

An attempt to “deoligarchise” Ukraine – real action or a game of pretence?

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Over the past year, President Volodymyr Zelensky has changed his rhetoric towards representatives of big business, commonly referred to as oligarchs. He has made a shift from the position of a neutral arbiter to uttering slogans about combating their excessive influence on politics and the economy. On 5 November, he signed the Oligarchs Act, intended at limiting their influence on politics. In addition, an act amending tax regulations is to be passed in the near future, which will reduce the profits of those who own assets in the iron ore mining sector. However, the solutions adopted are largely of a populist nature and are unlikely to diminish the importance of the oligarchs. Instead, they may prove to be a convenient instrument for the ruling camp to put pressure on big business to ensure its loyalty. This will be crucial if Zelensky, contrary to the announcements he made during the election campaign, decides to seek re-election, which is becoming more and more likely.

The Ukrainian oligarchs

A system in which representatives of big business, so-called oligarchs, exert a dominant influence developed in Ukraine towards the end of the 1990s. Over a quarter of a century, they have managed to create monopolies or oligopolies in many sectors of the economy, primarily in the metallurgical, chemical and energy industries. Many of them owe their fortunes to the privatisation of state-owned assets at a reduced price. As their wealth increased, so did their influence on politics. As they sponsored political parties, individual politicians or officials, laws and regulations favourable to their interests were passed. The main strength of the oligarchs is the mass media – around 70% of the TV market belongs to the four media companies they control. This enables them to impose the political content of news and promote politicians who are dependent on them. This deal, despite some reshuffles, has not changed since the Euromaidan revolution in 2014 (President Petro Poroshenko himself was a representative of big business) or after the 2019 elections.

Although Zelensky has been accused by his opponents of being dependent on Ihor Kolomoyskyi (his channel broadcast TV productions of the future president), he in fact remained neutral towards the oligarchs for a long time. Contrary to initial fears, Kolomoyskyi did not gain any particular influence over him. Zelensky tried to build his position as an arbiter and use big business to support the



government's initiatives (e.g. the purchase of ambulances in the first phase of the COVID-19 pandemic), while his pressure on Poroshenko resulted from the fact that he was and remains the main political opponent of the ruling camp.

At the same time, the head of state tolerated the fact that the deputies of the ruling presidential party, Servant of the People, and some ministers in the cabinet favoured

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the oligarchs. This state of affairs began to change in the autumn of 2020, when the Constitutional Court issued a ruling effectively blocking the activities of the National Agency for the Prevention of Corruption (NAPC).¹ The motion was initiated by deputies of the pro-Russian party Opposition Platform – For Life led by Viktor Medvedchuk and For the Future, a party controlled by Kolomoyskyi. In February this year, the National Security and Defence Council (NSDC) decided to impose sanctions against Medvedchuk.² Although in this case the justification was his pro-Russian activity, the president and his entourage emphasised that this step illustrated his fight against the oligarchy. An equally important motive for hitting Medvedchuk was the growing popularity of the Opposition Platform – For Life, of which he was one of the leaders.

The approach employed, which involved the NSDC being used to impose sanctions, met with a positive public reaction. As a result, support for Zelensky has been growing since February. The president decided to go ahead: June he presented a draft of the so-called act on oligarchs to the Verkhovna Rada (VR). In the same month, the government also submitted proposals for regulatory changes that would raise taxes to be paid by the owners of steel plants (most of whom are business tycoons).

The Oligarchs Act...

On 23 September, the Verkhovna Rada adopted, in its second reading, a draft law on preventing threats to national security involving the excessive influence of people who have a significant political or economic influence on public life (commonly known as the Oligarchs Act). The document introduces the legal concept of an oligarch – a person who meets three out of four criteria: takes part in political life, has a significant influence on the media, owns companies that have a dominant position in the market, and has assets worth over US\$90 million. It is up to the NSDC to decide who is an oligarch. Such a decision may be requested by the government, a member of the NSDC, the National Bank of Ukraine, the Security Service of Ukraine or the Anti-Monopoly Committee.

If this status is granted, the indicated person will be entered in a special register. A person with this status is forbidden to finance parties and candidates in elections, be engaged in any demonstrations with political slogans and to participate in the privatisation of state-owned assets. 'Registered' oligarchs are also required to submit an annual asset declaration. Senior officials, in turn, will have to provide a declaration of any contact with the oligarch or his/her representative, but the definition of such a person and sanctions for failure to do so are vague (political or disciplinary liability).

