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ACCRONYMS

AA	Association Agreement
CPI	Corruption perception Index
CSP	Country Strategy Paper
DCFTA	Deep and Comprehensive Free Trade Area
DCI	Development Cooperation Instrument
EaPIC	Eastern Partnership Integration and Cooperation
EBRD	European Bank for Reconstruction and Development
EC	European Commission
EIB	European Investment Bank
EIDHR	European Instrument for Democracy and Human Rights
ENI	European Neighbourhood Instrument
ENPI	European Neighbourhood and Partnership Instrument
EU	European Union
FH	Freedom House
GDP	Gross Domestic Product
GRECO	Group of States Against Corruption
IMF	International Monetary Fund
INSC	Instrument for Nuclear Safety Cooperation
NGO	Non-Governmental Organisation
NIF	Neighbourhood Investment Facility
NIS	New Independent States
NSA/LA	Non-State Actors and Local Authorities
ODIHR	Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Cooperation and Development
OLAF	<i>Office Européen de Lutte Contre la Fraude</i>
OSCE	Organisation for Security and Co-operation in Europe
PCA	Partnership and Cooperation Agreement
SBU	The Security Service of Ukraine
SIGMA	Support for Improvement in Governance and Management
SSF	Single Support Framework
TACIS	Technical Aid to the Commonwealth of Independent States
TAIEX	Technical Assistance and Information Exchange
TI	Transparency International
WB	World Bank

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I. INTRODUCTION

This report analyses the impact of European Union (EU) conditionality – particularly regarding anti-corruption policies and practices– on the use and distribution of EU funding in Ukraine between 2007 and 2014. It provides a historical overview of the relationship between the EU and Ukraine, by analysing descriptive data on assistance sums, funding focus, the actors involved and the main challenges encountered. Methodologically the report is based on both quantitative and qualitative empirical sources, using primary and secondary data. The research finds that the current relationships that exist between international donors – particularly the EU – and Ukraine are marked by a top-down approach that imposes stringent standards, with this being materialised in the form of numerous anti-corruption laws and institutions as well as of transparency regulations. A strong ethos of change dominates the Ukrainian public space after the Maidan protests, aiming to fundamentally link the future of Ukraine to the EU – thereby leaving the previously close connection to Russia behind. However, the new anti-corruption routines co-exist with the ‘traditional’ ways of doing things. As a large share of international aid received has been directed to budget support, it is very challenging to assess whether, and if so to what degree, it might have been affected by corruption. The report concludes that the emergence of increased levels of control and transparency in the area of EU funding coupled with a more stable political climate would undoubtedly both increase international donors’ confidence in Ukraine and bring more benefits to local people on the ground.

The report proceeds as following: First, it analyses the historical development of the legal agreements in place, as well as the data on assistance sums, funding focus and whether there is a match between policy and actual actions taken. Second, the report gives a short overview of the current state of the country by looking at four main indicators: governance, state capture by private interests, public allocation of funding and accountability. Third, it provides a detailed diagnosis of international donors’ conditionalities and their impact on local governance. Fourth, the report concludes by showing that, despite significant improvements having been made in the areas of transparency and anti-corruption, old habits die hard – as a new culture of integrity has not yet fully penetrated local mindsets and structures. A set of recommendations for reducing the risks of corruption rearing its head are presented at the end of the report.

II. STATE OF EU CONDITIONALITY AND DEVELOPMENT ASSISTANCE

The EU cooperates with Ukraine within the framework of the **European Neighbourhood Policy** and specifically of its eastern regional dimension, the **Eastern Partnership**. The key goal herein is to bring Ukraine closer to the EU. Presently, Ukraine is a priority partner country for the EU.

1. Historical development, legal agreements in place

1.1. 1991–2000: Partnership and Cooperation Agreement

The relationship between the EU and Ukraine was established immediately after the dissolution of the former Soviet Union, when in December 1991 the European Community issued a declaration acknowledging the country's independence. The early 1990s were marked by negotiations to set up the **Partnership and Cooperation Agreement (PCA)** between Ukraine and the EC, which entered into force in 1998 and has since been the main legal framework for EU–Ukraine relations. In 1998, Ukraine officially announced its intention to become an EU associate member. The focus herein has been on harmonising its legislation to that of the EU, as well as on establishing bilateral cooperation in various branches of the economy (typically in the form of new trade agreements – e.g. regarding coal and steel, textiles). The EC offered assistance through the TACIS (Technical Aid to the Commonwealth of Independent States¹) initiative and the Financial Protocol on the EU/G7 joint action plan on the restructuring of Ukrainian debts in the energy sector. The first 1996–1999 TACIS initiative targeted three sectors, with mixed results: institutional reform and development; economic reform and private sector development; and, energy and the environment. While the energy and financial sectors showed tangible signs of change, regarding agriculture and enterprise development the visible effects were minimal. Ukraine also benefited from other NIS regional programmes – e.g. on nuclear safety (EUR 370 million), cross-border issues (EUR 23 million) and inter-state problems². In 1996, the EU recognised the status of Ukraine as a country with an economy in transition. The macro-financial assistance offered by the EU towards the end of the 1990s amounted to just under EUR 500 million; this funding, disbursed in tranches, was typically conditional on the satisfactory completion of the PCA's implementation.

