

Special Report

## Reducing grand corruption in Ukraine: several EU initiatives, but still insufficient results



EUROPEAN  
COURT  
OF AUDITORS

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## Executive summary

I Ukraine has been suffering from corruption – particularly grand corruption – for many years. The EU has backed several reforms to increase the rule of law and fight corruption in Ukraine.

II Although EU key documents mention the fight against corruption, they make no specific reference to grand corruption. “Grand corruption” is defined as the abuse of high-level power that benefits the few, and causes serious and widespread harm to individuals and society. Oligarchs and vested interests are the root cause of this corruption. Grand corruption and state capture hinder competition and growth, and harm the democratic process.

III Preventing and fighting corruption in Ukraine is one of several EU objectives for EU assistance in Ukraine. The Commission and the European Advisory Mission Ukraine supported capacity-building for institutions engaged in fostering the rule of law, in particular the newly-created anti-corruption institutions. We focused our audit on grand corruption as this is the main obstacle to the rule of law and economic development in Ukraine. We audited whether the European External Action Service and the Commission have effectively assessed the specific situation in Ukraine as regards grand corruption, and taken the necessary action to support reforms in Ukraine. We focused on the EU’s contributions to judicial and anticorruption reforms during the 2016-2019 implementation period.

IV The European External Action Service and the Commission have viewed corruption as a cross-cutting priority, and channelled funds and efforts through a variety of sectors. Overall, we found that this approach focused insufficiently on grand corruption. While the EU has helped to reduce corruption opportunities, grand corruption remains a key problem in Ukraine. Judicial reform is experiencing setbacks, anti-corruption institutions are at risk, trust in such institutions remains low, and the number of convictions resulting from grand corruption is small. Although the European External Action Service and the Commission have viewed reducing corruption as a cross-cutting issue, they have not designed and implemented a specific strategy to tackle grand corruption. The projects we examined were not exclusively focused on fighting grand corruption, but half of them included some activities that indirectly addressed the problem.

**V** The Commission's support for civil-society projects and independent journalism was a relevant course of action, and helped not only to ensure transparency but also to expose corrupt practices.

**VI** The Commission supported the Antimonopoly Committee's activities and corporate governance reforms of State Owned Enterprises, but the focus was initially on aligning Ukrainian legislation with EU standards and principles rather than on enforcing competition law.

**VII** The Commission and the European Advisory Mission Ukraine have provided intensive assistance for judicial reform. However, a substantial number of judges, prosecutors and members of judicial governance bodies still need to undergo integrity vetting. The Commission also helped to set up and develop specific anti-corruption institutions. However, we found that the existing environment in Ukraine puts the sustainability of these institutions at risk, as they still rely on the unreformed judicial, prosecution and law-enforcement sectors.

**VIII** EU projects also helped to shape a number of digital tools for preventing corruption, but several tools required further commitment from the national authorities. The current lack of accurate databases is known to make such tools less efficient for crosschecks and transparency. EU projects are working on these issues.

**IX** Coordinating EU conditions with other donors has played a part in amending Ukraine's Constitution, strengthening the legal framework, and setting up institutions. However, the Commission could have relied more on conditions to support reforms in the judiciary.

**X** The EU has a system in place for monitoring and evaluating its projects. However, assessing how far the projects helped to fight any type of corruption is difficult for half of the projects audited, as outcomes are not measurable (due to a lack of baselines, targets and relevant indicators) and refer to outputs and activities.

**XI** On the basis of these conclusions, we recommend that the European External Action Service, the European Advisory Mission Ukraine and the Commission should:

- design and implement specific actions that target grand corruption;
- assess and adjust the scale of its support for civil society organisations and investigative journalism;

- contribute to removing impediments to free and fair competition;
- improve monitoring and reporting in order to inform and take corrective action where needed;
- emphasise integrity and commitment to reform when providing capacity-building support;
- support the digitalisation of registers; and
- stipulate stricter conditions for Commission support.

# Introduction

## Ukraine: a strategic partner for the EU

**01** Ukraine is a geopolitical and strategic partner for the EU<sup>1</sup>. It is one of Europe's biggest countries in terms of geography and population, and is also one of the EU's direct neighbours. In recent years, large numbers of Ukrainians have migrated to the EU<sup>2</sup>.

**02** For more than 20 years now, the EU has been supporting Ukraine in its reform agenda on a path towards economic integration and deeper political relations. Ukraine has been part of the European Neighbourhood Policy since 2003. Ukraine and the EU started to negotiate the Association Agreement (AA), including the Deep and Comprehensive Free-Trade Area (DCFTA), in 2007. In November 2013, Ukraine suspended the signing of the AA/DCFTA, thereby triggering the Euromaidan revolution of 2014<sup>3</sup>. The AA/DCFTA was finally signed in June 2014, and came into force in September 2017. The AA intends to bring Ukraine and the EU closer together through deeper political ties, stronger economic links, and respect for common values.

**03** In March 2014, Russia annexed Crimea and Sevastopol, and an armed conflict began in eastern Ukraine. As a result, the EU adopted restrictive measures against those responsible for actions challenging Ukraine's territorial integrity, sovereignty and independence.

## Corruption in Ukraine

**04** Ukraine has a long history of corruption, and faces both petty and grand corruption. Petty corruption is widespread, and is accepted as almost inevitable by a large part of the population. Citizens "often justify their participation in such petty corruption by noting that high-level officials and oligarchs are involved in graft on a

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<sup>1</sup> EEAS "EU-Ukraine relations – factsheet", 2020 and [the European Parliament resolution of 11 February 2021 on the implementation of the EU Association Agreement with Ukraine, 2021](#).

<sup>2</sup> EEAS: [Interview of the High Representative/Vice-President Josep Borrell with Ivan Verstyuk of Novoe Vremya](#), 21 September 2020.

<sup>3</sup> ECA special report 32/2016: ["EU assistance to Ukraine"](#), paragraph 7.

much grander scale”<sup>4</sup>. Experts have estimated that huge amounts – in the tens of billions of dollars – are lost annually as a result of corruption in Ukraine<sup>5</sup>.

**05** Transparency International defines grand corruption 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”. In Ukraine, it is based on informal connections between government officials, members of parliament, prosecutors, judges, law enforcement agencies (LEAs), managers of State Owned Enterprises (SOEs) and politically connected individuals/companies (see [Figure 1](#)). There are around 3 500 SOEs at central level and 11 000 at municipal level<sup>6</sup>.

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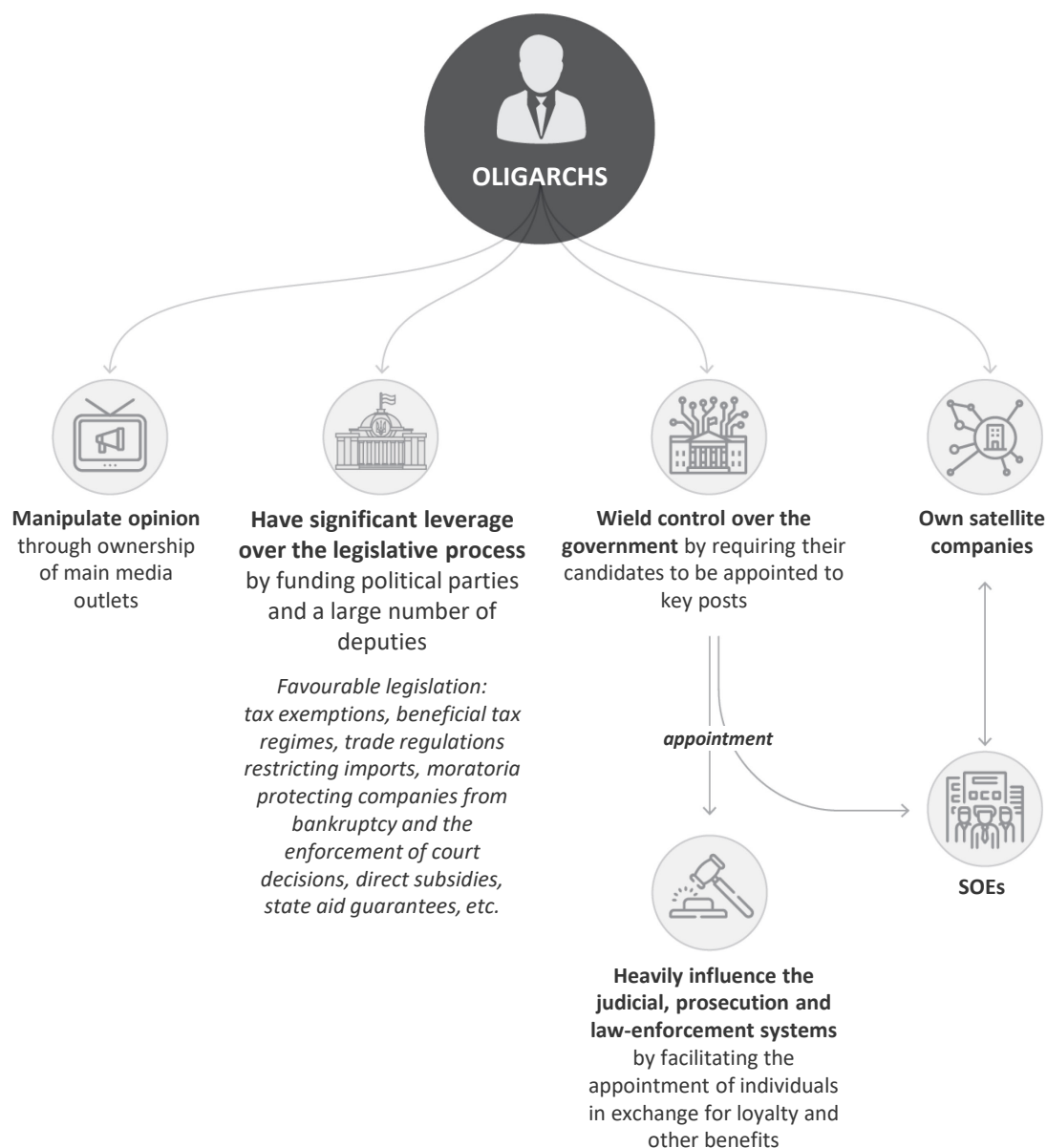
<sup>4</sup> USAID: “[Changing corrupt behaviours assessment: addressing everyday corruption in Ukraine](#)”, 2015, p. 7.

<sup>5</sup> Centre for Economic Strategy: “[How much does the budget lose due to the lack of good governance?](#)”, 2018, p. 41.

<sup>6</sup> Chatham House: “[Are Ukraine’s Anti-corruption Reforms Working?](#)”, 2018, p. 23. Strategic Advisory Group for Support of Ukrainian Reforms: “[Reforms in Ukraine after revolution of Dignity: what was done, why not more, and what to do next](#)”, 2019, p. 115.



**Figure 1 – Ukrainian system facilitating grand corruption**



Source: ECA, based on several sources<sup>7</sup>.

<sup>7</sup> IMF: 'Government of Ukraine Report on the Diagnostic Study of Governance Issues Pertaining to Corruption, the Business Climate and the Effectiveness of the Judiciary', 2014, pp. 4, 9 and 20;  
 OECD 4th monitoring result: 'Prevention and Prosecution of Corruption in State-Owned Enterprises', 2018, p. 8;  
 IMF Country Report No 17/84, paragraph 32;  
 Stiftung Wissenschaft und Politik: "'Deoligarchisation" in Ukraine, Promising Visions, Murky Realities', 2016, pp. 1-2 and 4-5;  
 'Survival of the richest: how oligarchs block reforms in Ukraine', 2016, pp. 3-8;  
 ECFR: 'Guarding the guardians: Ukraine's security and judicial reforms under Zelensky',

**06** “State capture” by blocks of powerful political and economic elites that are pyramidal in structure and entrenched throughout public institutions and the economy has been seen as a specific feature of Ukraine’s corruption<sup>8</sup>. Both the International Monetary Fund (IMF) and Ukraine’s government acknowledged the resistance that vested interests had shown to structural reforms<sup>9</sup>. Grand corruption resulting from weak rule of law and widespread oligarchic influence runs counter to EU values, and is a major obstacle to Ukraine’s development<sup>10</sup>. Grand or high-level corruption hinders competition and growth in the country, harms the democratic process, and is the basis for wide-scale petty corruption.

**07** Furthermore, investigative journalists have regularly published articles about oligarchs’ illicit financial flows (including money-laundering abroad), even in the EU<sup>11</sup>. A report estimates the cost of tax avoidance through offshores at least one billion euros annually<sup>12</sup>.

**08** From 2016 to 2020<sup>13</sup>, the three major obstacles to foreign investment in Ukraine remained the same: widespread corruption, a lack of trust in the judiciary, and market

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2019, pp. 5-6, 8, 11, 13-14; and

Jacques Delors Institute: “[Supporting Ukraine’s difficult path towards reforms](#)”, 2015, p. 7.

<sup>8</sup> IMF Country Report No 17/84, 2017, p. 15.

<sup>9</sup> See IMF: “[Government of Ukraine report on the diagnostic study of governance issues pertaining to corruption, the business climate and the effectiveness of the judiciary](#)”, July 2014, paragraph 7;

IMF: [Country report No 17/83, April 2017](#) and

*Financial Times*: “[Ukraine courts cannot be allowed to throw out anti-corruption gains](#)”, Volodymyr Zelensky, 1 November 2020.

<sup>10</sup> Atlantic Council: “[Corruption, Democracy, and Investment in Ukraine](#)”, 2007, p. 5, and IMF [Country Report No 17/84](#), 2017, pp. 5, 6 and 15.

<sup>11</sup> International consortium of investigative journalists: “[With Deutsche Bank’s help, an oligarch’s buying spree trails ruin across the US heartland](#)”, and “[‘Enough is enough’: How FinCEN Files exposes a broken system that keeps dirty cash flowing](#)”, 2020.

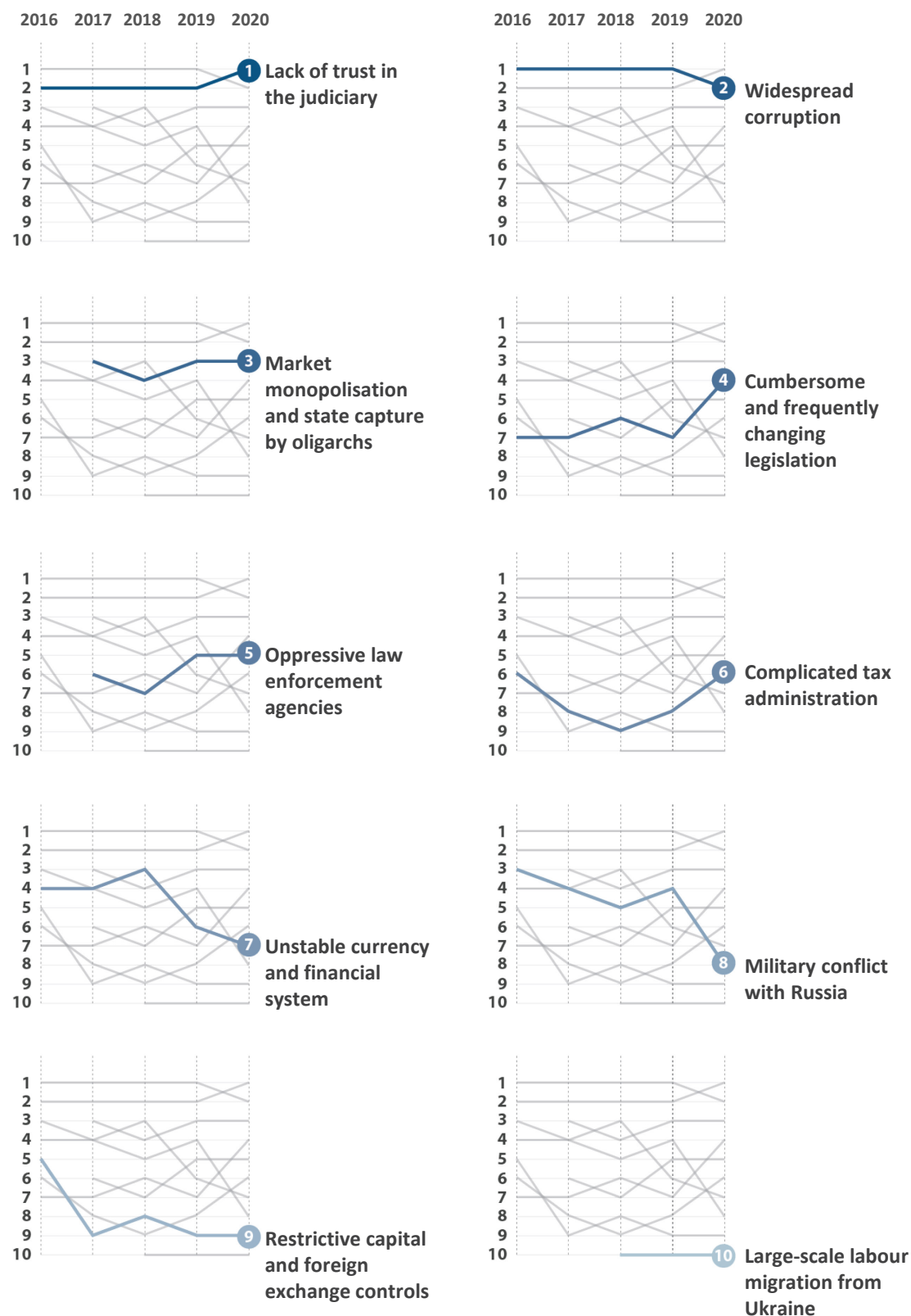
<sup>12</sup> Profit shifting in Ukraine’s iron ore exports, 2018, p. 3.

Institute of Social and Economic Transformation: “[Comparative analysis of the fiscal effect of tax evasion/avoidance instruments in Ukraine](#)”, 2020, p. 44.

<sup>13</sup> Dragon Capital and the Centre for Economic Strategy, [Foreign Investor Survey](#), November 2020 and European Business Association, [Investment Attractiveness Index First Half of 2020](#).

monopolisation and state capture by oligarchs (see [Figure 2](#)). In recent years, foreign direct investment in Ukraine has remained below the 2016 level (see [Annex I](#)).

