



Shadow Report

Civil Service Reform in Ukraine: Specialised Law Implementation in 2016-2017

AGENCY FOR LEGISLATIVE INITIATIVES

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The “Agency for Legislative Initiatives” pursues the mission of promoting the establishment of democratic values, as well as developing the political culture and legal awareness of citizens and policy-makers, spreading the best global practices for building effective public institutions, and supporting Ukraine’s European integration vector.

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Abbreviations

NCSAU – National Civil Service Agency of Ukraine

CMU – Cabinet of Ministers of Ukraine

CEAs – central executive authorities

Law – Law of Ukraine on Civil Service No. 889-VIII of 10 December 2015

PAR – public administration reform

NRC – National Reform Council

LSAs – local state administrations

VRU – Verkhovna Rada of Ukraine

PAU – Presidential Administration of Ukraine

NABU – National Anti-Corruption Bureau of Ukraine

NCPA – National Corruption Prevention Agency

NGO – non-governmental organisation

Анотація

Звіт присвячено оцінці прогресу в здійсненні ключових реформ у сфері державної служби України, що були визначені новою редакцією Закону України «Про державну службу», прийнятого 10 грудня 2015 року, що набув чинності 1 травня 2016 року. У звіті досліджуються питання забезпечення політичної нейтральності державної служби, підвищення професійного рівня державних службовців, забезпечення адекватного рівня оплати праці та оцінки ефективності службової діяльності.

У публікації прослідковується прогрес у здійсненні відповідних заходів державної політики в період між травнем 2016 року і травнем 2017 року, а також містяться окремі пропозиції для здійснення подальших кроків у цій сфері.

Для цілей підготовки цієї публікації вивчалися тільки чинні нормативні правові акти у сфері державної служби, в першу чергу Закон «Про державну службу», в період між травнем 2016 року і травнем 2017 року.

Проекти нормативно-правових актів у сфері державної служби, а також суміжні чинні закони, такі як Закон України «Про Кабінет Міністрів України», Закон України «Про центральні органи виконавчої влади», законодавство про місцеві органи державної влади та органи місцевого самоврядування, для цілей цієї публікації не аналізувалися. Однак слід зазначити, що комплексне і якісне реформування системи державної служби не можливе без узгоджених змін до згаданих вище законів та іншого відповідного законодавства.

Abstract

The Shadow Report assesses implementation of key civil service reforms in Ukraine as defined by the new version of the Civil Service Law adopted on 10 December 2015 and enacted on 1 May 2016. It focuses, primarily, on the civil servants' political neutrality and professionalism, as well as their remuneration and performance.

The paper traces the progress made in the implementation of the above public policy measures between May 2016 and May 2017, as well as suggests certain further steps in this area.

This report is based only on the current civil service laws and regulations valid in the period between May 2016 and May 2017, in particular the Civil Service Law.

Even though the civil service associated bills and draft regulations, as well as related laws, such as on the Cabinet of Ministers and on the Central Executive Authorities, the legislation on local administrations and local self-governance were not in the focus of this publication, a comprehensive and high quality civil service reform is not possible without their amendment

Summary

Having adopted and enacted the Law, Ukraine has made a considerable progress in the civil service reform, as this is, in fact, the first major political step in this direction since 1993.

Key achievements:

- The scope of the Law and civil service positions have been clearly defined, while support service, advisor, consultant and other similar posts have been withdrawn from the civil service structure;
- The state secretary posts have been established to strengthen the civil service professional level and stability;
- An open and transparent competitive selection has been introduced for all civil service posts, especially the senior positions, such as the ministry/CMU state secretaries, heads of local (regional and district) state administrations, and heads of central executive authorities; the competition procedures can be traced real time online;
- The Senior Civil Service Board composed of 11 members from all branches of power and 4 representatives of civil society associations, academia, and universities has been established setting up an unprecedented example of openness and transparency in the selection of civil service staff;
- The salary issues have been regulated with essentially decreased subjective component as compared to the previously existing remuneration scheme.

Despite of the impressive achievements prompted by the Law, however, a comprehensive civil service reform requires substantial improvement and a thorough approach, which is recognised by the government, parliament, and civil society representatives.

Key issues for further improvement:

- A comprehensive vision of the target civil service model needs to be defined with the key elements of career-based or position-based civil service models clearly outlined. An open competition for all posts is a position-based model feature, while other elements, such as centralised administration, high social security, and inflexibility, represent the career-based system.
- The civil service reform needs to be harmonised with other PAR elements, such as modification of the public authorities structure and procedures, amendment of the Laws on the CMU and the CEAs, changes and approaches to the local self-government and local authorities models, the constitutional reform and other related reforms. Thus, a vague local state administration model, for example, had a considerable impact on the Civil Service Law content while it was drafted, with such impact continuing even now, upon its adoption, as certain MPs make attempts to rush amendments thereto.
- There is a need to strengthen communication and to improve public awareness of the competitions held for the senior civil service positions. In some cases, e.g. for the specialised skills and knowledge posts, candidates could be looked for/recruited proactively. As an example, when ministerial state secretaries were selected, even though

the information was indeed published on the NCSA website, its form and target audience coverage did not meet the level and importance of the posts concerned.

- The competitive selection procedure should be finalised, while the operation quality of the selection boards should be improved, as it is also expected by the Government. [10] Such improvement should focus on the following:
 - Increased flexibility in shaping special requirements for the positions;
 - Modernised methods to assess the candidates' skills and knowledge, namely:
 - Specialised professional knowledge;
 - Communication and leadership skills (soft skills);
 - Integrity.
- The Senior Civil Service Board professionalism should be enhanced, in particular for the staff selection purpose. The Board members currently have no confirmed recruiting expertise and/or experience. Besides, the Board has not been employing independent professional staff selection examination, even though such a possibility is envisaged by the Law (Article 16.3). There are no clearly defined professional criteria and expertise requirements for the Board members.
- The remuneration system defined by the Law and bylaws needs to be significantly improved. The current system and the civil service salaries have not yet become a strong motivational factor for attracting talent, especially at the middle and higher management levels, and have not contributed to the Government becoming a competitive employer in the labour market.
- The fixed wage has never become 70% of the civil servant's total remuneration as proposed by the Law. Currently, the fixed share makes up approximately 40% against 60% of the variable one. [15] Even after the transition period expires (on 1 January 2019), the remuneration model (and the bonus rate) set by the Law will not be able to achieve this target of the 70/30% ratio.
 - The high seniority bonuses (up to 50% of the salary) contradict the important principle of equal pay for equal work under the same conditions and do little to attract young and promising professionals without civil service experience. This generally increases the civil servants' average age and sometimes causes staff shortages in certain departments.
 - The rank bonus purpose and role are negligible in the civil servants' financial motivation structure. Rank-setting criteria are not clearly defined. Attributed every 3 years, ranks duplicate the seniority bonus content. The average rank bonus rate is less than 2-3% of total remuneration without any significant financial motivation impact. It is recommended that subsequently no ranks are used in civil service.

