

Reforms in Ukraine: Judiciary reforms are necessary

VoxUkraine has been evaluating the expected impact of economic reforms since early 2015. During that period, about 40 experts evaluated over 1150 legislative acts (a third of which were approved since 2019) that change “the rules of the game”. In this newsletter we provide an overview of recent reforms since 2019. During this time, our index has never reached the peaks of 2.5-2.6 points (out of 5 possible) we’ve seen at the beginning of 2015. Despite this slowdown, a few recent reforms are worth highlighting. While the opening of the land market after 18 years of moratorium is an important success, there are obstacles in the implementation of judicial reform. Despite initial promises, the adoption of laws that ‘reload’ the judiciary was not easy, and their implementation will be even harder. However, this battle cannot be lost. Because in its current state, the judicial system is not only a major impediment to future economic growth, it is also the greatest risk to already adopted reforms.

Background

In 2015, VoxUkraine launched a [Reform Index](#), measuring the legislative aspect of Ukraine’s reform process. About 40 experts evaluate the potential impact of adopted laws and other legislative acts on the scale from -5 to +5 over different sectors including governance and anti-corruption, public finance, monetary policy and financial markets, industrial organisation and foreign trade, as well as energy independence. After the Index was introduced in a 2016 GET Newsletter edition, we provide an update and focus on current reform developments.

Slow reform progress, despite law on the land market

Since the beginning of 2019, various reforms have been adopted, which are described in the following.

In 2019, the parliament adopted a number of laws that simplify **trade across borders**, such as first legal steps for cancelling double declaration of goods when moving between Ukraine and EU, the launch of the National electronic transit system, introduction of authorised customs operators (firms that get this status can enjoy minimal formalities at the border), intellectual property rights protection during exports/imports and others.

Decentralization was completed in the fall of 2020 with the mandatory merger of communities, the reduction of the number of raions by about three times and clarification of relations of local and central budgets. However, constitutional amendments needed to complete the reform are unlikely to be adopted before deoccupation of parts of Ukraine’s territory. Since April 2020, the second stage of the **healthcare** reform started: the new financing principle (money follows the patient) was extended to general hospitals (family doctors were

the first to enter the reform in 2018). The reform of the emergency service is keeping pace, and the law that enables development of transplantology in Ukraine was an important step. There were some advances in the **education** sphere as well: university financing is gradually moving from quantity- to quality-based. The reform of the primary schools started in 2019 is a success but the reform of the high schools seems to be stuck. Education and healthcare reforms are tightly related to decentralization – local governments have to decide whether and how they finance a school, a hospital or a family doctor in order to provide the best service to their residents. Hopefully, these new responsibilities will foster better political understanding by politicians and citizens. A milestone in the **financial sector** was the adoption of the law on ‘split’ that brought the regulation of non-bank financial institutions under the National Bank and pension or construction funds under the Securities Market Commission. The regulator of financial markets was liquidated. The NBU has already started to extend its transparency and prudence standards to the non-bank institutions, such as insurance companies. The new law ‘On derivatives market’ creates opportunities for introduction of modern market instruments into Ukraine’s financial market. Taking into account that the market is barely existing, it is rather a forward-looking law.

Until recently, Ukraine was one of few countries in the world without a functioning **land market** (i.e. agricultural land could not be officially sold – only leased or inherited). Naturally, this created a shadow market, kept rental prices low and individual land owners poor. In May 2020, as one of pre-conditions for receiving a first tranche amounting to USD 2.1 bn within the Standby Arrangement (SBA) with the IMF, the parliament adopted the law on opening the land market, although with severe restrictions. During the next 14 months, several other laws regulating different aspects of the land market were adopted. Since July 1st 2021 Ukrainians started testing their newly opened opportunities. Legal entities will be able to buy land only since 2024 and overall one buyer can buy no more than 100 ha. Foreigners are unlikely to be allowed to buy land in the foreseeable future.