¹ The TACIS programme was established in 1991 in order to support the financial improvement of the New Independent States (NIS) of the former Soviet Union, as well as Mongolia. Its budget is around EUR 450 million. See online: <http://www.cieel.gr/en/research/tacis.jsp>

² [http://lnweb90.worldbank.org/ECA/Transport.nsf/ExtECADocByUnid/628BD49DB14AF4D585256B7A006AA6A0/\\$file/5.%20Tacis%20Draft%20Indicative%20Prog.pdf](http://lnweb90.worldbank.org/ECA/Transport.nsf/ExtECADocByUnid/628BD49DB14AF4D585256B7A006AA6A0/$file/5.%20Tacis%20Draft%20Indicative%20Prog.pdf)

1.2. 2000–2013: Common Strategy and Association Agreement

During the 2000s, the relationship between Ukraine and the EU developed further – leading to economic and political improvements, governed by new and ambitious political agreements. In 2005, the Council of the European Union granted Ukraine market economy status. Between 2007 and 2013, the **European Neighbourhood and Partnership Instrument (ENPI)** was the main EU financial instrument governing the EU–Ukraine relationship – being supplemented by other regional and thematic sources of funding (e.g. civil society). Under the ENPI, the EU committed EUR 1 billion in bilateral assistance to Ukraine. Two main instruments were particularly important herein: the **Common Strategy** and the **Association Agreement**.

i) Common Strategy

After the Treaty of Amsterdam came into force in May 1999, a new instrument for regulating the relationship between the EU and Ukraine was put in place – The European Council **Common Strategy** on Ukraine was adopted in Helsinki, in December 1999. The Common Strategy, which covered the same four-year planning period as the TACIS initiative, built on the foundations laid by the PCA, aiming to provide a more coherent framework for the development of EU policies and actions in relation to Ukraine.

ii) Association Agreement

In March 2007, Ukraine and the EU started negotiations over an innovative policy instrument that would come to regulate the relationship between the two. The **EU–Ukraine Association Agreement (AA)** was the first of a new generation of agreements concluded with Eastern Partnership countries. Designed to replace the PCA, the AA was conceived of as a bolder framework that would eventually secure Ukraine’s economic integration into and political association with the EU. In 2008, it was agreed that this instrument would replace the PCA. As part of AA commitments, and after joining the World Trade Organization in February 2008, Ukraine launched negotiations on a **Deep and Comprehensive Free Trade Area (DCFTA)**. The AA negotiations were finalised in December 2011. The Agreement was initialled in 2012, with both sides committing to further technical adjustments in order to seal it. It was only in 2014 and after the dramatic events in Ukraine – which involved the annexation of Crimea and Sevastopol by Russia – that the political and economic provisions of the AA were signed.

November 2013–present: State of emergency

The Ukrainian crisis – summary

In November 2013, protests broke out in Ukraine’s capital following the decision of Ukrainian President Yanukovich to decline signing the EU–Ukraine Association Agreement, opting instead for closer cooperation with Russia. The latter purchased USD 15 billion of Ukrainian debt and reduced the price of Russian gas supplies by one-third,³ but, despite the deal, protests escalated – leading to the occupation by demonstrators of Kiev city hall. In an attempt to control the mob, anti-protest legislation was issued and then later annulled – which only led to clashes between protesters and the police. President Yanukovich fled Kiev in February, and then in March 2014 Russia absorbed Crimea into the Russian Federation.

³ <http://www.bbc.co.uk/news/world-middle-east-26248275>

By May Ukraine had a new president, Petro Poroshenko, voted for mostly by those in the western part of the country, who signed the Association Agreement with the EU in June. Meanwhile, in eastern Ukraine, the conflict with pro-Russian separatists escalated after more people were killed in clashes in Odessa.⁴ In response to this crisis the EU put in place a set of extraordinary measures for the short and medium term, ones designed to both support the Ukrainian authorities in their efforts to stabilize the situation in the country and to further encourage cooperation with the EU.

The support package for Ukraine approved in March 2014 proposed giving an overall funding amount of EUR 11 billion over the next seven years.⁵ A Ukraine support group was created by decision of the President of the European Commission in April 2014, alongside special measures – worth EUR 365 million⁶ (with EUR 355 million for a State Building Contract and 10 million EUR for civil society) – being implemented to support the country’s transition; these are just two examples of the policy instruments deployed by the EU. These measures contribute to the ongoing aims of the Eastern Partnership, but given the present extraordinary circumstances there is no Single Support Framework (SSF) for Ukraine.

1.3. 2014–2020

For the next seven years, the **European Neighbourhood Instrument (ENI)** will be the EU financial tool dedicated to the neighbourhood, replacing the aforementioned ENPI of 2007–2013. Other funding sources will be the thematic programmes. EU assistance will take the form of yearly action programmes, with the possibility of obtaining additional significant funding from the Neighbourhood Investment Facility (NIF) if there is progress made in enhancing democracy and protecting human rights.

2. Descriptive data of assistance sums and uses, funding focus and the actors involved for 2007–2014

2.1. General framework and support

During the period 2007–2013, approximately EUR 1 billion was committed to Ukraine (see Table 1 below) under the ENPI. The country was the fourth main recipient of aid after Palestine, Morocco and Egypt and the first from the Eastern Partnership area. The ENPI had a financial envelope of EUR 11.2 billion, which represented an increase of approximately 30 per cent as compared to the allocations of the period 2000–2006.

