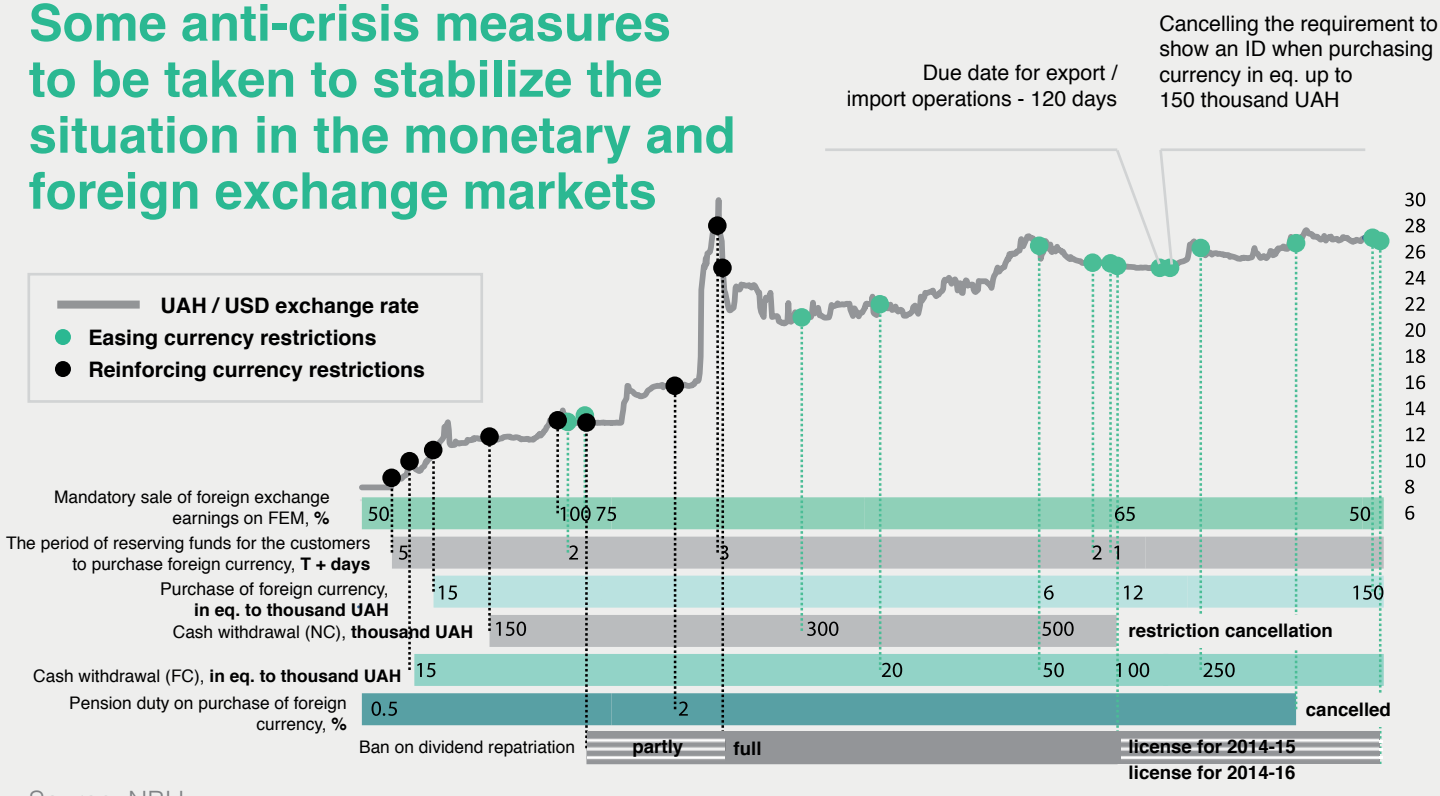
Real GDP forecast, % annual change



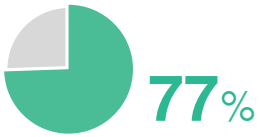
Source: NBU.

Some anti-crisis measures to be taken to stabilize the situation in the monetary and foreign exchange markets



Source: NBU.

Economic development



77%

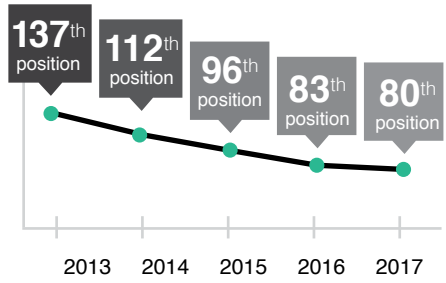
of Ukrainians are convinced that the most negative changes of 2016 occurred in the economic state of Ukraine *(Ilko Kucheriv Democratic Initiatives Foundation, December 2016)*

42.8%

of managers of industrial enterprises named assurance of stability in the regulatory field among the measures important to improve the conditions of doing business *(The Institute for Economic Research and Policy Consulting, February 2017)*

only **9%**

of top managers of leading businesses operating in Ukraine deem the investment climate in the country to be favorable *(EBA, the latter half of 2016)*



general position of Ukraine in the World Bank ease of doing business ranking

Challenges and goals of public policy

2016 can be described as the year when the economic crisis passed its lowest point. This is the year when restoration of the Ukrainian economy started: GDP growth of 2.2% (calculations based on the State Statistics Service of Ukraine quarterly data), inflation amounted to 12.4% (in comparison to 43.3% the year before), inflow of foreign investments increased to 3.4 billion USD (according to the NBU).

However, taking into account Ukraine's potential, considerable international support, and available possibilities to implement necessary reforms, the growth should have been much more significant. Unfortunately, a large number of measures aimed at stimulating economic growth and recommended by the expert group "Economic Development" of the Reanimation Package of Reforms was not implemented. In order to shape effective state policy in 2016 the "Economic Development" expert group determined eight key goals[1]:

- Simplification and normalization of conditions for doing business in Ukraine;
- Provision of conditions for sustainable and rapid development of small and medium entrepreneurship;
- Development of export and international trade;
- Intensification of investment attraction to Ukraine;
- Development of competition;
- Achievement of effective and non-corrupt management of state property;
- Better accessibility and quality of infrastructure for economic agents;
- Development of a modern institute for bankruptcy prevention and solvency restoration.

In addition, after the Verkhovna Rada prolonged the moratorium on selling land and implementation of the land

reform basically failed, the group added “moratorium cancellation” to the list.

The public policy touched upon almost all of the above-mentioned goals but most of the steps for their successful accomplishment were not taken. In other words, the authorities did not manage to solve the problem of low economic growth, despite the fact that the policy met the main challenges, at least to a certain extent. Weak implementation of the economic development policy is further evidenced by Ukraine’s position in global ratings of 2016: in Doing Business ranking it moved up only one position (considering the changes in calculation methodology)[2], its rating in the Index of Economic Freedom fell from 162th to 166th position, and in the global competitiveness rating it moved down from 79th to 85th position.

The main measures of the 2016 public policy in the Government Action Plan[3], which correspond to the goals of accelerating economic growth, are as follows:

- Provision of a favorable business climate and development of small and medium entrepreneurship;
- Privatization of state-owned objects and reform of corporate governance;
- Development and support of export. The government defined tightening sanitary and phytosanitary measures as one of the steps to achieve this goal;
- Intensification and attraction of investments;
- Completion of the land reform;
- Reform of the infrastructure system, particularly: restoration of the road network and establishment of a qualitatively new system of management and financing of the road facilities; reform of railroad transport; and improvement of the system of state management of marine and river transport of Ukraine and commercial shipping.

However, the government’s policy in 2016 barely took into account goals such as development of competition, development of quality infrastructure for economic agents, reform of the institute for bankruptcy prevention and solvency restoration.

Implementation of public policy

Simplification and normalization of conditions of doing business in Ukraine. The government’s plan included resolving such problems as the reduction of administrative barriers and cancellation of ungrounded regulation. As a result, 76 barriers were eliminated and the number of areas of commercial activity subject to this regulation was limited to seven. Another important step for bureaucracy reduction and improvement of licensing and administrative system efficiency was the development of an electronic and automated system of interaction between businesses and the state. Unfortunately, in 2016 the authorities did not manage to provide conditions for introducing institutes for business self-regulation nor were they able to finalize the reform of the system of technical regulation and state market supervision.

Provision of conditions for sustainable and rapid development of small and medium enterprises. The updated government plan of measures to deregulate economic activity foresees preparing the “Strategy for development of small and medium entrepreneurship in Ukraine” for the period until 2020, but in 2016 the government did not take any steps to implement the SME development policy. Nevertheless, state-owned banks (Ukreximbank, Ukrgazbank), together with international partners (IBRD, EBRD, EIB, IFC), started implementing programs to support SMEs,

which envisage accessible credit financing. In particular, the programs are aimed at the development of energy efficiency, agriculture and export growth.