**Figure 2 – Major obstacles to foreign investment in Ukraine: 2016-2020**



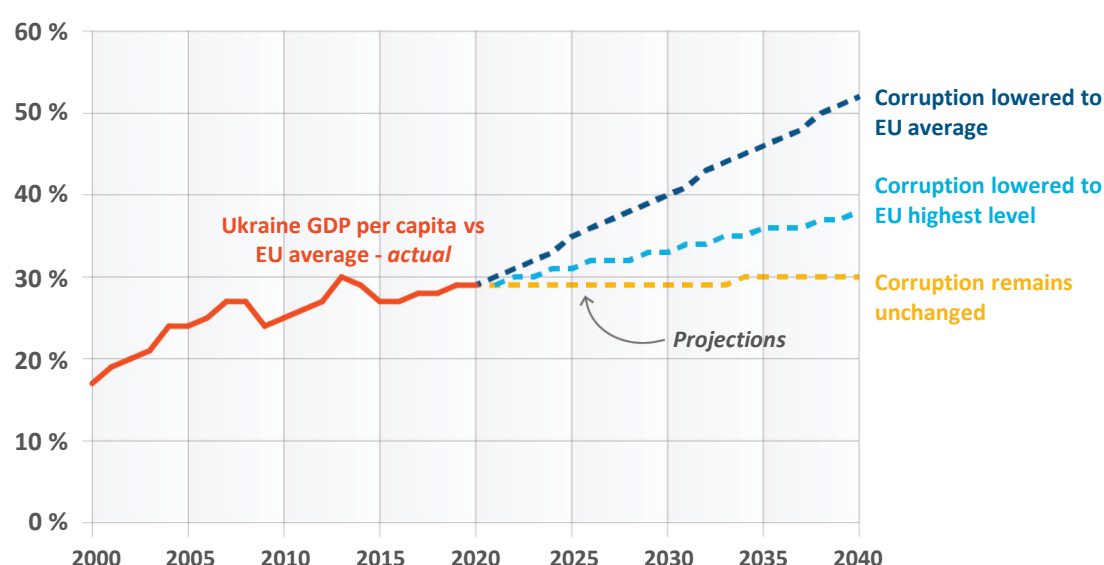
Source: ECA, based on Foreign Investor Survey 2020 EBA, Dragon Capital, CES.

**09** Various studies, in particular by the IMF (see [Figure 3](#)), have shown a projected correlation between a reduction in widespread corruption on the one hand, and economic growth and related improvements in citizen's lives on the other. Different stakeholders<sup>14</sup> agree that real change cannot take place in Ukraine without tackling the influence of vested interests.

### Figure 3 – Reducing corruption helps to speed up economic convergence with the EU (IMF study)

#### Ukraine's GDP per capita relative to EU average

(%, GDP measured in PPP)



Source: ECA, based on Figure 6 of the IMF Country Report No 17/84 on Ukraine – April 2017, and IMF World Economic Outlook Database, October 2020.

### EU support for Ukraine

**10** Ukraine is an EU Eastern Partnership<sup>15</sup> country. The EU and Ukraine have a common goal of further economic integration and political association. The EU therefore has many priorities (good governance, the economy, trade, energy, climate change, mobility, civil society, and humanitarian assistance) that need to be addressed

<sup>14</sup> World Bank: “Ukraine systematic country diagnostic toward sustainable recovery and shared prosperity”, 2017, paragraphs 9 and 19;  
IMF: “Statement by the IMF Managing Director on Ukraine”, 2019; and  
OECD: 4th monitoring result “Prevention and Prosecution of Corruption in State-Owned Enterprises”, 2018, p. 16.

<sup>15</sup> Eastern Partnership.

not only through financial cooperation but also through political dialogue. Ukraine is the second largest beneficiary country of the European Neighbourhood Instrument. Overall, the Commission has committed roughly €5.6 billion to macro-financial assistance (MFA) programmes and €2.2 billion to assistance programmes since 2014. The Commission also guarantees European Investment Bank loans of €4.4 billion. The EU is the largest donor to Ukraine<sup>16</sup>.

**11** The funding of the European Neighbourhood Instrument must comply with the rule of law<sup>17</sup>. This is a founding value of the EU<sup>18</sup>, and a guiding principle of its foreign policy<sup>19</sup>. Furthermore, the EU-Ukraine AA/DCFTA lists the rule of law and the fight against corruption as key elements for strengthening cooperation between the parties<sup>20</sup>.

**12** The European External Action Service (EEAS) and the Commission have addressed corruption in a multi-dimensional way by means of political and policy dialogue, project activities, and conditions for budget support and MFA programmes. Following the abolition of anti-corruption laws in 2010, the EU made visa liberalisation conditional upon benchmarks, including anti-corruption legislation and anti-corruption bodies<sup>21</sup>.

**13** The EEAS is responsible for political dialogue and, together with the Commission, for designing the strategy towards Ukraine. In response to the challenging situation in Ukraine in 2014, the Commission decided to launch “Special Measures” (support packages)<sup>22</sup> on an annual basis from 2014 until 2017. The Commission also set up a

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<sup>16</sup> Based on the OECD extraction of the Official Development Aid commitment to Ukraine; recipient country: Ukraine, 2018-2019 average.

<sup>17</sup> Article 1(4) and 2(1) of [Regulation \(EU\) No 232/2014](#) establishing a European Neighbourhood Instrument.

<sup>18</sup> Article 2 of the [Treaty on European Union](#).

<sup>19</sup> Article 21(2) of the [Treaty on European Union](#) and EEAS: “[A Global Strategy for the European Union’s Foreign and Security Policy](#)”, June 2016, p. 26.

<sup>20</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 and 3, and Title IV.

<sup>21</sup> [Annex 1](#) of the Commission Implementing Decision on the Special Measure 2016 for Anti-Corruption and Support to Key Reforms in favour of Ukraine: action document for EU Anti-Corruption Initiative in Ukraine, p. 4.

<sup>22</sup> [Overview of EU support](#).

special support group (the Support Group for Ukraine) to assist the Ukrainian authorities in carrying out the necessary economic and political reforms, in particular after the AA/DCFTA was signed. Since 2018, cooperation has been based on multi-annual programming for the 2018-2020 period.

**14** The EU advisory mission (EUAM)<sup>23</sup> is a civilian mission that comes under the Common Security Defence Policy overseen by the EEAS and the member states; it became operational in Ukraine in December 2014. Its mandate is to support Ukraine in developing sustainable, accountable and efficient security services that strengthen the rule of law.

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<sup>23</sup> Council Decision 2014/486/CFSP of 22 July 2014 on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM) Ukraine.

## Audit scope and approach

**15** The objective of the audit was to assess whether EU support for reforms in Ukraine had been effective at fighting grand corruption.

**16** To answer the main audit question, we asked the EEAS and the Commission three sub-questions:

- Have they assessed the specific situation of Ukraine as regards grand corruption, and have they assisted Ukraine in addressing that situation?
- Has the judicial-reform assistance they have provided led to the expected results?
- Has the anti-corruption reform assistance they have provided delivered the expected results?

**17** In 2016, we reported on EU assistance to Ukraine<sup>24</sup>. We noted that, since 2010, the Commission had increasingly emphasised the risks posed by the oligarchic system, and that although significant steps to combat corruption had been taken after the Euromaidan revolution, further consolidation of the anti-corruption framework was still needed. We concluded that EU assistance to Ukraine was partially effective in the fight against corruption.

**18** Given that corruption and state capture by oligarchs are major problems in Ukraine (see paragraphs [04-08](#)), we focused our audit on EU support for reforms to fight grand corruption. We have mainly covered the 2016-2019 implementation period, and also taken account of past and recent events. The audit assessed the EEAS, the Commission and the EUAM's activities, and includes neither an assessment of individual EU member states nor the Ukrainian authorities' actions.

**19** As part of our work, we reviewed supporting documentation and interviewed representatives from the Commission, the EEAS, and the EUAM for the civilian security sector. We also interviewed major stakeholders, including the Organisation for Economic Cooperation and Development (OECD), the Council of Europe, the European Bank for Reconstruction and Development (EBRD), the IMF, project implementers, beneficiaries, and civil society organisations (CSOs). For the purpose of our audit, we carried out a detailed analysis of two macro-financial assistance programmes (MFA III and IV) and, those activities concerned with the fight against grand corruption in

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<sup>24</sup> [ECA special report 32/2016](#): EU assistance to Ukraine.

22 projects (see [Annex II](#)). We consulted the Commission and the EUAM when selecting the projects, and chose those that were the most likely to help fight corruption. For project activities potentially addressing grand corruption, we examined whether the lessons learned and the mitigating measures that were taken addressed the risks relating to grand corruption, and whether interventions were relevant, supported competition, and achieved results in the area of judicial and anti-corruption reforms.

**20** We visited Ukraine during the preliminary phase when we were establishing the scope of the audit. However, as the pandemic prevented us from carrying out a field visit in October 2020 as originally planned, we made video calls to project implementers and a limited number of beneficiaries instead. Despite these constraints, we were able to complete the audit.



# Observations

## 1. The EU's strategy did not specifically focus on the fight against grand corruption, and its impact was difficult to monitor

**21** In the following sections, we examine whether the EEAS and the Commission:

- (a) identified grand corruption and the influence of the oligarchic system as a pervasive problem and addressed grand corruption with sufficient focus;
- (b) addressed grand corruption through increased competition and corporate governance;
- (c) monitored its support adequately.

### 1.1. The EEAS and the Commission did not specifically focus on addressing grand corruption

**22** The EEAS and the Commission collected information from multiple sources to prepare their policy and assistance interventions. However, they did not produce a document detailing the root causes of grand corruption.

**23** The Commission has acknowledged that high-level corruption has been a major problem in Ukraine for many years. In 2014, the Commission was already well aware that Ukraine was dominated by oligarchs, leading to “corrupt systems, typified by endemic conflicts of interest and vertical power”<sup>25</sup>. During the EU-Ukraine dialogue, the EEAS and the Commission stressed the need to prioritise the fight against corruption, and warned that failing to prosecute or impose sanctions on high-profile offenders had damaged public trust.

**24** Most EU key documents<sup>26</sup> refer to the need to tackle corruption in Ukraine, but they include few specific objectives in this respect. The objectives of the 2015 EU-

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<sup>25</sup> [Action Document](#) for the State Building Contract for Ukraine (project 3 in [Annex II](#)), pp. 2-4.

<sup>26</sup> [Association Agreement, Special Measures](#) (2014-2017), [2018-2020 Single Support Framework](#), operational conclusions of the Association Council and the Operational Plan for CSDP Mission EUAM Ukraine (documents not publicly available).

Ukraine Association Agenda contain one short-term priority worded as follows: “demonstrate serious progress in the fight against corruption, including through the implementation of the comprehensive anti-corruption legal package adopted on 14 October 2014, starting with the setting up and ensuring effective functioning of both the National Anti-Corruption Bureau and the National Agency for the Prevention of Corruption”<sup>27</sup>.

**25** The EEAS and the Commission allocated support for Ukraine on an annual basis from 2014 until 2017. They defined the country strategy (the Single Support Framework)<sup>28</sup> as from 2018, listing the following priorities:

- (a) strengthening institutions and good governance, including the rule of law and security;
- (b) economic development and market opportunities, including private-sector development and improvement of the business climate;
- (c) connectivity, energy efficiency, environment and climate change; and
- (d) mobility and people-to-people contacts, including social inclusion.

**26** Although the priorities do not specifically refer to the fight against corruption, one of their underlying objectives requires “strengthened prevention of and fight against corruption, strengthened anti-corruption institutions, including the establishment of anti-corruption courts”. The EEAS and the Commission regarded corruption as a “crosscutting priority”<sup>29</sup> for which a multi-dimensional approach is needed, rather than as a single “priority sector”. However, they did not develop a focused strategy for targeting grand corruption and the dominance of the oligarchic system. According to certain academics, it is not because an organisation has adopted a holistic approach that it does not need a strategy. Indeed, a strategy is even more

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<sup>27</sup> [2015 EU-Ukraine Association Agenda](#), 16 March 2015, p. 6.

<sup>28</sup> [Programming of the European Neighbourhood Instrument \(ENI\) - 2017-2020 - Single Support Framework for EU support to Ukraine \(2018-2020\)](#).

<sup>29</sup> [Council of the European Union: “Concept of operations for EU civilian advisory mission in Ukraine agreed”](#), 2014; and [Programming of the European Neighbourhood Instrument \(ENI\) - 2017-2020 - Single Support Framework for EU support to Ukraine \(2018-2020\)](#).

necessary for a multi-dimensional approach as it determines how the objectives that an organisation has chosen by analysing a given situation will be achieved<sup>30</sup>.

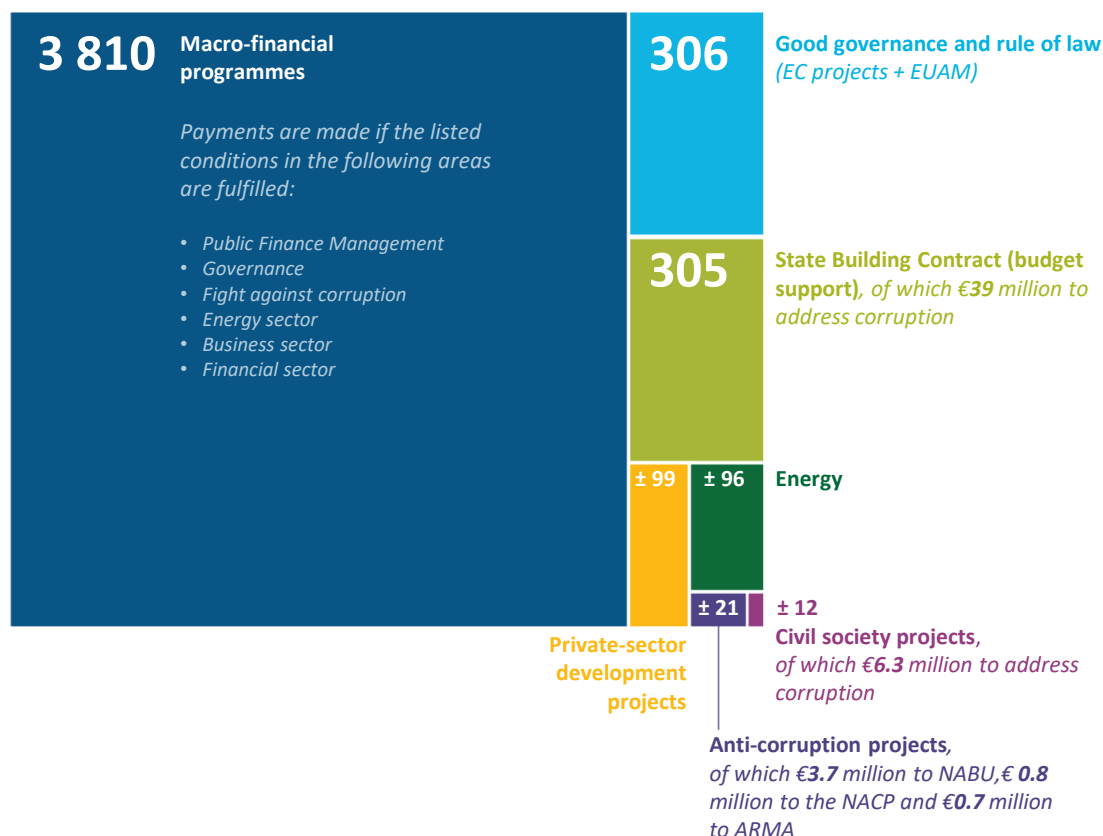
**27** As part of its approach, the EEAS and the Commission employed a wide array of instruments, including projects, conditions, and political/policy dialogue. Their support covered different sectors and reforms (see paragraph 25 and *Figure 4*). The Commission committed €5.6 billion to MFA programmes and disbursed €1.6 billion for MFA programmes I and II, followed by €2.2 billion for MFA programmes III and IV for which we analysed the anti-corruption conditions. In addition, out of €2.2 billion of assistance that was committed, the Commission spent €839 million on capacity-building programmes potentially addressing corruption. In the case of corruption, they focused mainly on institution-building, in particular by backing the establishment and operationalisation of anti-corruption institutions/agencies that aim to investigate, prosecute and adjudicate high-level corruption cases.

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<sup>30</sup> Linda Höglund, Mikael Holmgren Caicedo, Maria Mårtensson & Fredrik Svärdsten (2018), 'Strategic management in the public sector: how tools enable and constrain strategy making', *International Public Management Journal*, 21:5, 822-849, DOI: 10.1080/10967494.2018.1427161.

**Figure 4 – EU payments (in million euros) for the 2014-2020 period to key sectors potentially addressing corruption**

(in million euros)



Source: ECA, based on the CRIS database (December 2020), EUAM information and audited projects.

**28** The Commission provided us with a list of programmes and projects for the 2016-2020 period. These included multiple activities and beneficiaries, a number of which addressed corruption. The Commission's traceability system is based on a sector code for each project. However, the Commission can neither easily identify specific anti-corruption activities, nor calculate the related funding for each beneficiary institution.

**29** The aim of one project (Project 12 in [Annex II](#)) was to improve the implementation of anti-corruption policy in Ukraine. Although the project's overall objective did not refer to grand corruption, its activities included supporting the anti-corruption institutions, CSOs and journalists investigating grand corruption cases, and identifying corruption risks.

**30** Several projects (projects 8, 11, 12 and 15 in [Annex II](#)) provided support for identifying corruption risks in draft laws. Overall, these projects were able to detect and report to the authorities more than 250 draft laws involving corruption risks from 2018 to 2020.

**31** We also found that 11 projects (Projects 3, 4, 6, 7, 12, 13, 14, 15, 16, 17 and 20 in *Annex II*) involved activities providing support for establishing or strengthening the new anti-corruption agencies, the legal framework, the justice sector, investigations, and the business climate which, if effectively implemented, help to fight grand corruption.

**32** Apart from the development of the “politically exposed persons” database, the projects we audited did not tackle the oligarchic system directly. Good examples of such support could have included financing expert analysis to identify tax exemptions or state aid programmes which should be stopped, as well as corruption schemes and state capture, and monopolies and their drawbacks, and to verify company ownership. Another option would have been to finance SOE audits. The support for Ukraine’s Parliament (the *Rada*), the State Fiscal Service (SFS), and the Anti-Monopoly Committee (AMCU) did not make the fight against grand corruption its top priority. The EU-funded projects addressed grand corruption in law enforcement only at the margins (strategic advice and training courses on whistleblowing, anti-corruption legislation and integrity were a few such activities).

**33** Grand corruption and illicit financial flows - including money laundering - are intrinsically linked. As the Commission acknowledged<sup>31</sup>, the risk of laundering money abroad, even in the EU, is high. Of the audited projects, three included limited anti-money-laundering activities (projects 7, 12 and 13 in *Annex II*). One of them (project 12) also provided support for the state financial monitoring service and went beyond the anti-money laundering issue. The MFA programme included a condition requiring Ukraine to adopt the anti-money-laundering law, in line with the AA and the fourth EU Anti-Money-Laundering Directive by December 2019. This law was adopted and came into force in April 2020, but now needs to be implemented.