Table 1 Commitments under ENPI 2007–2013 (EUR Million)

Country	2007	2008	2009	2010	2011	2012	2013	Total	Average
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⁴ <http://www.bbc.co.uk/news/world-middle-east-26248275>

⁵ http://www.eeas.europa.eu/statements/docs/2014/140612_01_en.pdf

⁶ http://ec.europa.eu/enlargement/neighbourhood/countries/ukraine/index_en.htm

Algeria	57	32.5	35.6	59	58	74	50	366.1	52.3
Armenia	21	24	24.7	27.7	43.1	35	66	241.5	34.5
Azerbaijan	19	22	20	7	31	19.5	25	143.5	20.5
Belarus	6	5	10	10	17.1	22.3	23.8	94.2	13.5
Egypt	137	149	140	192	92	250	47	1007	143.9
Georgia	24	90.3	70.9	37.2	50.7	82	97	452.1	64.6
Israel	2	2	1.5	2	2	2	2	13.5	1.9
Jordan	62	65	68	70	116	120 ¹	88 ¹	589	84.1
Lebanon	50	50	43	44	33	92 ²	76 ²	388	55.4
Libya	2	4	0	12	10	25	30	83	11.9
Republic of Moldova	40	62.3	57	66	78.6	122	135	560.9	80.1
Morocco	190	228.7	145	158.9	166.6	207	334.9	1431.1	204.4
Palestine	447.7	382	352.6	367.9	413.7	224	313.7	2501.6	357.4
Syria	20	20	40	50	10	48.4	170	358.4	51.2
Tunisia	103	73	77	77	180	130	135	775	110.7
Ukraine	142	138.6	116	126	65	149	199	935.6	133.7
Total	1322.7	1348.4	1201.3	1306.7	1366.8	1602.2	1792.4	9940.5	1420

Regional

Regional/interregional Cooperation East	62	38	40	84.25	99.14	90.64	122.87	536.9	76.7
Regional/interregional Cooperation South	97.4	89	99*	99.4	104.6	114.2*	118.2	721.8	103.1
Total	159.4	127	139	183.65	203.64	204.84	241.07	1258.7	179.8

Cross-Border Cooperation ENPI	947.2
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Grand Total	1,2146.4
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(EUR Million)

- (1) Not including special measures to support Syrian refugees in Jordan
- (2) Not including special measures to support Syrian refugees in Lebanon
- (3) * Excluding amounts for European Parliament preparatory actions (EUR 2 M in 2009 and EUR 1.5M in 2012)

Source: European Commission⁷

The allocation of funds for 2007–2013 was policy driven, being dependent on the needs and capacity of absorption of Ukraine and on the implementation of the agreed reforms. The EC–Ukraine Country Strategy Paper (CSP) for 2007–2013, which was adopted by the Commission on 7 March 2007, indicated that the financial envelope for Ukraine under the National Indicative Programme (2007–2010) would amount to roughly EUR 500 million. For 2011–2013, a further total of EUR 413 million of ENPI funding was committed for Ukraine under the NIP (2011–2013) (see Table 2 below).

⁷ http://eeas.europa.eu/enp/pdf/2014/stats/statistical_annex_2014.pdf

Table 2 ENPI allocations for Ukraine 2007–2013 (EUR Million)

Ukraine	2007	2008	2009	2010	2011	2012	2013
Planned	120	122	124	128	135	152.2	180.2
Committed	142	138.6	116	126	65	149	199
Disbursed	52.1	123.3	100.9	121.3	103.7	79.9	153.8

Source: European Commission⁸

2.2. The distribution of EU funding according to thematic fields

Over the two periods (2007 - 2010 and 2011 - 2013), the funding flows closely followed the policy objectives jointly agreed upon by the EU and Ukraine. The EU–Ukraine Action Plan that accompanied the Strategy Paper presented six chapter priorities: political dialogue and reform; economic and social reform and development; trade, market and regulatory reform; cooperation on justice, freedom and security; transport, energy, information society and environment; and, people-to-people contacts. The CSP of 2007–2013 identified the following three areas of focus as key:

- Support for democratic development and good governance
- Support for regulatory reform and administrative capacity building
- Support for infrastructure

Table 3 below shows the distribution of ENPI funding for 2007–2010, while Table 4 displays the same information for the subsequent period of 2011–2013. While there is continuity in the thematic fields being supported through EU funding, the first period slightly emphasises the support given to infrastructure development. During the second period, 2011–2013, more than 50 per cent of the budget was allocated to sustainable development. Interestingly, even though nearly one-third of the budget was intended to support good governance only 7 per cent was actually used for such purposes. A minimum of EUR 43.3 million was earmarked for the Comprehensive Institution Building Programme first implemented in 2011.

Table 3 Distribution of ENPI funding for Ukraine 2007–2010 (EUR Million)

Priority	Planned	Actual
Support for democratic development and good governance	30% (148.2)	7%
Support for regulatory reform and administrative capacity building	30% (148.2)	42%
Support for infrastructure development	40% (197.6)	51%

Source: European Commission⁹

⁸ http://eeas.europa.eu/enp/pdf/2014/stats/statistical_annex_2014.pdf

⁹ http://eeas.europa.eu/enp/pdf/2014/stats/statistical_annex_2014.pdf

Table 4 Distribution of ENPI funding for Ukraine 2011–2013 (EUR Million)

Priority	Planned	Actual
Good governance and the rule of law	20–30% (94–141)	7%
Facilitation of the entry into force of the EU–Ukraine Association Agreement (including a DCFTA)	25–35% (117.5–164.5)	32%
Sustainable development	45–55% (211.5–258.5)	61%