Development of export and international trade. To simplify export to the EU in 2016, the customs subdivisions of the State Fiscal Service of Ukraine issued over 50,000 certificates under the EUR.1 form, which allow the application of preferential trade rules to products of Ukrainian origin. Another significant achievement in the area of simplifying access to EU markets was the introduction of the institute of an authorized exporter. In 2016, 113 enterprises obtained the status of an authorized exporter. By adopting relevant legislation, the authorities managed to reduce administrative barriers for export of services, simplify customs formalities, and introduce sanitary and phytosanitary measures that would allow a number of Ukrainian products to enter EU markets.

Intensification of investment attraction to Ukraine. The inflow of foreign investment depends on the implementation of several public policies, which prescribe anticorruption and judicial reforms, liberalization of currency regulation, development of favorable business climate, and improvement of infrastructure.

In the course of last year, the anticorruption reform continued, but so far, the results have not had any significant impact on the level of trust of the society and investors. The judicial reform still continues, but its quality raises some doubts. The National Bank of Ukraine made important steps to reduce currency control (for example, permits for dividend repatriation). Compulsory registration of foreign investments was canceled. Two offices for investment mobilization were established– the National Investment Council headed by the President and UkraineInvest – official Investment Promotion Office.

Despite certain achievements, incomplete implementation of investment mobilization policy influenced the amount of their inflow. First, the amount of investment did not increase significantly. Second, according to NBU, the majority of attracted investments are within the banking sector (additional capitalization of banks). Finally, lack of quality infrastructure restrains the launch of large investment projects.

Development of competition. Efforts to establish the gas and electricity market continue, which should enable the creation of markets compatible with natural monopolies. However, full implementation has not been accomplished yet. For instance, the law “On the electrical energy market in Ukraine” was adopted in its entirety only in April 2017.

Reformation of the Antimonopoly Committee of Ukraine (AMCU) following the steps suggested by the “Economic Development” group has not taken place yet. When it comes to key tasks, no significant steps were taken to implement the priority ranking system of AMCU cases, according to the risk of competition distortion. Lack of financing and AMCU’s limited powers to select cases for consideration and set priorities for its activity still remain the bottlenecks of the Committee’s work, inhibiting its institutional development.

In 2016, the AMCU kept working on the development of competition. In particular, they adopted resolutions to develop competition in gas and electricity markets, and control the preparation of the legislation on state assistance in 2017. In 2016, the AMCU put an end to 3,072 violations of legislation and imposed fines in the amount of 750 million UAH (excluding the Gazprom fine of 86 billion UAH).

The independence of the National Energy and Public Utilities Regulatory Commission was enhanced in order to tighten control over competition on energy and utility service markets. However, due to imperfections of the adopted law, the regulator’s independence could not be raised to the necessary level.

Attainment of effective and non-corrupt management of public property. The aim of these measures is to increase receipts from privatization, reduce the list of state enterprises that are not subject to privatization, and reform the process itself. As a result, 391 objects were

proposed to be excluded from the list of enterprises not subject to privatization in 2016; from these, 147 objects (according to a governmental report) were sold at auctions in 2016, but none of these belong to key sectors. Instead of expected privatization in the amount of 17.1 billion UAH, the objects were sold for a total of 331 million UAH. In general, throughout the year, attention was paid to preparing for privatization and introducing some changes to the procedure rather than to prompt sales of public property.

It was also planned to conduct corporate governance reform: establish supervisory boards of state enterprises with appropriate members; and approve the concept of public holding company establishment. The government's key achievement in this respect was the adoption of necessary legislation concerning public enterprise management. However, the procedure of appointment did not come into force and, consequently, no supervisory board was appointed. Neither was there significant progress in establishing a state holding company.

Improvement of accessibility and quality of infrastructure for economic agents. To introduce a new approach to financing road facilities a law was adopted to establish the State Road Fund. The reform of the rail industry was temporarily suspended to work on the draft law "On the railroad transport", which stipulates the creation of a competitive market of railroad transportation. Important steps were made, namely, the appointment of the manager of PJSC "Ukrzaliznytsia" and the establishment of a supervisory board.

No significant progress was achieved in the implementation of the public-private partnership mechanism for infrastructure projects. Moreover, the quality of connection to electricity, gas and utility networks was not improved, and the procedure for connection was not simplified. The existing model of industrial park operation does not meet the main challenges. It is important to lend support to potential investors by providing industrial parks with necessary infrastructure, but authorities have not made any steps in this direction.

Reform of the institute for prevention of bankruptcy and restoration of solvency. The main step to achieve this goal should have been the adoption of draft law No. 3132, which would ensure more efficient bankruptcy procedures. However, it has not been passed yet.

Land reform. Intensification of the process of land market creation was expected in 2016. However, in autumn, the Verkhovna Rada prolonged the moratorium on sale of land until 2018. To establish a regulatory basis, the Cabinet of Ministers was instructed to develop and submit for consideration draft law "On commerce in agricultural land" to the Verkhovna Rada by July 2017.

Stakeholders and their impact on policy implementation

International creditors (primarily IMF), organizations and programs of technical assistance are influential and interested stakeholders. They make provision of credits or technical assistance to Ukraine conditional on initiatives, particularly ones aimed at improving the business climate, deregulation, and reforming public sector enterprises.

Public authorities (Cabinet of Ministers, Prime Minister, Ministry of Economy, MPs, National Investment Council, and UkraineInvest—official Investment Promotion Office) are influential stakeholders who declare their interest in accelerating economic growth, attracting foreign investments and mobilizing more international assistance. Unfortunately, these claims do not translate into real actions. The main reason for resistance on the part of the authorities is the fact that structural reforms (mainly the reform of public sector enterprises and deregulation) decrease corrupt financial flows.

Business. Small and medium enterprises are extremely interested in simplifying the procedures for doing business, accessing quality infrastructure, and improving conditions for development of SMEs. Regrettably, they do not have much influence. At the same time, the majority of large business structures have considerable political influence, but they are more interested in preserving the status quo, rather than reforms.

Foreign investors are fairly interested in improving conditions for doing business but they are not influential stakeholders.

Public organizations, such as Ukrainian and international business associations and industry unions, are moderately interested stakeholders, but they do not have much influence.

Recommendations for further action in 2017

Key recommendations for 2017 include implementation of the deregulation plan and the SME strategy, reform of the AMCU, acceleration and extension of privatization, reform of bankruptcy procedure, opening of the land market, etc. Critical to stimulating economic development and winning foreign investors' trust is the reduction of corruption through anticorruption and judicial reforms.

Simplification and normalization of conditions for doing business in Ukraine. At present, several plans and concepts regarding further deregulation have been approved and the necessary draft laws have been developed. Their implementation is a necessary condition for carrying out the reform.

Provision of favorable business climate and development of small and medium entrepreneurship. The authorities need to approve and start implementing the Strategy for Development of Small and Medium Enterprises in Ukraine as soon as possible. In addition, it is necessary to extend the programs that simplify accessing financing for SMEs, increase the level of credit provision, and provide consultative support. Establishment of the Agency for SME development will be an effective step in the policy's implementation.

Development of export and international trade. To continue implementing measures to improve control over the quality and adaptation of European standards to Ukrainian products. To foster conditions necessary for effective work of export-oriented businesses by means of deregulation, improvement of access to financing, and provision of necessary state support for entering international markets. Of no less importance is the reform of customs service, targeted to reduce corruption, introduce service automation, and improve cooperation of border services.

Intensification and attraction of investments. Further steps of the authorities should be aimed at achieving a single goal – winning the trust of foreign investors, as currently, this is the main factor preventing them from investing in Ukraine. Therefore, anti-corruption and judicial reforms should be carried through.

Development of competition. It is necessary to reduce state intervention in markets, such as preferential treatment of state monopolies and subsidization of certain industries, and to establish a level playing field for all market players. The relevant legislation will come into force only in August 2017 – three years after its adoption. In addition, the state should meet commitments it undertook within the

framework of adjustment of the Third Energy Package. This would allow to create markets compatible with natural monopolies in the energy and utility service sectors. To ensure quality supervision over the market players, it is necessary to reform the AMCU based on best world practices.

Accomplishment of effective and non-corrupt management of public property. The policy for public property management includes all mandatory steps but they are not being implemented. It is necessary to privatize as many approved objects as possible in 2017. The authorities should finalize the concept of strategic public enterprise management and implement it by establishing a holding. The government should also appoint supervisory boards for public enterprises in accordance with the law passed in 2016.

Improvement of accessibility and quality of infrastructure for economic agents. The State Road Fund shall start full-fledged operation in 2017. It is necessary to liberalize the rail transport market and establish conditions for its operation. The main goal of industrial park development should be in attracting investors by establishing industrial platforms with developed infrastructure, which are interesting to them. Instead, the authorities provide tax and customs preferences, which most likely will not be used as intended. Due to financial limitations of the state, it is imperative to involve private investors in implementation of infrastructure projects. Therefore, building the public-private partnership is an important step in achieving this goal.