**34** The Council introduced the misappropriations sanctions regime in 2014 to freeze the assets of 22 individuals accused of embezzling state funds in Ukraine<sup>32</sup>. In 2020,

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<sup>31</sup> European Commission: ‘List of countries in the scope of the EU assessment on high risk third countries under Directive (EU) 2015/849 and list of priority 1 countries (for assessment in 2018)’ and Commission’s assessments (documents not publicly available).

<sup>32</sup> Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and Council implementing Decision 2014/216/CFSP of 14 April 2014 implementing Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.

only 10 of the initially named individuals remained on the sanctions list because others were taken off the list by the Council after a judgment by the European Court of Justice. The EEAS had collected insufficiently robust information<sup>33</sup>. The EEAS used “asset freezing” to prevent money from being transferred to other countries before court rulings could be issued. Furthermore, unlike the United States, the EEAS and the Commission have not yet proposed to the Council a model for restricting entry into the EU for Ukrainians suspected of grand corruption. In addition, the EEAS did not recommend that the Council should impose travel bans under the “misappropriation of sanctions” regime.

**35** We found that four projects (Projects 12, 13, 14 and 16 in [Annex II](#)) reduced corruption and saved funds directly. The beneficiaries received grants to carry out enquiries, and the evidence gathered through the projects was forwarded to law enforcement agencies. These projects have helped to uncover corruption schemes, raise public awareness, and keep the topic on the political and public agenda.

**36** The EUAM, as a leading player in security-sector reform, advised on design and activities of project 18 (see [Annex II](#)). Although the Commission paid out €29 million, the project had delivered only a limited number of outputs by the time of the audit due to delays and design issues.

**37** Initially, the EUAM’s mandate was limited to providing strategic advice to reform the civilian security sector. The EUAM contributed to fighting grand corruption through legislation and support for reforms of the prosecution and security services. Even though targeting corruption was not the EUAM’s main activity, only two out of 50 tasks dealt directly with corruption. The EUAM considered anti-corruption as a cross-cutting priority. It provided advice, mentoring and support for risk assessments and anti-corruption programmes. However, the EUAM’s mandate limits its support to risks identified within – but not beyond – LEAs, meaning that it cannot identify corruption schemes involving several stakeholders.

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<sup>33</sup> E.g. judgment of the General Court (Ninth Chamber), 28 January 2016, [Case T-486/14](#).

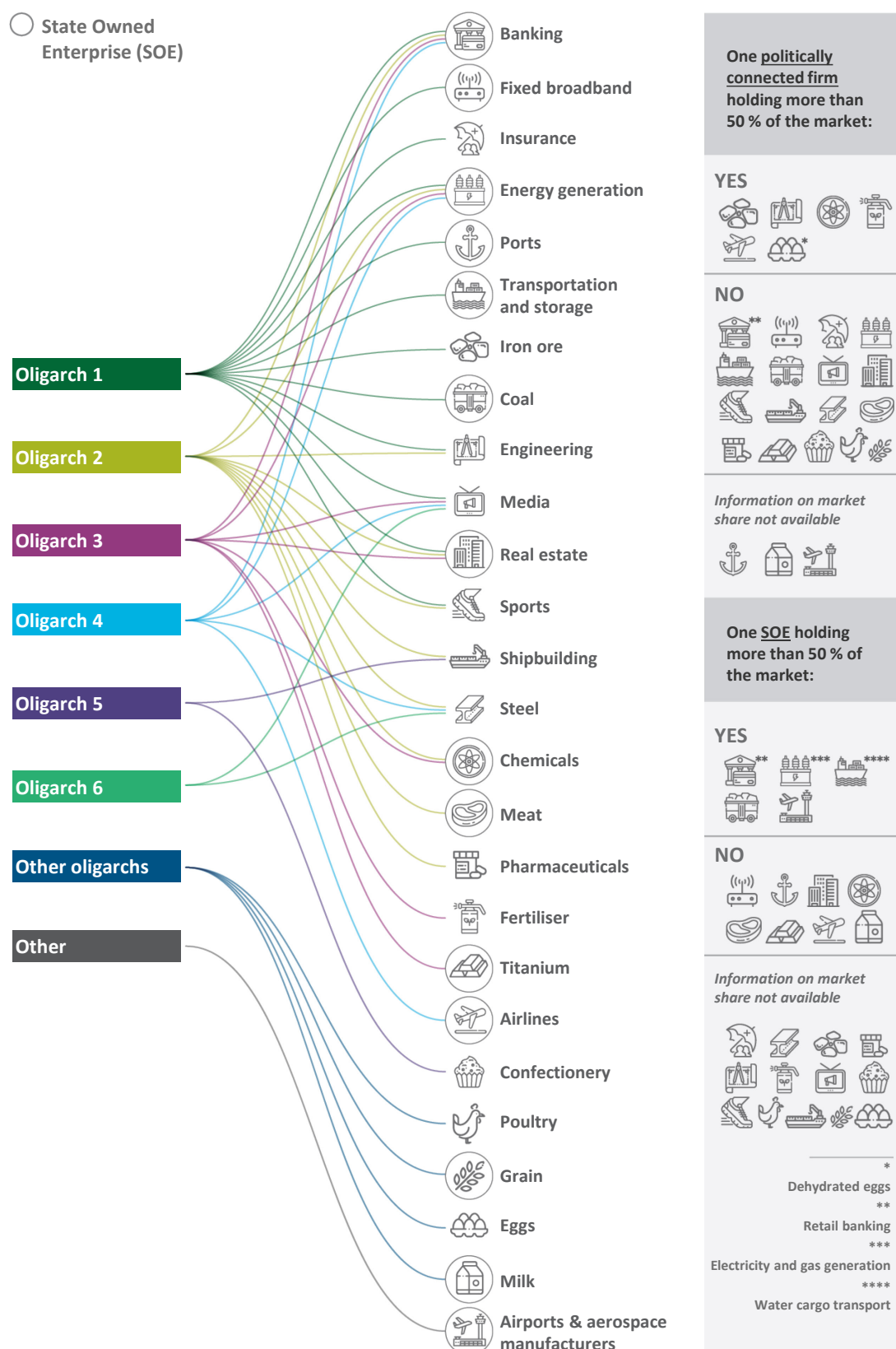
## 1.2. EU support for fighting against anticompetitive structures and behaviour delivered limited results

**38** Ukrainian oligarchs dominate a large number of sectors of the economy and markets that are closely connected to SOEs<sup>34</sup> (see [Figure 5](#)). This situation distorts competition. Although the Commission projects did not focus on SOE governance and reforms, the EU supported competition by various means (see [Annex VI](#)).

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<sup>34</sup> OECD: “[State-Owned Enterprise Reform in the Hydrocarbons Sector in Ukraine](#)”, 2019, pp. 30-31, 51, and  
Centre for European Policy Studies: “[The Struggle for Good Governance in Eastern Europe, oligarchs as key obstacles to reform](#)”, 2018, p. 61.

**Figure 5 – Multi-market contacts among politically connected firms and SOEs**



Source: ECA, based on the World Bank's "Reducing Market Distortions for a More Prosperous Ukraine", 2019, figures 16, 18 and 19.



**39** The Commission supported energy-related, anti-corruption, judicial, banking, electoral and public-administration reforms, and support for investigative journalism. Despite this support and the support provided by other donors, oligarchs and vested interests continued to undermine reform efforts.

**40** Politically connected individuals/companies – especially oligarchs – have influenced the legal framework to obtain a series of advantages from the state<sup>35</sup>, and use satellite companies benefiting from exclusive relationships with SOEs<sup>36</sup> (see [Figure 1](#)). EU-funded experts from project 17 (see [Annex II](#)) identified several moratoria enabling companies – mainly SOEs – to continue trading without going bankrupt or paying back debts due for repayment (see [Figure 6](#)). The Commission provided capacity building, but it did not require Ukraine to remove these moratoria through MFA conditions. These benefits favour state capture and corruption, limit market competition, and hinder new entrants<sup>37</sup>.

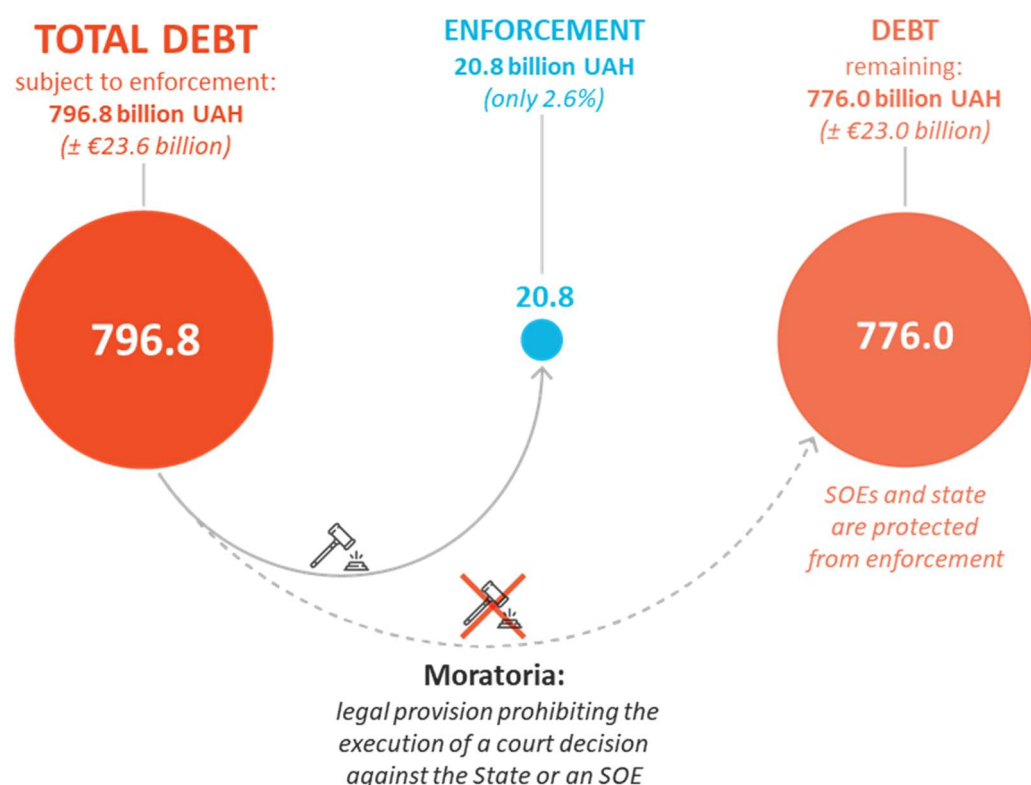
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<sup>35</sup> World Bank: [“Crony capitalism in Ukraine: impact on economic outcomes”](#), 2018, p. 5. For the World Bank, a politically connected company has at least one politically exposed person among its owners, shareholders or managers.

<sup>36</sup> OECD: [“4th monitoring result: Prevention and Prosecution of Corruption in State-Owned Enterprises”](#), 2018, p. 8.

<sup>37</sup> World Bank: [Reducing Market Distortions for a More Prosperous Ukraine](#), 2019, p. 20; European Council of Foreign Relations: [“Survival of the richest: How oligarchs block reform in Ukraine”](#), 2016, p. 8; and OECD: [“Anti-Corruption Reforms in Ukraine: Prevention and Prosecution of Corruption in State-Owned Enterprises”](#), 2017, pp. 8 and 53.

**Figure 6 – Debts unenforced in 2019**



Source: ECA analysis<sup>38</sup>.

**41** To facilitate privatisation, companies first need to improve their governance. The EU contributed to this (see project 20 in [Annex II](#)) through the EBRD Multi-Donor Account<sup>39</sup> (MDA) (see [Figure 7](#)). Since it was created, 14 donors, including the EU, have contributed more than €53 million to the MDA. Several SOEs (e.g. *Naftogaz*, *Ukrzaliznytsia* [railways], *Ukrenergo* [an energy transmission system operator] and *Ukrposhta* [the postal service]) have reformed their corporate governance, in particular by setting up independent supervisory boards, as advocated by the EBRD. We noted that there had been achievements in terms of management at *Naftogaz*, which turned from a loss-making company into a profitable one, and was the second largest taxpayer in 2019. However, these achievements are under threat in the energy sector: *Naftogaz* made losses in 2020, and appointed a new Chief Executive Officer without following the proper procedure. This was criticised by the National Anti-Corruption Prevention Agency (NACP).

<sup>38</sup> ECA, based on information from the Council of Europe “Supporting Ukraine in executing judgments by the European Court of Human Rights. [Report on a mission to Ukraine for bilateral consultations with Ukrainian authorities concerning the improvement of enforcement proceedings](#)”, 2018, p. 5, and the PRAVO JUSTICE project.

<sup>39</sup> EBRD Ukraine Stabilisation and Sustainable Growth Multi-Donor Account.

## Figure 7 – Examples of MDA contributions

### Capacity-building for SOE privatisation

- Development of primary legislation adopted by Parliament and secondary legislation adopted by the relevant agencies.
- Recruitment of corporate governance and legal specialists to advise the Ministry of Economic Development and Trade on developing a strategy and a framework (a state holding company) by means of which the state could exercise its SOE ownership rights.

#### Our summary assessment

Privatisation of large companies was stalling. Only small-scale privatisations had been carried out through the “Prozorro.sale” system, the biggest of which was that of the Dnipro Hotel.

### Capacity-building for improving corporate governance

- Legal framework for establishing supervisory boards with independent members.
- Financing support teams in the Ministry of Economic Development and Trade, and the Office of the Prime Minister, specialising in SOE governance matters.
- Screening of the corporate governance legislative and regulatory framework for *Naftogaz* and *Ukrtransgaz* (in charge of gas storage since January 2020).
- Development of the corporate governance action plan for *Naftogaz*.

#### Our summary assessment

The project made it possible to appoint three independent supervisory board members. Legislation is in place, but the reform process requires further political will. Reformers claim that previous achievements in the energy sector are under threat.

### Capacity-building for the AMCU

- Alignment of legislation with the EU.
- Training courses on competition policy.
- Training courses on EU best practices relating to mergers.
- Workshops on public procurement review procedures.

#### Our summary assessment

The projects delivered the expected outputs. However, the AMCU’s capacity is still too weak to dismantle monopolies and impediments to free and fair competition.

### Financing the Business Ombudsman Council (BOC)

- 7 million euros (from 2014 to 2019) to set up and run the BOC with the aim of addressing the problem of endemic corruption and reducing interference by the national authorities in the private sector.

#### Our summary assessment

From the outset, the BOC has received almost 8 000 complaints from business about the national authorities. The BOC analysed 84 % of cases within the target period. In 2019, 96 % of complainants were satisfied with the way the Council had handled their complaints. It provides recommendations to state bodies, and proposes systemic recommendations based on individual cases. However, only 37 % of the 321 systemic recommendations had been implemented by December 2019.

Source: ECA, based on several sources<sup>40</sup>.

**42** SOEs are required by law to draft anti-corruption programmes. The Commission has provided grants for independent media and activists (see paragraph 35), which uncovered corruption schemes involving SOEs and municipal enterprises. With the exception of these grants, EU projects did not focus on identifying grand corruption schemes involving SOEs, and had not provided support for the development of these programmes, even though Ukraine has around 3 500 SOEs at national level alone (see paragraph 05). The co-financed EBRD MDA plans to support Ukrainian Railways in this area, but only as from 2021.

**43** The AMCU was not used to dealing with market competition. The state aid law was adopted in 2014, but only came into force in August 2017. During the audited period, the Commission consolidated the AMCU by means of two projects (Projects 10 and 19 in *Annex II*) and the EBRD MDA (Project 20 in *Annex II*). The focus of EU-funded projects was on legislative approximation (alignment of Ukrainian legislation with EU standards and principles), but not yet on enforcing competition law. The Commission supported the AMCU in establishing the new state-aid monitoring department and the public procurement review team dealing with appeals, and in the area of mergers and acquisitions. Despite EU-funded support and recent developments, the AMCU is not sufficiently strong to address the largest cases of state aid, and it appears to lack independence<sup>41</sup>.

<sup>40</sup> Transparency International: “Dnipro hotel sold for over UAH 1 billion”, 15 July 2020; EBRD MDA, *Annex II*: Individual Project Reports of the 2019 annual report; and BOC 2019 *Annual Report*.

<sup>41</sup> European Commission and High Representative of the EU for Foreign Affairs and Security Policy: “*Association Implementation Report on Ukraine*”, 2020, p. 20, World Bank:

### 1.3. The Commission and the EUAM monitor their support, but greater focus is needed on expected results and impacts

**44** The Commission has a system in place for monitoring its projects. However, half of the projects had no clear indicators, baselines or targets, thus lessening the relevance of reporting (see [Box 1](#)). Two out of 21<sup>42</sup> projects (12 and 15 in [Annex II](#)) satisfactorily listed outputs and outcomes in the logframes, and referred to annual targets and levels of achievement.

#### Box 1

##### Examples of project outcomes that were not measurable

The project to “**Support Justice Sector reforms in Ukraine**” (project 6 in [Annex II](#)) had the following specific objectives:

- to align major stakeholders’ policies and reform priorities in a coherent sector-wide reform strategy, supported by an implementation plan and a multi-annual financing programme secured by a Government decision;
- to create a viable sector-coordination structure;
- to provide expertise for key outstanding legislation.

The logical framework for the project did not include any indicators for measuring these three specific objectives.

One of the specific objectives of the “**Enhancement of Reanimation Package of Reforms coalition**” project (project 8 in [Annex II](#)) was to “adopt quality legislation for the launch of reforms in Ukraine, mainly in such spheres as anti-corruption, decentralisation, economic, electoral system, judicial, law enforcement/prosecution, public administration and the media”.

The indicator referred to the number of drafted and advocated laws, but not to their implementation or impact.

**45** EU projects dealing with corporate governance and competition (Projects 10, 19 and 20 in [Annex II](#)) delivered the expected outputs (e.g. legal tools accepted, training courses organised, etc.). However, the EU projects failed to define relevant outcomes (see examples in [Box 2](#)) and longer-term effects contributing effectively to the fight

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“Reducing Market Distortions for a More Prosperous Ukraine”, 2019, p. 34, and OECD:

“SME Policy Index: Eastern Partner Countries 2020”, 2020, p. 484.

<sup>42</sup> Not including MFA programmes and budget support programmes.

against anticompetitive structures and behaviour. Competitiveness indicators (see [Annex V](#) indicators included in the Single Support Framework) do not reveal significant progress. Ukraine's competitiveness remains low.

## Box 2

### Reporting on “outcomes” that are activities or outputs

The “outcomes” of one of the projects of the EBRD MDA “Capacity Building of Ukrainian Anti-Monopoly Committee” included:

- legal tools (commentaries on two laws and analysis of exclusive rights) accepted;
- AMCU staff being trained on matters relating to the microeconomic underpinnings of competition policy and EU best merger practices;
- AMCU public-procurement review-panel members being trained.