The experience gained through the Law and the PAR Strategy implementation in 2016 suggests the following priorities for the further public administration reform:

- better comprehensiveness and consistency with other reforms;



- improved civil service competitive selection procedures;
- reform of the civil servants' remuneration system;
- reform of the civil servants' education and training system;
- formation of modern human resource management services in public agencies.

Civil Service Policy Aims and Objectives in Ukraine

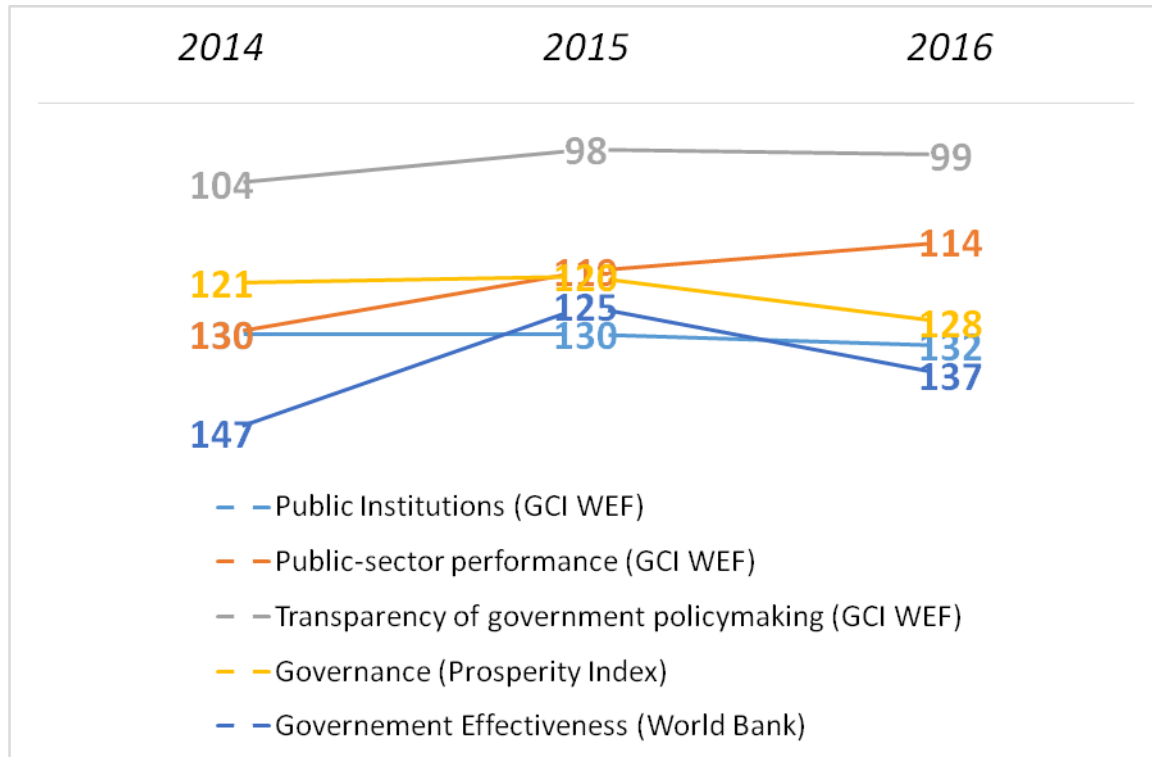
Civil service is a key public administration institution, therefore its efficiency is conditional for successful reforms in all other areas of public life.

The current civil service condition is hardly satisfactory and requires significant development and modernisation. This has been repeatedly noted in several important policy documents in the recent years in Ukraine:

"At the moment, civil servants lack sufficient motivation to work, their salaries are uncompetitive in the labour market in view of the tasks and functions they perform. There is no proper evaluation of civil servants' performance based on their professional competence. The staff management system in public authorities should be improved. The Ukrainian civil service today is largely exposed to political influence. These and other factors are not conducive to high-quality and professional operation of the institutional power." [8]

This is also confirmed by Ukraine's rather low position in the main international public administration efficiency rankings (See Fig. 1).

Fig. 1. Ukraine in International Public Administration Efficiency Rankings



International ranking webpages monitoring results for 2014-2016

Thus, the civil service reform is an urgent need in Ukraine and a key prerequisite for its further development, including for the purpose of European integration.

At the time when this report was drafted, there were several policy documents in Ukraine setting the main civil service reform goals and objectives.

In general terms, the civil service reform aims to shape a professional, prestigious, politically neutral, responsible and result-oriented civil service. For this purpose:

1. the civil service needs to be de-politicised along with improvement of its professional level through separation of political and administrative positions and establishment of the political neutrality principle;
2. an effective human resource management system should be set up in the civil service, including through the use of competitive selection for all positions, introduction of effective evaluation tools, enhancement of institutional capacity of the civil service functional management authority;
3. civil service salaries should be increased and standardised;
4. staff development, career planning and talent enhancement programmes should be introduced along with an efficient professional training system.

Annexes:

Annex 1. Analysis of the policy documents setting the civil service aims and objectives.

Annex 2. Compliance of the Law with the Coalition Agreement.

Annex 3. Compliance of the Law with the EU/OECD SIGMA public administration principles.

Annex 4. The civil service reform passport based on the PAR passport developed by the National Reforms Council Project Office.

Civil Service Reform Key Achievements

The new Law of Ukraine on Civil Service (No. 889-VIII of 10.12.2015) (the Law) came into force on 1 May 2016.

Forty eight by-laws have been developed and adopted for its implementation, among them thirty four CMU resolutions, including on the following:

- Senior Civil Service Board Regulation;
- Competition procedure for civil service positions;
- Model Requirements for the “A”, “B”, “C” positions;
- Civil servants remuneration principles.

The Government-setup Senior Civil Service Board started operating on 13 July 2016. It includes 11 members representing all branches of power in Ukraine and 4 representatives of civil society organisations, academia, and universities. So far, the Board has held 40 sessions and more than

100 competitions for the “A” positions. This included selection of state secretaries for all ministries (18), as well as the CMU State Secretary and Deputy State Secretary.

Over 2016, public authorities announced more than 7,500 competitions to fill vacant “B” and “C” positions.

On 18 January 2017, the CMU adopted Resolution No. 15 regulating the civil servants remuneration in 2017. It established the minimal wage of 2,000 UAH as of 1 January 2017 and generally raised the civil service wages by 3 to 26 per cent against 2016, while civil service positions were attributed to the relevant pay groups.

In the 2017 state budget, the civil servants’ payroll increased by more than 50% (29.7 bln UAH in 2017 against 19.2 bln UAH in 2016).