Reform of the institute for bankruptcy prevention and solvency restoration. The Parliament should consider a draft law to amend several laws of Ukraine in order to improve the efficiency of bankruptcy procedure. This would enhance the business climate and facilitate reduction of corruption, as well as mobilize domestic and foreign investments.

Land reform. It is necessary to open the land market as soon as possible and adopt legislation crucial for its effective operation. To hold a large-scale communications campaign to explain to the public the advantages of the land market. To develop and introduce principles of regular control over the market (AMCU).

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Interesting facts about the moratorium on the sale of agricultural land

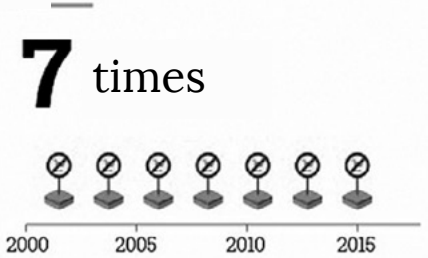
Ukrainian land reform has been in progress for 25 years – it is the world record

Till recently, Mexico used to be the record-holder

*reform is still in progress

Moratorium on the sale of agricultural land has been in effect for

Moratorium was prolonged



Moratorium forbids 6.9 million landowners to manage their land plots

6.9 mln landowners

1.6 mln of all landowners (23% of all owners) aged 70+ **

Population

96% of agricultural lands are subject to the moratorium

68% of lands owned by rural residents

** Survey by USAID project "Agroinvest", 2012

Up to 1 mln*** landowners have died

While the reform has been in progress, they did not get a chance to manage their property: they did not have any inheritors or inheritors did not register their property rights due to a costly inheritance procedure.

*** Report "Monitoring Land Relations 2014-2015". Official number of the properties not inherited after the owners' death – 9,650 land plots with the total area of 35,802 ha. However, the real scope of lands of uncertain ownership is estimated at the level of 0.5-1 million land plots with the total area of 1.85-3.7 million ha (with an average land plot of 3.7 ha)

The moratorium allows:

- to lease a land plot
- to swap land plots
- to bequeath a land plot
- to sell one's land plot unofficially

The moratorium prohibits:

- to sell one's land plot legally
- to change the designated purpose of a land plot
- to incorporate the title to land into the capital of business entities
- to pledge a land plot

How to sell one's land plot bypassing the moratorium:

Scheme 1

to change the designated purpose of a land plot after "transferring" it for a fee for the benefit of the state or a local community

Scheme 2

to sell corporate rights of the enterprises which had concluded lease agreements for 49 years

Scheme 3

to sell a land plot after changing the designated purpose of a state-owned or municipal land "with the help" of the governmental officials

Scheme 4

to build up a "fake" debt and use it as a reason to take the land plot away from the "debtor"

Scheme 5

to transfer the land plot under a lifetime maintenance agreement.

Created in partnership with: ціна держави

PROJECT
Supporting reforms in the agriculture and land relations in Ukraine

Reform of the energy sector

88.5%

of citizens believe that most negative changes in 2016 occurred in the area of price and tariff formation *(Ilko Kucheriv Democratic Initiatives Foundation, December 2016)*

27%

of managers of industrial enterprises view the policy to support energy saving programs at enterprises as an important measure to improve conditions for conducting business *(Institute for Economic Research and Policy Consulting, February 2017)*

55%

of citizens are not ready to tolerate material difficulties for the sake of reforms: 24% – because they do not believe in their success, 31% – because their material condition is already intolerable *(Ilko Kucheriv Democratic Initiatives Foundation, December 2016)*

Challenges and goals of public policy

Lack of appropriate strategic goals. Energy Strategy of Ukraine by 2030[1], approved by the Cabinet of Ministers in 2013, lost its relevance due to critical changes and new challenges in the political, economic and energy sectors. The strategy gives an ungrounded preference to developing the coal sector, and even in the worst-case scenario envisages continuous growth of economy and industry, which does not correspond to reality. The lack of realistic long-term vision for the sector has immediate impact on shaping the energy policy today, particularly on determining priorities and attracting investments (including international) into the energy sector.

Low institutional capacity of industry-specific public bodies. Due to a number of ill-conceived and non-publicly taken decisions, the National Commission for State Regulation of Energy and Public Utilities (NCSREPU) does not enjoy the trust of market players or consumers. As of early March 2017, the composition of the NCSREPU was not changed, which continues to discredit the regulator's decisions in the eyes of market participants. Current rates of development of the green generation raise doubts concerning the attainability of indicators declared in the National Action Plan for Renewable Energy by 2020. In addition, the combination of different functions – lowering energy consumption by developing energy efficiency and extending energy production through renewable sources of electricity generation – within the State Agency on Energy Efficiency and Energy Saving of Ukraine prevents it from concentrating on quality performance of both of them. The system of management of state enterprises has still not been reformed, which leads to repeated corruption scandals and extremely opaque and inefficient functioning.

Information inaccessibility. Ukraine's implementation of the Extractive Industries Transparency Initiative (EITI) is a significant step towards improving transparency of one of the energy industry components[2]. However, failure to adopt the draft law "On disclosure of information in extractive industries"[3] in February 2017 delays further progress and requires reconsideration of most of the plans to implement energy directives due to missed implementation deadlines and incorrect wording.

Effective market mechanisms not launched. The absence of a full package of necessary acts to regulate energy markets precludes fair and open competition between market players, preserves the monopoly of existing players, and consequently, limits consumers' ability to change their service provider and protect their rights. This relates equally to the gas market, with the incomplete reformation of NJSC "Naftogaz of Ukraine", and the opaque electricity market, which awaits implementation of the framework law adopted in May 2017. Bylaws relating to the new gas market, the national plan to limit emissions of large incineration installations, a package of laws on energy efficiency and improvement of the investment climate, regulation of nuclear energy, the law on disclosure of information in the extractive industries still remain in the form of drafts. In addition, significant monopolization of several segments of the electricity market prevents foreign and international investment, thereby distorting competition and inhibiting the industry's development.

Low energy efficiency and energy independence. The increase of consumers' prices and decrease of sectoral subsidies since 2014 created the precondition and impetus for a considerable number of consumers to start optimizing their consumption. Halting modernization is the absence of a large-scale system to support energy efficiency projects in residential and public buildings. Moreover, the scope and method of financing energy efficiency programs remain low and inefficient in terms of their impact on decreasing energy consumption.

The State Budget for 2016 allocated nearly 47 billion UAH to compensate the costs of housing and utility services. However, state support for applying energy saving measures, which is stipulated by the "Warm Credits" governmental program, amounted to only 860.65 million UAH in 2016. The amount of state support for citizens practicing energy efficiency measures is much lower than the amount of subsidies to pay for housing and utility services and comprises only 1.8% of the subsidy amount. This indicates a discrepancy between the declared goals of energy independence policy and real actions.

Considering the above-mentioned challenges, the Reanimation Package of Reforms formulated the following long-term goals for reforming the energy sector in its Roadmap of Reforms 2016-2017[4]:

- Strategic vision of the energy industry development shall be implemented by transparent and accountable bodies;
- Transparent operation of the energy industry;
- Favorable conditions for development of competitive gas, electricity and heating markets;
- Effective incentives and tools to cut consumers' energy consumption;
- Effective energy efficiency mechanisms in budget sector;
- Strong consumers' rights protection.

Chapter 9 of the Strategy for Sustainable Development "Ukraine-2020"[5] lists the main priorities of the public policy on energy independence. The main task is to ensure energy security and to transition to energy efficient/saving consumption of resources using innovative technologies. The goals coinciding with the vision of the experts of the Reanimation Package of Reforms should be distinguished among the main goals of public policy:

1) Reduction of energy intensity of the gross domestic product (by 20% by the end of 2020) by: ensuring a compulsory commercial energy audit of energy resource (energy and fuel) consumption; transitioning to energy efficient technologies and equipment, particularly, through the mechanism of energy service company involvement; using alternative energy sources;

2) Complete reform of the system of energy and fuel price and tariff formation, particularly, reconsideration of the mechanism of energy resource balance formation and ceasing cross-subsidizing and government subsidies.

Implementation of public policy

Energy strategy. In February 2016, the Ministry of Energy and Coal Mining published a draft Energy Strategy Concept by 2035[6]. The document combined proposals of the National Institute for Strategic Studies (NISS), Razumkov Center and representatives of expert community. Unfortunately, with the change of the government and top officials in 2016, the document remained in its draft form.

Following discussions with the public, the Government Action Plan for 2016 contained "Update of the energy strategy of Ukraine" as one of its items. A steering committee consisting of the heads of the Ministry of Energy and Coal Mining, the NCSREPU, the Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety, as well as a separate Expert Council – to consolidate the stands of the expert community and international donors – was established in the course of the document's development. The steering committee resolved to prepare a draft strategy on the basis of the preliminary work done by NISS and the Razumkov Center. As a result, on December 19, 2016, a draft of the Energy Strategy of Ukraine by 2035 was published on the website of the Ministry of Energy and Coal Mining – before public discussions. As of April 2017, comments on the draft have been collected, and adoption of the document is planned for spring 2017.