Source: European Commission¹⁰

2.3. Funding from other instruments

From 2007, EU assistance was also provided through a set of new instruments different from the prior ENPI (see Table 5 below). Ukraine did not benefit from the Eastern Partnership Integration and Cooperation (EaPIC) programme. Additional funding during 2008–2013 came from the Neighbourhood Investment Facility, which contributed a total of EUR 23.7 million for six projects in Ukraine. The Support for Improvement in Governance and Management (SIGMA) has been assisting Ukraine in developing its governance and administrative systems, undertaking on demand nine related actions between 2008 and 2013.¹¹ In addition to ENPI funding, support is provided also under other instruments such as the European Instrument for Democracy and Human Rights (EIDHR) – being given mostly to civil society, the thematic programme ‘Non-State Actors and Local Authorities’ (NSA/LA) of the Development Cooperation Instrument (DCI) and the Instrument for Nuclear Safety Cooperation (INSC). Furthermore, cooperation tools like Twinning or Technical Assistance and Information Exchange (TAIEX) have also played an essential role in the achievement of Ukrainian objectives. For example Ukraine reported, as of 2013, 26 Twinning projects concluded and a further 11 ongoing.¹²

Table 5 Funding received by Ukraine under other instruments different from the ENPI of 2011–2013 (EUR Million)

Other instruments	2011	2012	2013
Instrument for Nuclear Safety Cooperation	50.2	49.4	25.1
European Instrument for Democracy and Human Rights	1.2	1.2	1.2
Non-state Actors and Local Authorities – Development Cooperation Instrument	0.95	0.95	0.95

¹⁰ http://eeas.europa.eu/enp/pdf/2014/stats/statistical_annex_2014.pdf

¹¹ http://eeas.europa.eu/enp/pdf/2014/stats/statistical_annex_2014.pdf

¹² http://eeas.europa.eu/enp/pdf/2014/stats/statistical_annex_2014.pdf

Source: European Commission¹³

Since the inception of the ENPI in 2007, the EC has had the option to provide aid in the form of budget support. According to the Country Evaluation Report of 2010,¹⁴ during the period 2007–2009 more than 70 per cent of the annual allocations were directed towards budget support. These were used to fund the implementation of the governmental strategy in the energy sector (EUR 82 million and EUR 5 million in 2008), the removal of barriers to trade (EUR 39 million disbursed in four tranches and EUR 6 million in technical assistance) and the promotion of energy efficiency and renewable sources of energy (EUR 63 million disbursed in three tranches and EUR 7 million in technical assistance). This preference for budget support might have excluded or made more difficult the gaining of access to EU funding by non-state actors.

3. Framework of EU conditionality

3.1. Conditions and indicators used by the EU

For the period 2007–2013, EU conditionality¹⁵ was embedded in the EC–Ukraine CSP and the NIP (2007–2010, 2011–2013); the yearly action plans were used as tools for assessing the country's performance and deciding on further allocations in the future. Essentially, there were three major priority fields funded under the first NIP:

- support for democratic development and good governance (public administration reform, public finance management, rule of law and judicial reform, human rights, civil society development and local government, education, science and people-to-people contacts);
- regulatory reform and administrative capacity building (trade, improving the investment climate, social reform and regulatory aspects);
- infrastructure development (energy, transport, environment and the management of national borders).

The second NIP, 2011–2013, was geared towards supporting the key policy objectives outlined in the EU–Ukraine AA, and had three priorities:

- good governance and the rule of law;
- facilitation of the entry into force of the EU–Ukraine Association Agreement, including a DCFTA;
- sustainable development.

This report cross-checked the fulfilment of EU conditionality according to several indicators, indexes and variables, ones furthermore derived from a number of different sources:

¹³ http://eeas.europa.eu/enp/pdf/2014/stats/statistical_annex_2014.pdf

¹⁴ http://ec.europa.eu/europeaid/how/evaluation/evaluation_reports/reports/2010/1283_vol2_en.pdf

¹⁵ A non-comprehensive list of indicators is presented in Annex 2, while a list of indicators used for disbursements is provided in Annex 3. The latter contains the conditions, indicators, sources of verification and weight attributed to each respective element.

- International institutions indicators and indexes: World Bank (WB) (e.g. ease of doing business), Transparency International/ Corruption perception Index (TI/CPI), Freedom House (FH)
- Macro-economic indicators (e.g. Gross Domestic Product (GDP))
- Variables designed to measure contextual progress(e.g. the adoption of particular legislative measures)

The EU annual reports on Ukraine (2008, 2009, 2010, 2011, 2012, 2013) use all these different types of measurement to assess progress made across seven dimensions: political dialogue and reform; economic and social reform; trade, market and regulatory reform; cooperation on justice, freedom and security; transport, energy, environment; the information society, research and development; and, people-to-people contacts, education and health. For example, in the 2010 Progress Report on Ukraine political dialogue and reform has two sub-dimensions: democracy and rule of law; and, human rights and fundamental freedoms. Some of the indicators used to measure the achievements are displayed in Table 6 below, while a more comprehensive, though non-exhaustive, list of indicators is presented in Annex 2.