The project developed commentaries on two main competition laws with a view to providing AMCU staff with practical guidance on applying both laws. It also provided an analysis of EU legislation on granting special or exclusive rights. These are not a longer-term effects.

The second and third outcomes have been assessed as achieved, because the project provided training courses and organised workshops.

**46** The Commission monitored the MFA and budget support conditions, the visa liberalisation benchmarks, and the overall situation in the country by means of policy and political dialogue, contacts with CSOs, studies and evaluations. The Commission and the EEAS report publicly on the progress of reforms in Ukraine, especially through its AA implementation and the reports adopted under the visa liberalisation mechanism. However, there is no public reporting on EU contributions to Ukraine's achievements in fighting any type of corruption. Straightforward reporting on results is hampered by the fact that high-level strategic documents such as the Single Support Framework for EU support for Ukraine (2018-2020) or the EUAM Operational Plan generally lack targets (see [Figure 8](#)).

**Figure 8 – Examples of objectives lacking targets**



Source: ECA, based on the Single Support Framework 2018-2020 and the EUAM's operational plan.

**47** The EU does not report on Single Support Framework indicators (e.g. performance in Worldwide Governance indicators, and the degree of public trust in the prosecution services, judiciary and law enforcement agencies and the European Commission for the Efficiency of Justice indicators) to monitor Ukraine's progress in a public, regular and standardised format. These indicators show that Ukraine made little progress in fighting corruption (see [Annex III](#) and [Annex IV](#)).

**48** The Commission used various reports from international organisations to monitor Ukraine's progress in fighting corruption, for instance from the Group of States against Corruption (GRECO) and the OECD. GRECO acknowledged that important reforms were still ongoing; the low level of compliance with its recommendations (only 16 % were

fully implemented) requires a greater effort to reach an acceptable level of compliance<sup>43</sup>. The OECD also reports limited progress<sup>44</sup>.

**49** Although EUAM reports monitor tasks (objectives), they do not systematically measure them against verifiable indicators. Furthermore, the monitoring of outcomes is rarely based on quantifiable data, and lists activities and outputs rather than outcomes. In addition, the EUAM did not carry out an impact evaluation after more than five years of operations in the country. This is not in line with the EU better regulation toolbox 43<sup>45</sup>.

## 2. EU support for judicial reform: not enough results

**50** In this section, we examine whether the Commission and the EEAS have:

- (a) prepared their interventions in the judicial sector also with a view to addressing the issue of grand corruption;
- (b) provided support for judicial reform that delivered the expected results;
- (c) promoted digital tools that delivered the expected results.

### 2.1. Capacity-building projects have created fewer benefits than expected

**51** Reforming the judiciary has been one of Ukraine's highest priorities since it joined the Council of Europe in 1995. In 2014, the Ukrainian government itself noted that the judiciary was viewed as being one of the most corrupt institutions in the country<sup>46</sup>.

**52** The Commission provided significant capacity-building support, such as international and local experts providing analysis, advice, methodology, opinions,

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<sup>43</sup> GRECO: fourth evaluation round 'Corruption prevention in respect of members of Parliament, judges and prosecutors', Ukraine, 2020, paragraph 189.

<sup>44</sup> OECD: 'Anti-corruption reforms in Ukraine: 4th round of monitoring of the Istanbul Anti-Corruption Action Plan', progress update, 2019, p. 6.

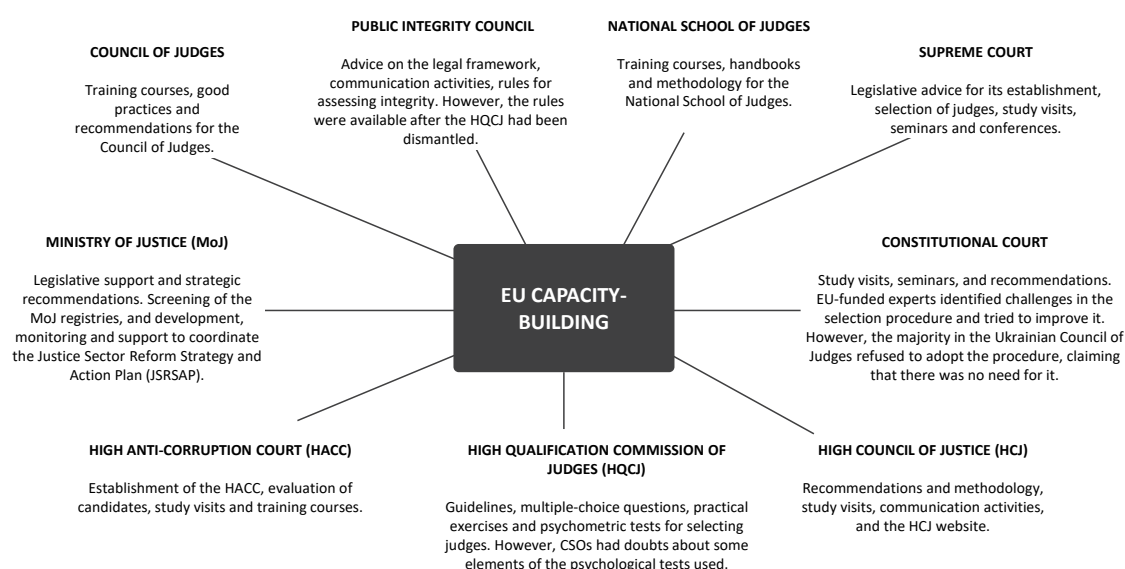
<sup>45</sup> European Commission: Better Regulation Toolbox, TOOL #43 "What is an evaluation and when is it required"?

<sup>46</sup> IMF: "Government of Ukraine report on the diagnostic study of governance issues pertaining to corruption, the business climate and the effectiveness of the judiciary", 2014, pp. 3 and 4.



handbooks, training courses, seminars, round-table meetings, study visits, communication activities as well as support for setting up IT systems (see [Figure 9](#)). Irrespective of other support provided, we estimate that it covers almost 85 % of the audited projects' budget. However, the Commission cannot provide an estimate of the amounts involved. EU projects helped to redraft the Constitution, as well as a large number of laws and bylaws. As far as the adoption of legislation is concerned, the legal framework is more closely aligned with EU standards.

**Figure 9 – Examples of Commission's support for capacity-building**



Source: ECA, based on project documentation.

**53** One of the key achievements has been to simplify the court system and to create a new Supreme Court (projects 6, 7 and 15 in [Annex II](#)), which was set up in December 2017. The projects in the judicial system delivered a majority of planned outputs (e.g. gap analysis, recommendations, the development of a justice-sector strategy, monitoring tools, advice and support for institutions, and support for the process for selecting judges). Analysing and monitoring the judicial system has been useful for identifying weaknesses.

**54** According to the Council of Europe, the different legal amendments helped to formally achieve 90 % of the legislative and institutional objectives of the Justice Sector Reform Strategy and Action Plan<sup>47</sup>.

**55** However, the sustainability of Commission's interventions and support for reforms is constantly under threat, as evidenced by frequent amendments to laws, and

<sup>47</sup> Council of Europe: "Assessment of the 2014-2018 judicial reform in Ukraine and its compliance with the standards and recommendations of the Council of Europe", 2019, p. 4.

delays to or distortions of bylaws, thus preventing the effective implementation of reforms. EU-funded experts from project 12 (see [Annex II](#)) also drew attention to the fact that an activity is considered to have been achieved when an act is approved, even if the legal framework is implemented only partly or not at all. In 2020, the Venice Commission pointed out the “extraordinary urgency of the situation”, and assessed the problems of judicial reform as being “the result of a poor legislative process [...], a [...] lack of a holistic approach, no proper impact assessments [...], a lack of clarity [...] and] the poor implementation of the laws once they are adopted”<sup>48</sup>. During the audited period, there were numerous attempts to water down reforms supported by the Commission and the EEAS (see [Box 3](#)).

### Box 3

#### The anti-corruption reforms are constantly at risk

- Law on illicit enrichment: Ukraine passed a law in 2015 criminalising illicit enrichment (an EU budget support condition), but the Constitutional Court of Ukraine (CCU) overturned the law in February 2019 by declaring it unconstitutional. The result was that all cases of illicit<sup>49</sup> enrichment were closed. The EU submitted an advice (an *amicus curiae*) to the CCU for the constitutionality of illicit enrichment as a criminal offence, but its arguments were not accepted by the CCU. However, Ukraine’s parliament approved a new bill in October 2019 reinstating criminal liability for this offence.
- Through political dialogue and conditions, the EU promoted the adoption of amendments to the Constitution to ensure greater independence for judges and its own entry into force, also by setting up a new Supreme Court. The EU contributed to professional and integrity assessments for Supreme Court candidates. In February 2020, the CCU ruled that the winding-up of the old Supreme Court of Ukraine (SCU) was unconstitutional. It stated that SCU judges who had not undergone integrity and professional assessments should have been transferred to the Supreme Court<sup>50</sup> on the basis of a special procedure and criteria, but did not specify what these were. At the time of the audit, the SCU had still not been wound up.
- The EU expected an electronic asset declaration system to function effectively (Eastern Partnership, budget support, visa liberalisation action plan, and MFA conditions). On 27 October 2020, the CCU ruled that the

<sup>48</sup> Venice Commission Opinion No 999/2020 on Draft Law No 3711.

<sup>49</sup> European Commission and High Representative of the EU for Foreign Affairs and Security Policy, [2019 Association implementation report](#).

<sup>50</sup> Democracy Reporting International: “[The Attempt of the Constitutional Court of Ukraine to Determine Fundamentals of the Judicial Reform Process](#)”, 2020, Decision No 2-r/2020.

NACP's verification powers in relation to asset declarations and the offence of false declarations were unconstitutional. As a result, the National Anti-Corruption Bureau (NABU) had to close more than 100 corruption investigations, and the High Anti-Corruption Court (HACC) 17 cases, some of them involving senior officials. In December 2020, the *Rada* reinstated the obligation to declare assets and criminal liability for false declarations with much weaker sanctions, and restored the NACP's powers. The EU, together with other international partners, was actively involved in having such legislation restored.

**56** Although the Commission has been providing assistance to the judicial sector for decades, resistance to change caused major setbacks that Commission analysis and mitigating measures were unable to avoid. Only half of the audited projects had a dedicated “lessons learned” section. The Commission’s approach to ensuring sustainability was long-term engagement in the area of the rule of law, political/policy dialogue, and conditions. The Commission improved its approach by setting up a specific project to tackle corruption (see paragraph 29), but it did not make technical assistance conditional upon the implementation of previous recommendations, the sustainability of previous outputs, or management integrity. The Commission cancelled a planned twinning project in 2021 with the CCU following the Court’s decision of October 2020 invalidating anti-corruption reforms.

**57** Keeping prosecution reform in line with EU standards is one of the most challenging tasks. The Commission’s budget support programme required the law reforming the Prosecutor-General’s Office (PGO) to be adopted and to come into force. Although the law aimed to monopolise the PGO’s powers, evaluators commissioned by the Commission found that the law did not make the PGO sufficiently independent of pressure from political stakeholders. The way cases are allocated to prosecutors is not robust enough to prevent interference. Furthermore, the law was not fully implemented and required revision.

**58** The Commission helped the PGO to develop a roadmap to reform prosecution services; this included creating the Qualification and Disciplinary Commission of Prosecutors (QDCP). However, despite the Commission and EUAM’s efforts, the reform process was very slow to get off the ground (see Box 4). Major progress was made in September 2019, when the President signed the law revamping the prosecutor’s office. This involved cutting the number of regional and local prosecutors (from 15 000

to 10 000), closing the military prosecutor's offices, assessing all prosecutors, evaluating performance, and suspending the QDCP until September 2021<sup>51</sup>.

#### Box 4

##### The Commission and EUAM contributions to re-assessing and selecting prosecutors

The 2015 reform of the prosecution system aimed to make prosecutors more professional, efficient and accountable. A competition to recruit new prosecutors took place in 2015. The Commission financed logistical support (travel expenses, IT and tests) to recruit local prosecutors, including administrative staff.

The Commission provided support for the QDCP, which became operational in 2017 and was responsible for selecting, transferring and disciplining prosecutors. However, the QDCP did not take all of the Commission's recommendations on board. According to CSOs, the QDCP's integrity checks relied on self-declarations rather than thorough checks, and there were few reprimands<sup>52</sup>. The EUAM thus supports the drafting of a new and improved system for the QDCP.

The Commission (project 17 in Annex II) has been one of the major contributors to prosecutors' attestations, a first step towards cleaning up the institution. Around 1 800 prosecutors did not pass the selection procedure, and have appealed against these decisions in the courts.

At first glance, the selection process looks like a step towards greater independence, but it was carried out within the PGO rather than by the QDCP, contrary to the advice of GRECO's compliance report<sup>53</sup>. In addition, this selection did not apply to the previously assessed Specialised Anti-Corruption Prosecution Office (SAPO), the Prosecutor-General and their deputies, and prosecutors appointed to administrative positions. EU-funded experts are assisting the Office of the Prosecutor-General with revising the disciplinary system and establishing a performance evaluation system for prosecutors.

**59** Law enforcement and prosecution reforms have not yet improved trust, which remains low (see [Figure 10](#)). Several organisations have reported cases of misconduct

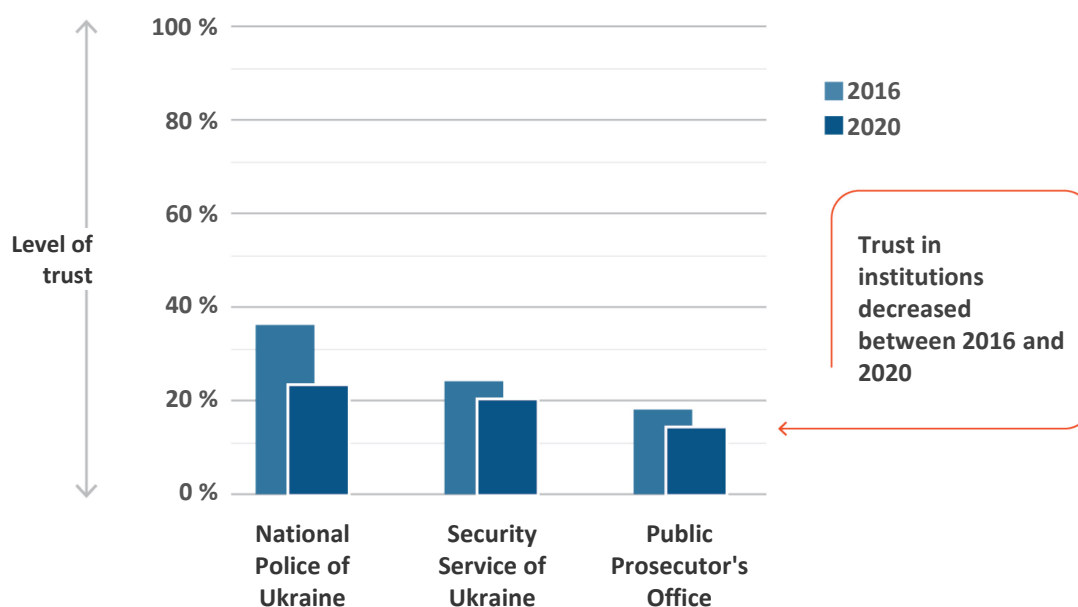
<sup>51</sup> Centre of Policy and Legal Reform: [Political Points for 29 August – 5 September 2019](#), and [Ukrainian President signs law on reform of prosecutor's office](#), 23 September 2019.

<sup>52</sup> Reanimation Package of Reforms Initiative: [Reforms under the Microscope](#), 2017, p. 57.

<sup>53</sup> GRECO: fourth evaluation round: [“Corruption prevention in respect of members of Parliament, judges and prosecutors”](#) Ukraine, March 2020, recommendation xxiii.

in law enforcement agencies<sup>54</sup>. A survey conducted for the EUAM also shows a fall in public trust in the sufficiency and helpfulness of EU and EUAM actions to promote reform (see [Annex VII](#)).

**Figure 10 – Level of trust in institutions according to EUAM surveys: 2016 versus 2020**



Source: ECA, based on Ukrainian public opinion surveys for the EUAM.

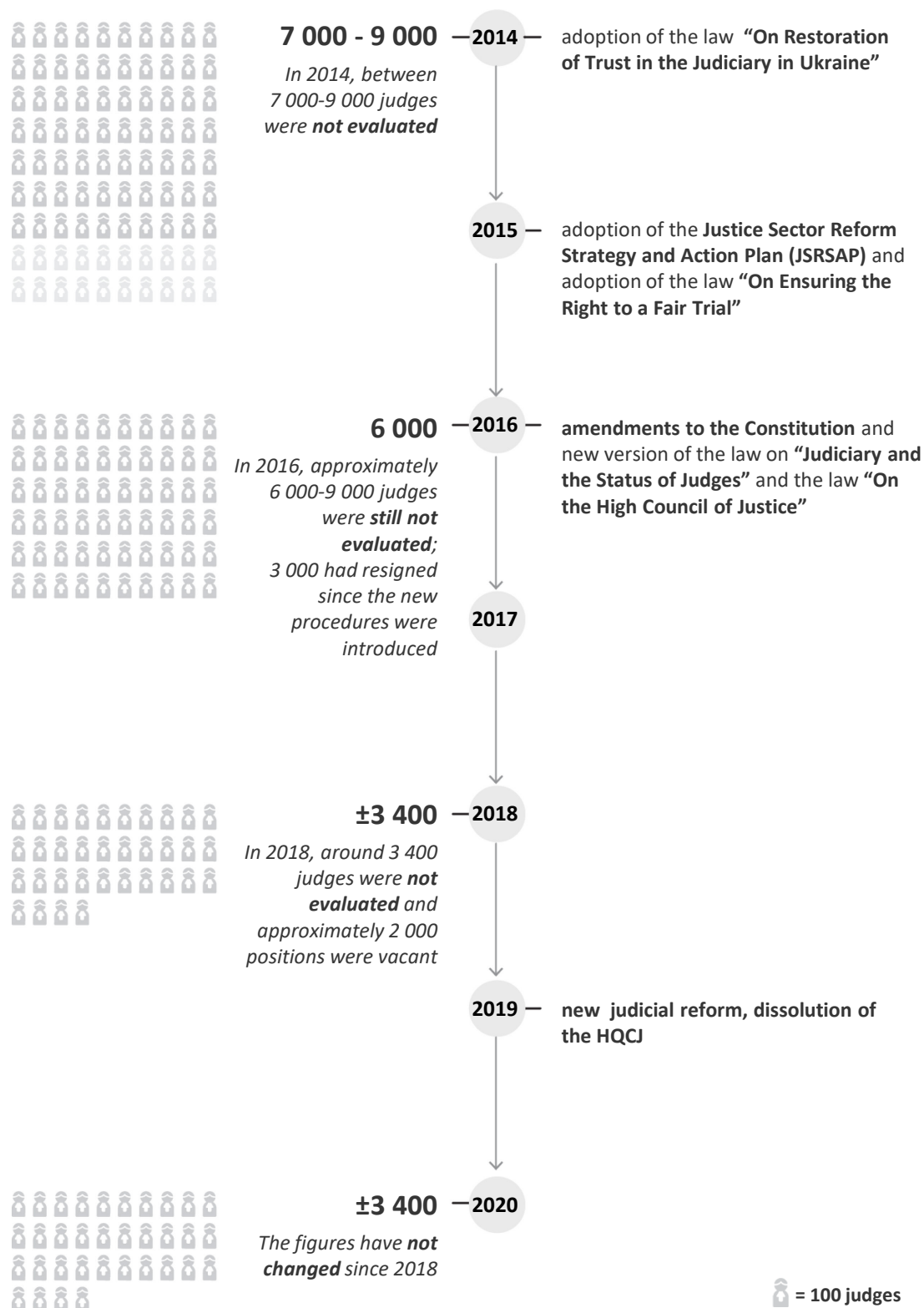
## 2.2. EU support for judicial reform has not reached key institutions, and continues to experience setbacks

**60** Judicial reform required the re-assessment or evaluation of all judges (see [Figure 11](#)). The Commission provided significant support for this process, which was run by the High Qualification Commission of Judges (HQCJ) with the assistance of the Public Integrity Council (PIC), represented by CSOs. The first selection concerned Supreme Court judges in 2017. The Supreme Court is at the top of the judicial hierarchy. Starting from 2018, the selection process continued with candidates and existing judges, and HACC judges. In the latter case, an innovative procedure was used

<sup>54</sup> Council of Europe: “Corruption undermines human rights and the rule of law”, 19 January 2021;  
 UK Home Office: “Country Policy and Information Note Ukraine: Organised crime and corruption”, September 2019, pages 9, 19 and 25;  
[UKRAINE 2019 HUMAN RIGHTS REPORT](#);  
 European Council of Foreign Relations: “Guarding the guardians: Ukraine’s security and judicial reforms under Zelensky”, August 2019.

with the Public Council of International Experts – a special advisory body of recognised international legal experts – assisting the HQCJ.