More than a thousand amendments were submitted to the bill. To avoid considering all of them one by one a special procedure was applied. According to many lawyers, this is a violation of the Verkhovna Rada's regulations.³ The document was supported by 279 deputies, including 229 from the Servant of the People party and the majority of parliamentarians from the For the Future (18)

¹ P. Żochowski, 'Ukraine: a Constitutional Court verdict ignites a political crisis', OSW, 30 October 2020, osw.waw.pl.

² S. Matuszak, P. Żochowski, 'Growing importance of the Security Council in Ukraine', OSW, 1 April 2021, osw.waw.pl.

³ This concerns voting on the amendments in packages instead of considering each amendment individually.

and Trust (15) factions. The pro-Russian Opposition Platform – For Life and European Solidarity, led by former president Petro Poroshenko, were against. Yulia Tymoshenko's Batkivshchyna abstained from voting, which in the Ukrainian parliament, where 226 votes are required to obtain a majority, is in fact tantamount to opposition (see Appendix for details).

...and the tax changes

The act amending the tax code, often referred to in the media as the 'anti-Akhmetov' act, was adopted on its first reading on 1 July. Its final vote has been repeatedly announced since then, but has not yet come to pass. In fact, most of its provisions concern changes in taxation unrelated to the oligarchs (including the real estate market and small farms or the increase in excise duty on alcohol products). As with the law on oligarchs, there are attempts to block the project by submitting a huge number of amendments to it (over 11,000). However, all indications are that in this case the obstacle can also be avoided, thanks to the use of a special procedure at the Verkhovna Rada.

The main change the bill brings is the introduction of a progressive tax rate on the extraction of iron and manganese ores – the rate will

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be directly linked to prices on the IODEX 62% FE CFR China index (prepared by the Platts agency). This will affect not only Rinat Akhmetov but also other oligarchs who earn money on ore mining (Viktor Pinchuk, Vadym Novynskyi, Kostiantyn Zhevago and Ihor Kolomoyskyi). In the case of prices being below US\$100 per tonne, the tax is expected to be 3.5%, for prices ranging from US\$100 to US\$200 it will be 5%, and above US\$200 it will be 10%. The increase in the public levies is related to record-high prices of iron ore: between May and early August they exceeded US\$200 per tonne. This generated enormous income for Ukrainian companies (the Metinvest Akhmetov and Novinsky concern generated a profit of US\$2.8 billion in the first half of this year)⁴. At the same time, it is far from certain as to whether the budget will actually receive additional revenues due to the introduction of the new rates, as prices have been falling regularly since the end of August (dropping below US\$100 per tonne at the beginning of November).⁵ The second change affecting the owners of large industrial plants is a threefold increase in the environmental tax related to CO₂ emissions.

The doubts

The provisions of the Oligarchs Act were already highly controversial at the draft stage, owing to doubts as to their compliance with the constitution. These doubts concern both the restrictions on the civil rights of people who may be considered oligarchs and expanding the powers of the NSDC and the president. Moreover, the act was adopted in breach of the parliament's rules of procedure, although this was not the first time this was the case. Since the act was adopted in a hasty manner, there is a conflict-of-law in its provisions. It was only removed during the vote on 3 November (the procedure applied for this is also questionable).⁶

The then parliamentary speaker, Dmytro Razumkov, sent the bill to the Venice Commission after the first reading, asking for an opinion, which was expected to be issued in December this year. Zelensky's inner circle treated this step as an attempt to sabotage the reform and as proof of co-operation with

⁴ ““Метінвест” Ахметова-Новинського за пів року отримав 2,7 мільярда доларів чистого прибутку”, *Економічна правда*, 1 September 2021, epravda.com.ua.

⁵ 'Iron Ore 62% Fe, CFR China (TSI) Swa', *Financial Times*, markets.ft.com.

⁶ І. Лисогор, 'Рада постановою виправила деякі неточності в «законопроекті про олігархів», його підписуватиме Стефанчук', *LB.ua*, 3 November 2021, lb.ua.

the oligarchs. Under pressure from the president, the ruling party decided to vote at an accelerated pace, without waiting for the Commission's opinion. Razumkov did not participate in the Verkhovna Rada's meeting on the pretext of being infected with the coronavirus. The conflict between the parliamentary speaker chairman and the head of state finally led to Razumkov's dismissal on 7 October this year.⁷

The provisions of the act are not sufficient to actually limit the influence of big business on politics.