The Civil Service and Local Self-Governance Officials Code of Conduct was adopted and came into force.

On 5 April 2017, the CMU passed Resolution No. 243 on Certain Civil Service Law Implementation Issues to distribute political and administrative functions among the Minister, Deputy Minister, and the ministerial State Secretary. The Resolution also sets the procedure for issuing instructions to civil servants and ministry staff.

Public Perception

An important aspect of the civil service reform is its perception by the public. Useful information to this regard can be found in the “Monitoring of the Public Perception of Reforms” survey¹ prepared by TNS for the National Reform Council in February 2017, according to which:

- Most respondents believe that the new Civil Service Law, which came into force on 1 May 2016, has not made it easier to get into the civil service with only 10% thinking otherwise and 47% finding it difficult to answer;
- More than half of the surveyed (54%) consider that increased salaries will not improve the civil servants’ performance;
- A quarter of the interviewed have said that civil servants get high salaries now, higher than the average over the country, while 54% assess such pay as average and 21% – as low;
- The predominant majority of respondents pointed out to corruption, red tape, and formalism as the main civil service problems, while about half of the surveyed reproved irresponsible employees (48%) and poor performance (47%). Young people deplore lack of innovations and modernisation in the civil service (50%), while the older group condemn formalism and bureaucracy (79%).

¹ http://reforms.in.ua/sites/default/files/documents/tns-nrc/2017_02.pdf



On the one hand, the above survey results evidence low public awareness of the changes introduced by the Law. On the other hand, however, a number of issues have been revealed in the current operation of the civil service in Ukraine that have not been resolved by the Law, but are important for the citizens, and not just for politicians or specialised experts. Such findings also signal utterly insufficient and sporadic communication on the civil service reform by the political leadership.

Civil Service Law Development and Adoption

In July 2014, a NCSAU task force started drafting a new Civil Service Law (the bill) with variable involvement of the Ukrainian academics, public figures, as well as experts from Poland, Slovenia, Germany, Latvia, and the UK.

The concept of the law was first made public by then Vice Prime Minister Volodymyr Hroysman in September 2014, followed by the December presentation at the NRC session where it was supported by the Council members. In January 2015, NCSAU submitted the bill to the CMU Secretariat for its approval by the Government, which granted its endorsement in late March and sent the future law to the Parliament.

On 23 April 2015, after 20 voting attempts, the Parliament adopted the bill in the first reading with 226 votes.

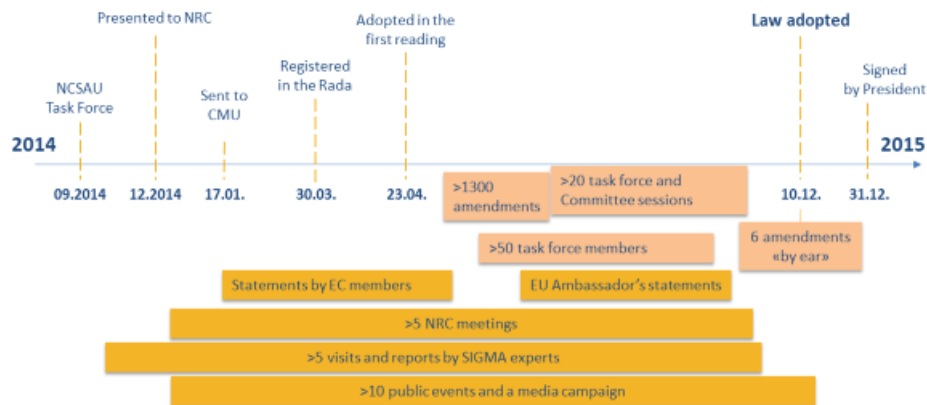
In May, the profile parliamentary Committee for State Building, Regional Policy, and Local Government received around 1,300 amendments to the bill subsequently examined by the Committee task force of over 50 members led by the chair of the civil service subcommittee.

On 22 May 2015, the EU-Ukraine Memorandum of Understanding was signed to grant Ukraine the EU macro-financial assistance. One of its second tranche conditionalities read: "Adopt the legislative package on the Civil Service and ensure its entry into force, so as to depoliticise and professionalise the civil service through a clear delimitation between the political and administrative function and to foster effective human resource management".

In July, the Committee task force completed its work on the proposals received, and on 2 September the Committee held its first session to examine the amendments where it voted on the first 110 out of about 1,300 of them. It took five Committee sessions in September and October to consider all improvements suggested. On 30 October, the Committee finalised the bill and recommended it for the second reading. During November, the draft legislation was reconciled among the key political players, while all parliamentary factions also expressed their support.

On 9 December, the Verkhovna Rada Chairman, heads of parliamentary factions, representatives of the Government and the Presidential Administration held a meeting to discuss the future of the bill. Six more changes were suggested, whereupon the bill, with such six additional amendments included, was adopted on 10 December with 261 votes, and on 31 December 2015 the President signed it into law with enactment on 1 May 2016 (*See Fig. 2. "Civil Service Law: Development and Adoption"*).

Fig. 2. Civil Service Law: Development and Adoption



Source: authors' analysis

Development and adoption of the bill focused on the following key issues:

- 1) The scope of the law, namely the public authorities and positions to be attributed to the civil service and their categories;
- 2) The Senior Civil Service Board formation principles and composition;
- 3) Requirements for civil service positions, selection principles and procedures;
- 4) Remuneration principles and amounts;
- 5) Implementation approaches and transition period.

To support adoption of the bill, many public and non-public communication efforts were made:

- International partners, including the EU Ambassador and the European Commission representatives, made public statements;
- The bill was considered at five scheduled and one special NRC sessions;
- It took more than five SIGMA/OECD expert missions to prepare comments to the bill;
- Information has also been disseminated by MPs, officials, and civil society experts through dozens of articles, interviews, press conferences, round tables, and talk shows.

Experts believe that it was the NRC session in September 2015 which became the turning point in the decision-making regarding the bill. There some of the NRC members advised against its adoption arguing that it would not be supported by the international partners, especially the European Union. The latter, however, was strongly backing the bill, as can be seen from the main international agreements, and insisted on its soonest possible adoption. The above NRC meeting triggered a breakout of a huge media scandal, forcing political leaders to pay closer attention to the bill and finalise its discussion and adoption.

The following are the key stakeholders in the bill development and adoption: 1) NCSAU; 2) CMU Secretariat; 3) Presidential Administration; 4) NRC; 5) Verkhovna Rada State Building Committee members; 6) National Public Administration Academy; 7) civil servants trade union; 8) NGOs (RPR, Nova Krayina, CPLR etc); 9) international organisations, especially the EU Delegation to Ukraine.

The adopted law is seen as a compromise and is generally consistent with the OECD/SIGMA good governance principles. It has given a start to the full-fledged civil service reform in Ukraine for the first time since 1993 when the previous law was passed.

