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## Audit preview

Information on an upcoming audit



## EU support to fight grand corruption in Ukraine

August 2020

## **Why is the ECA auditing grand corruption in Ukraine?**

Ukraine is one of the European Union's largest and most politically important direct neighbours and since 2003, it has become the second largest beneficiary country of the European Neighbourhood Instrument.

Ukraine and the EU started negotiating an Association Agreement, including a Free-Trade Agreement, in 2007. In November 2013, the then Ukrainian President suspended signature of the Association Agreement, triggering the "Maidan revolution". The Association Agreement was signed in June 2014 and entered into force in September 2017.

Overall, the Commission has committed roughly 15 billion euros to Ukraine since 2014 (12,8 billion in loans and 2,2 billion in funding under assistance programmes).

Corruption and state capture by political and economic elites remain major problems in Ukraine. The European Court of Auditors (ECA) is examining whether EU support for Ukraine has been effective at fighting corruption, with a particular focus on grand corruption. Reducing this type of corruption is key to Ukraine's economic and social development.

We will review the conditions of the Association Agreement between the EU and Ukraine, the visa liberalisation, the macro-financial assistance, the political and policy dialogue and a selection of relevant projects from the major instruments to address corruption, focusing principally on the 2016-2019 implementation period but also taking account of relevant events before and after that time.

The audit team invites readers to share views and experiences about EU actions to fight corruption in Ukraine. If you wish to contact the audit team, you may do so at the following email address:

[ECA-Ukraine-support-Audit@eca.europa.eu](mailto:ECA-Ukraine-support-Audit@eca.europa.eu)

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## Introduction

Ukraine is one of the biggest countries in Europe, in area and by population, with approximately 42 million people in 2019. Ukraine is one of the most important mineral-producing countries in the world, has a heavy industry and is well known for its rich agricultural land.

Ukraine has been part of the European Neighbourhood Policy since 2003. Ukraine and the EU started negotiating an Association Agreement (AA) including the Deep and Comprehensive FreeTrade Agreement (DCFTA) in 2007. In November 2013, President Yanukovich suspended signature of the AA between the EU and Ukraine, triggering the “Maidan revolution” of 2014. President Poroshenko was elected in May 2014 and the AA was finally signed in June 2014. It fully entered into force in September 2017<sup>1</sup>.

From June 2017, Ukrainian nationals have been exempt from visas for short-stay travel to the Schengen zone. Ukraine had to fulfil, adopt and implement a certain number of benchmarks for this exemption to apply. The EU assessed that the conditions were met. However, the visa-free regime can be suspended if the conditions are no longer met.

## Corruption and weak rule of law are hindering Ukraine's democratic and economic development

Rule of law is a founding value of the Union and thus also a guiding principle of the EU's foreign policy, which must be complied with and promoted abroad via common policies and actions.

Ukraine suffers from a low level of compliance with the rule of law and a very high level of corruption as reflected by the five international indicators shown in [Table 1](#) below, where it scores high for corruption or low for rule of law in every index.

**Table 1 – Ukraine’s indicators for corruption and the rule of law**

Corruption perception index 2019	World Justice Project 2019	World Governance Indicator 2018	World Governance Indicator 2018	World Justice Project 2019
Score from 0 to 100; 0 is the highest corruption; 100 the lowest (source: Transparency International)	Absence of corruption Score from 0 to 1; 1 is the strongest control; 0 is the lowest control (source: World Justice Project <sup>1</sup> )	Control of corruption Score from 0 to 100; 100 is the strongest control; 0 the lowest control (source: World Bank)	Rule of law Score from 0 to 100; 100 is the strongest adherence to rules and laws; 0 the worst (source: World Bank)	Rule of law index Score from 0 to 1; 1 strongest adherence to rule of law, 0 the weakest (source: World Justice Project)
score: 30 rank: 120/180 countries	score: 0,33 rank 108/126 countries	score: 18,27 out of 100	score: 24,04 out of 100	score: 0,50 rank 77/126 countries

### Rule of law

Rule of Law requires a system of certain and foreseeable law, where everyone has the right to be treated by all decision makers with dignity, equality and rationality, in accordance with the laws, and to have the opportunity to challenge decisions before independent and impartial courts through fair procedures.

Rule of law core elements are:

- legality, including a transparent, accountable and democratic process for enacting law;
- legal certainty;
- prohibition of arbitrary execution of executive power;
- access to justice before independent and impartial courts;
- respect of human rights; and
- non-discrimination and equality before the law<sup>3</sup>.

There is a history of corruption that hinders Ukraine’s development<sup>4</sup>. The population and many stakeholders<sup>5</sup> consider corruption to be one of Ukraine's three major problems, together with poverty and the war. The EU Commission itself considers corruption as the highest risk for Ukraine.

