



## Public Administration in Ukraine: Adjusting to European Standards

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### Abstract

In recent years many important developments have been observed in the Ukrainian public administration: reforms in the public-administration system and civil service, improvements in the regulatory framework for their functioning, extension of the rights and powers of local self-government, bringing their activities into compliance with the EU requirements as well as the transformation of civil service according to the European standards.

However, reforming public administration in a post-socialist transition country is hampered by the lack of resources and by public mistrust. The Ukrainian state faces these challenges, as well, and it attempts to find the ways to leave behind the situation formed by decades of uncertain public policy and a flapping development vector.

Since 2014 key events have taken place that dramatically affected the public administration in Ukraine, i.e.: the elections of a new president instead of the one who fled, the snap parliamentary elections, establishing new civil and military administrations, launching approximately 60 reforms aiming to give the nation a modern shape corresponding to world-wide trends. Special importance must be granted to the public administration (PA) reform because it plays a crucial role in securing the nation's success in global competition.

The goal of this study is reviewing the most important PA reforms occurring in Ukraine (decentralization, civil-service reform, anti-corruption measures, transparency, reviewing the functions of the central executive bodies). The research questions embrace the following: (a) what main directions in PA reforming are perceived by the Ukrainian government; (b) how are the national governmental body's

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functions reviewed; (c) what are the obstacles and risks for PA reforming at the national level? To address these questions, the respective legislation has been analyzed along with some practical steps applied by the government towards the improvement of public institutions' operation.

Our study demonstrates that Ukraine has moved quite a distance from the soviet legacy as concerns public administration; however, the country has not reached the point of no return yet: the positive reform achievements must be supported by steady efforts in order to make them irreversible and to significantly raise public administration's efficiency.

**Keywords:**

anti-corruption measures, central executive bodies, civil service, decentralization, public administration, transparency.

## **1. Introduction**

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Ukrainian public administration has experienced drastic changes since independence, which is common for virtually all post-socialist nations. The internal drivers of these changes are present in the entire post-socialist world: unleashing market forces after decades of command economy, which requires new approaches to state regulation of economy, macroeconomic instability (or even economic decline), total mistrust of the population towards public institutions. However, the PA reforms implemented since independence had an "aesthetic" nature as they did not deeply touch the hardware of the state machine inherited from the soviet past, so the power of these internal drivers appeared to be insufficient. This situation showed signs of change after the mid-2010s, as reforming activities of the new government formed after the Revolution of Dignity in February 2014 were doomed by the popular preference for moving towards Europe, in contrast to the one supported by the former government (staying a satellite of Russia).

Ongoing trends in Ukrainian PA are preconditioned on the fact that the nation passed through a severe internal conflict in 2013–2014. Being disappointed by an unexpected change of governmental plans towards European integration and an attempt to suppress the peaceful mass protests by means of a rough force, the nation managed to kick away the corrupt government after bloody clashes in the nation's capital Kyiv and other cities (these events are referred to nowadays as the Revolution of Dignity); these events created the prerequisites for the country's turning back to the integration into Europe. In this context, the external drivers (pressure from the side of international organizations, especially the World Bank and EU) began to play a more significant role, and the government must seriously take them into account.

The moment of the state's institutional weakness, when all the top government officers fled from the country (February 2014) was used by the Russian Federation to annex the Crimean Peninsula (February–March 2014) and launch a war against Ukraine by direct military interventions as well as the military and financial support of two separatist quasi-states within the parts of the Donetsk and Luhansk regions, which were *de facto* occupied by the Russian Federation in 2014. In this way, the internal political and social conflict turned into an external one which took a massive death toll of 13 thousand Ukrainians, both from military forces and the civil population, more than 1.5 million dismissed persons as well as economic losses amounting to many billion USD.

This situation called for severe measures dedicated to the restoration of the state's efficiency. It means that deep (not esthetic) PA reforms became very topical because the nation's survival depended on them.

The need and basic directions of PA reforms in Ukraine were discussed in many studies published by Ukrainian researchers. The general approaches to transforming PA in Ukraine were covered by Valerii Bakumenko (Бакуменко 2007, 2012, 2013; Бакуменко and Безносенко 2006), Valerii Heets (Гець 2011), Nina Nyzhnyk (Нижник 2007; Нижник and Мосов 2014), Yurii Surmin (Сурмін 2012) and Valerii Tertychka (Тертичка 2002, 2017). The mechanisms of Ukrainian public-sector decentralization were elaborated in publications by Yurii Hanushchak (Ганущак 2012, 2013). Important directions in reforming the civil service, which is one of the core elements of PA transformation, were extensively analyzed in publications by Raisa Naumenko (Науменко et al. 2010), Yurii Kovbasiuk, Kostiantyn Vashchenko and Yurii Surmin (Ковбасюк et al. 2012) Svitlana Khadzhiradeva (Хаджирадєва 2008; Хаджирадєва and Ніколаєв 2014) among others. The implementation of reforms within the Ukrainian public sector has also been critically assessed by the SIGMA Project (2018) as well as in a series of analytical papers published by a pool of national experts within the Reanimation Package of Reforms (<http://rpr.org.ua>) and other domestic think tanks. Many ideas formulated in these studies are incorporated into respective national legislation, by-laws and governmental action plans adopted since 2014.

Many post-socialist countries seek to implement PA reforms, but even those which joined the EU achieved not much success in a complex reform of the PA system and approaching European standards. E.g. Croatia succeeded only in two spheres, i.e. openness/transparency and regulatory policy (Koprić 2018); in the Czech Republic “the reforms that are needed are adopted formally without following up with substantive changes in public management” (Špaček 2018, 178); in Lithuania the reform agendas have changed depending on politically dominating parties that hampered the overall progress (Nakrošis 2018); after 25 years of PA reforming, Slovakia still lags behind the EU average level for most governance quality indicators due to path-dependency and excessive politization that made im-

possible administrative-territorial reform (Nemec 2018), etc. This short citation list demonstrates that PA reforming is not an easy thing. So it would not be a surprise if Ukraine as a country engaged in internal and external conflicts demonstrated mixed results on the way to its more efficient PA.