Table 6 Indicators for political dialogue and reform

Dimension	Sub-dimension/ Goal	Indicators
Political dialogue and reform	Democracy and rule of law	Legislation on presidential elections in line with the recommendations of the Venice Commission and Organisation for Security and Co-operation in Europe/ Office for Democratic Institutions and Human Rights (OSCE/ODIHR)
		Public administration reform (e.g. draft laws on civil service)
		Judicial reform and rule of law (e.g. new criminal code and code of criminal procedure)
		Anti-corruption laws (with specific obligations detailed in Part 4, c, i)
	Human rights and fundamental freedoms	Improvements in pre-trial detention conditions
		Respecting the rights of refugees and asylum seekers
		Rights of national minorities (e.g. amendments to the criminal code to include reference to racial motivation as an aggravating factor for crimes, adoption of comprehensive anti-discrimination legislation)
		Freedom of expression
		Freedom of assembly (e.g. draft law with provisions restricting rallies)

		Gender equality (e.g. anti-discrimination committee)
		Children's rights
		Regional and international issues, cooperation on foreign and security policy, conflict prevention and crisis management
		EU Border Assistance Mission to Moldova and Ukraine

Source: European Commission¹⁶

3.2. Role of governance facility instrument

One of the innovative features of the ENPI was the setting up of a **Governance Facility**, which aimed to provide additional resources to those partners who had shown the willingness to carry forward essential reforms related to the improvement of governance. Along with cross-border cooperation, in the form of Twinning and TAIEX, the Governance Facility proved to be a useful instrument for Ukraine's development, bringing in an additional allocation of EUR 28.6 million during the first ENPI.¹⁷ This resulted from Ukraine's good performance in the realm of governance, which came after having made serious progress regarding the agreed reform agenda – with the country putting into practice the governance aspects set out in the Action Plan. The additional funding was provided in order to support the implementation of Ukraine's energy policy, , and to improve the capacity to deal with irregular migrants and to reduce migration flows. The sum given roughly amounted to 5 per cent of the funding allocated to the country for 2007–2010.

3.3. The relationship between policy and action

Overall, the focus of EU funding matches the key policy goals put forward in the EC–Ukraine CSP, NIP (2007–2010, 2011–2013) and the AA. The governance indicators used to assess Ukraine's progress, evaluate previous support programmes and determine future funding priorities indicate that EU assistance did indeed respond to the needs of the country – albeit in an all too modest fashion (Duleba et al. 2012)¹⁸¹⁹. After the Maidan the EU put forward a generous package for Ukraine that has aimed to contribute to the country's ongoing development. However the lack of substantial reforms, alongside the numerous setbacks detailed in the next section, together raise serious questions about the overall effectiveness of such EU funding.

¹⁶ http://eeas.europa.eu/enp/pdf/pdf/progress2010/sec10_524_en.pdf

¹⁷ http://europa.eu/rapid/press-release_MEMO-14-234_en.htm

¹⁸ Available online at: <http://www.sfpa.sk/dokumenty/publikacie/372>

¹⁹ See more in 'Evaluation of the European Commission's cooperation with Ukraine', European Commission, Vol. 1, December 2010, p. 22. Available online at: http://ec.europa.eu/europeaid/how/evaluation/evaluation_reports/2010/1283_docs_en.htm (accessed on 10 August 2012).

Since the early 2000s, having anti-corruption indicators in place has become an important condition for receiving foreign funding – with international organisations flagging up the gap between legislation and its actual implementation and enforcement on the ground. Former President Yushchenko introduced his mandate by declaring a ‘war on corruption,’²⁰ and finished it with being accused of corruption himself. His war was received – and funded – with great enthusiasm by both local and international partners. Legislation was adopted and progress was made according to international donors’ conditions, but the practices of everyday life were not dramatically altered – as the Maidan events and demands showed. The EU has consistently supported and kept a close watch on the development of anti-corruption frameworks in Ukraine, earmarking nearly one-third of the budget of the ENPI for governance purposes. The low disbursement rates on governance – around 7 per cent for 2007–2013, as opposed to the projected 20–30 per cent of ENPI funding for Ukraine – might simply indicate a practical adjustment to the realities of the country, and not necessarily a mismatch existing between the EU’s words and deeds.

A key question that still remains to be answered is whether or not public spending becomes more efficient when international assistance is involved. It was impossible to find statistical or qualitative data regarding the levels of criminality associated with EU funding and/or transnational aid flows in Ukraine. The lack of empirical data could be explained by the fact that a big chunk of international funding goes directly to the state budget, and it is difficult to disentangle the effects it has, if any, on public spending. Another reason for this paucity of information could be the fact that even when individual actors are awarded grants for a specific project such individuals are usually elite entrepreneurs and/or oligarchs. They would thus have both the political influence and the technical expertise to conceal any criminal activity. Last but not least, the Ukrainian justice system might not have the knowhow to investigate complex cases that involve donor funding – thus making any statistical evidence unobtainable by outsiders.