Energy markets. The majority of legislative tasks of the reforms reflect Ukraine's commitments under the Association Agreement with the EU and the Treaty Establishing the Energy Community. Still, the adopted laws either require secondary legislation or are not being enforced. As of April 2017, the composition of the NCSREPU remained unchanged, and the law "On natural gas market" is working only partially due to unresolved issue of payment for using gas distribution networks.

In April 2017, the Verkhovna Rada adopted the law "On the market of electric energy in Ukraine"[7]. The law envisions conditions for reliable and safe supply of electricity with consideration of consumers' interests and minimization of expenses to electricity supply services (by legislatively determining an organizational structure and principles of functioning of the electric energy market, as well as main preconditions for its reformation).

In February 2017, the vote on the draft law "On disclosure of information in extractive industries" failed. Many implementation plans for energy directives need reconsideration because of unmet deadlines and incorrect wording. Separation of the transport function from the NJSC "Naftogaz of Ukraine" has not yet been done, and alleviation of special responsibilities (due on April 1, 2017) is unlikely, both of which make the existence of a competitive gas market impossible.

Energy efficiency. Despite the priority of energy independence and energy efficiency issues, the Parliament and the Government have not taken effective actions for their advancement. In 2016, draft laws on energy efficiency were repeatedly presented for Parliament's consideration but not adopted. Furthermore, continued existence of the only active public support program "Warm Credits" was at risk because its financing was not stipulated in the draft Budget for 2017. Instead, the Energy Efficiency Fund, which has not been established yet, had a line in the budget with a financing of 800 million UAH. It was due to public pressure that a considerable success was achieved – the "Warm Credits" program was prolonged in 2017 but with minimal financing of 400 million UAH. The public policy remains inconsistent, however, which is demonstrated by the smaller budget for energy efficiency allocated for 2017, compared with the previous year.

In December 2016, the draft law "On the Energy Efficiency Fund"[8], which was criticized by the expert community and central bodies of the executive power, was nevertheless submitted to the Verkhovna Rada. The draft law passed the first reading of the Parliament in March 2017 having barely gathered 226 votes. The opaque process of draft law preparation by the Ministry for Regional Development,

Building and Housing of Ukraine prevented MPs from familiarizing themselves with the draft law when it was presented to the Government for approval. This drew harsh statements from some experts who were concerned with the future of the Fund's operation because they saw elements of corruption in some provisions of the draft law. In general, the Energy Efficiency Fund is essential under the present-day conditions, but the draft law requires much improvement as it is being prepared for the second reading.

The Energy Efficiency Fund can start its operation only once other related laws are passed. One of them is the draft law "On energy efficiency of buildings"[9]. Shortcomings of its provisions are proven by Verkhovna Rada's failure to adopt the draft law in the first reading in November 2016, registration of an alternative draft law, and reluctance of the respective ministries and the specialized committee to promptly adopt it. In April 2017, the MPs' version of the draft law did get through the first reading.

The draft law "On commercial audit of utility services" has been pending at the parliamentary committee, awaiting the Energy Efficiency Day in the Parliament along with the above-mentioned drafts. Strategic areas determined in the presidential "Ukraine-2020" strategy regarding lowering energy intensity of the gross domestic product remain a declaration without actual implementation efforts.

Over the last year, the only law which successfully passed both readings at the Parliament was the law on the prolongation of performance (ESCO) contracts for thermal modernization of budget institution buildings[10]. Although implementation of the law will take some time, it is of supreme importance, for it will enable attraction of private investment into the implementation of energy efficiency measures and projects in social institutions. The ProZorro electronic bidding system is supposed to be used for procurement of performance.

Nevertheless, despite the attempts of the State Agency on Energy Efficiency and Energy Saving and the Ministry for Regional Development, Building and Housing to implement the energy efficiency policy, and despite public pressure, not much success has been achieved in this regard. The bureaucracy involved in working on problematic issues of the drafted regulatory acts halts implementation of the tasks set to achieve energy independence. In addition, the capacity of local bodies of power to shape and implement local energy efficiency policy remains questionable. The government does not pay much attention to establishing municipal energy management structures or to training and professional development of cities' energy managers, which could accelerate the implementation of the respective reforms.

Stakeholders and their impact on policy implementation

President of Ukraine. Except for his right to veto, the influence of the President is very significant in issues concerning public tariff policy. Before the law "On the National Commission for State Regulation of Energy and Public Utilities (NCSREPU)" was adopted, the members of the commission were determined by a presidential decree. After the law was adopted in September 2016, the members of the NCSREPU are still appointed by the President's decree. The President also determines the majority of the interview panel that selects the NCSREPU members through a competition.

Other public authorities include: the Ministry of Energy and Coal Mining, the Ministry for Regional Development, Building and Housing, the Ministry of Economic Development, the Ministry of Ecology and Natural Resources, the NCSREPU, the State Agency on Energy Efficiency and Energy Saving, specialized Committees of the Verkhovna Rada (Fuel and Energy Complex, Nuclear Policy and Nuclear Safety, Environmental Policy, Nature Resources Utilization and Elimination of the Consequences of

Chornobyl Catastrophe, and Construction, Urban Development, Housing and Communal Services). Although this group of stakeholders is influential, it does not show much interest in reforms. Its inconsistency and lack of political will to implement comprehensive reform measures do not allow to make necessary administrative decisions.

Large energy providers. Large state companies (NJSC "Naftogaz of Ukraine", EnergoAtom, Ukrenergo) and private holdings (DTEK and others) have major influence on the content of governmental decisions regarding energy industry regulation. This influence is especially felt in the issues of tariff setting and development of draft laws and strategic documents related to medium- and long-term growth of the energy industry and its related sectors.

Civil society organizations. Nongovernmental organizations and their experts are stakeholders with a great interest in reforms and relatively big influence on the decision-making process in the energy field. They ensured the necessary pressure on the responsible bodies of power demanding to accelerate the process of creating the legislative basis on energy efficiency and energy market development. These actors include: the Reanimation Package of Reforms, Civil Network "OPORA", the National Ecological Center of Ukraine, Association on Energy Efficiency and Energy Saving, DiXi Group, Bioenergy Association of Ukraine and others.

International organizations include: European Commission, IMF, Secretariat of the Energy Community, World Bank and others. This group of stakeholders is interested in reforms and has a considerable impact on authorities' decision-making. Their involvement in the development and implementation of reforms ensured that necessary legislative acts on energy efficiency and energy market development were adopted and enforced. However, there were cases when politicians manipulated public opinion and lobbied for questionable decisions, citing requirements of the international partners.

Recommendations for further action in 2017

Energy strategy. Under Ukraine's international commitments, the new Energy Strategy-2035 should be adopted in 2017. It should be presented in a clear way with well-defined objectives and a roadmap of sector development. It is also important to ensure the process of annual (or other determined frequency) update of the document in order to ensure its correspondence to current global trends, economic development, and attainment of set goals. The Ministry of Energy and Coal Mining or the Cabinet of Ministers should be designated as responsible parties for developing, adopting and updating (when necessary) and implementing the Energy Strategy.

Energy markets. It is essential to pass a number of laws and regulatory acts in 2017, particularly: bylaws to the law "On the electrical energy market"; the national plan to limit emissions of large incineration installations; the legislation on energy efficiency and improvement of investment climate; regulations on nuclear energy; the laws "On strategic environmental assessment" and "On assessment of environmental impact".

In addition, it is necessary to reconsider the plans to implement EU directives, taking into account realistic and grounded deadlines. Thereafter, it is important to determine clear accountability of certain officials in regard to their performance to avoid collective responsibility. It is also crucial to establish effective working connections between

advisory bodies and the secretariats of the responsible bodies of power.

Furthermore, it is imperative to start implementing short-term projects of technical integration of the Integrated Energy System of Ukraine with the energy system of the European Union. This will limit the existing monopoly on electricity generation until the launch of a free market by building direct current links or other solutions equal in implementation time.

Energy efficiency. To ensure further progress, it is vital to adopt legislation on energy efficiency of buildings, commercial audit of utility services, and full-fledged implementation of provisions of the Energy Efficiency Directive 2012/27/EC. Of critical importance is sufficient financing of energy efficiency measures. This can be accomplished by: 1) establishing a long-term active Energy Efficiency Fund; 2) prolonging the "Warm Credits" public support program for the coming years; 3) providing institutional mechanisms for monetization of subsidies to pay for housing and utility services; and 4) introducing energy management system at the level of cities and in budget-funded institutions. The government should pay appropriate attention to developing capacities of central and local bodies of power to shape and implement energy efficiency policy.