At the beginning of 2016, the preparation and adoption of the relevant secondary regulations implementing the law began.

Key challenges in the preparation and adoption of the Law:

1) Lack of political leadership

There was no clearly defined political or institutional responsibility for the reform in general and the bill in particular. On the one hand, there were many stakeholders, while on the other, their coordination was poor with their activities and impacts chaotic and of varying effect.

2) Lack of analytical studies (quantitative, qualitative, and financial)

The civil service performance operational data was rather scanty. The in-house financial modelling experts showed rather low level of qualification, while analytical support to the law drafting was quite feeble. The actual number of civil servants was unknown. No external experts with sufficient expertise were available. Lack of data and figures was sometimes used for manipulations in the decision-making debate.

3) Weak public support

Due to no communication campaign, the reform and the bill seemed complicated and incomprehensible to the general public, while their benefits to the society could be traced only in the fairly long-term prospect. For this reason, voters were not very interested in the reform, which, in its turn, influenced the interest expressed by the politicians, as they carefully monitor the public mood. Admittedly, the NGOs communicated about the reform quite extensively at the high expert level, but this is exactly the reason why no large public attention was attracted.

Recommendations to improve adoption of legislation:

1) Public policy and decision-making analytical documents (problem analysis, alternative solutions, various options impact assessment, best option proposals, and implementation approaches) should be prepared before any bill is drafted.

2) The ultimate goal should be clear and understandable ("to-be model")

It is important to form and approve a comprehensive target model ("big picture"), the to-be model, rather than just state what needs to be changed. The vision of the processes and procedures should be developed and reconciled before the regulations are drafted. Discrepancies in the understanding and interpretation of the regulatory texts may distort (and this has been the case a number of times) the essence of the reform. Analysis of the final texts should focus on the wording and details. Thus, when the Civil Service Law was developed, some of its articles had to be rewritten three times after what seemed to be common understanding and agreement.

3) A wide range of stakeholders should be involved

It is quite important to determine true stakeholders, their actual interests and positions, and the real decision-makers in the relevant area. When the bill was drafted, the range of such actors changed several times (including due to the leaders' altered political attitudes).

Not only supporters, but also opponents should be engaged through systematic interaction with them based on explanations, arguments, data analysis, and even public communication. Consensus should be sought with all stakeholders through effective moderation, coordination,

and early involvement (sometimes it is important for those involved just to express their position, and they are not always ready to defend it to the end).

4) Intense and clear communication

A comprehensive communication strategy is necessary founded on achievement of objectives with early explanation of goals and stakeholders' expectation management. Different communication campaigns are needed for different target audiences: politicians, the public, governmental officials, experts. The reform team (or individual leaders) public relations should be distinguished from the comprehensive communication on the reform content.

5) International support

Such support should not be only declared. It is important that foreign partners make public statements, hold non-public meetings with public authorities (the Government and the Parliament) to give their explanations, while important markers should be recorded in the international documents.

Civil Service Law Analysis

On 1 May 2016, the new Civil Service Law came into force (See Fig. 3. Civil Service Law). 48 by-laws have been developed for its implementations, including 34 CMU resolutions.

Fig. 3. Civil Service Law

92 articles

11 sections:

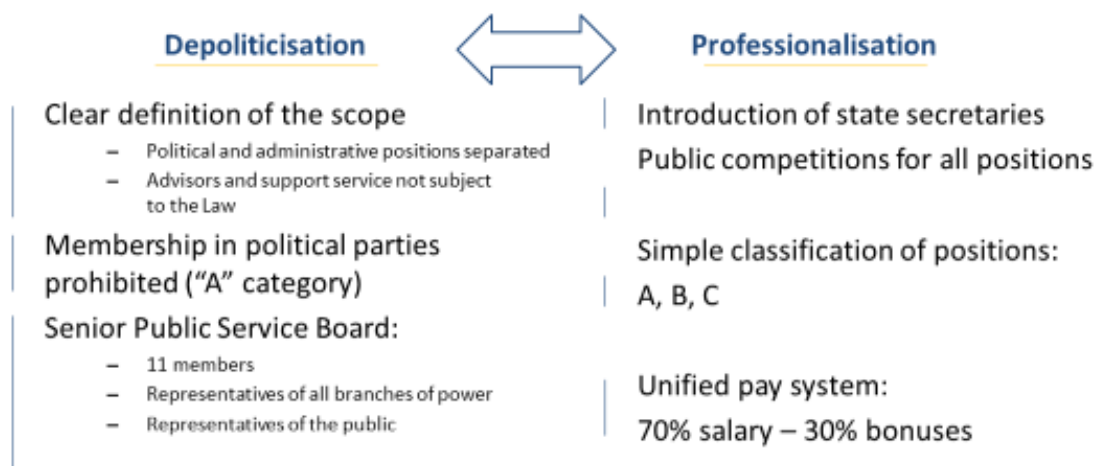
- General Provisions
- Civil Servant's Legal Status
- Civil Service Administration
- Introduction to Civil Service
- Career
- Pay, Promotion and Social Security
- Working Time and Holidays
- Disciplinary and Material Liability
- Civil Service Termination
- Civil Service in Certain Governmental Agencies. Support Service
- Final and Transitional Provisions

- Consensual text
- Adopted on 10/12/2015
- Entered into force on 1/05/2016
- 2 years of transition period

Source: authors' analysis

The Law is a definite achievement in the Ukrainian civil service reform and the first major political step in this direction since 1993 (See Fig. 4. Civil Service Law: Key Achievements).

Fig. 4. Civil Service Service: Key Achievements



Serving the public rather than the government

Source: authors' analysis

The law defines the civil service approaches and principles, as well as regulates the key staff management issues (see Fig. 5. Civil Service Law: Key Elements).

A more detailed analysis of certain provisions of the Law, possible defects, and recommendations for their improvement follow below.

Fig. 5. Civil Service Law: Key Elements



1. Scope of the Law

The Civil Service Law applies to a much narrower range of individuals than the Law on Prevention of Corruption (the Anticorruption Law). In particular, it covers civil servants working for the Cabinet of Ministers and central executive authorities, local state administrations, prosecution bodies, military command, Ukrainian foreign diplomatic missions, and some other public authorities.

At the same time, it also determines the range of persons not subject to the Law, like the top political leadership, members of parliament and local councils, heads of certain public authorities (the Presidential Administration, the Antimonopoly Committee of Ukraine, the National Council for Television and Radio Broadcasting, the Accounting Chamber, the Central Election Commission, and certain other public collegial bodies), judges, prosecutors, the Armed Forces and other legitimate military units staff, law enforcement officers etc.

In general terms, the Civil Service Law is a special piece of legislation that regulates the status of a particular category of civil servants, including the recruitment/dismissal procedure, as well as incentives, social security etc. At the same time, the Law sets only certain special rules of conduct for a limited number of civil servants.

