

## Public Administration Reform in Ukraine: Hurdle Race with a Slow Start

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Launched in 2015 after the Revolution of Dignity, Ukraine's public administration reform is a serious attempt to overhaul the existing system based on recognized European principles. However, its implementation has been patchy due to various obstacles including poor leadership and resistance to change. To tackle these drawbacks, it is important to establish a reform task force led by the prime minister and improve legislation. Support from Germany and Europe will also be decisive for the reform's success.

Ukraine is currently undergoing a substantial process of state-building and post-communist transformation. The country's success or failure in implementing crucial reforms following the Revolution of Dignity (2013-2014) will have profound implications not only for the future of Ukraine, but also for the entire post-Soviet region. The failure to undertake crucial reforms in Ukraine would undermine the confidence and power of reform-minded forces in other post-Soviet countries, and serve as an evidence that the EU and other Western actors are not capable of supporting transformation in countries covered by the EU Association Agreements.

Public administration reform is one of the most central reforms in this respect, as it addresses the country's strategic management and implementation capacity – an area where the track record hitherto has been lamentable. Before any bills are brought to parliament, they have to fit into the broader strategy of reforms and meet international commitments. In other words, they have to be the product of public policy-making and policy analysis, aspects that the Ukrainian government has so far lacked. Ministries have traditionally been preoccupied with producing regulatory acts on an ad-hoc basis and managing state property, while budgetary planning did not exceed beyond one year.

Moreover, the implementation of laws is crucial. Experts argue that the adoption of laws in parliament only accounts for 5 percent of success.<sup>1</sup> For the reformist laws to bring about real change, the government has to pass a number of by-laws and ensure their implementation. It is at this stage that resistance to reform is particularly strong, due to lack of capacity, sabotage on the part of old-guard civil servants, or vested interests of those who reap the benefits of the old rules and lack of public attention.

All these require a capable and professional civil service. In other words, institutions, procedures and people all equally matter for the reform to succeed. The present paper argues that, for the first time since Ukraine's independence, the country has managed to launch a reform aimed at producing a new caliber of public administration. However, the usual drawbacks of Ukrainian policy-making – such as the lack of adequate legislation, poor political leadership, the interference of informal networks in the recruitment process, and resistance on the part of old-guard bureaucracy – are accountable for the failures and slow pace of reform to date.

## Overhaul of the Old Post-Soviet System: Institutions and Human Resources

The idea of public administration reform is not new to Ukraine. Numerous Ukrainian governments in the past announced such a reform, with the most prominent waves under President Leonid Kuchma from 1997 to 1998, and under President Viktor Yanukovich from 2010 to 2011. In the first case, the comprehensive concept of public administration reform was passed, which envisaged the reform of the central executive authorities, civil service, territorial-administrative reform and local self-governance.<sup>2</sup> In the latter case, 112 central executive authorities were reorganized into 72.<sup>3</sup> Neither of these attempts, however, went beyond superficial legal and institutional modifications, and failed to bring substantial changes to the old central command system which embodied the Soviet legacy.<sup>4</sup>

The reform launched in 2015, however, goes to the very core for the first time. It aims at dismantling the old system and introducing a new system based on European and international good governance principles. The respective principles are well elaborated by the initiative “Support for Improvement in Governance and Management” (SIGMA), a joint program of the EU and the Organization for Economic Cooperation and Development (OECD). First launched in 1992 to support EU candidate countries in strengthening public management, it was extended to cover the European Neighborhood countries in 2008.<sup>5</sup>

Comprehensive public administration reform in Ukraine includes the following pillars:

- Decentralization
- Reform of the cabinet of ministers and central executive authorities (ministers, services, agencies, etc.)
- Civil service reform
- Administrative services system reform
- Public finance management system reform

While decentralization, itself a highly complex process, stands somewhat separately, the latter four pillars are the subject of the Strategy of Public Administration Reform in Ukraine for 2016-2020, which was adopted in June 2016.

This study focuses on the reform of the central executive authorities and the cabinet of ministers as well as the civil service reform. As foundations of the country’s strategic management and implementation capacity, the two are closely linked, since institutional reform can only succeed if institutions are staffed with capable personnel. Importantly, it is aimed at the government’s ability to shape and implement policies that have clear objectives with existing (albeit usually limited) resources. It is also

about a clear delineation of functions among the ministries and other central executive authorities. Ideally, the ministers should only be responsible for policy-making, shaping, and analysis, and outsource such tasks as the management of state property, public services and inspections to other agencies. According to the Better Regulation Delivery Office,<sup>6</sup> over 95 percent of regulatory acts in Ukraine have no clear objectives, demonstrating that the central executive authorities’ work has invariably been process- rather than results-oriented. This is precisely what the reform aims to change, along with establishing a professional civil service which is independent from political and particularistic interests.