**Figure 11 – Timeline of assessment of judges**

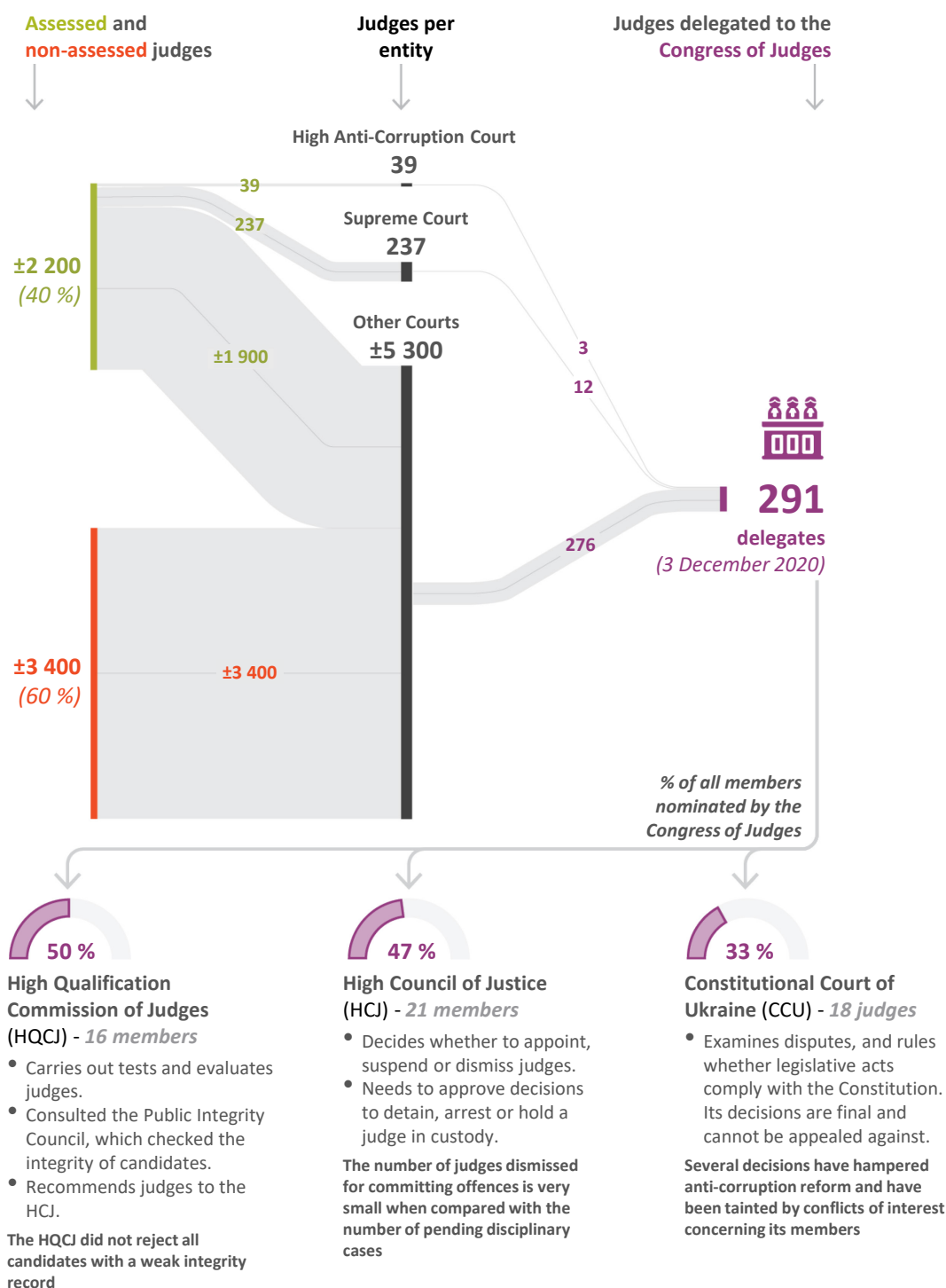


Source: ECA, based on PRAVO JUSTICE, DE JURE FOUNDATION and European Commission for the Efficiency of Justice (CEPEJ) data.

**61** Together with other donors, the Commission – through its budget support programme (project 3 in [Annex II](#)) – required the adoption of amendments to the Constitution and a law setting up a High Council of Justice (HCJ) to guarantee judicial independence and integrity. However, the Commission’s support for the selection process and judicial reform is at risk. The system of appointments by the Congress of Judges mostly involved judges who were not evaluated (see [Figure 12](#)).

**62** The CCU, the HCJ and the HQCJ also play strategic roles in the judicial system. The integrity of their members is thus crucial, but was not checked when they were being appointed (see examples in [Annex VIII](#)). As part of the MFA programme, in July 2020 the Commission required an Ethics Commission to be created with a mandate to check the integrity of HCJ members. At the time of the audit, this condition had not been met. Neither this condition nor the obligation to perform integrity checks of other top judicial bodies, such as the HQCJ and the CCU, were imposed in the MFA programmes before the reform was launched.

**Figure 12 – Assessment of the integrity and independence of top judicial bodies**



Source: ECA, based on several sources<sup>55</sup>.

<sup>55</sup> CEPEJ statistics (2020 edition) on the number of courts, Venice Commission Opinions 969/2019, 999/2020 and 1012/2020; and the DEJURE FOUNDATION “proposal for a model for selecting trustworthy judges”, 21 June 2019;



**63** For many years, the EU’s political dialogue has stressed the need to reform the judiciary to improve public trust, which ranged from 5 % to 12 % in 2015<sup>56</sup>. It is also one of the indicators for measuring the EU’s expected results. However, such trust remains very low, at between 14 % and 17 % in 2019<sup>57</sup>.

### **2.3. The Commission’s support for developing digital tools to tackle corruption is hampered by data quality issues and an aversion to change and reform**

**64** EU projects included a number of digital tools for helping to prevent corruption. Support was provided especially to pay for selection tests in the justice sector, to digitise the e-case management of anti-corruption agencies (see [Box 5](#)), to update the “politically exposed persons” database<sup>58</sup>, to develop websites, to contribute to the ProZorro public procurement platform, and to prepare e-case management for bankruptcy trustees, notaries and private enforcement officers. Civil society initiated the “ProZorro” and “DoZorro” e-public-procurement platform to ensure transparency and monitoring. These tools help to expose corruption, and may discourage some corrupt practices. The Commission indirectly financed the ProZorro development and training courses as part of the EBRD MDA. Civil society also developed the “politically exposed persons” platform. The latter compiles information from different registers, including asset declarations, and can be used by financial institutions to conduct their checks.

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<sup>56</sup> KIEV INTERNATIONAL INSTITUTE OF SOCIOLOGY, “[comparative analysis of national surveys, Corruption in Ukraine 2015](#)”; USAID Fair Justice project: “[national public opinion survey on Democratic, Economic and Judicial Reforms, Including Implementation of the Law on the Purification of Government](#)”, 2015 and EUAM public surveys, 2015-2019.

<sup>57</sup> Razumkov Center Ukraine 2019–2020: “[Broad Opportunities, Contradictory Results](#)”; Democratic Initiatives Fund: “[Survey results](#)”, June 2019 and EUAM public surveys, 2015-2019.

<sup>58</sup> [Public register of politically exposed persons of Ukraine](#).

## Box 5

### Commission support for the e-case management system

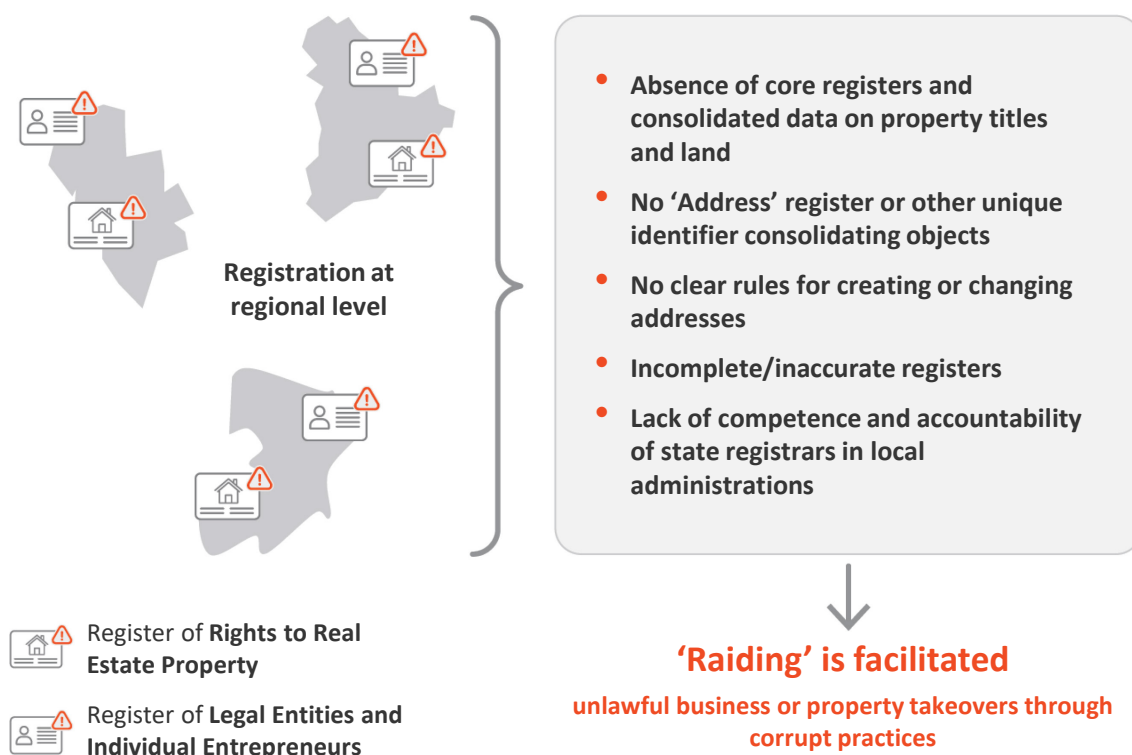
The Commission provided advice to modernise the outdated e-case management system in the justice sector, the aim being to cover the whole chain from investigations to probationary system. However, the national authorities had no clear vision of the justice sector and no effective mechanisms for coordinating all justice sector stakeholders. As a result, the Commission could only promote dialogue between the different stakeholders, and provide recommendations for the concept and roadmap.

The Commission did finance the development of an e-case management system for the anti-corruption agencies (project 12 in [Annex II](#)), but at the time of the audit it was not yet connected to the court system. As a result, in order to make the system active, the Commission required amendments to the criminal procedure code to be included in the last MFA programme (signed in July 2020) for it to be made operational.

**65** The Commission financed NABU’s data warehouse, which enables automatic searches and interconnects different databases. The Commission also procured data-management systems for the Ministry of Justice, the aim being to digitalise documents and facilitate searches.

**66** The Commission’s assessment of the registries used in the justice sector provided useful support (projects 6 and 17 in [Annex II](#)). In particular, experts drew attention to the lack of interoperability between registers, the absence of unique identifiers, the absence of agreed addresses, and the lack of or inaccuracies in the data that were registered. All of these issues made crosschecks more difficult, thus delaying the enforcement of court decisions (project 6 in [Annex II](#)) and facilitating unlawful business or property takeovers through corrupt practices, otherwise known as corporate “raiding” (see [Figure 13](#)). To secure property rights, the Commission provided support in a number of areas (see [Figure 14](#)).

**Figure 13 – Decentralised and inaccurate registers facilitate raiding**



Source: ECA, based on information from the "Support for Justice Sector Reforms in Ukraine" and "PRAVO JUSTICE" projects.

**Figure 14 – Commission support for securing property rights**



Source: ECA, based on project documentation.

**67** The creation of the open data portal<sup>59</sup> was a major step towards increasing transparency and reducing corruption opportunities. One of the budget support conditions in 2016 was "access to public registers". Although Ukraine has made progress in this area, several shortcomings remain:

<sup>59</sup> Portal providing free data access for citizens.

- high fees and restrictive search functions limit the use of public registers;
- the number of open state registers required by law has not yet been reached;
- the quality of registers is uneven.

**68** A prerequisite for using the latest technological developments (e.g. big data and data mining) as preventive tools for fighting corruption is the resolution of problems generated by a lack of reliable data (e.g. in registers).

**69** MFA programmes III and IV included several conditions for better access to information (publication of audit reports, public procurement contracts, and verification of information on company ownership).

### **3. The Commission supported anti-corruption institutions, but they struggle to deliver the expected results**

**70** In the following section, we examine whether the Commission had:

- (a) set relevant conditions to help fight grand corruption, and collected and analysed sufficient information to assess progress;
- (b) provided support for anti-corruption institutions that delivered the expected results.

#### **3.1. The Commission supported anti-corruption reform mainly through conditions, but its assessment of progress remained discretionary**

**71** The Commission used anti-corruption conditions – mainly legislative and institutional changes – to ensure that these new anti-corruption entities were set up and made operational. The anti-corruption conditions stipulated in the MFA loans complement the budget support and visa liberalisation actions. However, the way the conditions were drafted allowed a degree of discretion, as clear baselines and measurable targets were often missing. In general, there was not enough focus on the proper implementation of laws and anti-corruption measures, but also on tangible outcomes. Furthermore, the conditions focused on the new anti-corruption system, but not sufficiently or early enough on the integrity and independence of the judicial and law-enforcement sectors (see paragraphs [61-62](#)).

**72** The Commission's assessments of budget support, visa liberalisation and MFA conditions were based on information provided by the authorities, civil society and EU-

funded experts, and international organisations. When the conditions were obviously not met, the Commission reduced the budget support disbursement (only 52.5 % of the 2016 tranche was disbursed) and cancelled the third MFA III tranche of €600 million. However, the first MFA IV tranche of €500 million was paid shortly afterwards.

**73** The Commission could only propose to the European Parliament and the Council that the visa obligation should be lifted when it assessed that all benchmarks had been fulfilled. Nevertheless, the Commission interpreted its conditions with discretion, leading to an over-positive assessment. Our analysis showed that although one of the three anti-corruption benchmarks for the visa liberalisation action plan<sup>60</sup> was achieved, the other two were only partially achieved (see [Box 6](#)). This did not lead to the visa-free system being reconsidered.

### Box 6

#### Examples of anti-corruption conditions/benchmarks with assessment issues

##### Visa-liberalisation action plan

“Implementation of legislation on preventing and fighting corruption, ensuring the efficient functioning of the independent anti-corruption agency; development of ethical codes and training on anti-corruption, especially targeting public officials involved in law enforcement and the judiciary.”

In its sixth report, the Commission acknowledged that progress had been made in adopting legislation and setting up anti-corruption institutions. Although this benchmark (implementation of legislation) had not been met at the time of the assessment, it was considered to have been achieved on the basis of positive developments and commitments by the Ukrainian authorities.

##### Budget support programme

“Effective system for verification of declarations of assets, income and expenses of public officials is in place and operational, dissuasive sanctions for submission of false information in declarations is introduced, threshold for declaration of expenses is significantly reduced, a single web-portal for submission in electronic form and publication of declarations with open access to the portal is set up. Other provisions on asset disclosure are an improvement in cooperation with civil society and international stakeholders.”

<sup>60</sup> [Visa Liberalisation Action Plan](#) Block 2.3.1.: Preventing and fighting organised crime, terrorism and corruption, 2010.

In November 2016, the Commission assessed this indicator as “fully achieved” because the NACP had received more than 100 000 declarations and the regulatory framework was in place. However, the system was not fully effective. The EC was aware of the NACP’s shortcomings in verifying the declarations. Finally, in January 2018, the Commission did not validate the third instalment of MFA III because the mechanism for verifying asset declarations submitted by public officials was still not effectively in place.

#### **Macro-financial programme III, second instalment (2017)**

“Establish a National Anti-Corruption Bureau, a specialised Anti-Corruption Prosecution Office and a National Agency for the Prevention of Corruption, ensuring that they are independent and operational, i.e. endowed with the financial resources, staff and equipment required to perform their functions.”

The Commission claims that the condition focused only on the establishment of anti-corruption institutions, and so assessed it as having been achieved. We understand that the condition also required the institutions to be independent and operational.

The agencies had been created and had started work, but the independence of SAPO and the NACP was questionable. SAPO is part of the Public Prosecutor’s Office, and so is still not fully independent.