The financing of political parties, despite the adoption of the new

electoral law in 2019, remains non-transparent, and it is very doubtful that the formal ban on accepting funds from the oligarchs' register will change anything in this regard. The ban on participation in privatisation will also not have a major impact on the current state of affairs, as the vast majority of the most profitable state assets had already passed into the hands of the tycoons in previous years. Only a few objects remain in the possession of the state that may arouse interest among representatives of big business (e.g. the Odessa Port Plant). In addition, it has a minority stake in some of the assets already managed by the magnates (mainly the so-called *oblhaz* and *oblenerho*, i.e. district gas and electricity distribution companies), but even if the state-owned packages are sold, it is likely that a way round the ban will be found, e.g. they will be purchased by substitutes.

For some potential oligarchs who do not participate in official political life (e.g. Akhmetov), the problem may be the need to submit asset declarations, although the law does not provide for sanctions for failure to do so or for providing incorrect information in the declaration. The obligation to notify the authorities about any contact with an oligarch will be the most burdensome. It seems that this measure is aimed mainly at Poroshenko, who as a deputy is very active in the public sphere. It is difficult to say how compliance with the provisions of the law will look like in practice, but in theory every contact of a member of the European Solidarity faction with the former president should be reported, except for public events broadcast live in the media. Another question concerns the concept of an oligarch's representative. Although this term has been defined in the document, it is not specified who – and in what manner – should determine that a given person meets the indicated conditions.

To adopt the law, the votes of the Servant of the People party alone would be enough, which is proof of the continuing consolidation inside the party. It is worth noting that the bill was supported by the groups For the Future (controlled by Kolomoyskyi) and Trust (controlled by the agricultural tycoon Andriy Verevskyi). While it is difficult to define the motives in the first case, it is easier to identify them in the second – Verevskyi, whose grouping regularly supports the Servant of the People party during votes and is in fact its informal coalition partner, probably received guarantees that he would not be entered into the oligarchs' register.

The goals and the outlook for the future

It is currently difficult to judge how long the list of the oligarchs will be. It will almost certainly include Poroshenko, Akhmetov (the richest businessman in the country), Kolomoyskyi, Pinchuk and Dmytro Firtash – each of whom has assets worth hundreds of millions or billions of dollars and a media empire of their own. However, the criteria for being considered an oligarch are so broad and fuzzy that they potentially cover a large group of people. Tomáš Fiala, a Czech businessman and a founder of the Dragon Capital investment fund operating in Ukraine, which owns the NW media concern (it includes

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⁷ K. Nieczytor, 'Loyalty above all. Ukraine's speaker of parliament is dismissed', OSW, 8 October 2021, osw.waw.pl.

a news radio, a weekly and an internet portal) and bought the opinion-forming Ukrayinska Pravda portal in May, has been mentioned among the possible 'candidates'.