## Current State of the Reform Reform of the Central Executive Authorities

One of the key objectives of the public administration reform is the capacity-building in ministries to improve the government’s efficiency and decision-making. Central to this objective, thus, is the reform of the ministries and the secretariat of the cabinet of ministers. The idea behind this is that the ministries should be responsible for the full cycle of forming and implementing public policy, while the powers of each ministry should be clearly defined and cover all policy areas that fall within their remit.

In that vein, the cabinet of ministers announced in May 2017 to create special directorates – which were designed to be reform enclaves – in the secretariat of the Cabinet of Ministers, ten pilot ministries, and two agencies. Other ministries and state agencies would follow at a later stage. This idea of creating a new structure parallel to old institutions instead of reforming the latter had already proven successful in Ukraine. Prominent examples include the newly created online public procurement system ProZorro and the National Anti-Corruption Bureau (NABU):<sup>7</sup> ProZorro, fully implemented in 2016, accounts for about 10 percent of the overall public spending savings due to increased competition and better transparency.<sup>8</sup> NABU, too, can point to achievements since its inception in late 2015, as it completed the pre-trial investigation and submitted to the court some 130 cases of high-level corruption with an estimated damage of four billion hryvnia (ca. 1.3 billion euros).<sup>9</sup>

Each of the pilot ministries was to be responsible for five to seven policy areas or public policies, which, in turn, would be supervised by newly established individual policy directorates. Additionally, directorates of strategic planning and European integration were created in each ministry, tasked with coordination, policy prioritization and strategy development. Ministries in

charge of the following high-priority policy areas were selected: healthcare, finance, agriculture, education and science, infrastructure, culture, including religious and inter-ethnic relations, regional development, decentralization and municipal services, justice, social policy, and energy. The two respective state agencies deal with civil service and e-governance. Altogether, fifty new directorates were created. Simultaneously, the secretariat of the cabinet of ministers acquired new roles and functions, and is now responsible for producing analyses and ensuring the coherency of government actions (compatibility across policy areas) – an aspect which had hitherto been largely missing.

### Civil Service Reform

The civil service reform followed the logic that in order to work in a novel way, new institutions require new personnel. Traditionally, Ukraine does not lend itself to social advancement or social mobility. Talented and qualified professionals, including those educated in the West, were routinely excluded from leadership positions in public institutions if they did not have prior experience in the sector. Given little choice but to begin climbing the career ladder from the lowest level, most opted to remain outside of the sector. Although top officials promised change following the Orange Revolution in 2004, actions did not follow until after the Revolution of Dignity ten years later. With the appointment of new reformist ministers in December 2014, the first wave of young professionals joined the ministries, with many more following suit in 2018 to work in the newly established directorates. A second problem arises from the notoriously low salaries which results in poor professional standards among civil servants in Ukraine. They are not competitive on the market and lack integrity due to low remunerative incentives.

As working in the civil service was not particularly appealing, young and ambitious professionals often preferred the private sector, civil society, offices of international organizations operating in Ukraine, or an employment abroad. With the new reform, this situation began to shift as young hires with Western education were selected for newly created directorates.<sup>10</sup> In December 2015, the Ukrainian parliament, the Verkhovna Rada, adopted the Law on Civil Service, which entered into force in May 2016 and laid the foundations for the subsequent reform. Among other things, the reform separated political and civil service levels in the ministries by introducing the positions of state secretaries – the highest non-political post in the ministries. In 2016 and 2017, competitive tenders were announced and state secretaries were recruited and appointed in all ministries and the cabinet of ministers.

Simultaneously, the selection process started for positions in the new directorates. To ensure the recruitment of new high-quality personnel, the cabinet of ministers had adopted the concept of introducing “reform professionals”<sup>11</sup> back in November 2016.