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Heat metering in Ukraine

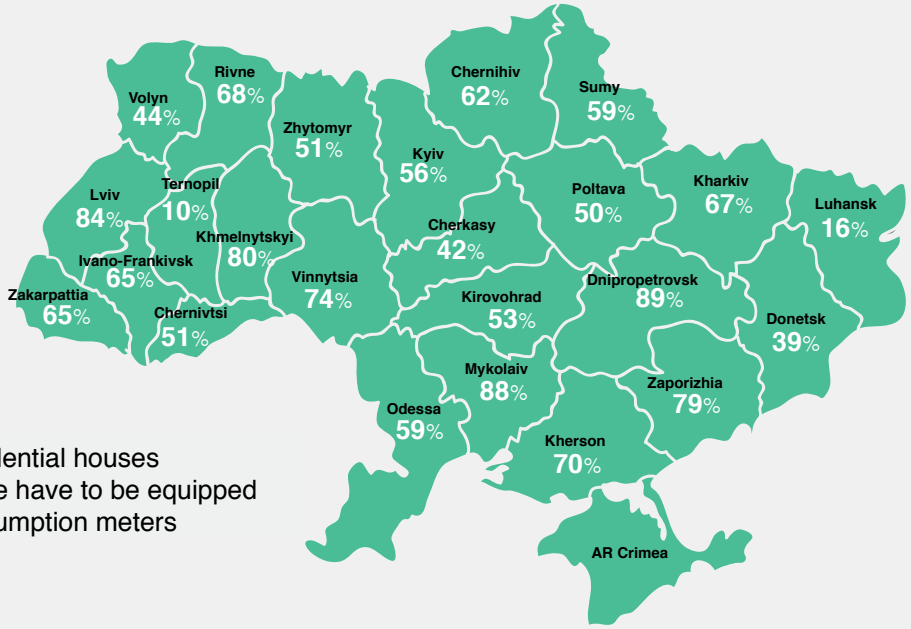
IF THERE ARE NO HEAT METERS:

- You pay the heating bills according to the fixed norms set by the government and calculated in proportion to a heated area
- You are forced to pay for excessive energy losses in heat pipelines
- You are victims of 40-percent increase of heating tariffs, as you have no influence on the cost of heating

ENERGY CONSUMPTION IS NOT CALCULATED IN UKRAINE

68.5% of buildings in Ukraine are equipped with heat meters

EQUIPMENT OF RESIDENTIAL AREAS WITH METERING TOOLS



81.374 residential houses all over Ukraine have to be equipped with heat consumption meters

Source: NECU, State Statistics Committee, National Public Utilities Commission

Infographics prepared within the project financed by the European Union and Air Pollution and Climate Secretariat. The contents is the responsibility of the authors.

Distributed for free.

INSTALLATION OF HEAT CENTERS

20% less to pay for heating

Energy saving will help to cut a heating bill by up to **50%**

Payments are made for high-quality heating, not for losses in heat pipelines

Transparent formation of heat tariffs

NECESSARY CAPITAL EXPENDITURE

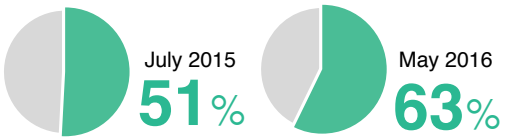
3 billion UAH is necessary to cover the entire country, with the price of installation of a heat meter in one building equal to **50 thousand UAH**

CONTRIBUTION FROM ONE FAMILY:

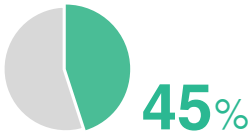
1.852 UAH — 27 apartments (three-story house) / OR / 320 apartments (sixteen-story house) — 156 UAH

it will pay off in **1-2 heating seasons**

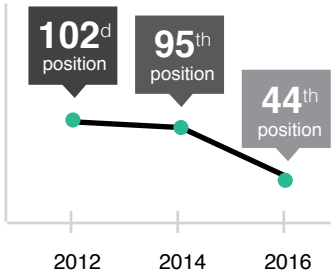
Environmental protection



number of people claiming they clean after their outdoor recreation *(Ilko Kucheriv Democratic Initiatives Foundation, Razumkov Center, May 2016)*



of Ukrainians are ready to sort household waste to improve the environmental situation *(Ilko Kucheriv Democratic Initiatives Foundation, Razumkov Center, May 2016)*



Ukraine's position in the Environmental Performance Index

Challenges and goals of public policy

In the course of the last several years, Ukraine has been occupying the lowest positions in global environmental rankings. Back in 2012 Ukraine occupied 102th position out of 132 countries according to the environmental performance index reflecting the efficiency of public policy in reducing the impact of the environment on human health and ensuring vitality of ecosystems and reasonable use of natural resources. In 2014, Ukraine managed to go up to 95th position out of 178 countries, and in 2016 – to 44th position out of 180 countries[1]. Despite the improvement of energy performance indicator, Ukraine still has many ecological problems that need to be addressed.

In 2016, Ukrainian population and environment often suffered from pollution of air, water and lands by emissions and waste of industrial and livestock enterprises. In particular, in Ternopil[2], Poltava[3], Cherkasy[4], and Ivano-Frankivsk regions the environment suffered from operation of pig farms and poultry farms. In addition, there were multiple cases of water resource contamination by industrial waste[5].

Given the tragedy at Hrybovychi landfill, the problem of municipal solid waste disposal became especially acute[6]. Presently, Ukraine buries in landfills 94% of its municipal solid waste[7]. Waste in Ukraine is not viewed as material and energy resource. Irrational and unauthorized use of natural resourced remained a topical problem in 2016: out of 29,243 criminal offences in the environmental sector registered in 2016 16,649 criminal proceedings were initiated in response to illegal loggings and 4,912 – in response to violation of the rules of subsurface resource use[8]. Continuing existence of the so called "Amber Republic" is another example of plundering subsurface resources.

The total sum of calculated losses inflicted to the state as a result of violating environmental legislation in 2016 comprises 735,823 UAH. Only the amount of 121,493 UAH was recovered.

Therefore, the main challenges that public environmental policy had to address in 2016 were as follows: environmental pollution by emissions and waste, illegal use of natural resources (loggings, subsurface resource use, etc.), problems with solid municipal waste disposal (removal of unauthorized landfills, sorting solid municipal waste, etc.) and hazardous waste (batteries, mercury lamps), compensation, mitigation and effective control of environmental damages (prevention of damage, determining the persons at fault, and holding them liable).

General goals of the public environmental policy are specified in the Law of Ukraine "On the main principles (strategy) of the public environmental policy of Ukraine by 2020"[9], under which the goals include raising the public environmental awareness, improving the environmental situation and environmental safety, assuring the environment is safe for human health, integrating the environmental policy and improving the system of integrated environmental management, preventing the losses of bio- and landscape diversity, establishing an environmental network, assuring environmentally balanced use of natural resources, and improving regional environmental policy.

The "European Ukraine" Coalition Agreement of deputy factions contains chapter 17, which recognizes the necessity to reform the state environmental management and integrate the environmental policy into other industry-specific policies. "Ukraine-2020" sustainable development strategy includes the environmental issues into the security vector and indicates the importance of development and implementation of the program for preservation of the natural environment. Under the Association Agreement, primary environmental challenge is the implementation of EU norms and standards[10]. Memoranda with the IMF focus on the issues of opening the land market, which would have a significant influence on the environment.

At the beginning of 2016, the Ministry of Ecology and Natural Resources of Ukraine declared such priorities as harmonization of the Ukrainian legislation with the European environmental law, inclusion of environmental protection requirements in the regional development programs as well as industry-specific and sector-specific policies, shaping and implementation of the public policy on climate change and adjustment to it, extension of protected areas to average European size, establishment of a national eco-network, reform of the waste and hazardous chemical substances disposal system, creation of an effective system of supervision[11] over adherence to the environmental legislation[12]. In April 2016, Ostap Semerak became the new Minister of Ecology and Natural Resources, which influenced the change of policy goals of the Ministry towards European integration and reform of environmental management system.

The State Ecological Inspection of Ukraine defined the following goals for 2016: establishment of a single supervisory body in the field of environment protection, improvement of supervision efficiency, and implementation of measures to prevent and combat corruption.

Consequently, the goals of the public environmental policy for 2016 were as follows: implementation of the Association Agreement, establishment of an effective system of control over observance of environmental legislation, reform of the waste and hazardous chemical substance disposal system, establishment of the national eco-network, as well as development and implementation of the public policy on climate change.

Civil society of Ukraine sees environmental challenges in ensuring safety of water and food products, available recreation spots (green areas in the cities, objects of the nature reserve fund, access to river banks, etc.), cheap energy, as well as control over the use of natural resources, e.g. amber, wood, water and others. In view of the abovementioned challenges, RPR Roadmap of Reforms determines the following principal goals regarding the environment: environmental management (effective, accountable, supervised European system of environmental management and sustainable use of natural resources), sustainable development, unavoidable responsibility for violations in the field of environment protection and enforcement of environmental legislation.

