

ICPS newsletter

Positive changes in economic legislation are insufficient to speed up economic activity

A study "New economic legislation: 2000–2001" was published in a new issue of ICPS journal Policy Studies, which appeared in print last week. In this issue, we present our analysis of changes in economic legislation that took place over the last 12 months with regard to their influence on the business environment in Ukraine. Due to the lack of political consensus, the Verkhovna Rada has yet to adopt the key pieces of legislation that would ensure the integrity of the legislative environment in Ukraine, in particular, the new Tax Code and Customs Code. At the same time, significant moves have taken place in the legislative regulation of the financial sector, in the domain of product safety, in the administration of taxes, and in the sphere of intellectual property rights. However, we believe that these changes are not sufficient enough to boost economic growth

Legislative acts are used as tools for the enforcement of state policy, therefore, the quality of laws depends on the quality of the policy. We believe that the conflict of interests among parties, and the lack of a requirement for proper justification of legislative changes hamper the adoption of effective laws. As examples we can cite the delay in adoption of the new Civil Code and Customs Code. Whereas these key documents, which are the pivots of national legislation, have not been adopted so far, the improvement of extant legislation has also stalled.

Financial sector

At the same time, an understanding of the vital need to develop the financial market infrastructure in order to deal with the growing economy did spur the adoption of framework laws for the financial sphere. Over the past 12 months, the Verkhovna Rada has adopted the following essential laws for the financial sector: "On financial services and state regulation of financial services markets", "On payment systems and money transfers in Ukraine", "On the circulation of bills in Ukraine", and "On banks and banking activity".

Thanks to the clear definition of financial terms and types of financial services, market players' activities will become more and more transparent, and monitoring processes will become simpler. Concentration of authority concerning regulation and monitoring of "non-banking and non-stock" financial services in the hands of one agency will enable the application of common regulatory principles, and that will reduce risks in the markets for these services.

Banking regulation will become more stable thanks to the legislative consolidation of norms that heretofore were dispersed among various normative acts. The new Law "On banks and banking activity" implements a number of new approaches to bank regulation, in particular, increases the NBU's authority regarding liquidation and supervision of banking activities, strengthens the protection of clients' rights, and facilitates the business of banking.

Regulation of economic activity

The most important step in reforming the Ukrainian system of technical

regulation and its conformity to European standards was the adoption on 17 May 2001 of the Laws of Ukraine "On standardisation", "On confirming compliance", and "On the accreditation of compliance assessment agencies". The positive side to these laws is that they set legal guarantees for securing the rights and lawful interests of business entities and the mechanisms of their protection, as well as in creating opportunities for economic entities in some cases to choose alternative variants of conduct in order to adhere to legislative requirements.

At the same time, in the regulation of market activity, the following principles of licensing types of economic activity have been violated: adherence to a single list of types of economic activities that are subject to licensing; and adherence to a unified licensing procedure for these types of activities, stipulated by the Law "On licensing certain types of economic activity".

Tax policy

The most notable event in the tax policy practices, despite the fact that the adoption of the Tax Code has not moved forward from its "dead stop", became the adoption of the Law "On the procedure for settling the obligations of taxpayers towards budgets and target funds". This law will promote a more effective and more transparent tax administration due to the detailed regulation of procedures which govern the interaction of taxpayers and tax administrations. At the same time, reducing the tax burden and its equitable distribution among taxpayers remains burning issue.

Judicial reform

The expiration of the 5-year term of the "Transitional Provisions" of the Constitution of Ukraine became a significant impetus for the implementation of a small-scale legal reform. Over the period of June-July 2001, the Verkhovna Rada of Ukraine adopted a system of laws on reforming the national judicial system and court procedures. If these amendments had not been adopted by the parliament, Ukraine might have been left without a judicial system after 28 June 2001. These amendments increased opportunities for the protection of entrepreneurs' rights.

Protection of economic competition

The crucial need to improve legislation on the protection of economic competition led the Verkhovna Rada to adopt the Law of Ukraine "On the protection of economic competition". After entering into effect in March 2002, this act will become the basis for Ukraine's antimonopoly legislation. According to the new law, the role of the Antimonopoly Committee of Ukraine will change dramatically; now the committee will perform proactive

functions, i.e., for the effective assurance of economic competition. At the same time, the law includes provisions that might increase the risks for business activity.

Open economy

Over the past 12 months, Ukraine has succeeded significantly in raising the level of economic openness for trade. Meanwhile, no noticeable changes have taken place in the sphere of capital flows and labour force movement. Over the past year, a number of legislative acts have been implemented with the purpose of strengthening intellectual property rights, diminishing the operating expenses of foreign trade entities and eliminating obstacles for entry to Ukraine.

Property relations and privatisation

Effectiveness of corporate governance in Ukraine has diminished through the lack of adequate legislative underpinnings for the functioning of economic associations and ownership relations. For the second consecutive year, the legislative base for privatisation in Ukraine has been stable (this fact boosts investor confidence);

however, due to poor compliance and allowance of exceptions to the general rules, the situation has deteriorated. The most glaring example of an exception to the general privatisation rules was the Law "On the particularities of privatisation of the Mariupol Illich Metallurgical Works", which contradicts the State Privatisation Programme.

Sectoral regulation

Finally, we have evaluated modifications in the regulation of agriculture, tariff formation in the energy sector and property relations.

In the process of regulating agriculture, state agencies have focused their efforts on supporting agricultural production. Increasing attention is being paid to measures aimed at eliminating the free market failures, to prevent excessive price fluctuations for agricultural commodities and stimulate producers' interest in this or that sector. But eliminating the government failures — weaknesses of the legal base, lack of coordinated state policy, and inadequate provision for the property rights of rural people — has been postponed.

New methods for the calculation of tariffs for transmission and supply of electricity offer more freedom to those energy distributing companies which execute their obligations towards energy-suppliers, and also distinctly stipulates terms of tariff-setting. This approach is more effective and objective compared to the previous ones. However, this kind of regulation does not provide enough incentives to boost the efficiency of energy distributive companies (in particular, incentives to diminish excessive costs), and does not set firm control mechanisms; instead, it creates grounds for unproductive cost increases. ■

The study "New economic legislation: 2000–2001" was jointly conducted by Coordination and Analysis Centre for Ukrainian Business Associations and ICPS with financial support from the Centre for International Private Enterprise (CIPE) within the framework of the project "Evaluation of changes in economic legislation".

Summary evaluation of changes in Ukrainian economic legislation over the last 12 months

Stimulated business activity:	Restricted business activity:
<ul style="list-style-type: none">• adoption of framework laws on the regulation of activities in the financial sector;• regulation of procedural relationships between taxpayers and tax agencies, implementation of procedures for administrative appeal regarding the actions of tax agencies;• adoption of the set of laws in the sphere of technical regulation, which comply with the European standards;• small-scale judicial reform that enhances opportunities to defend entrepreneurs' rights in court;• simplified procedures for foreigners crossing the border;• lifting the moratorium on the bankruptcy of agricultural enterprises.	<ul style="list-style-type: none">• postponing the adoption of the Tax Code, and Customs Code;• delaying the adoption of the laws "On securities and the stock market", and "On joint-stock companies";• introduction of holographic protection of documents and products that will increase the cost of doing business;• increase of the overall tax burden caused by the introduction of a levy to the Fund for Accidents Insurance;• uncertainty in the regulation of the telecoms sector through the lack of a well-formed draft Law "On telecommunications".

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