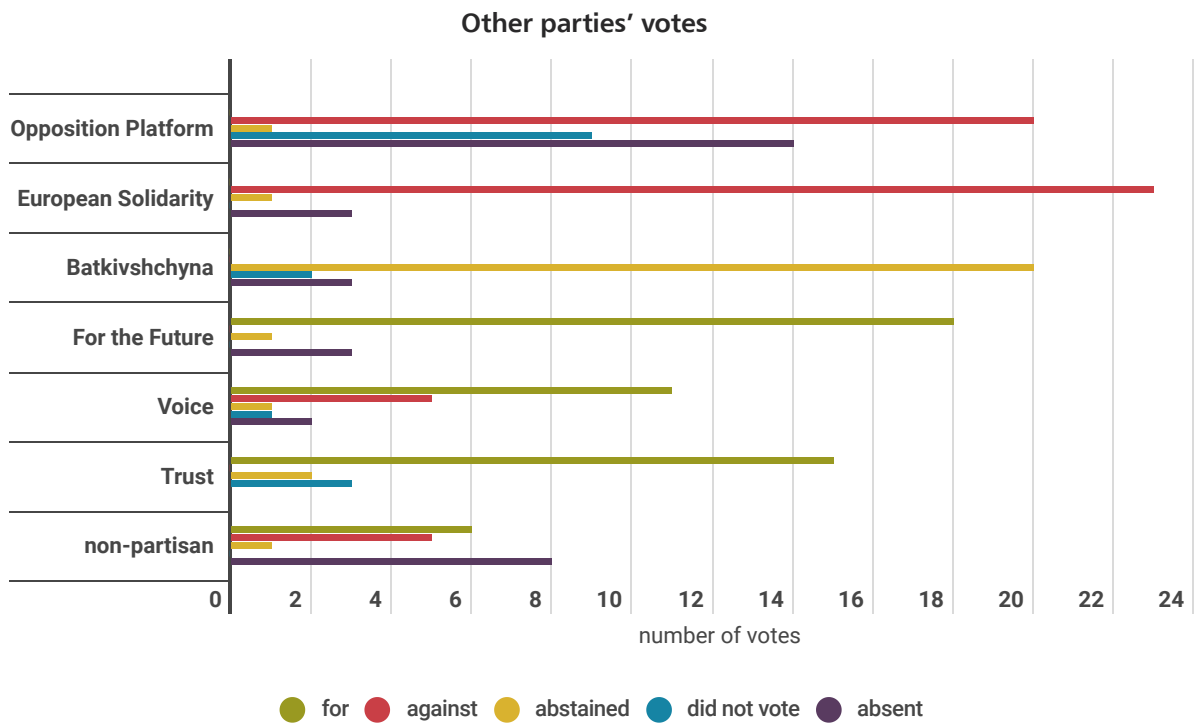
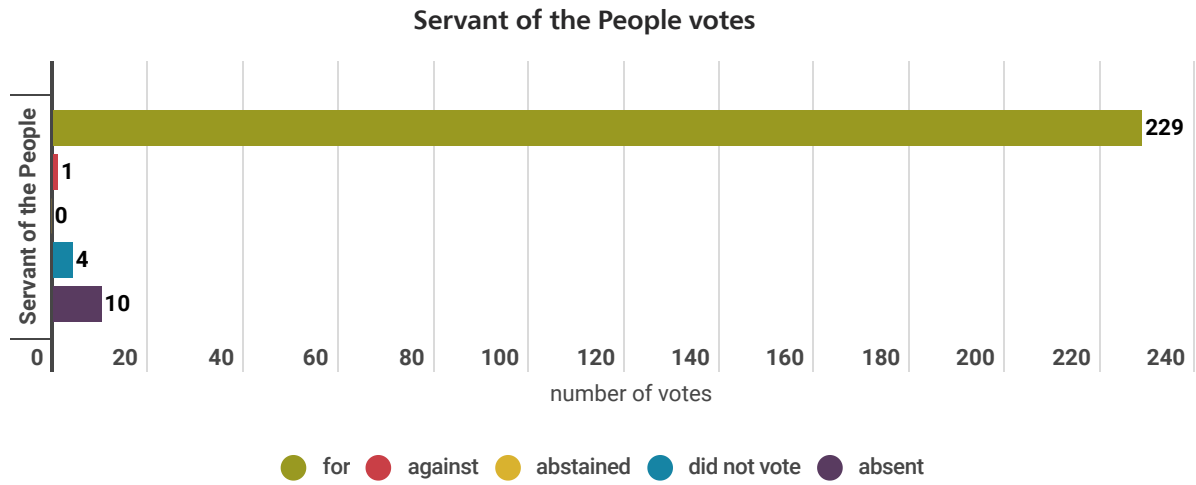
So far, Zelensky's struggle with the tycoons has been more symbolic than real. The provisions of the 'anti-Akhmetov' bill can hardly be considered a strong blow to their interests, as higher taxes will only be paid in the event of high ore prices. It cannot be ruled out that, thanks to the amendments to the bill before the second reading, in the event of a drop in prices below US\$90 per tonne of raw material the tax rate will be even lower than before the changes were introduced.⁸ Throughout his presidency so far, Zelensky has tended to take spectacular public measures in place of real systemic changes, i.e. using instruments that could actually curb the influence of the oligarchs. These are primarily at the disposal of the Anti-Monopoly Committee and law enforcement agencies. The National Anticorruption Bureau is conducting several investigations into the cases of magnates, but they have been sabotaged by the Prosecutor General's Office, most likely with the consent of the President's Office.

At the same time, the Oligarchs Act may serve as a convenient instrument of pressure on business representatives from outside the group branded by the media as oligarchs, so that they behave loyally to the ruling camp. Although an open confrontation between the government and the main figures of big business would quite certainly be doomed to failure, Zelensky's increasingly likely decision to seek re-election adds significance to the role of the media controlled by the tycoons. In this context, it will be of key importance for him to at least ensure their political neutrality.

⁸ Я. Вінокуров, '«Антиахметівський» законопроект може перетворитися на «проахметівський» через ренту на руду', Економічна правда, 29 September 2021, epravda.com.ua.

APPENDIX

Results of the vote on the Oligarchs Act



Source: website of the Verkhovna Rada of Ukraine, rada.gov.ua.