Implementation of public policy

Analyzing public environmental policy, it is important to note several underlying trends. The state, on the one hand, does a lot in this respect involving international assistance. However, this has not yet yielded tangible results that could prove effective implementation of the set policy goals.

Implementation of the Association Agreement: environmental management and integration of the environmental policy into other industry-specific policies. Under the Association Agreement, in the field of environmental management procedures for environmental impact assessment and strategic environmental assessments are to be introduced. At the end of 2016, the Parliament adopted the Laws "On assessment of environmental impact" and "On strategic environmental impact", which resulted from the efforts of the Ukrainian and European experts, central bodies of power, and members of the Ukrainian Parliament. However, the President of Ukraine vetoed these laws. Presently, the work on improvement and repeated adoption of the laws continues. Thus, in 2016, the procedures of environmental impact assessment and strategic environmental assessment were not introduced.

Air quality. At present, the Ministry of Ecology and Natural Resources and the Cabinet of Ministers keep working on the implementation of air directives: special inter-department groups continue their meetings. In addition, draft regulatory acts aimed at monitoring the quality of air and the development of plans to improve air quality[13] are being developed.

Waste and resource management. In order to implement the waste management directives, a draft National Waste Management Strategy[14] and a draft of the new version of the law of Ukraine "On Waste" were developed in 2016. The work on the draft National Waste Management Strategy and other regulatory acts continues[15]. Seventeen laws related to waste management have been submitted to the Parliament for consideration.

Water quality and water resource management, including the marine environment. On October 4, 2016, the Verkhovna Rada adopted the Law of Ukraine "On amendments to several legislative acts of Ukraine regarding integrated management of water resources under the basin principle". The Ministry keeps working on the development of secondary legislation (bylaws of the Cabinet of Ministers, orders of the Ministry of Ecology and Natural Resources, methodological guidelines, etc.) to implement the Law of Ukraine regarding integrated management of water resources under the basin principle and develop a concept to optimize the functions and tasks of territorial subdivisions of the State Agency for Water Resources of Ukraine and basin authorities in the part of introducing integrated water resource management. At the same time, insufficient attention of the authorities is paid to proper treatment of waste waters at treatment facilities, control over dumping, etc.

In addition, in 2016, the "Program of Hydropower Industry Development by 2026" approved by the Resolution of the Cabinet of Ministers of Ukraine No. 552 of July 13, 2016 "On approval of the Program of Hydropower Industry Development by 2026" was developed. The Program envisages construction and extension of capacities of the pumped storage units (PSU), particularly Dnistrovska, Kanivska, Tashlytska ones, and construction of hydroelectric power chain on Dnister river within three national nature parks. Meanwhile, environmental assessment of Program impact on water resources and the environment in general was not conducted in the course of program development.

In the first quarter of 2017, executive authorities adopted a number of acts in the respective field:

- Resolution of the Cabinet of Ministers No. 205 of March 29, 2017 "On approval of the procedure of using budget funds allocated to the development and improvement of environmental condition of irrigation and drainage systems";
- Resolution of the Cabinet of Ministers No. 126 of March 10, 2017 "On appointment of the commissioner for collaboration on boundary waters and their deputies";
- Decree of the Ministry of Ecology and Natural Resources No. 26 of January 26, 2017 "On approval of the procedure of developing water balance";

- Decree of the Ministry of Ecology and Natural Resources No. 233 of January 26, 2017 "On approval of the model provisions on basin councils";

- List of contaminating substances to determine chemical state of surface and ground water massifs as well as environmental potential of artificial or substantially altered surface waters adopted by the order of the Ministry of Ecology and Natural Resources.

Preservation of biodiversity. In 2016, the Law of Ukraine "On amendments to several legislative acts of Ukraine regarding animal life protection" was adopted. In particular, it stipulates the announcement of the "silent season" by the local governments in May-June in the areas of most active breeding, strengthening protection of animal habitats in the objects of nature reserve fund, prohibition of use of electric foiling, loops, self-activating traps and crossbows to hunt animals. In addition, a draft methodology for mapping habitation was developed and 270 potential objects of the Emerald Network Europe in Ukraine to preserve rare and endangered natural habitats, species of flora and fauna, which are subject to protection under the Berne Convention, were determined. Today, a specialized draft law containing the provisions of the Bird and Habitat Directive regarding preservation of separate species and habitats and establishment of a system of conservation areas is being developed.

Industrial pollution and manmade threats. To implement the Directive No. 2010/75/EU on industrial emissions, the Ministry of Ecology and Natural Resources established a task force on March 24, 2016. A draft concept of environmental permits reform and a draft law "On the system of environmental permits" were elaborated. The Ministry is finalizing the concept of environmental permits reform and the draft law "On integrated permits" (or "On the system of environmental permits"), developing the methodology for identification of main industrial pollutants and the less-polluting production facilities, shaping the list of economic activities of the main polluting and less-polluting production facilities, and taking stock of the main operating polluters.

To implement the regulation of the Cabinet of Ministers No. 803-p of October 5, 2016 "Certain issues of preventing corruption in the ministries and other central executive authorities" within the corruption prevention project of the government-civic initiative "Together Against Corruption" initiated by the Reanimation Package of Reforms, the Ministry of Ecology and Natural Resources cooperates with the public on the creation of a single unified electronic system for accessing information about permits, reports, and materials of environmental audits, which is the priority anticorruption measure for the Ministry[16].

Climate change and ozone layer protection. To implement the requirements of the Association Agreement in the part of climate change, the Ministry of Ecology and Natural Resources prepared the Concept of Implementation of the Public Climate Change Policy of Ukraine, which envisages elaboration of strategies of low-carbon development and adjustment to climate change in Ukraine. It is planned to be implemented in 2016-2030. The Concept was approved at the Cabinet of Ministers meeting of December 7, 2016.

Meanwhile, the medium-term plan of priority actions of the government by 2020[17] and the Energy Strategy of Ukraine by 2030 stipulate further extraction and use of fossil fuels. Not enough attention is paid to the development of renewable energy sources, particularly ones that pose the least threat for the environment.

In the part of implementation of EU Directives concerning the ozone layer, the Ministry of Ecology and Natural Resources developed a draft national concept for elimination (destruction) of waste of ozone depleting substances, as well as the draft law of Ukraine "On ozone layer protection", which stipulates prohibition to use controlled substances. At present, the work on the improvement of this draft law to incorporate the provisions of Regulation

(EC) No. 842/2006 on certain fluorinated greenhouse gases is in progress.

Genetically modified organisms. With a view of implementation of the Directive No. 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms and the Regulation of the European Parliament No. 1946/2003 on transboundary movements of genetically modified organisms, the Ministry of Ecology and Natural Resources of Ukraine developed a new version of the draft law "On the state system of biosafety in the process of creation, testing, transportation and use of genetically modified organisms." The draft law is currently undergoing inter-departmental approval.

Thus, to fulfil the requirements of the Association Agreement in the part of environmental protection, state authorities established a number of working groups and developed drafts of regulatory acts. At the same time, almost no regulatory acts aimed at implementing EU legislation and standards into the national environmental legislation were passed or came into force in 2016.

Creation of an effective system to enforce environmental legislation. On October 13, 2016, the Ministry of Ecology and Natural Resources of Ukraine presented the Concept of Reform of the State Environmental Control[18], which envisages the establishment of the State Environmental Service of Ukraine (State Agency for Environmental Safety) to replace the State Ecological Inspection of Ukraine.

At the same time, even though the state set a goal to create an effective system of environmental control, the Concept foresees cancellation of scheduled inspections of small and medium businesses whose activity has a negative impact on the environment.

On November 3, 2016, the Verkhovna Rada adopted the Law "On temporary peculiarities of state supervision (control) in economic activity"[19], which imposed a moratorium on scheduled measures of state supervision (control) over economic activity by the state supervision bodies by December 31, 2017. Extraordinary inspections may be held in exceptional cases, in particular, based on a grounded petition of an individual concerning violation of their legal rights by an economic agent upon consent of the State Regulatory Service. This virtual cancellation of scheduled inspections and complication of the procedure of extraordinary measures undermines the institute of environmental control, makes cessation and prevention of harm to the environment, health and life of people impossible, and contradicts the purpose of effective environmental control system.

Use of natural resources. The use of natural resources is directly related to the state policy on enforcement of environmental legislation. Meanwhile, effective measures that would put an end to illegal amber mining, logging, violation of the rules of protection and use of other natural resources have not been taken in 2016. In addition, in 2016, state authorities themselves violated the requirements of the legislation on protection and use of natural resources. Particularly, in October 2016, upon the request of the Ministry of Defense of Ukraine, "Shans-2016" Private Company tilled virgin lands, which since 2012 have been a landscape reserve of local significance "Tarutynskyi steppe" and ruined 1,200 hectares of especially valuable lands inflicting damages for an amount of 54 billion UAH.