The goal of this study is reviewing the most important PA reforms occurring in Ukraine with regard to approaching the European standards as set in a document issued by SIGMA (2016).

The research questions covering the goal stated above embrace: (a) what main directions of PA reforming are perceived by the Ukrainian government; (b) what are the main directions in reviewing the national governmental bodies' functions; (c) what are the obstacles and risks for PA reforming at the national level.

To address these questions, we firstly analyze the scope of PA reform in Ukraine, presenting the main directions of state-reform activities; secondly, we present the main changes occurring at the national PA level, directing our attention mostly to how the functions of the central executive bodies have been transformed since 2014; thirdly, we define some issues in Ukrainian PA that endanger the reform success. The article ends with some conclusions and policy recommendations concerning PA reform.

The study is carried out based on Ukrainian legal acts approved in the course of reform launching (laws and respective bylaws) as well as guidelines and empirical studies published by Ukrainian and international PA experts.

## **2. Reform need**

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Reforming PA plays a significant role while governing transit from command economy to the market one that has occurred in many post-socialist nations during the last several decades after the collapse of the Soviet Union. It appeared that those nations achieved significant social and economic progress that managed to make their public sector more responsive to the strategic needs of society (Slukhai and Borshchenko 2019). Without a modern and effective PA system no market reforms will be a success; otherwise the nation could stick in a situation of too slow or even absent socio-economic progress that may lead to social unrest and possible national collapse.

By the middle of the 2010s the Ukrainian PA system has been significantly eroded and actually ruined; in result it was not in a position to grant wellbeing and security to the citizens, or even just to preserve the statehood itself. The public institutes served the private interests of the ruling clan that took over the most attractive segments of the national economy through state capture. This situation was not a surprise because Ukraine belonged to the post-socialist countries that were most reluctant to PA reforms (Bouckaert et al. 2011). It has been recognized by the

vast majority of Ukrainian scholars, who blamed the obsolete post-soviet PA system for hampering the nation's political, economic and social development as it has not been capable of offering adequate policies with regard to volatile internal and external circumstances or implementing them efficiently (Бакуменко 2012; Геєць 2011; Куйбіда 2018).

This almost hopeless situation got a chance to be changed after the Revolution of Dignity (2013–2014). The national authorities formed in 2014 faced a high risk of losing the national statehood. That is why one of the most important tasks of the newly-formed government after the snap parliamentary and presidential elections was to restore PA in the country and to cardinally reform it. The Ukrainian government must overcome the burden of the soviet legacy through extensive efforts. Signing the Ukraine-EU Association Agreement in 2014 laid down a starting point for PA's modern developments in Ukraine towards its modernization in line with European principles.

Basic European PA principles comprise four basic groups: 1) reliability and predictability (legal certainty); 2) openness and transparency; 3) accountability; 4) efficiency and effectiveness (SIGMA 1999). A road-map for PA reform in Ukraine could be found in a SIGMA document (SIGMA 2016) that gives a detailed description of the PA principles which must be introduced in the countries seeking EU integration as well as corresponding success criteria. These principles are reflected in the respective reform strategy adopted by the Ukrainian government in 2014.

As concerns *reliability and predictability*, PA must adhere to the rule of law, which means that all activities within the state must be performed in line with the legal procedures approved in a proper way. This is a big challenge for Ukraine because political culture in the country does not involve some moral obstacles, making it impossible for public servants to act in a lawless way; moreover the Judiciary in Ukraine is quite weak in order to resist the will of those in power (a good example could be the repeal of the Constitution by the decision of the Constitutional Court in 2010 according to the demand of President Yanukovych and the restoration of the Constitution as of 1996, which was called “a constitutional overthrow 2010”). This principle also involves timeliness in the actions of public bodies as well as a high level of professionalism of civil servants in performing their duties.

*Openness and transparency* mean making information on how the governmental activities in different spheres are carried out publically available, especially in public finance. Fiscal transparency is an important instrument of effective public-finance management because without sufficient information available to society, the public goals in any sphere cannot be adequately matched to the public needs. Transparency is especially important for transition countries that have no longstanding traditions of public-sector administration compatible to those in countries with market economy and efficient democracy like Ukraine. Low transparency could lead to a lack of public control over appointed officials and elected

politicians, to misuse of public revenues; inefficient money spending may also occur. That is why achieving a sufficient level of transparency is one of the most important goals for nations which reform their PA in order to reach the modern standards of governance.

*Accountability* is one of the important features of the state in a democratic society. It means that public authorities must act in a responsible way, taking into account the necessity to inform the society about their decision-making and the results of policies and actions taken; they must justify their policies, explain benefits and expenses of actions taken to the society. The problems persisting in Ukrainian PA systems which create problems with the accountability of public bodies and officials are the absence of a clear distinction between political and administrative functions in the Executive, lack of clarity concerning the allocation of responsibilities in policy development and implementation as well as excessive centralization in ministries' function fulfillment.

Since recently, a principle of *efficiency and effectiveness* has gained higher importance. "Efficiency is characteristically a managerial value consisting in essence of maintaining a good ratio between resources employed and results attained ... Effectiveness ... basically consists of ensuring that the performance of public administration is successful in achieving the goals and solving the public problems set for it by law and government" (SIGMA 1999, 13). The Ukrainian PA sector appeared to be very inefficient. The nation-wide report carried out in the early 2010s confirmed the low efficiency of the state, giving evidence of a decline in the citizens' trust in state institutions. The survey data showed the citizens' negative assessment of the public-service delivery (more than 70 percent of respondents). Only 14 percent of the citizens who applied to public authorities were able to receive a service of acceptable quality; only one-third of the population trusted the executive bodies, only half of the people trusted the legislative and judicial bodies. The study revealed a number of problems with the delivery of public services, which led to an insufficient level of consumer satisfaction: high time consumption (on the average, expectation for such a service as issuing a passport was 30 days), poor information support, limited number of channels for receiving services, high moral costs associated with poor quality of service, etc. (Swedish National Audit Office 2012).