### **3.2. The anti-corruption institutions that the EU helped to set up are still struggling to deliver the expected results**

**74** The National Anti-Corruption Strategy for 2014-2017 required anti-corruption institutions to be created (the main ones are shown in [Figure 15](#)). The EEAS and the Commission also encouraged the government to set them up and make them function efficiently. They have supported setting up specialised anti-corruption institutions whereas the judiciary and law enforcement remained compromised to a considerable extent by corruption.

#### **Figure 15 – Anti-corruption agencies and institutions, and their tasks**

## **NACP**

### **National Anti-Corruption Prevention Agency**

- Develops and implements anti-corruption policy, in particular anti-corruption strategy
- Monitors the lifestyles of public officials
- Verifies declarations of assets
- Determines conflicts of interest relating to public officials
- Scrutinises political-party funding and the protection of whistleblowers

## NABU

### National Anti-Corruption Bureau

- Investigates high-level corruption cases
- Collects relevant, admissible and reliable evidence

## SAPO

### Specialised Anti-Corruption Prosecution Office (Part of the Public Prosecutor's Office)

- Oversees NABU's investigations
- Ensures there is enough reliable evidence against defendants
- Brings high-level corruption cases before the courts

## HACC

### High Anti-Corruption Court

- Specialised court whose jurisdiction includes high-level corruption cases
- Adjudicates cases investigated by NABU

## ARMA

### Asset Recovery and Management Agency of Ukraine

Finds, traces and manages assets derived from corruption and other crimes

Sources: ECA, based on the action document of the EU Anti-Corruption Initiative in Ukraine (Phase II), Chatham House: "The struggle for Ukraine", 2018, EUACI technical assessment of the Asset Recovery and Management Agency of Ukraine.

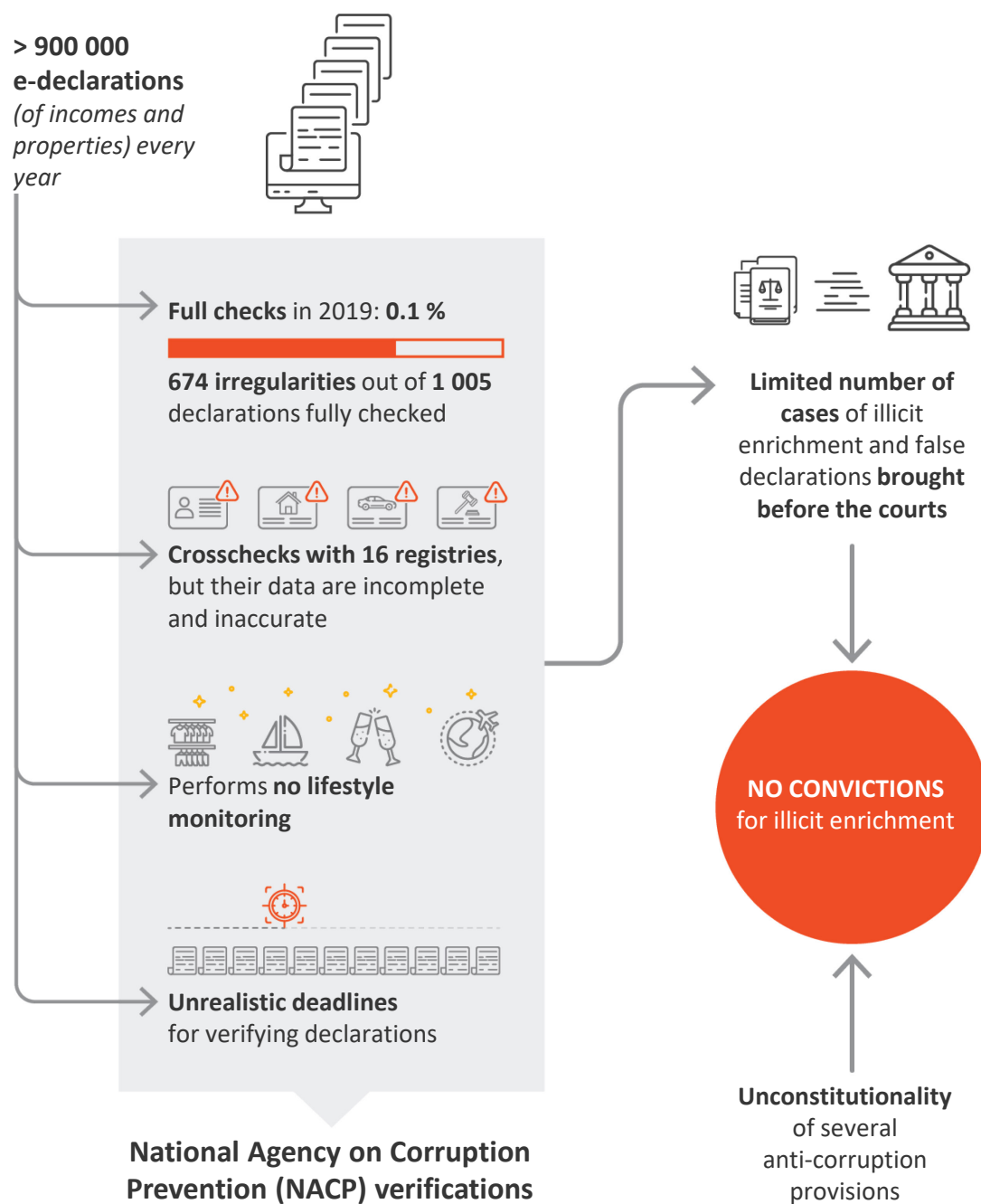
## The National Anti-Corruption Prevention Agency

**75** The NACP drafted a National Anti-Corruption Strategy for 2018-2020 based on the implementation of the previous one. EU-funded experts hired by project 12 (see [Annex II](#)) assessed that approximately 40 % of the previous strategy and State programme was completed, and 30 % partially achieved. The EEAS and the Commission welcomed the Cabinet of Ministers' endorsement of the strategy in April 2018; however, Parliament never adopted it. The EU-funded projects and the EUAM provided further recommendations for the draft National Anti-Corruption Strategy for 2020-2024. The document passed its first reading in Parliament in November 2020. The second reading was ongoing when we were finalising our report.

**76** Despite the Commission's support, the NACP's verification tasks still did not meet GRECO's recommendations<sup>61</sup>. Several EU conditions required an effective system for verifying assets. However, the e-asset declaration system is not as effective as it should be. There have been no convictions for illicit enrichment (see [Figure 16](#) and [Box 6](#)). Nevertheless, making the asset declarations public serves as a preventive tool.

<sup>61</sup> GRECO Fourth evaluation round. [Corruption prevention in respect of members of parliament, judges and prosecutors](#), recommendation (i), second part not fulfilled.

**Figure 16 – Limited effectiveness of the asset declaration system**



Source: ECA, based on GRECO's fourth evaluation round "Corruption prevention in respect of members of Parliament, judges and prosecutors", December 2019, recommendation ii; MFA IV disbursement of the second instalment 'Information note to the European Council', 26 May 2020 and project documentation for project 12: "Anti-corruption and support to key reforms".

**77** The EU-funded MDA project and the EUAM helped to draft anti-corruption programmes (see paragraph 37), and the NACP subsequently approved them.



However, the vast majority did not address key corruption risks, and the procedure was treated as a “formality and a box-ticking exercise”<sup>62</sup>.

**78** The Commission eventually reduced its engagement with the NACP after the latter’s reputation was tarnished, for example by making IT assistance contingent on progress in key areas of operations. Other donors had stopped providing assistance earlier when negative developments were noted.

**79** With Commission support, a new structure for the NACP was established in October 2019. Also, a new NACP head was appointed in January 2020 after passing a competition overseen by the international selection commission.

### **The National Anti-Corruption Bureau**

**80** The National Anti-Corruption Bureau (NABU) has a good reputation among the international community. Although EU political support has helped to keep NABU operational and independent, the Agency is constantly under threat from opponents who resort to means such as accusations of misconduct. EU-funded experts provided draft proposals for NABU’s jurisdiction, but this legislation is also constantly under threat (e.g. the cancellation of rights to challenge corruption-related commercial agreements<sup>63</sup>). In September 2020, the CCU declared that important provisions of the NABU Law were unconstitutional. This will impact the head’s appointment, the Civil Oversight Council, and the independent audit which is yet to be carried out<sup>64</sup>.

**81** The Commission and the EUAM organised a large number of training courses, workshops and study visits, and also provided guidance for NABU, with a focus on investigative tasks. NABU’s statistics show that there has been progress in terms of open investigations (see [Figure 17](#)). The Agency calculated its economic benefit to society by comparing its budget (€30 million) with the economic impact (losses of €450 million that were avoided)<sup>65</sup>. Its capacity to investigate high-level cases has significantly increased, in particular when compared with the number of high-level

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<sup>62</sup> OECD: “Anti-corruption Reforms in Eastern Europe and Central Asia - Progress and Challenges, 2016-2019”, 2020, p. 31.

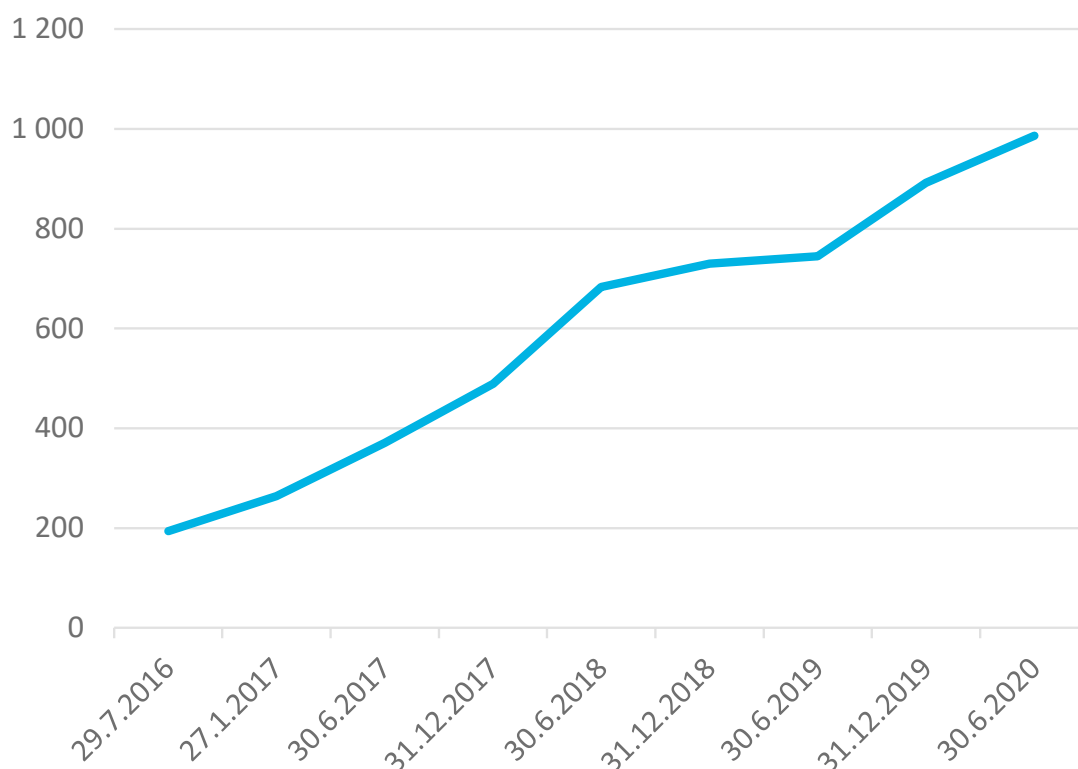
<sup>63</sup> European Commission and High Representative of the EU for Foreign Affairs and Security Policy: [Association Implementation Report on Ukraine](#), 2019, p. 9.

<sup>64</sup> NABU: “Constitutional crisis requires an immediate solution to restore the effective work of anti-corruption institutions - NABU statement”, 6 November 2020.

<sup>65</sup> NABU report, January-June 2010.

profiles that were investigated before NABU was set up<sup>66</sup>. The majority of cases involve SOEs<sup>67</sup>, and around 18 % of the “notices of suspicion” involved senior officials<sup>68</sup>. At the time of the audit, NABU was investigating major corruption schemes such as the *Rotterdam +* case and *Privatbank*<sup>69</sup>.

**Figure 17 – Increase in the number of ongoing NABU investigations (criminal proceedings)**



Source: ECA, based on NABU twice-yearly reports.

**82** However, NABU is only one link in the anti-corruption chain. The outcome of NABU’s investigations relies on factors such as prosecutors and the forensics bureau validating evidence. NABU claimed that its work has long been hampered by the National Security Service of Ukraine (SBU)<sup>70</sup>, which owns the technical equipment for

<sup>66</sup> OECD: Istanbul Anti-Corruption Action Plan, [4th Round of Monitoring](#), Ukraine, 2017, pp. 11 and 143.

<sup>67</sup> NABU report, January-June 2020.

<sup>68</sup> NABU report, July-December 2019.

<sup>69</sup> OECD: “Snapshot of Ukraine’s Energy Sector: Institutions, Governance and Policy Framework”, 2019, p. 41 and NABU: “Former PrivatBank top managers notified of suspicion”.

<sup>70</sup> NABU “Undercover operation conducted by the NABU and the SAPO was failed due to the lack of the right of autonomous wiretapping”, 30 November 2017.

wiretapping and has the necessary staff, a lack of wiretapping rights, and insufficient access to registries. Through its political dialogue, the EU together with other donors successfully lobbied for a law (eventually adopted in October 2019) enabling NABU to carry out undercover investigations with wiretapping. However, in practice, and despite the EU's involvement, the SBU retains control over wiretapping.

### **The Specialised Anti-Corruption Prosecution Office**

**83** Although SAPO is responsible for bringing high-level corruption cases to court, it remains part of the Public Prosecutor's Office and is thus not fully independent. In addition to EUAM activities, the Commission provided support mainly through four projects (Projects 6, 12, 13 and 15 in [Annex II](#)). The achievement of successful outcomes was undermined by the limited independence of SAPO's management and backlogs<sup>71</sup>. The Commission reduced its support following the 2018 wiretapping scandal, suggesting that SAPO's head had brought pressure to bear on prosecutors and courts<sup>72</sup>.

### **The High Anti-Corruption Court**

**84** Before the HACC was set up in September 2019, a significant number of high-level corruption cases had stalled in the courts after being forwarded by SAPO/NABU, a fact which the OECD qualified as "shocking"<sup>73</sup>. Given this situation, the international community<sup>74</sup> and CSOs have argued for the creation of an independent court with a reliable recruitment procedure. As part of its dialogue in 2016, the EEAS and the Commission requested that legislation should be adopted for the HACC.

**85** The Commission provided significant support for the establishment of the HACC (see [Figure 9](#)). After a transparent competition, 38 judges were appointed in April 2019. The long-awaited court, which comprises both a first and an appellate level, officially opened on 5 September 2019, and started to examine its first high-level cases in the last quarter of 2019.

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<sup>71</sup> European Commission: [Action Document for the EU Anti-Corruption Initiative in Ukraine \(Phase II\)](#), p. 6.

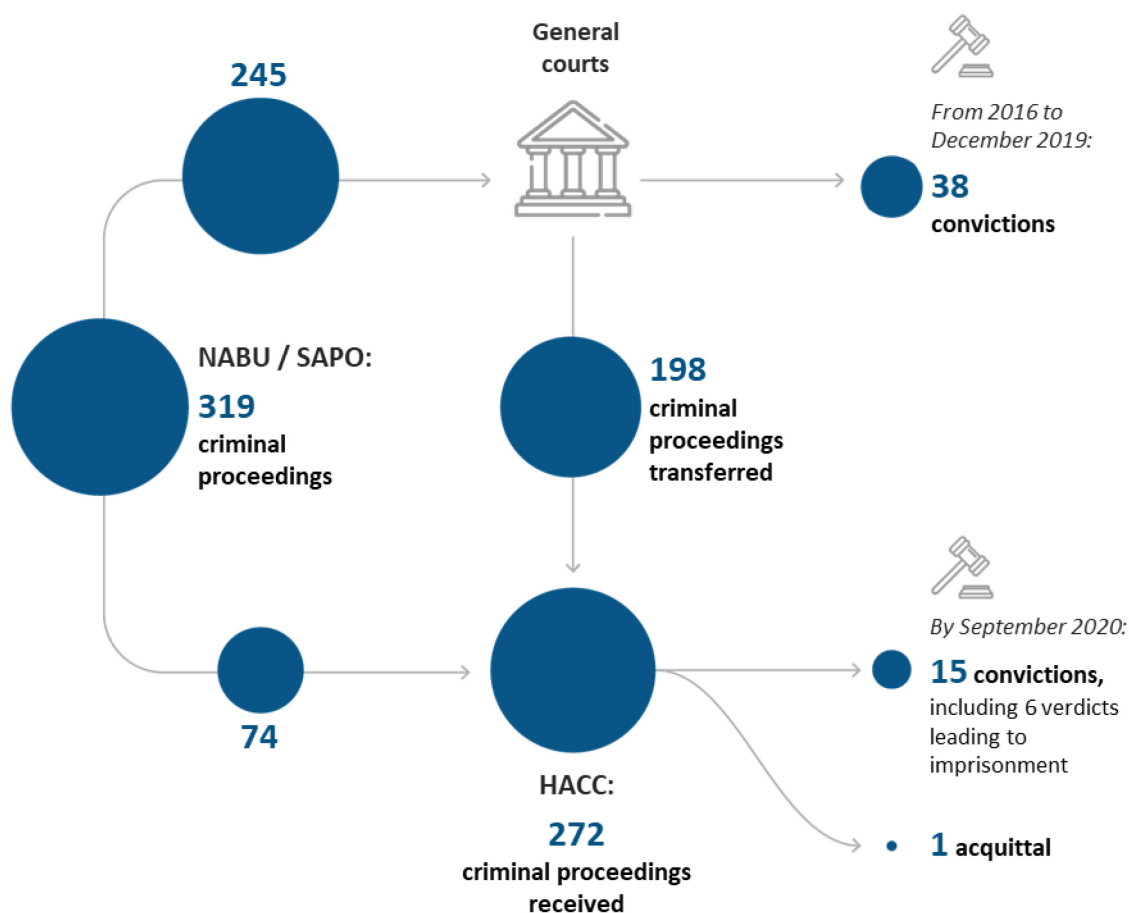
<sup>72</sup> ANTAC: "[register of dumped cases](#)".

<sup>73</sup> OECD: Istanbul Anti-Corruption Action Plan, [4th Round of Monitoring](#), Ukraine, 2017, p. 155.

<sup>74</sup> OECD: Anti-Corruption Reforms in Ukraine, [Round 3: Monitoring of the Istanbul Anti-Corruption Action Plan](#), March 2015, p. 84.