In 2016, public policy was mainly aimed at implementing preparatory measures to fulfil the Association Agreement, and EU Directives and Regulations on environmental issues. At the same time, the problems of inefficient state environmental control, problems with hazardous waste, illegal use of natural resources, waste management, particularly solid waste management, failed to get off the ground. The state should primarily focus not only on implementation of the European legislation and fulfilment of EU requirements, but on the creation of an effective system of environmental control and establishment of the institute of supervision, which would provide for environmental safety and sustainable development of Ukraine.

Stakeholders and their impact on policy implementation

The Verkhovna Rada of Ukraine and Committee on Environmental Policy, Use of Natural Resources, and Liquidation of aftermath of the Chornobyl Disaster keep playing a decisive role in the environmental reform. MPs – members of the specialized committee, including Committee Secretary Ostap Yednak, prepared the respective draft laws and conducted an awareness campaign among MPs, which resulted in adoption of two environmental laws in October 2016.

President of Ukraine. On October 31, 2016, Petro Poroshenko vetoed the laws "On environmental impact assessment" and "On the strategic environmental assessment", adopted in the same month, having sent them back to the parliament along with his proposals. However, these proposals are not specific enough, which means that they cannot be adopted unless the committee reviews them thoroughly.

Ministry of Environment and Natural Resources has facilitated the reform. However, it does not have a critical influence on the decision-making of the Cabinet of Ministers of Ukraine in the sphere of environmental protection.

Ministry of Defense of Ukraine has destroyed the objects of the nature reserve fund of Ukraine. One of the reasons is that the Ministry did not know about their existence: its outdated maps printed back in the USSR do not account for the changes that happened since Ukraine became independent.

Non-government environmental organizations have been guiding environmental reform. RPR experts have contributed to the development of the legislation, joined working groups set up under the Ministry of Environment and Natural Resources, initiated strategic judicial proceedings, etc.

International organizations and technical assistance programs have been supporting the environmental reform. The EU-funded project "Support to Ukraine in approximation of the EU environmental acquis", launched in 2015, helped to prepare the key draft laws endorsed by the parliament in 2016.

Recommendations for further action in 2017

As of the end of 2016, the implementation of the set goals got almost nowhere. 70% of enterprises are not inspected by the state environmental inspection. The condition of environment is not monitored. The strategy of developing hydropower industry by 2020 was adopted without assessing its environmental impact. The woods are massively logged, amber is illegally extracted, and treatment facilities fail to cope with the treatment of the polluted sewage runoffs.

To prevent further aggravation of these threats, it is crucial to develop a detailed plan of public policy implementation.

In the institutional dimension, it is necessary to reform the State Ecological Inspection by establishing a new environmental supervisory body, extending its powers, staff, facilities and resources, ensuring monitoring, control and forecast of the state of the environment, as well as institutional capacity of the Ministry of Ecology and Natural Resources.

In addition, it is necessary to introduce a single environmental information system, cadaster system of all natural resources, plans of river basin management and investment mechanisms to finance green businesses. The Strategy of Waste Management in Ukraine requires adoption.

The adoption of the Laws of Ukraine "On environmental impact assessment" and "On strategic environmental assessment" should become a priority, for it would allow bringing the environment protection issues to a new strategic level that would correspond to Ukraine's "environmental safety" vector of the development.

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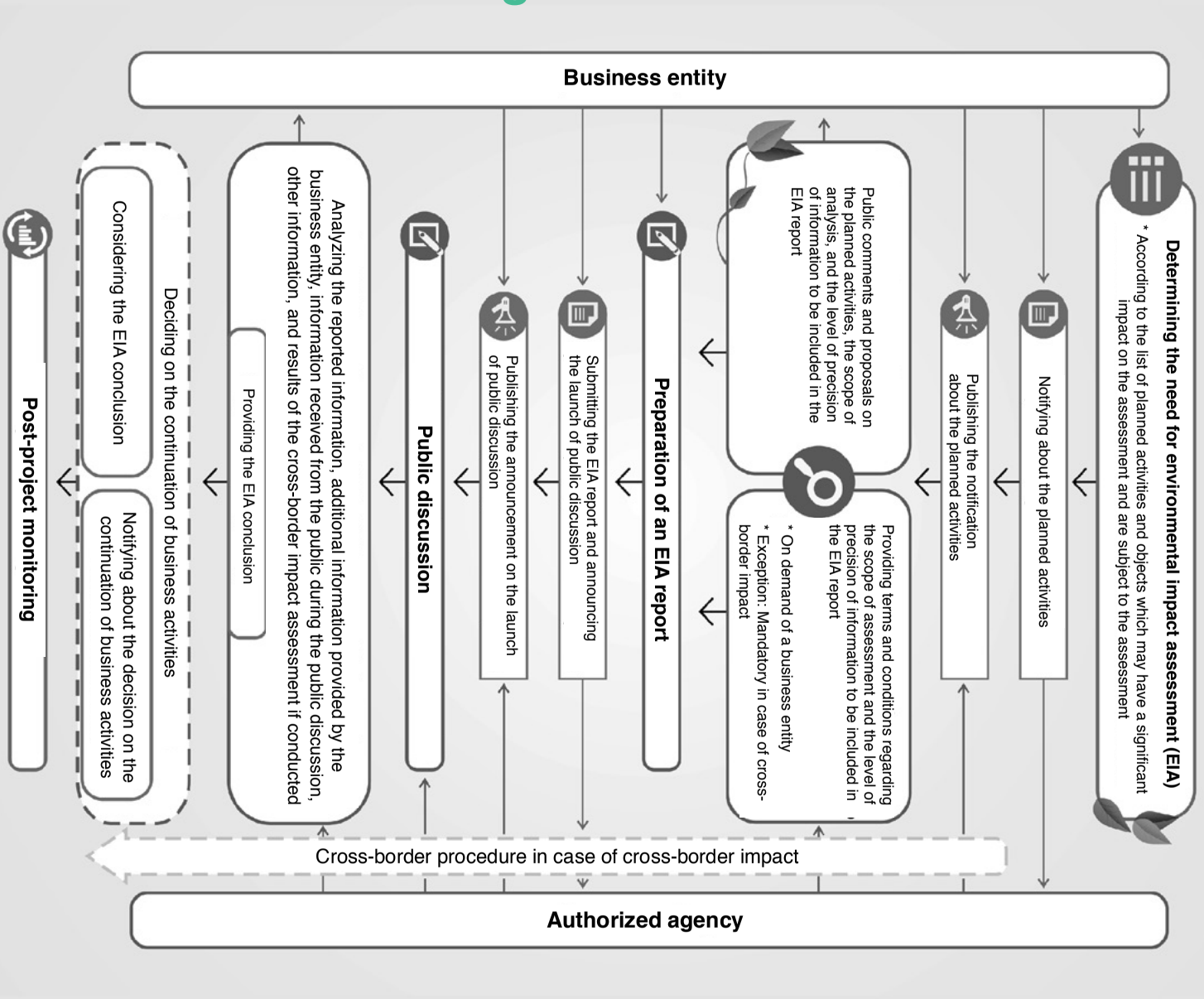

European integration in the field of environmental assessment: EIA and SEA. – Kyiv, 2017