Ukraine appeared to belong to the countries that were inferior with regard to PA efficiency and the quality of public services. Ukraine was at the bottom of the opacity rating calculated by the Kurzman Group (46<sup>th</sup>) regarding such indicators of the quality of PA functioning as quality of public services, accountability, quality of regulatory policy, rule of law, as well as corruption control. The state was not responsive to the citizens and business, and this had a significant negative impact on economy. With this level of opacity, the additional costs of Ukrainian and foreign investors amount to 5.64 percent of the invested funds in connection with the increase in risks. At the same time, a decrease in the opacity index by one point cor-

relates with the average increase in annual *per capita* GDP by USD 986, DFI share to GDP by one percent and inflation reduction by 0.46 percent. This may signify that PA reforms could greatly increase a country's economic performance.

There were in the past some attempts to modernize PA in Ukraine; however, all these tries proved to be unsuccessful mainly due to political bias in their implementation (each new President tried to adapt PA in a way to grant more authority to the state's head, but not to make PA more efficient). Those PA reforms were basically oriented on achieving the short-term results, but not the strategic ones. In result, Ukraine still has a very inefficient and volatile PA system.

### **3. Public administration reform agenda**

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PA in Ukraine faces many challenges in order to be reshaped in a way that is adequate to current public needs. It is necessary to solve many issues that relate to different problematic spheres. In September 2014, the government adopted the Sustainable Development Strategy "Ukraine 2020". According to it, the PA reform objective is "to build a transparent public administration system, to create a professional civil service institute, and to ensure its effectiveness" (Президент України 2015). The result of the reform implementation has to be the establishment of an efficient, transparent, open and flexible PA structure that functions based on the latest information and communication technologies (e-governance) and is able to produce and implement coherent public policy aimed at reaching sustainable social development and granting adequate response to internal and external challenges. In 2016, the Ukrainian Cabinet of Ministers adopted the Public Administration Reform Strategy until 2020 (later extended through 2021). This document foresaw the following directions of PA reforming: concentration of the ministries on the formation of the state policy; raising the quality of governmental decisions; clear subordination and delineation of state functions at the national level; improvement of administrative service delivery; formation of professional civil service (Кабінет Міністрів України 2016). These directions go in line with the European PA principles (SIGMA 1999) and are essential for raising PA quality and efficiency.

Several pillars could be distinguished that create a basis for successful PA reform: (a) decentralization and optimization of administrative-territorial composition, (b) training of civil servants and raising the quality of civil service, (c) fighting corruption, (d) reaching higher transparency.

*Decentralization*, the transfer of power from the center to the lower levels of government, would mean a vertical reallocation of power. However, the mere power transfer is not sufficient in order to gain higher PA efficiency; the national government itself has to be reshaped (this issue is covered in detail in Chapter 4). Ukraine urgently needed to reform its obsolete four-level administrative-territorial system inherited from the soviet past. Until nowadays, all attempts to implement the ad-

ministrative-territorial reform were unsuccessful and did not go beyond the elaboration of concepts that were quite controversial in their nature.

On 5 February 2015, Verkhovna Rada of Ukraine passed the Law “On Voluntary Amalgamation of Territorial Communities”. The purpose of this act was to consolidate territorial communities through their voluntary amalgamation which should eventually lead to an increase in their capacity and efficiency in the delivery of public services. Prior to the reform, the average size of a basic-level territorial unit was below 500; the consequences were low fiscal capacity and high local government dependence on state transfers which do not allow developing and pursuing public policies with regard to local demands on public services. By the end of 2019 more than 1,000 amalgamated communities have been established with a total population of 11.3 mn people and an area of 241,100 sq km (MRDU 2019). Simultaneously, a reassignment of revenues occurred that made the budgets of the newly established territorial units more fiscally viable. Decentralization is believed to be one of the most successful reforms in the PA domain of Ukraine since the reform process started. The next step could be a revision of the intergovernmental relations in terms of granting higher fiscal autonomy to the local governments and possible rearrangement of the district-level territorial units.

*Civil-servant training, selection and remuneration.* Efficient PA is impossible without having highly skilled public servants, so PA reform requires a professionally trained staff. The dynamics of reforms requires a rapid transformation of the state administration and the local self-government system, making professional the civil service, which depends on the level of competence of public servants, both civil servants and local self-government officials. The level of competence of public servants under ongoing complications of social processes has to increase. So the public policy towards personnel has to be aimed at creating material and institutional conditions regarding training, retraining, advanced training and assessment of professional competences during the civil servant’s professional life.

This context gives rise to the task of developing a system of professional training for public servants with the simultaneous assessment of their skills and the level of professionalism in the field of Public Management and Administration (PMA). The institutionalization of public-servant professional development in PMA includes: (1) the development and implementation of a sectoral (PA) qualifications framework based on the National Qualifications Framework; (2) the development (with the participation of interested parties) of professional standards in civil service based on a competence approach; (3) the development and introduction of standards in the major PMA as well as educational standards for the training of public servants; (4) the introduction of a nation-wide qualification examination for persons receiving higher education in the major PMA; (5) the development and adoption of educational-professional and research-educational programs of an innovative nature for the major PMA; (6) advanced training within the programs for



specialized short-term courses, perpetual and short-term thematic seminars, trainings, workshops on topical issues of societal development.

Several steps in granting high staff quality through selection procedures have been realized till now. Firstly, the three-level entry competitions (testing the qualification requirements, testing the skills, personal interview) for filling in civil-service positions have been introduced. Secondly, three types of selection commissions have been instituted: for top-level officials; for middle- and low-level staff; disciplinary commissions to assess possible claims to civil servants. In order to grant public control over the selection procedure and its effective results, the commission should include representatives from the civil-society organizations, academic institutions and high-level experts.

Improving the work quality through regular performance evaluation became the second important challenge in the Ukrainian civil service. The first annual public-servant evaluation was launched in August 2017, when the government approved the standard evaluation procedure. This procedure is applied on an annual basis in case a person has occupied the position for at least six months. The evaluation pursues several goals: to evaluate a public servant's performance concerning his/her official duties; to decide on bonus payments; to plan the person's career; to assess the need for the person's additional professional training. The evaluation grade may be positive, negative or excellent. In case a person was awarded an excellent grade, he/she could be eligible for annual bonus payments and/or the recommendation to enter competition for a higher position; if the person received negative evaluation results, after three months he/she will be the subject of a new evaluation that will result in firing the person in case it is negative.