Despite the fact that the EU and more generally international donors use clear indicators of progress (e.g. number of laws adopted, of institutions set up), it is difficult to evaluate to what degree the newly established frames actually penetrate the local culture and structures. Furthermore, as Ukraine is a country in crisis the EU has had to adjust to the unfolding situation there – therewith putting in place new, adjustable tools and mechanisms of intervention and evaluation. Only time will tell what the real impact that such tools have is. It seems though, at least for the period under review, EU assistance was driven by a ‘top-down’ approach; while it might have promoted sector-wide reforms, it also allowed for little flexibility at lower levels of society. For example the budget support instrument accounted for 70 per cent of ENPI funding between 2007 and 2009. Such overreliance on a single type of assistance could be a source of concern, as has been signalled by the Court of Auditors. Furthermore, by employing a top-down

²⁰http://www.kommersant.com/p547678/r_1/Viktor_Yushchenko_Attracts_Investments_with_the_War_on_Corruption/

approach the EU has promoted closer relationships with the Ukrainian government – thus hampering the access to funding for non-state actors.²¹²²

III. STATE OF GOVERNANCE: DESCRIPTIVE PART

1. Governance regime

Ukraine is a particularistic, neo-patrimonial state, one beset by endemic corruption – both a legacy of communist times and a consequence of a hitherto unsuccessful transition to capitalism, which means it could be referred to as a ‘failed state’ (Wilson 2014). Ukraine’s first truly free and fair parliamentary elections were held in 2006 under President Yushchenko. Unfortunately the promises of the Orange Revolution were eventually broken, despite the fact that Yanukovich claimed to take a Euro-pragmatic approach that cherished EU integration as a long-term goal. Oligarchs and politicians have continued to extract rents from the gas, precious metal and raw mineral industries, as well as from the geo-political situation of Ukraine as a transit state that facilitates the transfer of Russian natural gas to Europe. So-called ‘business politicians’ (Della Porta et al, 1996) have managed to control the country’s markets, thus hampering economic development (Mungiu-Pippidi 2010, EBRD 2013) and blurring public–private boundaries.

The Ukrainian economy declined drastically after independence, with the first ten years witnessing the real GDP eventually drop by nearly 60 per cent as compared to 1990. After the year 2000 the economy started to recover, but the 2008 financial crisis impacted heavily on the country. Despite the fact that macro-economic indicators are good (see Table 7 below) as compared to the wider regional context for the Eastern Neighbourhood, the investment climate has been unpredictable – being marked by obscure regulations, frequent changes to them and arbitrary enforcement. This is also reflected by international indexes – e.g. the WB’s ease of doing business (96 for 2015 and 112 for 2014).²³

Table 7 Macro-economic indicators for Ukraine

	2008	2009	2010	2011	2012	2013
Real GDP growth rate	2.3	-14.8	4.1	5.2	0.2	-0.0e
Inflation rate	25.2	15.9	9.4	8.0	0.6	-0.3
GDP per capita (in EUR)	2,663	1,828	2,245	2,574	3,018	2,908

²¹ ‘Is the New European neighbourhood and partnership instrument successfully launched and achieving results in the Southern Caucasus?’, European Court of Auditors Special Report, No.13, 2010, p. 17.

²² R. Sadowski, ‘The future of the ENPI: Towards separate financial instruments for the Union for the Mediterranean and the Eastern Partnership?’, Eastern Partnership Review, No. 4, 2011, p. 7.

²³ This index ranks economies relative to the ease of doing business in them, on a country scale from 1 to 189. Available online at: <http://www.doingbusiness.org/data/exploreeconomies/ukraine/>

Unemployment rate (as a % of the population aged 15–70)	6.4	8.8	8.1	7.9	7.5	8.0
Employment rate	63.4	61.0	61.5	61.9	62.4	n/a
General government debt relative to GDP (%)	20.5	35.5	39.9	36.3	36.6	
Trade balance (as a % of GDP)	-10.2	-4.9	-6.8	-8.7	-9.1	

Source: Eurostat, based on data supplied by the National Statistical Office of Ukraine.²⁴

An important element of the Ukrainian context is **natural gas**, since nearly 80 per cent of Russian gas is routed through Ukraine. As Wilson (2014) explained, ever since 1991 massive gas subsidies have been divided between Ukrainian and Russian politicians at the expense of taxpayers. Alternatively, they have been used as slush funds for various political endeavours despite newly designed alternatives – namely Nordstream (operational since 2011) and the stillborn South Stream (abandoned by Russia in 2014). In 2010, 7.5 per cent of Ukraine’s GDP was spent on energy subsidies; out of this, 2 per cent was directed to the state oil and gas company Naftohaz Ukrainy. The corrupt scheme in place here involved Naftohaz buying cheap gas to supposedly help hard-pressed domestic consumers, but instead actually rerouting it to high profile customers and/or oligarchs (Åslund 2013).

2. State capture by private interests

Economic stagnation and the gas issue are closely connected to the birth of a new economic and political **oligarchic elite**, which flourished during transition to capitalism. The generation of oligarchs born in the early 1990s were simple traders and speculators. During the early 2000s a new generation of oligarchs emerged: their power was based in the steel industry, dependent on state subsidies (e.g. electricity), cash loaded and interested in acquiring former state factories at heavily discounted prices. They transformed their social capital into financial capital by using their position as former directors of communist enterprises to orchestrate ‘fair sales’ of Ukrainian enterprises on highly restrictive terms. An example is the sale of the Kryvorizhstal steel mill to two oligarchs for USD 800 million to ensure their support in the 2004 election; the mill was subsequently nationalised and resold for USD 4.8 billion after the election (Wilson 2014).