In addition, a comprehensive portal with job announcements was created,<sup>12</sup> and new competent civil servants were selected through competitive procedures which required them to make analytic and strategic calculations. As a result, a “new” type of a civil servant emerged, intended not merely to be a manager but also an analyst who understands the problems of society and is capable of delivering optimal solutions with limited resources. Moreover, they were to be proactive, unlike the previous generation of civil servants who strictly followed procedures and tended to remain passive when a procedure was missing. As of May 2018, some 600 reform professionals out of 3000 envisaged by the strategy were employed. Roughly one half were civil servants and the other half external recruits.<sup>13</sup> All candidates were required to pass the same competitive selection procedure.

In short, two major practical elements both of the reform of the cabinet of ministers and central executive authorities and the civil service reform have been implemented: the separation of political and civil service levels by appointing state secretaries, and the creation of reform enclaves represented by reform directorates, staffed by professionals selected through genuine competition. These changes are aimed at safeguarding the institutional memory of the central executive authorities and the independence from political influence. They also represent an attempt to expand the work of ministries from producing regulations and managing state property to include public policy-making in the respective policy areas. That said, it is yet too early to assess the implications of the reform on the quality of public policy-making.

### The Role of the Western Actors

Importantly, the European Union has played a crucial role in advancing the reform, whose funding has allowed the OECD and the World Bank to provide advisory services and analytical work for the Ukrainian authorities. Apart from providing such technical assistance, the EU has increasingly demanded that the Ukrainian government implement the reform appropriately. The concept of reform professionals was, for instance, adopted as part of the EU’s conditionality. After the Law on Civil Service was passed in 2015, the EU pledged 104 million euros to support Ukraine’s public administration reform, including the salaries of reform professionals. However, this was accompanied by the condition that these positions

be properly institutionalized, and only after Ukraine fulfilled this condition did the EU disburse the initial tranche of 10 million euros.<sup>14</sup>

## Obstacles for the Reform

To date, reform progress has been slow and marked by drawbacks. According to the most recent analysis of the civil society initiative Reanimation Package of Reforms (RPR), some 47 percent of actions envisaged by the strategy of public administration reform had been implemented by the end of March 2018.<sup>15</sup> This record is hardly worthy of note. On the other hand, as SIGMA experts stated in a report in June 2018, the plans might have been too ambitious.<sup>16</sup> Indeed, in the illustrative words of one interviewee, the undertaking was “like repairing a car while driving it.”<sup>17</sup> The challenge is that the deeply rooted old system needs to be entirely replaced with a new one – a mammoth task which requires not only time, but also political will, leadership, consensus among key players, resources, and pressure from the outside.

One typical problem is the insufficient and inadequate legal basis which becomes apparent as adopted laws progress in practice. For instance, the Law on Civil Service prohibits changes to the existing structures of civil servant staff, such as the number or hierarchy of personnel for certain posts. Examples abound where a legal basis for certain procedures is questionable at best and lacking altogether at worst. The Laws on the cabinet of ministers of Ukraine or on the central executive authorities require various amendments. A law that would transfer some of the power from the cabinet of ministers to ministers and other central executive authorities by the end of March 2018 was not drafted at all. Therefore, for the reform to continue, modifications to existing laws must be made and new laws passed. In this respect, SIGMA rightly indicates that because the majority of bills in Ukraine are initiated by members of parliament rather than government, they do not pass the usual quality control mechanisms and scrutiny that bills prepared by the government do; moreover, they are not a part of a larger strategy.<sup>18</sup>

Poor political leadership is a further problem. The Coordination Council, established in May 2016 and consisting of high-level officials and two civil society representatives under the chairmanship of the minister of the cabinet of ministers, failed to play such a role. Its meetings were irregular, and it failed to establish a necessarily degree of authority to enforce its decision onto the cabinet of ministers and ministries.<sup>19</sup> Although the four pillars of the Strategy of Public Administration Reform in Ukraine mentioned above all have their respective leaders (see

Box), it seems that unless the prime minister intervenes and takes the lead, reform progress will be too slow and its cohesion seriously affected. Since April 2017, the RPR has been calling on the authorities to establish a high-level task force of reform, headed by the prime minister and including representatives of ministries, parliament, and Ukrainian as well as international experts. Among the risks that have potentially discouraged Prime Minister Volodymyr Groisman to take the lead are the lack of a strong and cohesive team on which he could rely, the lack of determination to prioritize the reform, and the fear to face strong resistance which could crash the reform efforts and jeopardize his political power.<sup>20</sup> This might be especially true today, on the eve of presidential and parliamentary elections in Ukraine in 2019.