Ukraine still has a civil-servant remuneration system that was inherited from the soviet past. This created significant obstacles for fighting corruption because inadequate pay made civil servants prone to bribery. The composition of servants' remuneration is still inefficient and bears high corruption risks. So, around 30 percent of it is a fixed salary attached to some position; another 70 percent consists of allowances and after-payments. The reform is intended to invert this proportion according to world-wide standards: 70 percent for salary and only 30 percent for other payments. However, just inverting the pay proportions would not eliminate the risk of corruption, which is why some additional steps must be undertaken which should not be limited to salary raise, which of course is also important (see Copoka 2018). The monetary motivation should be complemented also through raising the social status of a civil servant and granting additional significant benefits that would make non-voluntary ejection (e.g. because of breaking ethical rules) very painful.

*Fighting corruption.* In 2018, Ukraine was ranked #120 (in 2014 – #142) among 180 countries by the Corruption Perceptions Index (Transparency International 2019). The low progress means that this phenomenon is very deeply rooted

in society, and there are some significant factors which make it persistent despite changing presidents and governments.

There are some factors which create a fertile ground for corruption. Moreover, with the slow economic growth and political instability, higher unemployment, some of them have only aggravated. The main ones are: (1) poverty of the majority of the population, the excessive polarization of society with regard to income and wealth. Along with this, the concept of labor as a source of well-being has devaluated, which creates a corresponding atmosphere in society; (2) controversial attitude of society towards corruption. On the one hand, there is a rejection and condemnation of corruption in society, on the other hand, people have a propensity to solve their own problems through evading the legal requirements; (3) low quality of legislation, i.a. conflicts among different legal acts, possibility of ambiguous interpretations of the same legal clause, regulation of a large number of issues by by-laws that include some clauses containing high risk of corruption; (4) frequent changes in the government machinery because of political reasons, “principle of quotas” by filling in the governmental positions, political corruption; (5) excessive regulation of entrepreneurial activity, imperfect tax system, possibility to grant profits thanks to close approximation to some officials; (6) an ineffective law-enforcement and judicial system where the judges could hardly be dismissed; (7) inconsistency of the civil-servant remuneration system mentioned above.

It is impossible to eliminate all these reasons within a short period of time, although there is demand for “quick” solutions in society met by politicians that came to power in the course of the 2019 presidential and parliamentary elections (it was promised to the electorate not “to fight” corruption, but “to beat” it through imprisoning top corrupt officials and “dismissing unjust judges each week”, etc.). A good example here may be the Law “On Cleansing the Power” as of 14 September 2014 passed by Verkhovna Rada after the Revolution of Dignity that in fact not only did not meet its initiators’ expectations, but also caused many legal collisions resulting in dismissed persons’ renewal on their positions and huge absence-payment claims according to legal decisions put in to the Ukrainian state.

Nevertheless, some useful steps against corruption have been undertaken. This relates to institutionalizing the anti-corruption investigation and justice (Specialized Anti-Corruption Public Prosecution Office, National Anti-Corruption Bureau, National Agency on Corruption Prevention founded in 2015, Superior Anti-Corruption Court of Justice in 2016) and anti-corruption examination of the legal drafts. In 2010, the Ministry of Justice of Ukraine first introduced the examination of draft legal acts for the existence of corruption-bearing norms. It should be noted that from 1 July through 31 December 2010 alone, corruption-bearing factors were revealed in 213 draft regulatory acts, of which 52 drafts contained inappropriate definition of functions, rights and responsibilities of public authorities and local self-government authorities. In 2017, the new methodology for anti-corruption ex-

amination of legal acts was adopted that set the following directions for a legal-act examination: (a) ambiguous definition of functions, rights, duties and responsibilities of public bodies and persons which commission the functions of public bodies; (b) putting an excessive burden on the consumers of an administrative service; (c) lack or vagueness of administrative procedures; (d) lack of tender procedures or flaws within them. The Methodology defines the basic corruption-causing factors and their manifestations, sets criteria and assessment ways for these factors, offers possible ways to eliminate a corruption-causing factor. In the first quarter of 2018, the Ministry of Justice examined 871 legal acts of different governmental bodies and found only one case that was associated with a high corruption risk. This could signify that the corruption stemming from the legal acts of government became almost untraceable; however, it does not mean that it disappeared in other spheres. Thus, anti-corruption examination facilitates the elimination of corruption-causing factors at the rule-making level, which ultimately excludes discretionary powers.

However, this positive trend towards the elimination of corruption risks at the stage of passing the legal acts and by-laws could be significantly undermined after 2019 because of so called “turbo-regime” in passing legal acts practiced by the mono-majority in Parliament (Sluha Narodu Party). E.g., according to an expert analysis, 75 percent of legal acts passed by the new Verkhovna Rada in fall 2019 were adopted with different violations of parliamentary rules like ignoring minimal time limits for letting legislators get acquainted with them, violation of minimal deadlines for legal draft submission, ignoring the second reading, absence of the respective committee’s conclusion, etc.; this situation gave reason to conclude that “the number of legal initiatives and tempo of their passing are in the inverse proportion to their quality..., extent of stake-holders involvement and impact assessment” (Лабораторія законодавчих ініціатив 2019a).

However, despite all the declarations of power holders, dismissals of some corrupt officials, instituting the anti-corruption authorities, corruption still remains deeply-rooted both in the state and society. There is still a long way to lessen the corruption toll on society.

*Transparency* is one of the core issues of good governance. It became one of the concerns of the Ukrainian state as a reflection of non-transparent actions of the previous governments that did not meet worldwide PA standards. With regard to budget transparency, some progress could be observed since that time. According to the Open Budget Survey 2017 (IBP 2018), Ukraine’s Openness Index has demonstrated a positive trend with a score reaching 54 points (46 in 2015). With regard to the IBP criteria, it could mean that Ukrainian budget transparency is still not sufficient, as society receives a limited amount of budget information. However, budget transparency is a sphere where Ukraine demonstrates most significant progress according to scores of the World Economic Forum (2019). The achieved progress concerning budget transparency could be associated with the reforms that

have been initiated in Ukraine since 2014. It is worth pointing out the adoption of the Law of Ukraine “On the Openness in Using Public Means” (2015), which imposed an obligation onto main budget spending units to upload information on transactions with public moneys to the specially designed governmental website. As a result, any citizen nowadays can get access to information and raise questions in case the information gives reasons to suspect an unfair or corrupt deal.