Potential Downsides and Recommendations for a Comprehensive Approach and Consistency with Other Reforms

- It is important to have a clearly defined a vision of the target model for the Ukrainian civil service, as well as an accurate outline of its main elements founded either on the career-based or position-based civil service principle. An open competition for all posts belongs to the position-based principle, while other elements, such as centralised management, high social security, inflexibility, represent the career-based one.
- The civil service reform should be mutually consistent with other PAR elements, namely modification of public authorities structure and procedures, amendment of the CMU Law

and the Central Public Authorities Law, changes and approaches to the local self-governance and local authorities model, the constitutional and other related reforms. Thus, the unclear local state administrations model had a considerable impact on the content of the Law during its development and continues influencing it now upon its adoption through the attempts made by individual MPs to propose amendments thereto.

- It is also rather advisable that the civil service reform and the local self-governance (LSG) service reform were implemented in parallel, but the LSG Service bill has not entered into force (the President returned it to the Parliament).
- At the current stage of the Ukraine's political system development in Ukraine, it is recommended to prohibit political activities to all civil service categories, not just to the "A" category. This should promote the civil service impartiality and professionalism.
- The Law and other regulations contain no well-defined criteria or systemic approach to attributing public authorities or positions therein to the civil service. Generally, the current legislation offers no clear distinction between the public or civil service positions, the individuals authorised to perform state functions and public budget-funded staff.

For example, it is not clear why the NBU is not subject to the Law, although essentially it executes state functions. There is also a pending issue regarding attribution of the newly-established bodies (NABU) or special status authorities (NCPA, some PAU positions) to the civil service.

- The legislation lacks definitions for public, societal, and state interests and their fundamental differences.

Public Interest and Civil Service

A civil servant is quite a unique job as compared to other professions, since it is intended to help implement most types of interests for the largest number of subjects.

Many legislative acts or other sources governing civil servants operation use a whole range of concepts related to interests, such as societal, public, or state ones. Each civil servant's task is to have a proper understanding of the difference among them and to be able to prioritise.

The widest concept is that of the societal interest, which stems from the people's desire to achieve the common good. The public interest is somewhat narrower, as it involves only the societal interests that are recognised by the state through adoption of legislation. On the other hand, the public interest is much wider than the state one. The public interests are the most significant interests of the society and the state, and it is the public interest that shall be in the focus of all civil servants' care.

According to the Constitution of Ukraine, public interests include:

- national interests;
- national security interests;
- interests of the state;
- territorial integrity interests;
- common interests of village/town/city territorial communities;
- public order interests;
- economic well-being interests;
- human rights interests;

- health care interests;
- public morality interests;
- interests of the society;
- interests of all compatriots.

The most important thing is that for civil servants the public interest is higher and more important than the state one. Civil servants work not just for the state interest, but primarily for the sake of the public interest.

2. Civil Service Duties and Principles

A. Main Duties

The Civil Service Law defines a number of principles to guide civil servants in their service, namely the rule of law, legality, professionalism, patriotism, integrity, efficiency, equal access to civil service, political impartiality, transparency and stability.

Under the Law, the main civil servant duties are largely compliant with the general civil service principles. Most of such duties (like to observe the code of conduct rules, to prevent the conflicts of interest and to respect other anticorruption legislation requirements, to avoid disclosure of confidential and classified information, to perform honestly one's professional duties) actually reflect the content of similar rules and duties set by the Anticorruption Law.

Potential Downsides and Recommendations:

Even though the Law obliges civil servants to respect the rules of conduct, it contains no provisions explaining their content, makes no reference to the Anticorruption Law or any other legal act establishing the rules. Likewise, no public body is authorised to clarify them.

B. Fulfilment of Orders, Directives and Instructions

The Law expects civil servants to fulfil orders, directives and instructions coming from their superiors, provided they are issued within the limits of their powers. Should, however, any civil servant doubt legality thereof, they have to:

- request a written confirmation of the order, directive or instruction;
- fulfil the above upon getting a written confirmation (should the superior provide no such confirmation, the relevant order, directive or instruction is considered cancelled);
- notify the higher level superior/body in writing simultaneously with the fulfilment of the above (in this case, the civil servant is exempt from liability should the order, directive or instruction be recognised unlawful in accordance with the procedure established by law, excluding the cases of obvious criminal nature).

C. Political Impartiality

Unlike the Anticorruption Law, which establishes the political neutrality principle only as a rule of conduct, the Civil Service Law outlines the civil servants' political neutrality duties and restrictions more specifically and sets their general obligation to carry out lawful orders, directives or instructions regardless of the party affiliation or political beliefs.

Civil servants also cannot:

- demonstrate their political views and take/omit any action in manifestation of their special attitude to political parties;
- engage in campaigning or events run by political parties, as well as use their office and other civil servants (some public servants) for this purpose;
- arrange and participate in strikes and campaigns (apart from campaigning leaves);
- use their official position for political purposes in any other way.

The "A" category civil servants (the CMU State Secretary and Deputy Secretaries, ministerial state secretaries, heads of central executive bodies, chiefs of staff of the Constitutional and the Supreme Courts of Ukraine, high specialised courts and their deputies, heads of local state administrations etc.) cannot be members of political parties and are required to suspend their membership for the period of civil service in such office.

D. Disciplinary Liability

The Law establishes the basic disciplinary liability principles, including for breaking the code of conduct and the political impartiality rule.

The disciplinary infringements include:

- Displaying disrespect of the state, state symbols or the Ukrainian nation;
- Actions undermining the civil service credibility;
- Abuse of powers for personal/private interests or unlawful benefits of other persons;
- Failure to report in due time the emergence of direct subordination relationship between civil servants and family members;
- Making an ungrounded decision damaging the state or municipal property or resulting in their illegal use (if such actions feature no crime or administrative offense elements).

Such infringements can be subject to disciplinary actions, such as admonitions, reprimands, insufficient service compliance warnings, and dismissal from civil service.

Potential Downsides and Recommendations:

The Law does not specify the code of conduct content and refers to no other regulations, making it unclear which code of conduct rules violation entails disciplinary liability.

The Law also defines dismissal as an exceptional disciplinary action, and therefore it does not apply to the code of conduct violations or actions undermining the civil service credibility.