### Leaders of the Four Pillars of the Strategy of Public Administration Reform in Ukraine, 2016-2020

- Oleksandr Sayenko, Minister of the Cabinet of Ministers: Reform of the cabinet of ministers and central executive authorities
- Kostiantyn Vashchenko, Head of National Agency on Civil Service: Civil service reform
- Pavlo Petrenko, Minister of Justice: Reform of the system of administrative services
- Oksana Makarova, current Acting Minister of Finance: Public finance management system reform

Despite the relative competitiveness and transparency of the selection procedures, informal networks still seem to prevail. Civil society experts criticized the outcome of the selection of state secretaries, and pointed to violations of the selection procedures which allowed candidates to be selected by vested interests. For instance, in December 2016, the Minister of Infrastructure Volodymyr Omelianand, and Acting Healthcare Minister Uliana Suprun spoke at a joint press conference to denounce the appointment of state secretaries in their respective ministries, emphasizing the candidates' links to the old system.<sup>21</sup> According to investigations conducted by Radio Free Europe in November 2016, the selected state secretaries of the Ministry of Interior, Oleksii Takhtai, and of the Ministry of Infrastructure, Andriy Galushchak, had been involved in corrupt schemes.<sup>22</sup> Mykola Vygovsky, coordinator of the civil society monitoring mission DobroChesno, who observed the process of selection, revealed that most members of the selection committee were not independent, but controlled either by the presidential administration or the cabinet of ministers. He also described

a method to bypass the rule of anonymity for a written exam so that selection committee members could vote for their preferred candidates.<sup>23</sup> Thus, in many cases, personnel from the old system were selected for the positions of state secretaries, which flies in the face of the idea to attract “fresh blood” from outside.<sup>24</sup> Low publicity and poor advertisement of the competition were further causes for failing to attract a larger number of external candidates. The situation improved later during the recruitment for the reform directorates, not least due to greater publicity and improved selection procedures which included the introduction of video recordings to the selection process and the shift away from individual grading to collective consensus among the selection committee when determining the winners. Both innovations increased transparency and diminished the interference by vested interests.

Resistance on the part of old-guard civil servants complicates matters further. Professionals in new directorates do not operate in a vacuum, but require the support and cooperation of mid-level civil servants from other units of the ministries. The previous generation of civil servants, however, have not been adequately trained, lack motivation, are poorly remunerated and are used to working according to procedures that are often redundant or inefficient, discourage initiative and responsibility, and are process- rather than results-oriented. This inevitably leads to a clash of mindsets, resistance and even sabotage directed at new professionals who attempt to introduce efficient procedures. Such is the preliminary assessment of the experts closely monitoring the situation.<sup>25</sup> More in-depth assessments will only be possible when reform professionals and new directorates commence working in full.

## Conclusion

The fact that such a profound reform was launched for the first time since Ukraine’s independence merits recognition. However, the deeply-rooted old system cannot be dismantled overnight. It is the same dated system which produces resistance at different levels and, thereby, causes delays and problems.

The context in which the reform is taking place is both favorable and challenging. After the Revolution of

Dignity, Ukraine has experienced an unprecedented degree of mobilization of reform-minded forces inside and outside the country. Although not completely free from vested interests, the young government, formed in 2016, is staffed by professionals at different levels; it includes leadership positions which are making reforms possible. Strong and professional civil society has an impact, both as a participant of the policy process and a watchdog. The EU, in cooperation with other Western actors, provides considerable support, combining financial and expert assistance and conditionality. At the same time, the military conflict with Russia is claiming substantial resources and efforts, not to mention human casualties. The run-up for presidential and parliamentary elections, both scheduled for 2019, might stall the reform. As a result, it can hardly bring political dividends in the midst of the election campaign.

To speed up the process, it is important to establish a high-level reform task force under the leadership of the prime minister and to amend legislation and procedures as suggested by experts. The latter might require improved cooperation between the government and the parliament to ensure that the government drives the reform – as it is based on experience in the implementation process – and that the parliament responds swiftly when legal changes are needed to overcome the stumbling blocks. As the upcoming elections might pose a challenge in this regard, external pressure is crucial. German and other Western policy-makers should continue working closely with the European Commission and Ukrainian civil society in order to keep the reform under close scrutiny throughout all stages, and constantly exercise pressure on Ukrainian public authorities. This also means that the allocation of funding should be strictly linked to specific reform steps, and every evidence of resistance or lack of will to move forward should be named and shamed.

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## Notes

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