To sum up, the Ukrainian government has initiated a considerable number of PA reforms. Some positive results have been achieved; however, much more must be done in order for these results to become sustainable and contribute to raising social welfare. In case all the reforms will be implemented, Ukraine could have a transparent and client-oriented PA system that grants economic growth and efficient utilization of human, physical and financial resources resulting in higher social welfare.

A successful implementation of policies described above will only be possible if some changes occur in the government itself. That is why one of the most important Ukrainian PA reforms was reforming the central level of government, which obviously must be one of the reform drivers. The functional and organizational structure of the Ukrainian national PA system is a result of functional changes. “Over the years of Ukraine’s independence, approximately four hundred transformations of CEBs took place. Only in recent years (since 2011, when government authorities were liquidated, resulting in almost halving the CEB number), the improvements to the CEB system were made several times. This is important because the optimization of the CEB system is a key precondition for reforming and modernizing the civil service, it opens possibilities for significant reduction of expenditures on management and the staff, approximates administrative service delivery to the consumer, contributes to reducing oversight functions and deregulation” (Гончарук and Прудис 2018).

#### **4. The central level of government: functions under review**

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The overall quality and efficiency of PA highly depends on the situation at the national level of power. And one of the first steps that would allow launching positive changes in the functioning of the national PA system is reviewing authorities’ functions at this government level. In 2014, the first important steps in changing central executive bodies’ (further referred as CEBs) functions were undertaken.

As noted by some Ukrainian researchers (see Мотренко 2010), a built-in conflict of interests which is caused by the necessity to implement conflicting types of functions in one body (like the combination of statutory regulation with the functions in delivering administrative services or oversight functions, managing state property and implementing oversight measures) was present in the functioning of Ukrainian CEBs. This conflict had the following consequences: CEBs carried out

all administrative procedures, from adopting a regulation to controlling its compliance, and strategic decisions were displaced by tactical/operational actions. The typology of CEB functions put forward in 2010 (state policy formulation, approval of statutory instruments, control and supervision in a certain sphere of activity, delivery of public services and public-property management) resulted in the formulation of criteria for determining the CEB function types; it also preconditioned the main tasks of civil servants according to the Law “On Public Service” as of 2015. This long-standing tradition was broken in 2014.

In September 2014, the Cabinet of Ministers of Ukraine decided to leave 680 control functions belonging to different CEBs out of 1,032 ones (there were 1,623 of such in 2010) and to reduce the number of bodies carrying out control functions by 51 percent (Кабінет Міністрів України 2014). The aim was to achieve a reduction of pressure on business and to decrease the level of corruption. The implementation steps included: preparation of a target model of the CEB system; optimization of the CEBs with regard to the number of their staff; reducing the number of functions and eliminating their duplication; devolving part of the authority to the local level or self-regulated organizations. As a result some CEBs were dissolved and some consolidated, the others were deprived of control functions; some control functions were merely abolished. Thus, from 2014 to 2017, most of the line ministries were deprived of control functions in the field of economic activity; these control functions were consolidated in the newly formed CEBs; a part of the control functions (like price control, assay supervision, construction and topographic-geodetic control) was cancelled at the national level with devolving the supervision in housing and utilities to local self-governments.

However, many experts and industry associations warned at the very start of reforming that such an approach to changing control and oversight functions would require considerable follow-up steps regarding: the need to adhere to the principle of preserving a “reasonable level of state regulation”, especially in those areas that could seriously endanger the lives of the citizens; to assess not the number of inspectorates but the functions needed, and for these functions there has to be a certain body; enhancing the quality in the functioning of the newly-established bodies, so that the next deregulation reform did not bear signs of changing only the number of supervisory and inspection bodies (Берегелський 2014).

In 2016, the government started revising its own functions concerning managing public assets, including shares in state-owned open joint-stock companies.

According to some experts, in early 2018 the Cabinet of Ministers of Ukraine was found reluctant to lose its managerial functions like the rights to create, reorganize and dissolve business entities, appoint and dismiss their managers, decide about discarding, alienation or transfer of property, corporate rights, approve financial plans of enterprises, approve the leasing of state property etc. (Вишневіський and Кондик 2018). It might mean that proclaimed policies are not thoroughly im-

plemented. The seriousness of the government's steps in this direction of changing functions could be confirmed by elaborating a draft law on the deprivation of the Cabinet of Ministers of Ukraine and the CEBs of non-relevant authorities as a legislative initiative.

The other steps regarding changes in the CEB functions undertaken in 2017–2018 aimed at distinguishing their functions in formulating the state policy and adopting regulations of CEBs' activities. The first group of functions aims to identify the basic priorities and directions of development, the ways to achieve them, set terms and expected socio-economic outcomes in a particular area of economy and public life; the second one relates to issuing norms and rules that govern relations within a particular sphere, extend to an indefinite number of individuals and are binding for the public authorities, local self-government authorities, their officials, legal entities and citizens.

In December 2017, the Cabinet of Ministers of Ukraine stated the presence of: (1) a possible conflict within the ministries concerning the state-policy formulation functions and certain functions in implementing the state policy, in particular regarding the management of state-owned facilities, inspection/supervision activity and delivery of administrative services; (2) the problems with policy formulation based on its analysis and strategic planning that makes it difficult to detect, predict and prevent issues in the relevant areas, achieve the long-term goals and constrains the reform processes in the state; (3) the lack of a clear allocation of authority that results in function duplication and, consequently, inefficient use of human and financial resources. It was also acknowledged that some specific functions with which ministries and other CEBs are burdened are not linked to the development of the corresponding spheres (sectors) and are superfluous (Кабінет Міністрів України 2017а).