3. Selection Procedures

The civil service selection procedure is regulated by Article 22 of the Law. In its 2016 report, the Government was rather critical thereof having noted that “given the imperfection of the Civil Service Law and the previous shortcomings in the selection boards operation, competition-related risks should be reduced, in particular through the improved selection procedure, enhanced quality of the selection boards work, and amendment of the Law.” [10]

Potential downsides and recommendations on selection board members and operation

The Senior Civil Service Board set up by the Government was launched on 13 July 2016. Having been originally composed of 12 members, it now consists of only 11 ones (based on Law No.1798-VIII of 21.12.2016), in particular:

- | | |
|--|---|
| 1) a Parliament representative; | 7) a national employer organisations representative; |
| 2) a President representative; | |
| 3) a Government representative; | 8) four representatives from NGOs, research and educational institutions, and relevant qualification experts. |
| 4) NCSAU Head; | |
| 5) NCPA Head; | |
| 6) a national trade unions representative; | |

As it can be seen from the current Board composition, the NGO representatives (6 members) prevail over the governmental ones (5 members). The Board selects the winners and recommends them for appointment to the body in charge (most often, the CMU). The appointing body has very limited rights to turn down the candidate selected by the Board. This leaves open the question on the entity responsible for the “A” category appointments, as well as the rights and responsibility of the Board with its majority represented by NGOs, just like the powers and responsibility of the CMU as the top public executive body.

- In addition, the employers and trade unions’ representatives role and the need of their inclusion to the Board are not clearly defined;
- In view of the heavy workload (altogether about 800 “A” category posts) and the Board’s high responsibility, it is advisable that its members get remuneration for their work, while a reliable and professional secretariat is set up to support the Board operation quality, for which purpose the secretariat staff should have proper working conditions.

Potential downsides and recommendations on the selection procedure

Since the staff is selected in a decentralised way, the procedure laid down in the Law and the resolution is fraught with such risks as uncoordinated actions and insufficient selection quality, even despite of the understandable and precise definitions.

To introduce new selection methods, not only clear job descriptions and professional positions classification are needed, but the selection board members should be sufficiently trained. Since both factors will require time and effort, the probation period extension should be given a serious consideration. It is rather recommended that the weaker the selection capacity is, the longer the probation period should be. Such period, however, should definitely not have any impact on the net salary.

All test questions are available on the Internet. As a result, the candidates may prepare their answers in advance, as there is only a limited scope of questions. The questions should be published only if they are part of a big database.

Some important issues for possible improvement:

- Rating remains to be rather problematic, as it creates no sufficient differentiation among the candidates and gives an impression of being quite complicated, especially as some board members have rather limited experience. It may be too difficult in practice to plan the selection in the way that only specific requirements are examined at every competition stage. Moreover, the written test value is very low (the smaller it is, the bigger should be the number of requirements to be checked). Finally, the resolution is not clear enough on the rating procedure.
- The first testing stage (multiple choice tasks) should not be limited to legal questions only, but also needs to verify, for example, financial literacy or similar spheres of knowledge depending on the area of work or position.
- It is not clear why the Board is entitled to ask the "A" position candidates to present the results of solving situational tasks orally. Written presentations and their truly anonymous examination would enhance objectivity.
- The test coding system may yet fail to ensure complete confidentiality.
- Situational tasks solutions (keys) are necessary for rating situational tasks to reduce the level of subjective evaluations by the board members.
- An integrity check is currently not envisaged at all. Even though this quality is hard to examine, it is quite advisable to have mechanisms in place to verify false or inaccurate information, e.g., through the publicly available data and public sources analysis.
- Since there are some cases when selected candidates are not appointed due to incomplete special verification procedure, it is recommended to limit such verification period to 30 days.
- It is important to have a clear interpretation of the provisions of the Law that can be and sometimes are construed in a variety of ways, in particular as concerns:
 - defining the experience of work in management positions (management position definition?) (Art.20, Para.2)
 - defining specialised requirements for civil service positions (is this an obligation or a right to take specialised laws into account? How specialised requirements should be defined in the absence of specialised laws?) (Art. 20, Para. 3)

4. Remuneration

The remuneration system laid down in the Law significantly simplified and unified the remuneration approaches and tools which had been used in the civil service before the Law came into force.

On 6 April 2016, the Government set the civil service remuneration conditions for 2016 (CMU Resolution No. 292 on Civil Servants Remuneration in 2016, valid since 1 May 2016). This act approved salary plans and rank increments, as well as distributed civil service positions among the relevant remuneration groups.

A similar governmental resolution was issued on 18 January 2017, No. 15, to regulate the remuneration issues in 2017. The act established the civil service minimal base wage of 2,000 UAH as of 1 January 2017, increased salary rates for civil servants and other categories

of public authorities staff from 3 to 36 per cent against 2016, regulated distribution of civil service positions among various salary groups etc.

Remuneration Plan

№	Law Article	Element	Amount / Coefficient			Base Amount
-	50	2. Salary composition:	Min	Max	Aver	
1	50	1) base wage;	2	14	8	Subsistence minimum for able-bodied persons
2	50	2) seniority increment;	3%	50%	27%	Percentage of base wage
3	50	3) civil servant rank increment	200	1000	600	CMU Resolution No. 15 of 18.01.2017
4	50	4) additional workload remuneration for replacing a temporarily absent civil servant	50%	50%	50%	50 percent of the temporarily absent civil servant's salary
5	50	5) additional workload remuneration for performing the vacant position duties	-	-	-	Proportional to the additional workload from salary fund vacancy savings
-	50	6) bonuses (if applicable):				
6	50	1) annual performance evaluation bonus;	-	-	-	As per the personal contribution to the public authority results
7	50	2) monthly/quarterly bonus for personal contribution to the public authority overall results	0%	30%	15%	Not more than 30% of the civil servant's base wage fund per year
8	Para.14 Trans. Prvsns	During two years upon enactment of the Law, senior officials may establish additional incentive payments for civil servants within the salary fund savings in accordance with Incentive Payments Regulation approved by the CMU	0%	unlim	unlim	2. Senior officials may establish additional incentive payments for civil servants within the salary fund savings. 4. Bonuses are set as the base wage % as per the senior official's order

“In 2016, the civil service salary fund was 19.2 bln UAH. It added up 10.5 bln UAH in 2017 having grown to 29.7 bln UAH. As of 1 January 2017, the actual number of the civil service working staff made up 200,202 persons, while the total number of the listed civil service positions was 234,756 people (as of 01.01.2016, there were 268,370 civil servants)” [10].

Potential downsides and recommendations

The current remuneration system features the following main shortcomings [15]:

- Lack of transparency in the salary fund use: no integrated system for staff registration and individual payments monitoring provides no possibilities for analysis;
- Disparities within the current system among various public authorities, especially as compared to the newly established ones (NCPA and NABU);
- Salary fund savings make up the main source for incentive payments, which does not encourage senior officials to optimise the quantity and functions;
- Low “A” category salaries, especially in comparison with the private sector, increase corruption risks and reduce the opportunities to attract decent professionals.

The current remuneration system does not fully meet the basic remuneration rules, as well as the EU/OECD SIGMA main PAR objectives and principles, in particular Principle 3.5. “A fair and transparent remuneration system, including salary classification based on the job classification system.” (*for the detailed Principle 3.5 wording see Annex 5*).