The fundamental factor that limits the development of the financial market and business in general is poor rule of law. The **judicial reform** was launched in 2016 but lacking domestic stakeholder support, it did not go very far. More independence was provided to judges. Meanwhile, judges with dubious reputation were selected to key self-governing bodies of the system, which naturally did not allow to properly implement the clean-up process. In mid 2021, the parliament adopted two laws

that should re-launch top judicial bodies. These laws provide a decisive voice in selecting judges to those bodies to international experts – this clause was fiercely opposed by the judiciary and some politicians. Thus, we should not expect a smooth implementation.

Total number of reforms and scores in selected areas

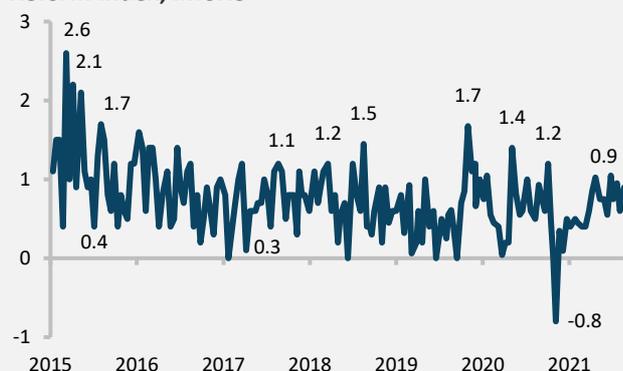
Area	Number of legislative acts	Total score
Business regulation	59	60.9
Banking sector	40	50.4
Labour market	45	39.0
Public service	34	36.7
Property rights	18	25.7
Foreign trade	13	20.8
Capital markets	12	20.4
Anticorruption	26	16.4
Decentralization	16	14.5
Taxation system	17	14.0
Energy sector	13	7.4

Source: Reform Index. Total score is the sum of scores of individual legislative acts in an area since 2019

Anti-corruption: contradictory movements

Counteracting corruption is one of the main issues that worries Ukrainians as well as Ukraine’s international partners. In this sphere, the progress is mixed. 2019 began with the Constitutional Court denouncing an important part of anti-corruption legislation – a clause introducing criminal responsibility for illegal enrichment of public servants. At the end of 2019, the clause was restored. But one year later, the Constitutional Court produced another statement, basically cancelling the entire system of electronic declarations of assets of public servants (this sent our Index into negative territory for the first time in its history – see figure below). The parliament had to adopt four laws to fix the damage.

Reform Index, iMoRe



Source: Reform Index can take values from -5 to 5, with value above +2 considered an acceptable pace of reforms.

The launch of the Higher Anti-Corruption Court, the improved functionality of Corruption Prevention Agency and the law on whistleblowers are steps forward. The

failed reform of the prosecution and attempts to undermine the independence of Anti-Corruption Prosecution are on the negative side (the last one invoked EU threats to cancel the popular visa-free regime). The parliament granted the National Anti-Corruption Bureau (NABU) the right for independent eavesdropping long advocated by civil activists. Meanwhile, attempts to unlawfully replace the NABU head prompted harsh statements from international partners. An independent agency (the Bureau for Economic Security) that should take up the functions of investigation of financial crimes from the State Security Service and Tax Police was officially launched. However, no operational progress was made. In addition, the reform of customs service was stopped in March 2020. Instead, for the last several months, the National Security Council have been applying sanctions to smugglers on a case by case basis.

Conclusion and outlook

Since 2019, Ukraine adopted over 350 reformist legislative changes, while at the same time experiencing a few setbacks. The most important open issue today are judicial reforms. As the recent Constitutional Court decisions show, the judiciary system is currently not only a serious brake on socio-economic development, but poses an acute threat to already adopted reforms. The last few years have also shown that change is not irreversible. Therefore, together with promoting new reforms, one needs to keep an eye on how previously implemented reforms are maintained.

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