This oligarchic elite is fed by endemic corruption and the country’s massive shadow economy, which was estimated as being equivalent to 40 per cent of the country’s GDP (Sutela 2012²⁵) for the period 1999–2007. Some authors (Wilson 2014) have noted how the boundaries between

²⁴ http://eeas.europa.eu/enp/pdf/2014/stats/statistical_annex_2014.pdf

²⁵ <http://carnegieendowment.org/2012/03/09/underachiever-ukraine-s-economy-since-1991>

oligarchs and organised crime were blurred – if not outright obliterated - by the violent mafia wars of the 1990s in Crimea, Donbas and Odesa. However, the British Overseas Business Risk assessment²⁶ currently considers organised crime to present only a ‘limited direct threat’ to business in Ukraine, though it does emphasise the high levels of corruption in the country – circumstances conducive to the proliferation of organised crime.

Corruption flourished after the Orange Revolution under Yushchenko, and bloomed particularly during Yanukovych’s mandate. The latter managed to concentrate power in the hands of a narrow circle of oligarchs – his so-called ‘Family’ – whom he had known since the days of the Donbas gang wars. The penetration of this particular group into state sectors brought them USD 8 billion to 10 billion a year (Åslund 2013), and overall USD 100 billion according to Ukrainian prosecutors.

3. Public allocation

Despite the fact that Ukraine managed to create a solid framework for economic and social development, the laws supporting this were barely implemented. For example, privatisation laws were passed as early as 1992 – but the methods used were corrupt. Insider privatisations abounded, allowing oligarchs to gain control over key industries (e.g. Firtash over the local fertiliser industry). The Open Budget Survey 2012 ranks Ukraine as 35th out of 100 countries, with a score of 54 – which indicates a certain degree of openness regarding access to budget information and participation in that domain.²⁷

Public procurement is a key area afflicted by corruption. The overpayment of contracts (by between 10 and 50 per cent) had become a typical business practice under Yanukovych. The public procurement law was passed in 2010 despite the existence in it of a number of loopholes that would eventually undermine its core purpose. For example, in July 2012 state companies were exempted from needing to submit open tenders; after that, the amount of covert procurement rose to USD 21.1 billion within the next year (Nikolov and Shalaisky 2012). Procurement scams involved the setting up of fake companies and offshore firms, price exaggerations, the minimisation of tax liabilities, tax evasion to the tune of over USD 508 million (Mahnitsky 2014), money laundering and the outright theft of state funds). Corruption in procurement was particularly important in 2012, because Ukraine co-hosted along with Poland the finals of the European Football Championship. The infrastructure construction process for EURO 2012 was based on non-competitive tendering (having been abolished by the Yanukovych Administration in 2010 for most such contracts), bribery, overbilling and rake-offs – which all together eventually raised the costs involved to over USD 13 billion according to *The Economist* (2012)²⁸.

²⁶ <https://www.gov.uk/government/publications/overseas-business-risk-ukraine/overseas-business-risk-ukraine>

²⁷ <http://survey.internationalbudget.org/#timeline>

²⁸ <http://www.economist.com/blogs/easternapproaches/2012/05/ukraine-and-euro-2012>

4. Accountability

Frequent changes in legislation and government, the absence of policy consensus and a general sense of uncertainty have all been constants of Ukrainian political life until now. The period of uncertainty peaked after the Maidan protests, the escape of Yanukovich and the annexation of Crimea, events which raised particular concerns about the democratic process in Ukraine. The new pro-EU government seems to be committed to responsible policy-making and the preservation of democracy. Freedom House rated Ukraine as ‘partially free’ (Freedom in the World Index 2015) and Reporters Without Borders ranked the country 127th on their Press Freedom Index (2014), the worst record for the media since the Orange Revolution erupted.

Despite the fact that a legal framework to ensure effective governance and the impartial rule of law has been put in place, the rule of law in Ukraine has proved to be weak in practice. The implementation of the devised anti-corruption framework has remained a key challenge, as has ensuring the improvement of transparency and the independence of the judiciary. The democracy index produced by the Economist Intelligence Unit placed Ukraine 92nd in its 2014 rankings (with a score of 5.42 out of 10), which represents a regression from the 85th place it achieved in 2013 – thus characterising Ukraine as a ‘hybrid regime’.

5. Changes in specific anti-corruption-related indicators

Table 8 below contains a set of eight indicators related to corruption and democracy that have been created by different international institutions. Even though the scores are not comparable to the precedent year due to methodological shortcomings, the table does still address the issue of whether corruption and democracy in Ukraine are stabilising or worsening.

Table 8 Corruption and democracy indicators for Ukraine 2007–2013

Indicator	2007	2008	2009	2010	2011	2012	2013
TI/CPI ²⁹	2.7	2.5	2.2	2.4	2.3	2.6	2.5
WB – CoC ³⁰	-.74	-.79	-1.01	-.98	-1.00	-1.03	-1.09
WB – Rule of Law	-0.74	-0.69	-.77	-.81	-.83	-.79	-.83
WB – Government effectiveness	-.67	-.71	-.80	-.75	-.81	-.58	-.65
FH – Freedom in the World ³¹	2.5/free	2.5/free	2.5/free	2.5/free	3/partly free	3.5/partly free	3.5/ Partly free
Economist Intelligence	-	6.94/53/ Flawed	-	6.30/67/ Flawed	5.94/79/ Hybrid	5.91/80/ Hybrid	5.84/85/ Hybrid

²⁹ The TI/CPI index ranges from 1 to 10; the higher the better. See: <http://www.transparency.org/country#UKR>

³⁰ The WB’s Control of Corruption index ranges from -2.5 (weak) to 2.5 (strong).