In 2017, the Cabinet of Ministers of Ukraine, its Secretariat and ministries as institutions for implementing the function of state policy formulation, taking into account the government decision (Кабінет Міністрів України 2017b), changed their organizational structure (they formed directorates) and started procedures to fill in positions in them (filling in these positions is partly assigned to the National Civil Service Agency of Ukraine and the State Agency for E-Governance, where the general departments have been established). This function should include the following components: analytical (constantly analyzing the state of affairs in the sphere and developing alternative solutions for the existing problems); monitoring (overseeing and evaluating the results of the state policy implementation, elaborating proposals regarding the continuation or adjustment of the policy); coordination (coordination of the state policy implementation, interaction with other authorities); regulatory (development of laws and regulations related to the policy).

According to the provisions on directorates of the ministries, they are formed in order to perform the following tasks: (1) ensuring the state policy formulation

based on constant analysis of the state of affairs within ministry competence, elaboration of alternative solutions for the existing problems; (2) monitoring and evaluating the results of the state policy implementation, drawing up proposals regarding its continuation or correction; (3) ensuring statutory regulation (Кабінет Міністрів України 2017b). The directorates of the Secretariat of the Cabinet of Ministers of Ukraine perform tasks in the coordination of activities in strategic planning, draw up the proposals to the Prime Minister regarding the priorities of the state policy, prepare draft plans of government priority actions and coordination of their further implementation, provide analysis of powers and functions of executive authorities, evaluation of their performance. The distinction of positions within the ministries contributes to their concentration on a state policy formulation function; in order to efficiently perform their political and administrative functions, the positions of state secretaries were introduced (Верховна Рада України 2015; Кабінет Міністрів України 2015).

The further steps in changing the functions of ministries were aimed at: depriving them of the functions in administrative service delivery, inspection/oversight, managing state-owned assets (apart from the management of state-owned assets dedicated to the delivery of economic services to the ministries as well as the management of state-owned premises used for the placement of foreign diplomatic institutions of Ukraine); their focusing on strategic planning, ensuring the public-policy formulation, monitoring (control) and assessing the outcomes of its implementation; the possibility to leave the functions of the ministries in the state policy implementation in exceptional cases if their volume and content does not dictate the rational to establish a new central executive body or transfer them to other entities, in particular to local executive bodies or local self-governments, in the context of the decentralization of certain powers (Кабінет Міністрів України 2017c).

Notwithstanding all the attractiveness of this approach, there are several risks which should be taken into account here: (1) if the ministries will not take over the functions traditionally performed by the Secretariat of the Cabinet of Ministers of Ukraine, in case the latter did so in view of the staff limit (slightly more than 1,000 civil servants), then by the year 2020, the number of specialists for reforms at the ministries can reach 5,500 persons; (2) the loss of traditional PA functions by the ministries (e.g. the functions of state policy implementation) will require the reallocation of functions, and hence another reorganization of CEBs and the redundancy of civil servants (taking into account the continuing reorganization of the CEBs), this will cause another “organizational stress” both for the state and for the society); (3) it is difficult to imagine such dramatic changes in some specific ministries (e.g. the Ministry of Justice of Ukraine, the Ministry of Finance of Ukraine or the Ministry of Foreign Affairs of Ukraine), taking into account the functions that they are currently performing.

Thus, such a radical change in the functions of the ministries, or the transit to the target model of the ministries, requires a well-reasoned approach in order not to turn the ministries into an extension of the Cabinet of Ministers of Ukraine, not to destroy the integrity of the state administrative apparatus and not to create a system that will produce reform ideas which are far from the real needs without any opportunities for their practical implementation.

Besides, in order to implement an idea of assigning the strategic planning functions to the ministries and ensuring the state policy formulation, it is necessary to legislatively define the sectors of public policy and PA. Consequently, a minister has to be responsible for state policy formulation in one or more sectors, and the positions of deputy ministers would appear. The functions of the state secretary of the ministry should be limited to staff management and general organizational matters without direct responsibility within the public policy-making (Suray 2017). The confirmation of this idea is found in the draft law as of 14 July 2016 (Верховна Рада України 2016), which was unfortunately withdrawn in September 2018.

As concerns the practical implementation of changing the functions of the Cabinet of Ministers of Ukraine and the ministries, the report “The Action Plan Fulfillment for Implementing the Strategy of Public Administration Reform in Ukraine for 2016–2020” (Реанімаційний пакет реформ 2018) shows that some important measures still remained untaken, like amendments to the Laws of Ukraine “On the Cabinet of Ministers of Ukraine” and “On Central Executive Bodies” regarding the organization of strategic planning and the analysis of public policy. And this fact means that there is a significant delay in implementing some core activities associated with reshaping the CEB role.

Thus, the analysis shows that the government policy regarding changing the CEB functions on a short-term horizon (by the year 2020) includes the distinguishing and resourcing of developing and implementing a coherent public policy. Today, the implementation of this function depends on drafting and submitting a draft regulations on amendments to the Regulation of the Cabinet of Ministers of Ukraine regarding policy coordination, strategic planning and the agreement of draft acts of the Cabinet of Ministers of Ukraine; the development of the methodology of preparation and examples of program/strategic documents of the state policy (policy brief, “green book”, “white book”, concept, strategy, program, etc.) and the identification of their specific features and purpose in the process of formation, implementation and monitoring of the state policy. Without these documents, the Public Administration Reform Strategy of Ukraine cannot be successfully implemented.

The change in the CEB functions involving their reallocation between the state and local self-government bodies is a subject of ongoing discussions in the scientific, expert and managerial environments lasting since the declaration of Ukraine’s independence. However, the processes of amalgamation of territorial communities



become a significant factor in addressing this issue. Therefore, the state demonstrates today its readiness to decentralize the issues of local concern related to economy, finance and property management. The state is also ready to transfer downwards some functions concerning social protection, health and education, delivery of administrative services, herewith assessing the ability of local self-government bodies to implement them. However, the state is quite cautious towards the property transfer and devolving the respective management functions. For example, with regard to land management, the respective draft act (number 4355 as of 31 March 2016) has already been in the Verkhovna Rada of Ukraine for several years.