**86** By September 2020, the HACC had issued 16 convictions and one acquittal (see [Figure 18](#)). When compared with the general courts where corruption cases have been stalling for many years, the HACC has started to show its first promising results. However, its effectiveness, independence and sustainability were under threat at the time of the audit.

**Figure 18 – Statistics on criminal proceedings**



Source: ECA, based on [NABU reports](#), a [Transparency International](#) presentation and project 12: “Anti-corruption and support to key reforms”.

## The Asset Recovery and Management Agency

**87** The EUAM and the Commission-funded project 12 (see [Annex II](#)) assisted in establishing the Asset Recovery and Management Agency (ARMA) from the very beginning. The project involved conducting a technical assessment and providing ARMA with legislative support. It also financed IT tools (e.g. basic equipment, ARMA's website, and videoconference equipment) and training. The Agency started from scratch, and all staff had to be trained. ARMA increased its capacity for tracing and managing assets, and has processed an increasing number of asset recoveries<sup>75</sup>.

**88** As of October 2020, ARMA claimed it had found and traced illegally-obtained assets worth more than 100 billion UAH (almost 3 billion euros). Nevertheless, ARMA's mandate is limited, as it can only find and trace assets when asked to do so by law enforcement agencies. Despite an increased volume of assets managed by ARMA, this amount represents only 4 % (approximately €119 million) of all traced amounts.

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<sup>75</sup> ARMA reported on its activities in 2019.

## Conclusions and recommendations

**89** We found that although the EU has backed reforms to fight corruption and has helped to reduce corruption opportunities, grand corruption remains a key problem in Ukraine. Judicial reform is experiencing setbacks, anti-corruption institutions are at risk, trust in such institutions remains low, and the number of convictions resulting from grand corruption is small.

**90** Oligarchs and vested interests across Ukraine are the root cause of corruption and the main obstacles to the rule of law and economic development in the country. The European External Action Service (EEAS) and the Commission were well aware of the multiple connections between oligarchs, high-level officials, the government, parliament, the judiciary and State Owned Enterprises (SOEs). The EEAS has not yet proposed a model for restricting entry into the EU for Ukrainian individuals suspected of grand corruption, and preventing them from using their assets in the EU. Although EU key documents mention the fight against corruption, there is no overall strategy specifically addressing grand corruption. The EEAS and the Commission tackled corruption as a crosscutting priority, channelling funds and efforts through a variety of sectors; this included support for the anti-corruption institutions tasked with fighting high-level corruption. The multi-sector approach did not focus sufficiently on grand corruption (see paragraphs [22-28](#) and [34](#)).

**91** The EU Anti-corruption Initiative project focused exclusively on corruption, especially through its support for anti-corruption institutions dealing with grand corruption. None of the other projects we audited had the overall objective of specifically reducing grand corruption, but half of them included activities that addressed the problem. Grand corruption and illicit financial flows, including money laundering, are intrinsically linked, but the projects we audited contained a very small number of activities addressing money laundering risks. The Commission also stipulated conditions to promote reforms in these areas in its macro-financial assistance (MFA) programmes and the visa liberalisation benchmarks. The EU advisory mission (EUAM) supported the Ukrainian authorities in their attempts to reform the civilian security sector. It engaged with law enforcement agencies to reduce corruption as one of its cross-cutting priorities. However, the EUAM's mandate does not include tackling grand corruption (see paragraphs [29-37](#), and [71-73](#)).

## Recommendation 1 – Design and implement specific actions that target grand corruption

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In order to reduce grand corruption, the EEAS and the Commission should:

- (a) as part of the EU's multidimensional approach to tackling corruption, develop a strategic document on how to prevent and combat grand corruption, including state capture. This documents should identify key actions within a well-defined timeframe to target root causes, including the oligarchic structure;
- (b) together with member states and international partners, analyse and consider a model for preventing individual Ukrainians (oligarchs and people under their influence) who are suspected of grand corruption from entering the EU and using their assets there;
- (c) enhance monitoring of and support for the implementation of anti-money laundering legislation in Ukraine.

**Timeframe: end of 2022.**

**92** The Commission's support for civil-society projects and independent media was a reasonable course of action for preventing and detecting corruption. For instance, civil society developed the ProZorro and "politically exposed persons" platforms, both of which laid the foundations for monitoring reforms and alerting public opinion to corrupt practices and abuses of power (*Box 4*, and paragraphs *29*, *35* and *64*).

## Recommendation 2 – Assess and adjust the scale of its support for civil society organisations and investigative journalism

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In order to enhance transparency and foster reform, the Commission should:

- (a) assess and adjust the scale of its support for civil society and investigative journalism, by placing particular emphasis on fighting corruption and by supporting efforts to reduce the influence of media owned by oligarchs;
- (b) support civil-society beneficiaries in developing systematic monitoring mechanisms (e.g. a scoreboard) for tracking the performance of anti-corruption reforms, and regularly document the results achieved by the funded projects.

**Timeframe: end of 2022.**

**93** There is broad consensus that in a state-capture situation, economically influential individuals and companies obtain advantages from the state, in particular through SOEs. The Commission has supported the privatisation of big SOEs. It focused on their corporate governance in its policy dialogue and MFA conditions, but these reforms are at risk. It has also supported Ukraine in building up the Antimonopoly Committee's institutional capacity; however, at the time of the audit, the Committee was still too weak to enforce competition policy. Much greater action is needed, especially as so many companies in Ukraine enjoy the status of oligopolies or monopolies (see paragraphs [38-43](#)).

### **Recommendation 3 – Contribute to removing impediments to free and fair competition**

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In order to boost fair competition, the Commission should:

- (a) identify and avoid supporting (via projects, loans and guarantees) those companies under oligarchic influence that create impediments to free and fair competition;
- (b) support the Ukrainian authorities' efforts to dismantle monopolies under oligarchic influence where there are concerns about free and fair competition;
- (c) provide enhanced institutional support for the Anti-Monopoly Committee with a view to increasing its capacities and independence, while aiming to ensure that the Committee has integrity and commitment to reform.

**Timeframe: end of 2023**

**94** The Commission has a system in place for monitoring and evaluating its support. However, assessing how far the projects helped to fight any type of corruption is difficult for half the projects we audited, as outcomes are not measurable (due to a lack of baselines, targets and relevant indicators) and refer to outputs and activities. Furthermore, the EUAM has not released its impact evaluation (see paragraphs [44-49](#)).

**95** Although the EEAS and the Commission report each year on the progress of reforms in Ukraine, there is no specific reporting of the progress of the EU's contributions towards fighting any type of corruption. The reporting system is not based on pre-defined targets and indicators compared to baselines (see paragraphs [45-47](#), [55-57](#) and [71](#)).



## Recommendation 4 – Improve monitoring and reporting in order to inform and take corrective action where needed

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The EEAS, the Commission and the EUAM should:

- (a) improve the monitoring and public reporting system (based on clear and specific objectives, pre-defined targets and indicators, and compared to baselines), in particular where fighting grand corruption in Ukraine is concerned, by focusing on the EU's contributions;
- (b) require project implementers to fill in their project logframes properly by comparing project achievements with baselines and expected targets.

**Timeframe: end-2022**

**96** The lack of desire for reform and resistance to anti-corruption and judicial reforms caused major setbacks that were not avoided by mitigating measures. In a challenging environment, the sustainability of previous achievements is constantly at risk (see paragraphs [55-58](#)).

**97** The Commission and the EUAM have provided intensive assistance for judicial reform, especially to the High Anti-Corruption Court, which has now delivered its first results in the form of convictions. The Commission and the EUAM provided significant support for assessing the qualifications and integrity of judges and prosecutors. However, members of judicial governance bodies, a substantial number of judges and some prosecutors still need to undergo integrity vetting (see [Figure 18](#), [Box 4](#), and paragraphs [60-63](#) and [84-86](#)).

**98** The Commission helped to set up and develop the new anti-corruption institutions. However, if one link in the institutional chain is weak, the whole cannot function properly. The EEAS and the Commission have been active in securing an anti-corruption framework that is constantly under threat, and in trying to embed it within the local context of existing organisations. However, trying to integrate the new institutions into the existing environment is a constant battle (see paragraphs [74-88](#)).

## Recommendation 5 – Emphasise integrity and commitment to reform when providing capacity-building support for institutions

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In order to make EU support more effective, the Commission and the EEAS should:

- (a) when providing institutional support for judicial, law enforcement and prosecutorial institutions, emphasise criteria for integrity and commitment to reform (i.e. implementation of previous recommendations, sustainability of previous outputs, and integrity of management);
- (b) when providing assistance, aim to ensure that integrity assessments are carried out for key judicial and law enforcement posts (i.e. Constitutional Court judges, heads of courts, and members of the High Qualification Commission of Judges and the High Council of Justice).

**Timeframe: end of 2022**

**99** EU projects also helped to shape a number of digital tools for preventing corruption, but several tools required further commitment from the national authorities. Assessing the Ministry of Justice’s registries proved useful for identifying weaknesses, in particular the lack of accurate data. The verification of e-asset declarations is affected by the inaccuracy of some of the registries that are consulted. The unlawful takeover of business or property is a serious problem in Ukraine and a major risk for investors. The Commission is addressing this problem (paragraphs [64-69](#), and [76](#)).

## Recommendation 6 – Support the digitalisation of registers

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In order to increase the transparency of public registers, protect property rights and scrutinise the use of public money, the Commission should support the digitalisation of the most important public registers. Such support should increase their interoperability and data quality, and secure their handling.

**Timeframe: end of 2022.**

**100** Coordinating EU conditions with other donors has played a part in amending the Constitution, strengthening the legal framework, and setting up institutions. However, a number of conditions were not specific enough, and allowed a degree of leeway. By acknowledging that progress had been made, the Commission assessed

some conditions as having being achieved. However, our assessment is more critical, in particular where outcomes are concerned (see paragraphs [61](#), [71-73](#)).

**101** The Commission initially made only limited use of conditions to reform the judiciary, focusing first on the constitutional changes needed to reorganise the judiciary and on building up the anti-corruption institutions. In its last MFA programme (July 2020), the Commission required integrity checks for key judicial governance bodies. Furthermore, some achievements have been overturned by vested interests. One of the latest attempts was the Constitutional Court decision that declared the e-asset declaration unconstitutional. Although EU and international pressure did lead legislators to re-establish the obligation to declare assets and sanctions in the event of non-compliance, sanctions are not dissuasive enough. EEAS and Commission efforts prevented some backtracking, but are constantly under threat (paragraphs [55](#), [61](#), [71](#), [73](#), [Box 3](#) and [Figure 16](#)).

**102** The EEAS and the Commission have advocated improving the corporate governance of the large number of SOEs in Ukraine, and facilitating their privatisation. However, EU-funded experts concluded that moratoria prohibiting the enforcement of court decisions and protecting SOEs from bankruptcy or from paying back their debts were a major problem (see paragraphs [38-41](#)).

## **Recommendation 7 – Stipulate stricter conditions for Commission support**

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In order to guarantee and secure reforms, when it is designing and assessing MFA conditions the Commission should:

- (a) include strict requirements for reforming the judiciary, prosecution services and law enforcement agencies, in particular with a view to ensuring their independence and integrity;
- (b) explore, in a documented way, the conditions for removing debt moratoria on SOEs with a view to including such condition in a future MFA programme.

**Timeframe: end of 2022**

This Report was adopted by Chamber III, headed by Mrs Bettina Jakobsen, Member of the Court of Auditors, in Luxembourg on 20 July 2021.

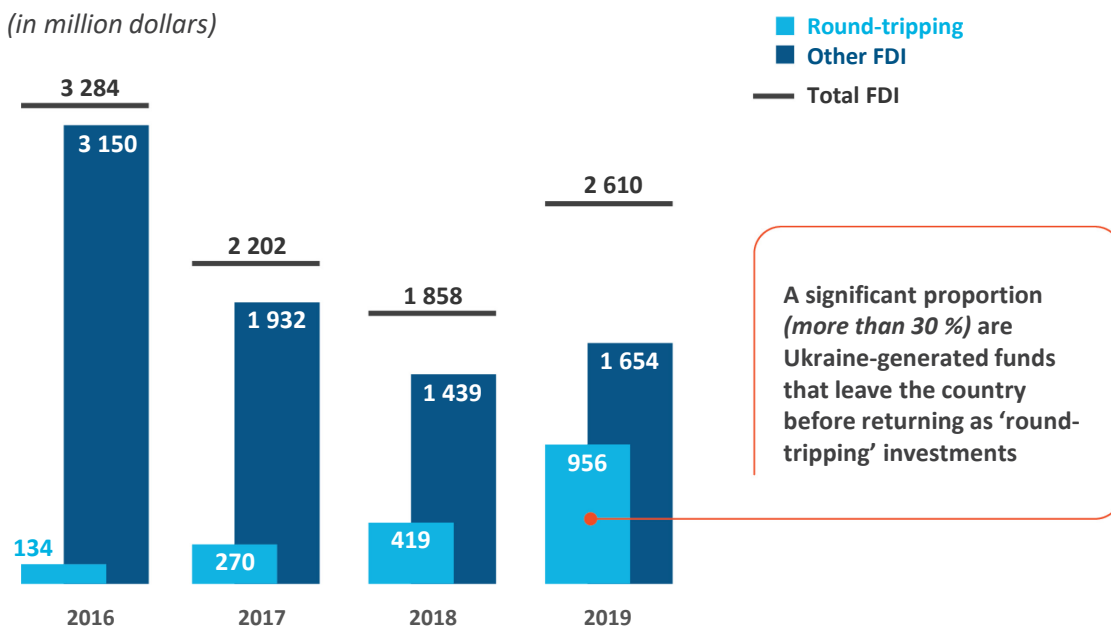
*For the Court of Auditors*

Klaus-Heiner Lehne  
*President*

# Annexes

## Annex I — Foreign Direct Investment (FDI), 2016-2019

(in million dollars)



Source: ECA analysis, based on National Bank of Ukraine data.

## Annex II — Programmes and projects audited

No	CONTRACT TITLE	COMMITTED (in euros)	CONTRACTED (in euros)	PAID (in euros) up to October 2020
1	MFA III	1 800 000 000		1 200 000 000
2	MFA IV	1 000 000 000		1 000 000 000
3	2014/344231 State Building Contract for Ukraine	355 000 000	305 125 000	305 125 000
4	2014/345095 Enhancement of constitutional, anticorruption and legal reforms in Ukraine (Reanimation Package of Reforms Initiative)	394 974	394 974	394 974
5	2014/351692 Consolidation of Justice Sector Policy Development in Ukraine	520 000	520 000	520 000
6	2013/328160 Project to Support Justice Sector Reforms in Ukraine	7 857 467	7 857 467	7 506 681
7	2014/346257 Implementation of the Programmatic Cooperation Framework with the Council of Europe in the Eastern Partnership	30 400 000	30 400 000 including 3 357 220 in Ukraine	30 400 000 including 3 259 547 in Ukraine
8	2016/373210 Enhancement of Reanimation Package of Reforms coalition	918 771	918 771	918 771
9	2015/369527 SUPPORT TO STATE FISCAL SERVICE (SFS) OF UKRAINE IN REINFORCING IBM ELEMENTS IN THE AREA OF CUSTOMS MATTERS	1 800 000	1 800 000	1 723 068,09
10	2016/374091 Strengthening institutional capacities of the Antimonopoly Committee of Ukraine to conduct market studies and effectively enforce competition law in accordance with EU standards.	1 688 065	1 688 065	1 688 065
11	2016/374814 <i>Rada za Evropu</i> : Capacity-Building in Support of the <i>Verkhovna Rada</i> of Ukraine	1 255 926	1 255 926	1 255 926
12	2016/382642 Anti-Corruption and support to key reforms	14 500 000	14 500 000	14 500 000

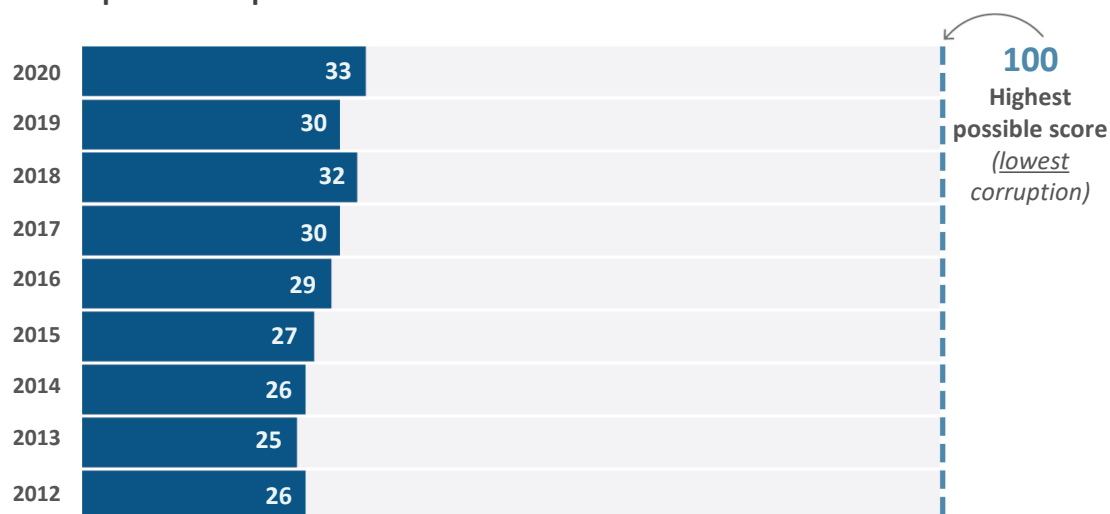
No	CONTRACT TITLE	COMMITTED (in euros)	CONTRACTED (in euros)	PAID (in euros) up to October 2020
13	2017/388596 Enhancing the role of civil society in public finance oversight	682 670	682 670	670 849
14	2017/388935 Fighting corruption and implementing reforms at regional level	729 541	729 541	656 586
15	2017/389065 Strengthening the Role of Civil Society in Facilitating Democratic Reforms and Increasing Accountability, Responsibility, and Quality of Government	685 805	685 805	656 199
16	2017/392878 Supporting prevention of corruption and investigation through civic engagement on a local level	748 944	748 944	674 050
17	2017/390764 PRAVO-JUSTICE: Support to Justice-related Reforms in Ukraine	15 290 000	15 290 000	9 584 385
18	2017/392754 Support to rule of law reforms in Ukraine (PRAVO - Police, Public Prosecution, Good Governance)	36 000 000	36 000 000	29 061 551
19	2017/387956 Support to the Antimonopoly Committee of Ukraine for Enforcing State Aid Rules	2 900 100	2 900 100	2 320 080
20	<b>EBRD-Ukraine Stabilisation and Sustainable Growth Multi-Donor Account</b>			
	2016/379989 "EBRD-UKRAINE Stabilisation and Sustainable Growth Multi-Donor Account"	8 000 000	8 000 000	8 000 000
	2017/394778 EBRD ADD No 1 "EBRD-Ukraine Stabilisation and Sustainable Growth Multi-Donor Account"	9 000 000	9 000 000	9 000 000
	2018/401226 Addendum No 2 to the Delegation Agreement with the EBRD ENI/2016/379-989 "EBRD-Ukraine Stabilisation and Sustainable Growth Multi-Donor Account" (dummy contract)	1 700 000	1 700 000	1 700 000