The civil service salary system should aim at the following:

- Attracting and retaining qualified staff;
- Providing competitive salaries;
- Ensuring uniform base wages across public bodies with equal pay for equal work under the same conditions;
- Promoting efficient performance with differentiation depending on qualifications, workload and limits of responsibility;
- Being guided by the classification of work (its complexity and the skills required), rather than positions.

Moreover, the civil service salary system should be comparable to the salaries in the related positions, such as political offices, support service posts, public authorities technical staff.

It is recommended that the salary system for positions outside the civil service be also based on clear criteria and transparent principles, namely:

Positions	Remuneration Principles
Political offices	<ul style="list-style-type: none"> • High base wages • No benefits/bonuses (as the bonus subject and procedure are not clearly defined)
Support service posts	<ul style="list-style-type: none"> • High base salaries • No benefits/bonuses (as the bonus procedure is not clearly defined and can be subjective on the part of the official in charge, the political superior)
Technical staff	<ul style="list-style-type: none"> • Salaries comparable to the level of wages in the labour market for similar work • No benefits/bonuses as in the civil service (status, seniority etc.)

Detailed proposals on the remuneration system approaches and principles for the civil service and other positions in public authorities can be found in Annex 6.

National Civil Service Agency (NCSA) Institutional Capacity and Adequate Funding

NCSA is the leading authority for implementation of the Civil Service Law, which attributes 11 new functions to the Agency.

For this purpose, the relevant structural units have been set up at the Agency to do functional and legal analysis, to monitor the exercise of the right to civil service, to support the Senior Civil Service Board operation, which requires significant strengthening of the NCSA institutional capacity.

In addition, for efficient and full-fledged civil service reform, the NCSA should develop a methodology for introducing modern staff management approaches. This task should be supported by establishment of the units in charge of the following:

- Methodological support to the public authorities HR services, development and implementation of techniques for managing organisational changes, staff evaluation and development;



- Development and implementation of methods for selecting candidates to the “B” and “C” category positions, coordination of efforts to attract candidates to the civil service;
- Creation and management of an integrated information system for human resources management in the civil service.

After a detailed analysis and creation of a new NCSA structure, the list of reform expert positions should be determined along with professional competence requirements to the candidates to such posts. A competition should also be held to select HR experts for the NSCA with the relevant experience and qualification, who should subsequently be offered a training to expedite their mastering of the civil service staff management specifics.

New Civil Service Vision

Modern Staff Management Tools

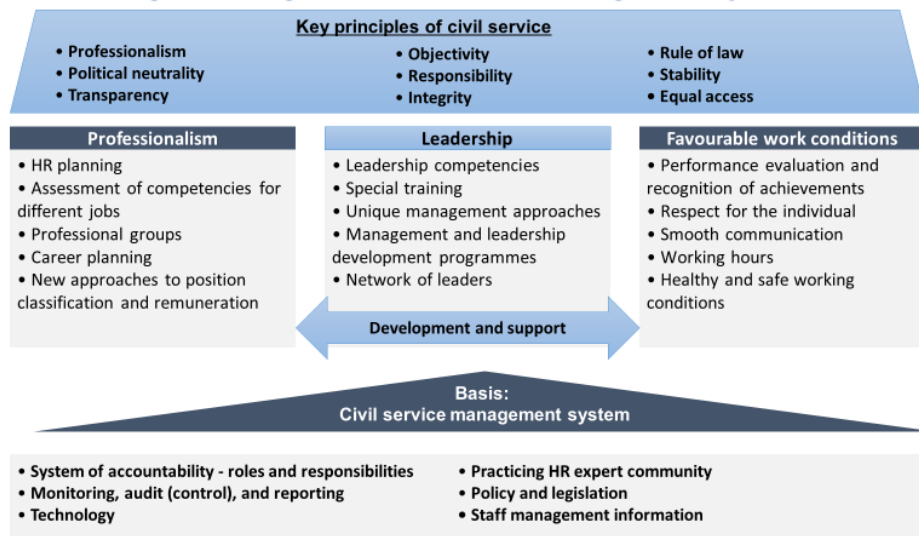
Respect for the rule of law, legality, patriotism, integrity, professionalism, political neutrality, loyalty, publicity, transparency, stability, responsibility and equal access to civil service should be the key civil service principles in Ukraine. The proposed vision outlines how such principles can be implemented into the Ukrainian civil service.

The society and citizens believe that the new civil service should:

- serve the national interests of Ukraine and its citizens;
- be professional and guided by ethical standards, while civil servants should be appointed based on merit, rather than for political reasons or personal interests;
- focus on fair and effective delivery of civil services to citizens;
- enjoy the confidence of those it serves, while citizens should be sure that civil servants aspire to work for the public, rather than personal interests or gains;
- develop policy options based on the comprehensive analysis and consultations with all stakeholders, as well as support the Government by providing objective decision-making recommendations on policy-making, and also on shaping agenda and priorities for the country;
- be committed to the implementation of the Government policy decisions;
- make its staff proud of belonging to the civil service and seeing their work and contribution recognised and valued;
- be an accessible and attractive employer that treats staff with justice and respect.

This vision should be based on a strong and comprehensive strategic civil service staff management system (*see. Fig. 6 “Strategic Civil Service Staff Management System”*).

Fig. 5. Strategic Civil Service Staff Management System



Source: "Strategic Framework for HR Management System" developed as part of the staff management reform in the Ukrainian civil service in Ukraine with the Canadian International Development Agency, August 2008

The strategic management system should aim at promoting modern, professional, integrity-based, politically neutral, sustainable, and representative civil service where appointments are made based on merit (professional qualifications, relevant skills and experience, personal talents and characteristics). Such system should also be contributing to the civil service development, as it is expected to:

- provide leadership and capacity building;
- attract qualified candidates and retain valuable staff;
- ensure effective, fair, transparent and efficient selection and merit-based promotion processes;
- support training for capacity building and professional skills development;
- establish a classification system for objective assessment of the relative value of all types of civil service work;
- introduce a classification-based remuneration system capable of attracting and retaining skilled candidates at the civil service;
- develop the working conditions to make the civil service an attractive employer encouraging and promoting efficiency, innovation, professionalism and retention of valuable staff; and
- create the necessary infrastructure and human resource management system in the civil service of Ukraine.

Key recommendations for the development of strategic human resources management (HRM) system in the Ukrainian civil service:

1. Leadership Development

1. A range of administrative leadership competences should be defined as a basis for all types of HRM activities;
2. A leadership and management development programme should be developed and introduced for the senior and middle level officials;
3. The leadership competences should be used for a two-stage assessment of the administrator community professional training needs;
4. A senior officials leadership network should be established;
5. A new approach should be introduced for the senior officials HRM through:
 - clear definition of the NCSA role in directing and coordinating the senior management human resources as a certain professional community;
 - improvement of the selection and promotion process on the basis of the new leadership competences and clear job descriptions, including introduction of special selection and promotion conditions;
 - review of the annual performance assessment process, introduction of the individual performance agreements for each civil servant, provision of bonuses based on the mandatory documented performance assessment, as well as annual monitoring and audit of the assessment process itself in all public executive authorities.