### Types of corruption in Ukraine - petty and grand corruption

**Petty corruption** deals with small sums of money to facilitate the receipt of public services. It is widespread and is accepted by a large part of the population. Citizens “often justify their participation in such petty corruption by noting that high level officials and oligarchs<sup>6</sup> are involved in graft on a much grander scale”<sup>7</sup>.

**Grand corruption** is defined by Transparency International as “the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society” and is a major obstacle to Ukraine’s development<sup>8</sup>.

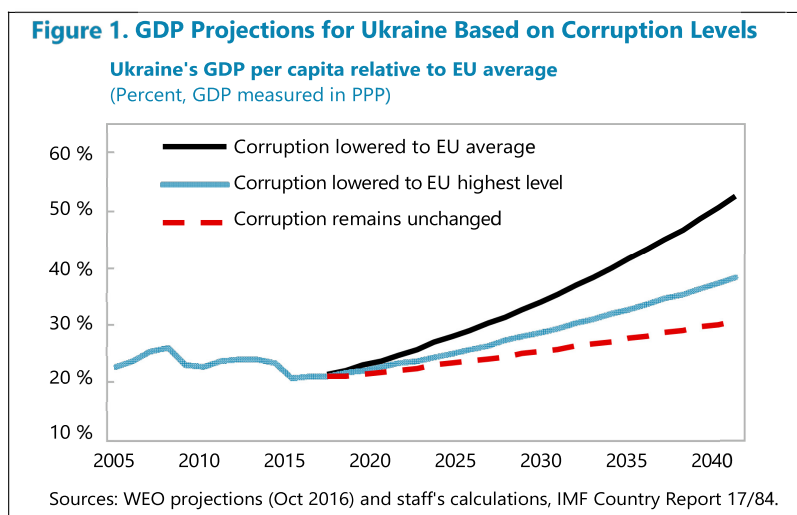
While petty corruption has to be addressed, real change cannot take place in Ukraine without successfully fighting high-level or grand corruption. For these reasons, this audit focuses on grand corruption.

In 2014 the IMF and the Ukrainian government already acknowledged that the business climate was severely hampered by pervasive corruption, an “over-bearing and opaque regulatory framework”<sup>9</sup> and an ineffective judiciary system. The lack of independence in the judicial system, particularly under the influence of oligarchs<sup>10</sup>, is one of the major problems.

The issue of the oligarchs' stranglehold on the country is, however, not limited to corrupt practices but includes the abuse of discretionary powers: “One of the major impediments to sound democratic governance [...] has been the role of oligarchs, or of very rich individuals able to heavily influence if not capture the political process”<sup>11</sup>.

Ukraine’s economy is characterised by a large number of state-owned enterprises, and a high concentration of capital in a small number of businesses dominating key sectors of the economy. The World Bank has highlighted the dominance of the state-owned enterprises (SOE) and politically connected firms, many of them controlled by oligarchs, as barriers to real market competition and hindrances to new entrants<sup>12</sup>.

Corruption has a negative impact on Ukraine's growth (see [Figure 1](#)). Kristalina Georgieva, the Managing Director of the International Monetary Fund, stated "Ukraine's economic success depends crucially on strengthening the rule of law, enhancing the integrity of the judiciary, and reducing the role of vested interests in the economy"<sup>13</sup>.



## Roles and responsibilities

### Ukraine's efforts to tackle corruption

Fighting corruption is not a recent priority. However, there was significant demand within Ukrainian civil society following the 2014 "Maidan revolution" to get rid of corruption<sup>14</sup>. The 2014-2017 anti-corruption strategy focused on:

- preventing corruption in the legislative, executive, and judicial branches;
- the systemic reform of criminal justice bodies;
- the role of civil society and public awareness<sup>15</sup>.

Nevertheless, despite efforts to reform, trust in institutions remains very low in Ukraine. President Zelensky won the elections in May 2019 with a promise to bring back peace to the Donbass region of eastern Ukraine but also to fight against corruption.

## **Rule of Law and anti-corruption measures in the EU-Ukraine relationship**

The EU's main objective is to support Ukraine in its reform agenda on the path towards economic integration and deepening its political association with the EU. The fight against corruption is stated as a key element of the EU-Ukraine relationship<sup>16</sup>.

The EU-Ukraine AA/DCFTA of 2017 lists the rule of law and fighting corruption among the key elements for strengthening cooperation between the parties<sup>17</sup>. The Eastern Partnership<sup>18</sup> has included rule of law and anti-corruption mechanisms amongst its 20 key priorities.

The EU has set conditions for the visa liberalisation regime, macro-financial assistance and budget support programmes, which include measures for preventing and combating corruption.

The EU has financially supported new specialised anti-corruption institutions, the implementation of the Justice Sector Reform Strategy 2015-2020, the judicial system, and the legal prosecution and law enforcement agencies. In July 2014, the EU also established an Advisory Mission for Civilian Security Sector Reform in Ukraine (EUAM), which has a mandate to provide advice and support on civilian security sector reform and ensure that reform efforts are coordinated with local and international actors. Support for anti-corruption action is intended to form part of the EUAM's activities, with experts providing capacity-building activities (advice, training etc.) to anti-corruption institutions.