No	CONTRACT TITLE	COMMITTED (in euros)	CONTRACTED (in euros)	PAID (in euros) up to October 2020
	2019/409355 Addendum No 3 to the Delegation Agreement with the EBRD ENI/2016/379-989 "EBRD-Ukraine Stabilisation and Sustainable Growth Multi-Donor Account" (dummy contract)	10 000 000	10 000 000	10 000 000
21	EUAM06BP406 "Strengthening the anticorruption capacity of the National Police of Ukraine by using modern technology to enforce the law"	49 900		25 575
22	EUAM01BP0501 "Strengthening Transparency, Accountability and Oversight in the Ukrainian Civilian Security Sector"	157 000		102 484
23	EUAM05BP505 "Institutional independence of the PPO/PGO of Ukraine and support to Self-governance bodies"	86 700		20 642
24	EUAM6.1.5BP605 "Strengthening anti-corruption capacities of Ukrainian civilian security sector institutions"	55 600		22 342,60
TOTAL MFA		2 800 000 000		2 200 000 000
TOTAL projects		473 378 683		409 364 432
TOTAL audited		3 273 378 683		2 609 364 432

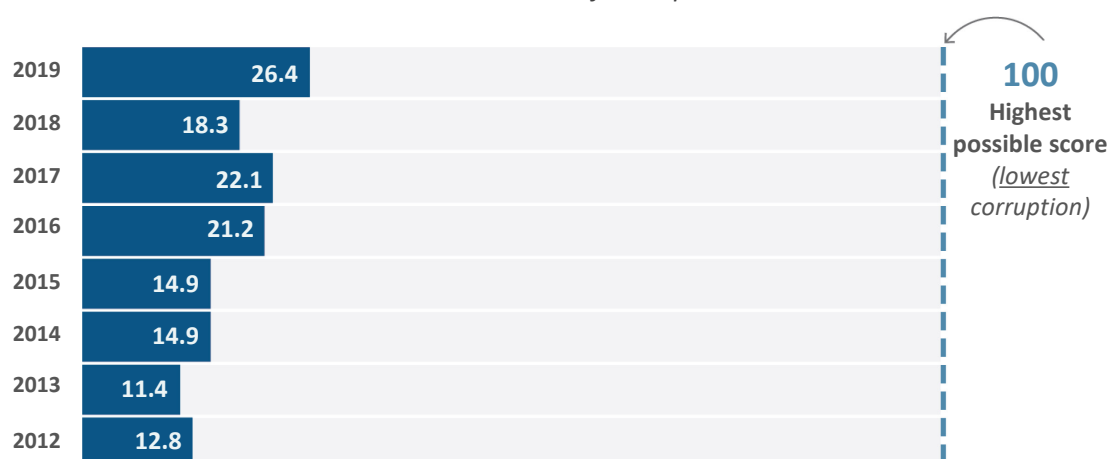


## Annex III — Limited progress in addressing corruption in Ukraine

### “Corruption Perceptions Index” score



### Worldwide Governance Indicator - “Control of Corruption” rank



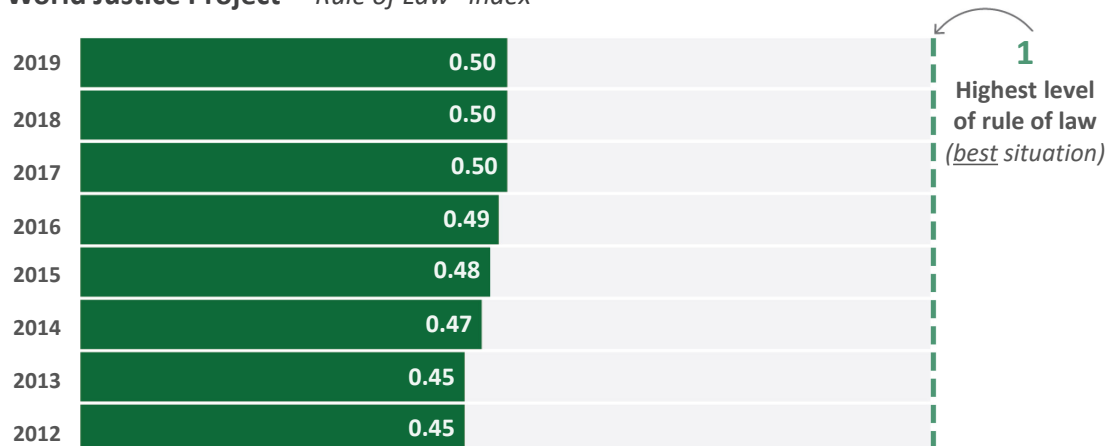
Source: ECA analysis, based on Transparency International’s Corruption Index scores and World Bank Worldwide Governance Indicator “Control of Corruption” ranking.

## Annex IV — Progression of Ukraine in rule of law indicators, 2012-2019

Worldwide Governance Indicator - “Rule of Law” rank



World Justice Project - “Rule of Law” index



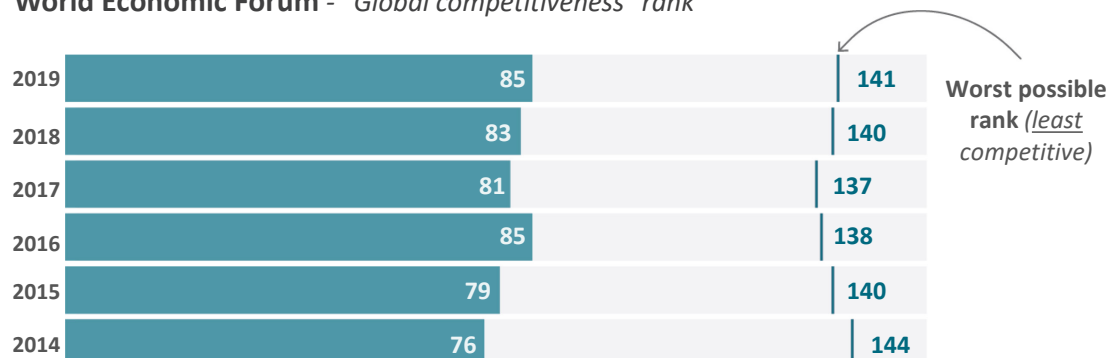
Varieties of Democracy - “Rule of Law” index



Source: ECA analysis, based on [World Governance Indicators](#) (World Bank), [World Justice Project](#) and [Varieties of Democracy](#).

## Annex V — Progression of competitiveness indicators, 2015-2020

### World Economic Forum - “Global competitiveness” rank



### IMD World Competitiveness Center - “World competitiveness” rank



Source: ECA, based on the [World Economic Forum](#) “Global competitiveness” indicator and the [IMD World Competitiveness Center](#)’s world competitiveness ranking for Ukraine. The number of countries assessed varies each year.

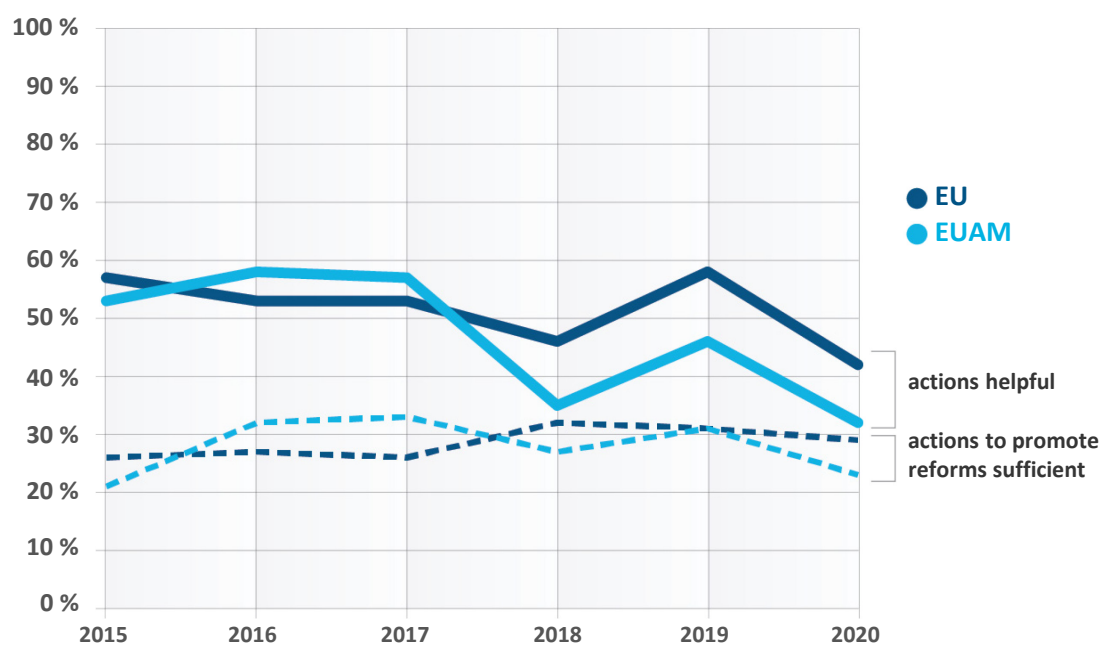
A higher rank means that a country is less competitive.

## Annex VI — The EU contribution to improving competition in Ukraine

<b>POLITICAL DIALOGUE</b>  <b>(high-level dialogue at government level)</b>	<ul style="list-style-type: none"> <li>• Devise and implement plans to privatise SOEs in line with international standards</li> <li>• Aim to weaken oligarchs' influence over the economy by means of market-oriented reforms and measures to combat corruption</li> <li>• Welcome Ukraine's renewed commitment to fighting the influence of vested interests ("de-oligarchisation")</li> </ul>
<b>POLICY DIALOGUE</b>  <b>(dialogue within the framework of financial cooperation)</b>	<ul style="list-style-type: none"> <li>• SOE reform</li> <li>• Focus on the energy sector, attend energy committee meetings</li> <li>• EU acted as "observers" in the process for selecting supervisory board members in SOEs</li> </ul>
<b>TECHNICAL ASSISTANCE</b>	<ul style="list-style-type: none"> <li>• Main donor of the EBRD Multi-Donor Account (MDA)</li> <li>• Support for the Antimonopoly Committee of Ukraine (AMCU)</li> </ul>
<b>CONDITIONS</b>	<ul style="list-style-type: none"> <li>• Macro-financial assistance programmes</li> </ul>

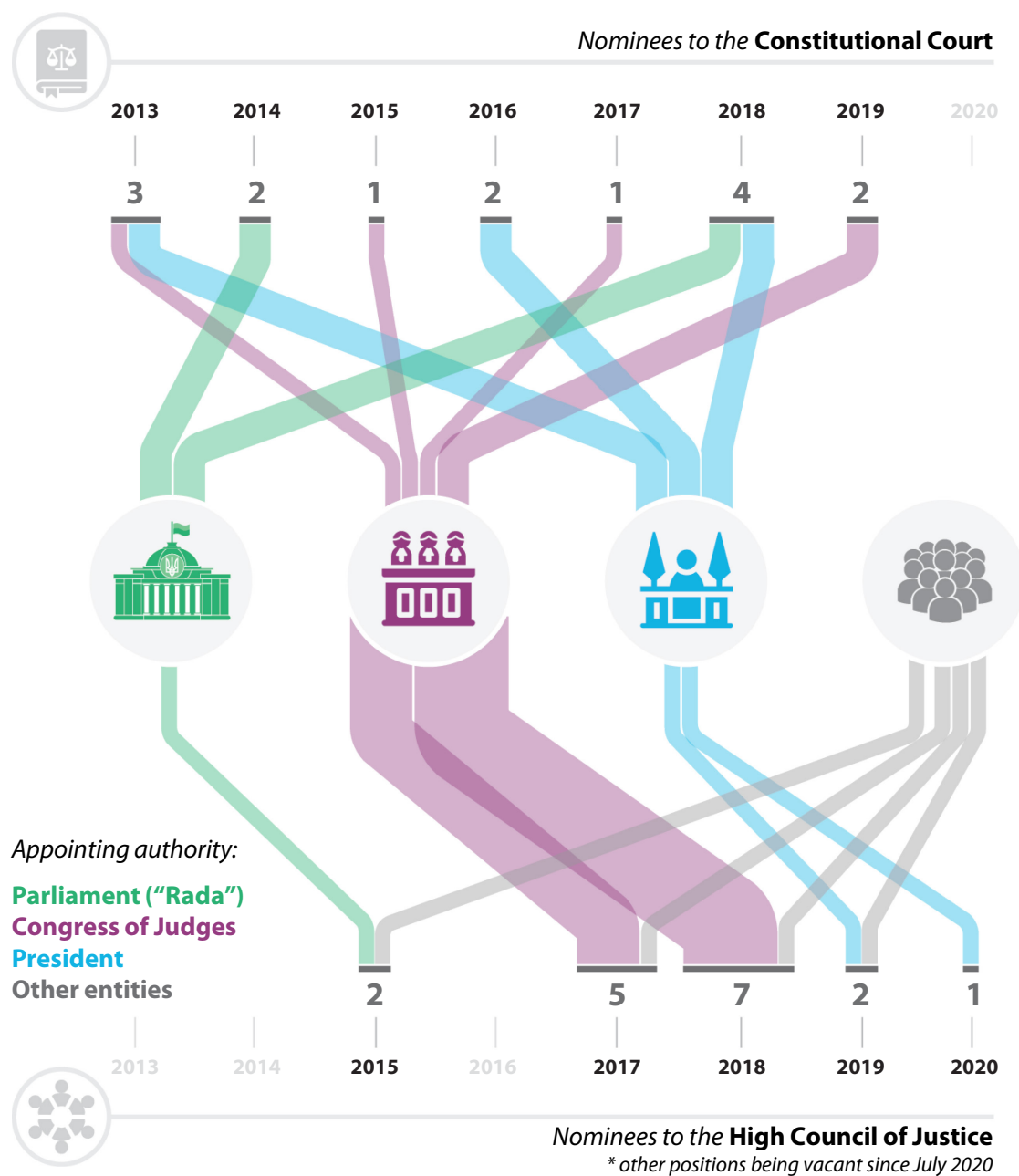
Source: ECA, based on audit documentation.

## Annex VII — Sufficiency and helpfulness of EU and EUAM actions in promoting reforms



Source: ECA, based on Ukrainian public opinion surveys for EUAM Ukraine.

## Annex VIII — Appointments of Constitutional Court judges and members of the High Council of Justice



Source: ECA, based on the [CCU](#) and [HCJ](#) websites consulted in January 2021.

# Acronyms and abbreviations

**AA:** Association Agreement

**AMCU:** Anti-Monopoly Committee of Ukraine

**ARMA:** Asset Recovery and Management Agency

**BOC:** Business Ombudsman Council

**CCU:** Constitutional Court of Ukraine

**CSO:** Civil Society Organisation

**DG:** Directorate-General

**DCFTA:** Deep and Comprehensive Free-Trade Area

**EBRD:** European Bank for Reconstruction and Development

**EUAM:** European Advisory Mission Ukraine

**GRECO:** Group of States against Corruption

**HCI:** High Council of Justice

**HACC:** High Anti-Corruption Court

**HQCJ:** High Qualification Commission of Judges

**IMF:** International Monetary Fund

**LEA:** Law Enforcement Agency

**MDA:** Multi-Donor Account (EBRD)

**MFA:** Macro-Financial Assistance

**NABU:** National Anti-corruption Bureau of Ukraine

**NACP:** National Agency on Corruption Prevention

**OECD:** Organisation for Economic Cooperation and Development

**PGO:** Prosecutor-General's Office

**QDCP:** Qualification and Disciplinary Commission of Prosecutors

**SAPO:** Specialised Anti-Corruption Prosecution Office

**SBU:** National Security Service of Ukraine

**SCU:** Supreme Court of Ukraine

**SFS:** State Fiscal Service

**SOE:** State Owned Enterprise

**UAH:** Ukrainian *hryvni*



# Glossary

**Budget support:** The direct transfer of EU aid to the national treasury of a partner country (Ukraine), subject to certain conditions.

**Grand corruption:** 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 as defined by Transparency International.

**Logframe:** Document listing objectives, outcomes and activities with references to baselines, targets and indicators for an EU project.

**Moratoria:** Legal provision prohibiting the execution of a court decision against the State or an SOE.

**Oligarchs:** One of a small group of wealthy individuals, often from business and without elected office, who exercise *de facto* control over a country.

**Outcomes:** Immediate or longer-term, intended or unintended, changes brought about by a project and which normally relate to its objectives (e.g. improved state-aid monitoring and control following better-trained workforce).

**Outputs:** Something produced or achieved by an-EU funded project.

**State capture:** Type of corruption benefitting those who influence the legal framework and appointment to key posts for their own benefit at the expense of the many.

**State Owned Enterprise:** A company wholly or partially owned by a country's government.

**Vested interests:** People or organisations with a financial or personal interest in a business, company, or existing system.

## Replies of the Commission and the EEAS

<https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=59383>

## Timeline

<https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=59383>

## Audit team

The ECA's special reports set out the results of its audits of EU policies and programmes, or of management-related topics from specific budgetary areas. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was carried out by Audit Chamber III External Action, Security and Justice, headed by ECA Member Bettina Jakobsen. The audit was led by ECA Member Juhan Parts, supported by Ken-Marti Vaher, Head of Private Office and Margus Kurm, Private Office Attaché; Sabine Hiernaux-Fritsch, Principal Manager; Aurelia Petliza, Head of Task; Joël Costantzer, and Dirk Neumeister, Auditors. Mark Smith provided linguistic support. Alexandra-Elena Mazilu provided visual support. Ramune Sarkauskiene provided linguistic and administrative support.

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Ukraine has been suffering from grand corruption and state capture for many years. Our audit assessed whether EU support in Ukraine was effective at fighting grand corruption. Although the EU had introduced several initiatives to reduce corruption opportunities, we found that grand corruption was still a key problem in Ukraine. We make several recommendations to improve the EU's support, in particular that specific actions should be designed and implemented not only to target grand corruption (including the oligarchic structure), but also to help remove impediments to free and fair competition.

ECA special report pursuant to Article 287(4), second subparagraph, TFEU.



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