The national government would probably more actively transfer its functions downwards if the Constitution of Ukraine regarding the decentralization of power was amended by respective provisions. In any case, the state should reserve its right to control/supervise the legal compliance of local authorities' actions, provide coordination of activities of territorial CEB departments and execute control over local self-governments' financial transactions according to legislation. However, some state functions could be transferred downwards without making changes in the Constitution. In particular, in compliance with the new version of the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations" as of 26 November 2015, the functions of administrative service delivery (like the registration of legal entities and individual entrepreneurs) were transferred from the justice authorities to the local self-government bodies. Currently, a process is observed of transferring the functions of the State Architectural and Construction Inspectorate concerning construction commissioning to the local self-government bodies. For making such a transfer it is sufficient to analyze the functions implemented by the CEBs, primarily through their territorial bodies, and local state administrations to find out if they comply with the subsidiarity principle while doing subsequent legislative regulation of this transfer.

Improving the national public institutes is a very important task for Ukraine as their effectiveness is still quite low. According to the World Bank governance estimations, Ukraine as concerns government effectiveness had a percentile rank of 35.10 among 214 countries of the world in 2017 (34.62 in 2015), which means that the country actually belongs to those with the lowest government efficiency and demonstrates no significant dynamics here (World Bank Group 2019). That is why the reforms concerning rearranging CEB functions should be continued as they are far from being completed.

## 5. Discussion and conclusions

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The Ukrainian government tries to restore the PA system after its breakdown in the mid-2010s. An assessment indicator for crisis phenomena in the PA system is the Fragile States Index, the value of which was 69.0 for Ukraine in 2011, 76.3 in 2015,

and 71.0 in 2019 (Fragile States Index 2019). Its dynamics demonstrate that the Ukrainian state is not stable. Ukraine belongs to a group of states whose situation is labeled by the Fund for Peace as “warning”. The reasons for such a situation embrace not only economic factors, including low PA quality, but also external ones, especially the hybrid war held by Russia against Ukraine. Having felt the consequences of the financial and economic turmoil, the citizens do not consider the results of the reforms launched after the Revolution of Dignity to be sufficient. This caused the failure of President Petro Poroshenko to be re-elected in 2019.

Under the conditions of the socio-economic and political turbulence caused both by internal and external factors, the PA institute of Ukraine faces a wide range of problems, including a negative balance of the society’s trust to the state, the imbalance of centralization and decentralization of the PA system, insufficient communication both within the state structures and between the state and society, shortage of skilled PA personnel, low quality of administrative services and insufficient level of moral and ethics in civil servants. That is why Ukrainian PA needs radical reforming in order to approach modern standards of public management.

The major directions of PA reforming have been outlined by the Ukrainian government in 2015–2016 in line with recommendations of the international organizations. The important tasks here are the optimization of the political and administrative interaction, the delineation of the political and administrative tasks within the national government, and building effective communication among all parties of the governance process. These directions involve decentralization, changing the role of the CEBs and improving coordination within the government bodies, raising the quality of administrative service delivery and formation of the professional civil service, fighting corruption, enhancing transparency. The reform progress achieved in each separate field differs greatly, especially in corruption prevention – the results of all the efforts in this field look very modest.

Our study has shown that some positive trends could be observed in the Ukrainian PA system since 2014. However, this dynamic is not sufficient in order to reach the results that could be converted to the positive economic trends. According to the Global Competitiveness Index published by the World Economic Forum, Ukraine was ranked 73<sup>rd</sup> out of 144 countries in 2013, 84<sup>th</sup> out of 148 in 2014, 76<sup>th</sup> out of 144 in 2015, 79<sup>th</sup> out of 140 in 2016, 85<sup>th</sup> out of 138 in 2017, 85<sup>th</sup> out of 141 in 2018. In 2018, Ukraine’s institution quality indicator (based on 20 indicators) was ranked 110<sup>th</sup> out of 140 countries in comparison with 130<sup>th</sup> out of 144 in 2014; in 2019 it was ranked 104<sup>th</sup> out of 141 countries; the respective ratings of the future orientation of governments were 115 in 2018 and 94 in 2019 (World Economic Forum 2018, 2019). It means that the country has achieved a moderate (and quite instable) progress in improving institutions, among which the PA sector plays a significant role; however, the country’s overall institutional quality still remains quite low. And this fact demonstrates that in order to enter the club of developed countries, which

is an ambitious goal of Ukraine, the government must do much more to improve the PA quality and to raise the state's efficiency.

The most visible progress has been achieved in decentralization. The data presented above show significant changes in public-sector composition from a quantitative side. A detailed analysis of the process detects some significant flaws, the most important of which is the discrepancy between the norms of amalgamation legislation, current Constitutional provisions and some other legal acts. Moreover, it looks like the practical implementation of decentralization reform in its current shape could lead to some non-desirable social consequences. For example, a conclusion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine to the amalgamation draft law indicated that the practical implementation of this act is unlikely to allow forming self-sufficient territorial communities which have the appropriate material, financial resources and public amenities necessary for the effective implementation of the bodies' tasks and functions or to improve the quality of public service delivery to the communities. Forming the amalgamated territorial communities with an average population of 9,000 people who will live in 16 settlements on average, as well as having basic-level territorial units with an average area of approximately 400 sq km, where the big distance from the administrative center of an amalgamated territorial community to the place of dwelling could create some problems for the citizens. As the most remote settlement of an amalgamated community is determined in view of the availability of basic public services (administrative, social and others) delivered on the territory of such a community (arrival time for an ambulance in urgent cases and a fire brigade must not exceed 30 minutes), it looks doubtful that all citizens will be in a position to have sufficient access to the services with regard to the state of physical infrastructure (especially the road network in the rural areas), which could lead to the alienation of the citizens not only from the public authorities, but also from the basic administrative and other services. Besides, it is worth mentioning that the voluntary amalgamation of territorial communities does not take into account specific features of some territories, for example the Southern districts of the Odessa region, some districts of the Chervivtsi region and Transcarpatia, where national minorities (Hungarians, Gypsies, Romanians, etc.) are concentrated. These problems must be taken into account as the amalgamation is now in its final stage and could be finalized by the end of 2020. That is why the decentralization process should not be taken formally; its quality must be prioritized. This process must be continued beyond the year 2020 with regard to instituting equal possibilities for citizens in having access to the services rendered by the amalgamated communities. There are also some unsolved issues with local finance: the revenues and expenditures of local governments have not experienced radical changes yet. This challenge is still overlooked by the government: the revenue structure of local self-governments is highly preconditioned by the grants from the national budget. The local governments in Ukraine should have the right to introduce local taxes and administer them. It should be mentioned that

Ukrainian PA reform strategy relates only to the national level of government; PA at the level of local self-government still awaits its turn to be reformed.