2. Professional and Sustainable Civil Service

1. A new civil service position classification should be legislatively developed and introduced to be based on the functions performed by the civil servants, rather than the public authority legal status; it should also include the organisational chart, the new job description methodology, and development of classification standards instructions to assess the relative value of all new and/or existing civil service positions.
2. New remuneration guidelines should be defined for civil servants, including new base salaries, bonuses, increments, and benefits, whereby civil service remuneration should be competitive with business, but not the highest; it should also reflect the relative value of all types of the civil service work, including the incentives, but be realistic in terms of the budget resources available.
3. The remuneration system should aim at making the base wage represent 85% of the salary for all positions.
4. The reward policy should be reviewed in order to introduce individual bonuses funds and special approaches to the target categories.

5. The pension plan should be likewise revisited as one of the general remuneration package elements from the perspective of sustainability, feasibility (implementability) and justice (equality).

3. Staff Planning

1. All central public authorities should be required to develop an annual HRM strategy to be interrelated with the general strategic and operational (current) plans of each public authority.
2. An annual governmental HRM strategy should be based on the staff management strategies of all central public authorities.
3. Data collection and reporting on civil service human resources should be improved for efficient support to the human resources, staff and monitoring management planning both at the level of individual public authorities and generally across Ukraine.
4. Heads of HR services and relevant structural units should be assisted to play a more strategic role in the HR planning for the civil service.

4. Recruitment and Promotion

1. An independent monitoring and reporting system for the recruitment/promotion political neutrality and efficiency should be outlined.
2. Position profiles should be developed based on the civil service professional groups with a uniform, but flexible approach to the definition of general and special requirements to the position and selection conditions.
3. New comprehensive evaluation tools should be developed for the selection procedures, including as to the leadership competences, communication skills, integrity and profile expertise in the relevant areas of responsibility.

5. Annual Assessment and Attestation

1. The annual assessment procedure should be revised and modified for it to ensure a meaningful communication between the civil servants and their supervisors, to establish clear, measurable, and reasonable tasks for the relevant positions, to be used to defined the training needs, to promote the career development discussions, and to recognise any given staff member's contribution.
2. A planning process should be introduced as part of the annual assessment to improve the performance of the staff experiencing problems in their professional activities.
3. The current requirements to the civil servant performance assessment procedures should be reviewed.
4. New annual assessment training modules should be developed and incorporated into the overall training programme for senior officials.

5. The HR managers' role should be strengthened in their capacity as advisers to the senior officials conducting the civil servants' annual assessment.

6. Civil Service Management System and Infrastructure

1. A permanent unit should be established at the NSCA as an expert, leadership and policy-making centre to develop the HRM capacity at civil service.
2. The HRM unit should be granted clear powers to define main and reconciled HRM function, to set qualification standards and to draft job descriptions for the HR staff in accordance with the adopted Strategic Framework, as well as to play a strategic role in the selection, promotion, and evaluation of the senior HR officials at civil service. In addition, such unit should be in charge of setting up a professional HR network.
3. The Main Civil Service Department HR operations and its role as the civil service HR management leader should be independently audited.
4. A communication strategy should be developed and implemented to support HR management which is directly linked to the broader civil service reform.
5. All HRM stakeholders should be identified at the level of central public authorities for clear identification of their roles, functions, responsibility and accountability to develop new responsibility/accountability frameworks (foundations) for HRM in civil service.

Conclusions

Introduction of the Strategic HRM System within the Ukrainian civil service is one of the key civil service reform initiatives in Ukraine. The success of such exercise depends on a number of factors, including commitment and constant support on behalf of the governmental top officials, NCSA strong leadership for civil service “from-within” transformation, as well as the ongoing provision of the necessary staff and resources to nurture strategy implementation in the long-term perspective.

The changes will happen and become appreciable only when the basic recommendations of this Strategic System are implemented, in particular:

- leadership capacity development;
- building the accountability system for HRM at civil service;
- introduction of new position classification approaches with considerable improvement of working conditions.

To make the changes possible, a comprehensive approach to the introduction of the Strategic System is recommended. Rather than looking for shortcut, picking up individual recommendations or focusing on vested interests, it is better to follow the approach that will make it possible to solve the key issues for each of the above components to secure the true progress in the building of a new civil service system in Ukraine.

References and Key Policy Documents

Key Policy Documents:

1. "Ukraine – 2020" Sustainable Development Strategy approved by Presidential Decree No. 5/2015 of 12 January 2015.
2. Public Administration Reform Strategy for Ukraine 2016-2020 approved by CMU Resolution No. 474-p of 24 June 2016.
3. CMU Instruction on Approval of the Reform Strategy for the Civil and Local-Self-Governance Service in Ukraine until 2007 and Action Plan Approval, No. 227-p of 18 March 2015.
4. Cabinet of Ministers Action Program (Vidomosti Verkhovnoyi Rady, 2016).
5. "European Ukraine" Parliamentary Factions Coalition Agreement.
6. Civil Service Law, No. 889-VIII of 10.12.2015.
7. Verkhovna Rada Resolution on the CMU Action Program (Vidomosti Verkhovnoyi Rady, 2016, No. 18, p. 208) {On the Programme approval see CMU Resolution No. 294 of 14.04.2016.
8. 2016 Government Priority Action Plan approved by CMU Instruction No. 418-p of 27 May 2016.
9. Medium-term Government Priority Action Plan until 2020 and 2017 Government Priority Action Plan (CMU Instruction No. 275-p of 3 April 2017).

Additional Resources:

10. 2016 Implementation Report for the 2016-2020 PAR Strategy
(http://www.kmu.gov.ua/control/uk/publish/article?art_id=249777403&cat_id=244276429).
11. 2015 and 2016 "Reforms Progress Monitoring" NRC Reports
(<http://reforms.in.ua/ua/storinka/zvity>).
12. "Public Perception of Reforms" Survey prepared by TNS for the NRC in Feb 2017
(http://reforms.in.ua/sites/default/files/documents/tns-nrc/2017_02.pdf)
13. EU/OECD SIGMA Public Administration Principles
(<http://www.sigmaweb.org/civilations/principles-civil-administration.htm>)
14. "Strategic Framework for HR Management System" developed as part of the civil service HRM reform at the NCSA supported by the Canadian International Development Agency, August 2008.
15. Civil Service Pay Reform Study by Iryna Piontkivska, Centre for Economic Strategy, presented on 27 April 2017.