## **Funding**

### **EU loans and budget support**

The EU is the largest donor to Ukraine<sup>19</sup>. The European Commission has committed roughly 15 billion euro to Ukraine since 2014, of which 12,8 billion were linked to loans and 2,2 billion were under assistance programmes; around 5 billion containing anti-corruption provisions.

### **Focus of the audit**

The ECA will examine if EU support for Ukraine has been effective at fighting grand corruption, with a particular focus on:

- how the Commission has assessed the specific situation of Ukraine as regards grand corruption and has taken account of any lessons already learned;
- whether the EU has designed relevant interventions to fight grand corruption;
- the extent to which EU support to combat grand corruption in Ukraine has delivered the results expected.

To do this we will carry out documentary reviews of information collected by the EU on corruption in Ukraine. We will address several Commission Directorates General, including DGs NEAR, ECFIN and HOME, the EEAS, EUAM Ukraine and the EU Delegation in Ukraine. We will analyse data and statistics on trends in integrity and corruption indicators, corporate and judicial governance and surveys to monitor trust.

In addition, we will discuss the root causes of corruption with representatives of the Ukrainian authorities, experts, civil society, the international community and other stakeholders, to identify the support received and evaluate the results of the action taken.

## **ABOUT ECA SPECIAL REPORTS AND AUDIT PREVIEWS**

The ECA's special reports set out the results of its audits of EU policies and programmes or management topics related to specific budgetary areas.

Audit previews provide information in relation to an ongoing audit task. They are based on preparatory work undertaken before the start of the audit and are intended as a source of information for those interested in the policy and/or programme being audited.

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**[ECA-Ukraine-support-Audit@eca.europa.eu](mailto:ECA-Ukraine-support-Audit@eca.europa.eu)**

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- <sup>1</sup> European Commission. Press release. [EU-Ukraine Association Agreement fully enters into force](#), 1 September 2017.
  - <sup>2</sup> The World Justice Project is an independent, multidisciplinary organisation working to advance the rule of law worldwide.
  - <sup>3</sup> Council of Europe: [European Commission for Democracy through Law \(Venice Commission\) Rule of Law Checklist](#), 2016, pages 6 and 7.
  - <sup>4</sup> USAID. [Country development cooperation strategy 2019-2024](#), 2019, pages 4, 5, 8 and 10. Commission on security and cooperation in Europe. [A Helsinki Commission staff report on corruption in Ukraine. The internal enemy](#), 2017
  - <sup>5</sup> IMF 'Corruption and growth' report, 2017 pages 3 to 6; World Bank 'crony capitalism in Ukraine', 2018 page 11; The Council of Europe Parliamentary Assembly. Resolution 2145 (2017) 'the functioning of democratic institutions in Ukraine', point 10.
  - <sup>6</sup> Cambridge Dictionary definition for an oligarch: "one of a small group of powerful people who control a country or an industry."
  - <sup>7</sup> USAID. [Changing corrupt behaviours assessment: addressing everyday corruption in Ukraine](#), 2015, page 7.
  - <sup>8</sup> Transparency International. 'What is grand corruption and how can we stop it?', September 2016.
  - <sup>9</sup> Government of Ukraine report on diagnostic study of governance issues pertaining to corruption, the business climate and the effectiveness of the judiciary, July 2014, pages 3 and 4.
  - <sup>10</sup> European Council on Foreign Relations. 'Survival of the richest: how oligarchs block reform in Ukraine', 2016, page 7.
  - <sup>11</sup> Centre for European Policy Studies. [The struggle of good governance in Ukraine, Georgia and Moldova](#), 2018, page 4.
  - <sup>12</sup> World Bank group. 'Reducing market distortions for a more prosperous Ukraine', 2019.
  - <sup>13</sup> IMF. [Statement by the IMF Managing Director on Ukraine](#), December 7, 2019.
  - <sup>14</sup> Center for Army, Conversion and Disarmament Studies 'Anti-Corruption Measures in Ukraine after the Revolution of Dignity: Key Legislative Aspects', Kyiv, 2016, pages 6 and 9.
  - <sup>15</sup> Idem.
  - <sup>16</sup> ANTICORR 'Anti-corruption policies revisited. Case study report on control of corruption and EU funds in Ukraine', 2016, page 22.

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- <sup>17</sup> Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. OJ L161 of 29/05/2014, preamble, Articles 1(2)(e), 2, 3 and Title IV.
- <sup>18</sup> A joint initiative involving the EU, its Member States and six Eastern European Partners - Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine.
- <sup>19</sup> Based on the OECD extraction of the Official Development Aid commitment to Ukraine; recipient country: Ukraine, 2017-2018 average.

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