At the national PA level, some important changes in CEB functions have been initiated, but they are far from being finalized yet. Changes that occurred at the national government level of Ukraine may lead to raising the efficiency of the PA system. Re-shaping the CEB functions towards concentration on policy development and depriving them from the control functions and direct interventions into markets, as presented in our study, are very important steps. However, the national government has not demonstrated a strong institutional will to coherently pursue respective policies, so many components which need to be implemented are still at the stage of discussions and draft law preparation. Moreover the changes in the CEB control/oversight functions are not followed by traceable positive changes in the national economy. According to the Federation of Employers of Ukraine, in 2017, the Business Ombudsman Council received 1,638 complaints regarding the actions of control and law enforcement authorities (twice as many as in 2016), 61 percent of which were related to the actions of the fiscal service and tax authorities (Федерація роботодавців України 2018). It is also worth mentioning that no legislative act on self-regulation organizations which have to overtake some of the oversight functions have been passed within the last 5 years; so the agents who should accommodate a part of the state oversight functions are not institutionalized yet. An independent assessment of reform progress in this field showed that the problems with CEB reforming are associated with delays in action-plan implementation (most important actions have been postponed), not finalizing reforms in the pilot ministries which would serve as a benchmark for the other CEBs, lack of motivated staff in the CEBs' reform teams, conflicts within the CEB staff between the "old" civil servants and the new ones hired for implementing reforms, overload of the new structures instituted in the ministries in the course of reforms with duties beyond their direct responsibility (Лабораторія законодавчих ініціатив 2019b).

Our analysis of the developments in a civil-service branch revealed a number of innovations aimed at improving the staff performance and ensuring the quality of civil service, namely: separation of administrative and political positions; clarification of the legal status of a civil servant; separation of the civil service from political activity; establishing an exhaustive list of persons who cannot enter the civil service; a new approach to the classification of the civil servants' positions; a competence-based approach to the selection of candidates; defining legislatively common approaches to the entry, performance evaluation and dismissal from civil service; improving the professional skills and professional training of civil servants, their incentive schemes. All these innovations aim at transforming the Ukrainian civil service into an effective institution that would speed-up reforms in PA and other spheres of societal life.

Despite important changes in the Ukrainian civil service enacted in line with the PA reform strategy, there are still many unsolved problems in this field, too. The positive achievements concerning the introduction of the public servants' selection and performance evaluation have to be reassessed with regard to their quality. While doing this, we could point out that the CEB heads appeared not to have been introduced to the modern approaches to personnel evaluation promoted by the international organizations (see UNDP 2009). The risks of civil-service reform failure or reversal are still quite high. After the change in political power following the presidential elections of 2019, the new president Volodymyr Zelenskyi declared a "reload of the power" within the civil service. Respective legal acts aiming to achieve some important changes in a civil-service reform track through revisions of the Law "On Civil Service" as of 2015 were passed very fast via the so-called "turbo-regime". The most important novelties include: simplification of hiring and firing the civil servants and introduction of the contract civil service for all public positions (the contracts will be signed for three years with a possible extension for an additional three years, the contract service will extend for seven percent of the civil service staff); possibility of distant work for the civil servants; setting a minimum level for civil-servant remuneration – at least double of the subsistence minimum set by the law (Верховна Рада України 2019). After passing these changes, a civil servant could be fired without any long bureaucratic procedure that was prescribed by the law as of 2015. The trends observed in fall 2019 in civil service (cancellation of the job guarantees for public servants and simplification of the selection procedure) create uncertainty for the further developments at least in this field because approaches concerning staff selection realized by the new politicians in power could undermine the cornerstone of the civil-service reform – its professionalization.

PA in Ukraine faces many challenges. Among them is a slowing-down of the reforms and their incompleteness, even the possibility to reverse the positive developments due to the political vulnerability of the process. The political bias and lack of administrative competence in the newly formed public bodies could set PA in chaos, as happened in some countries surviving political turbulence; a good example here is South Africa after dismantling the apartheid system (Franks 2014). Actually, Ukrainian PA reforms face high risks since a brand-new political party, "Sluha Narodu", got both the President position and the Parliament majority after the presidential and parliamentary elections of 2019. It is uncertain whether this political success will be transformed into decisive steps towards implementing the new far-reaching PA reforms (or just continuing the initiated ones) or result in rolling them back while trying to preserve obsolete institutions in order to consolidate the power in the state into a solid monolith.

Our study demonstrates that the Ukrainian government took some important steps towards PA reform. The policies adopted did change the overall situation in PA; however, the transformations occurring there are still behind the expected results, which is reflected in the popular mistrust to the reforms carried out. The

public perception of the Ukrainian PA reforms remains quite negative, however it has changed a bit after several years of reforming, as the public opinion surveys witness: in 2015, 77 percent of respondents supported the statement that “there are no or almost no reform activities” (TNS 2015); by the end of 2017, 68 percent of them shared this statement (TNS 2017). It means that in public perception the PA reforms are implemented very slowly and they do not significantly touch the life of an ordinary citizen.

As the experts of the Reanimation Package of Reforms NGO put it, “... the PA reform in general and the civil service reform in particular failed to pass the ‘point of no return.’ It did not only fail to become an institutional base for implementing other reforms in Ukraine, but it is threatened of revanche...” (Yatsun 2018, 28). Such a situation endangers the possible PA reform outcomes, making them politically highly vulnerable.

In sum, despite all the imperfections of the newly passed PA legislation (evidenced by the constant amendments to it) and the problems with the reform implementation, it should be acknowledged that a PA reform vector chosen by Ukraine has made it closer to the European standards. On the other hand, the new forms and procedures introduced since 2014 have to be filled in with new content; otherwise they will have no positive influence on the societal development.

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