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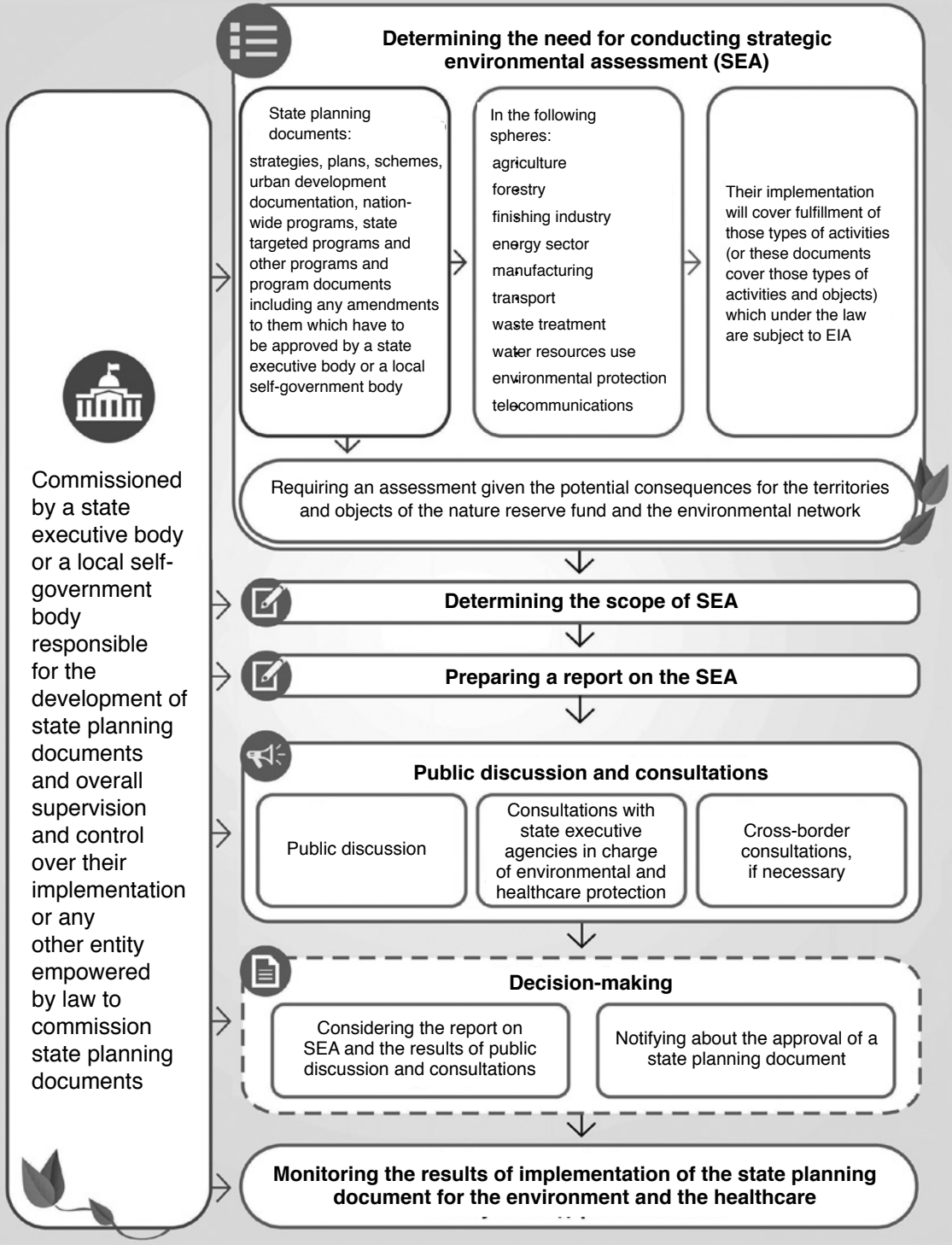

Reform achievements of RPR coalition members

Experts of the Reanimation Package of Reforms not only prepare dozens of draft laws, but also encourage the authorities to execute them in a timely and sustainable manner, ensuring the implementation of reforms.

A number of reformist changes that have occurred since the Revolution of Dignity due to the work of organizations – members of the RPR are already tangible for Ukrainian citizens.

Formation of an independent system of agencies in charge of investigating high-profile corruption: the National Anticorruption Bureau and the Specialized Anticorruption Prosecutor's Office. *(Anti-corruption Action Center)*

Launch and maintenance of the online system of public procurement Prozorro. *(Transparency International Ukraine)*

Launch of the National Agency for the Prevention of Corruption, introduction of the system of state financing of political parties and public monitoring of the transparency of party finances. *(Centre "EIDOS", Transparency International Ukraine, Centre of Policy and Legal Reform)*

Introduction of electronic system for disclosure of assets, income, and expenditures of public officials. *(Anti-corruption Action Center, Centre "EIDOS", Transparency International Ukraine)*

Development of the legislative framework and assistance with the amalgamation of territorial communities, considerable expansion of their financial and administrative capabilities. *(Civil Society Institute, Ukrainian Center for Independent Political Research)*

Establishment of the market price for gas for the consumers, which has paved the way for introducing market relations in this field. *(Civil Network OPORA, DiXi Group, All-Ukrainian Sustainable Development and Investments Agency, Association "Energy Efficient Cities of Ukraine", Network of Energy Innovations "Greencubator", National Ecological Centre of Ukraine, Association on Energy Efficiency and Energy)*

Delegation of the Healthcare Ministry's functions related to the procurement of medicines to well-known international organizations (UNDP, UNICEF, Crown Agents), which resulted in the increased competition, lower purchasing prices, and savings amounting to UAH 760 million. *(Anti-corruption Action Center)*

Making governmental databases on the owners of real estate, land plots, and transport vehicles public. Formalizing a new EU practice of mandatory disclosure of information about the ultimate beneficiary (controller) of a legal entity in an open governmental registry. *(Anti-corruption Action Center)*

Participation in the development of constitutional and legislative amendments within the judicial reform, in particular aiming at cleansing the judicial system of professionally unethical judges; establishment of the Public Integrity Council. *(Centre of Policy and Legal Reform)*

Providing a legislative framework to ensure functioning of electronic petitions to the authorities or local self-government bodies. *(Centre for Innovations Development at NaUKMA)*

Launch of the civil service reform: separation of political and administrative offices, introduction of an institute of state secretaries. *(Centre of Policy and Legal Reform)*

Establishment of a public broadcaster – the National Public Television and Radio Broadcasting Company of Ukraine – based on the principles of independence from authorities and accountability to the public. *(Center for Democracy and Rule of Law, Detector Media)*

Introduction of annual disclosure of the property structure and ultimate beneficiaries of television and radio channels. *(Center for Democracy and Rule of Law, Detector Media)*

Introduction of a comprehensive system of identification, management, and disposal of seized and confiscated illegally-acquired assets. *(Anti-corruption Action Center, Transparency International Ukraine, Centre "EIDOS")*

Active involvement in the implementation of reforms within the Visa Liberalization Action Plan with the EU. *(Anti-corruption Action Center, Transparency International Ukraine, Institute of World Policy, Europe Without Barriers, Institute for Euro-Atlantic Cooperation, Centre "EIDOS", Centre of Policy and Legal Reform)*

Unblocking the launch of a competitive market of third-generation mobile technologies 3G.

Launch of the system of public finance transparency, assistance with the development and launch of "E-Data", a unified web portal on the use of public funds. *(Centre "EIDOS")*

NGOs-members of the RPR

AgroReformsUA

All-Ukrainian Association of Small and Medium Businesses “Fortress”

All-Ukrainian Sustainable Development and Investments Agency

Anti-corruption Action Center

Association for Community Self-organization Assistance

Association for Support of Defense of Ukraine

Association “Energy Efficient Cities of Ukraine”

Association of Ukrainian Human Rights Monitors

Association on Energy Efficiency and Energy Saving

Bureau of Ecologic Investigations

CASE-Ukraine

CCC Creative Center

Charitable Foundation “Right to Protection”

Center of Reform Support

Center for Democracy and Rule of Law (CEDEM)

Centre of Policy and Legal Reform

Centre for Economic Strategy

Centre for Innovations Development at NaUKMA

Centre for Political Studies and Analysis “EIDOS”

Centre for Research of Liberation Movement

Centre UA

Chamber of Tax Advisors

Civic Organizacion «Center For Economic Research And Forecasting»

Civil Network OPORA

Civil Society Institute

Civil Society Online

Coalition of Civic Organizations “For Sober Ukraine”

Committee of Voters of Ukraine

Congress of Cultural Activists

CrimeaSOS

Cultural Assembly

DeJure Foundation

Detector Media

Development and Security Association

DiXi Group

Easy Business

Environment-People-Law

Election Law Institute

Europe Without Barriers

Foundation of Regional Initiatives (FRI)

Forum "Health"

Ilko Kucheriv Democratic Initiatives Foundation

Initiative E+

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Institute for Euro-Atlantic Cooperation

Institute of Social and Economic Transformation

Institute of World Policy

Internews Ukraine

Interns' League

LEAD Office

Life

MAMA-86

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Network of Energy Innovations "Greencubator"

"No Bribery" Movement

Partnership for Every Child

PLAST – National Scout Organization of Ukraine

Podolian Agency for Regional Development

Regional Press Development Institute

Rodyna

Transparency International Ukraine

Ukrainian Center for Independent Political Research

Ukrainian Centre for European Policy

Ukrainian Forum of Philanthropists

Ukrainian Homeland Defence Support Movement

Ukrainian Insurance federation

Ukrainian Science Club

Ukrainian Archaeologists Association

Union of Ukrainian Youth in Ukraine

Vostok-SOS

Youth Nationalistic Congress

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Edited by: Vadym Miskyi

Team of contributors:

Andriy Baranov, Natalia Best, Tetiana Boiko, Olha Hamankova, Andriy Hevko, Volodymyr Dybrovskyi, Artem Zakharov, Yevhen Krapyvin, Roman Kuibida, Oleksandr Liemienov, Ivan Lukerya, Vadym Miskyi, Roman Nitsovych, Serhiy Ponomariov, Olena Prokopenko, Yevhen Radchenko, Maria Repko, Igor Rozkladaj, Dmytro Romanovych, Ksenia Serdiuk, Serhiy Soroka, Tetiana Tevkun, Taras Tkachuk, Yulia Cheberiak, Zoriana Chernenko, Ruslan Chornyi, Anna Shumeiko, Dmytro Yablonovskyi, Oleksandr Yabchanka.

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Sofia-A Publishing Center.
04053, Kyiv, 12-B Observatorna Street.

6 Olhynska Street, 2nd floor, office 21, Kyiv, Ukraine

+38 067 401 20 48

platforma.reform@gmail.com

www.rpr.org.ua