³¹ FH’s ranking ranges from 1 (best) to 7 (worst): https://freedomhouse.org/report/freedom-world/2007/ukraine#.VQA8e_zkfz0

Unit – Index of Democracy ³²		democracy		democracy			
World Press Freedom Index ³³	26.75/92	19.25/87	22/89	46.83/131	54.00/116		36.79/126
Freedom House – Freedom on the Net ³⁴	-	-	-	-	-	27/Free	28/Free

The negative trend in corruption indicators is associated with a positive change in the anti-corruption ones. The latter development has been on the one hand driven by the international anti-corruption ethos that has been proposing ever-more refined instruments to deal with the phenomenon over the past decade. On the other hand, the Ukrainian context has been troubled by the political and economic crises that have become trademarks of this part of the world. Such a troubled local context has inevitably impacted on the anti-corruption movement – sometimes setting it back, other times pushing for rapid changes.

6. One step forward, two steps back

Even though corruption has been one of the single most important societal issues in Ukraine for the past twenty years, it was only towards the end of 2006 that concerted efforts were made to initiate anti-corruption legislation.³⁵ The 2006 OECD evaluation report³⁶ pointed out that even though on the surface there appeared to be a broad political consensus about the need to reduce corruption, in fact there was an urgent need to reform the Ukrainian legislative framework to meet international standards – drawing attention to the widespread corruption in the country’s political and judicial spheres. The Spring of 2007 brought about a political crisis and with it an unscheduled parliamentary election, which halted the adoption of anti-corruption legislation.

However, following the 2007 GRECO³⁷ peer review report that put forward 25 recommendations to the national authorities, an anti-corruption action plan was adopted in August 2007. In the subsequent two years more efforts were made by the Ukrainian government to give substance to the anti-corruption framework, specifically by adopting bills covering a wide range of anti-corruption measures, money laundering and the procurement of goods. In 2010, after the

³² This index runs from 1 (worst) to 10 (best). The information in the table should be read as: score/rank/type of regime. On this particular composite index Ukraine tends to score very well for the electoral process, pluralism and civil liberties, but less so for the functioning of government, political participation and political culture. See: http://www.eiu.com/public/thankyou_download.aspx?activity=download&campaignid=DemocracyIndex12

³³ This index runs from 1 to 179; the lower the better. See: <http://en.rsf.org/press-freedom-index-2013,1054.html>

³⁴ Freedom on the Net measures the level of internet and digital media freedom. It runs from 0 (the most free) to 100 (the least free). See: <https://freedomhouse.org/report/freedom-net-2013-global-scores#.VQBDjPzkfz0>

³⁵ http://eeas.europa.eu/enp/pdf/pdf/progress2008/sec08_402_en.pdf

³⁶ Available online at: <http://www.oecd.org/countries/ukraine/37835801.pdf>

³⁷ Ukraine has been a member of GRECO since 2006.

elections, Ukraine faced a period of deterioration regarding the freedom of the media, freedom of assembly and democratic standards. All the anti-corruption legislation previously adopted was abolished, and the commission in charge of fighting corruption dismissed.³⁸ However, the EC highlighted the adoption of a Public Procurement Law (EC 2011) as an important tool with which to curb corruption and increase competitiveness, while urging comprehensive reform of the judiciary and the continuation of the fight against corruption.

Shortly afterwards, Ukraine tried to update its legal framework to comply with the United Nations Convention against Corruption. Significant improvements were made through the adoption of the Anti-Corruption Law and the National Anti-Corruption Strategy, making 'the first visible progress in the field of criminalisation of corruption-related offences in line with international standards' (TI 2011:3).³⁹ Such progress was reinforced in 2013, when anti-corruption legislation was amended so as to introduce new changes to the Criminal Code and Code of Criminal Procedure: enhancing whistle-blower protection, introducing corporate liability and imposing criminal sanctions for corruption. This progress might have been driven by the policy objectives of the new AA, which had been initialled in March 2012. By 2013 the 'fight against corruption' had become a key element in the EU–Ukraine relationship; the lack of progress in this area and the regression in budget transparency augmented EU concerns regarding public finance management. This led to delays in the planned disbursements under EU sectoral budget support and as part of macro-financial assistance (EC 2013).

IV. DETAILED DIAGNOSIS: ANALYSIS

The spectacular momentum created by the Maidan, then enhanced by a combination of domestic factors and international concerns, has undoubtedly brought to life very powerful drivers of change. However pro- and counter-reformist currents continue to co-exist, and '*sometimes the boundaries between the new Ukraine and the old Ukraine are uneven*' (OS, political analyst). This creates a rather fluid context characterised by mismatches between political declarations and actual actions taken. However, '*what matters is that the current government is still very conscious of their reputation with the international donors*' (OS, political analyst).

³⁸ The 2011 Progress Report is available online at:

http://eeas.europa.eu/enp/pdf/pdf/progress2011/sec_11_646_en.pdf

³⁹ <http://ti-ukraine.org/en/system/files/research/ukraine-summary-2011.pdf>

1. International donors' conditionality and its local impact on governance

International donors' conditionality⁴⁰ has had a massive impact in post-Maidan Ukraine, because it offers the most important incentive for building a new and healthier system of governance: *'Now the government is under the surveillance of both international organisations and domestic organisations. Now it is a unique moment when the EU has a lot of leverage and this conditionality goes beyond what it was before. This is why there is a lot of legislation newly adopted [...] as part of conditionality. It is not a formal screening, but substantial monitoring from the EU'* (OS, consultant).

Nevertheless, the relationship between the nature of international funds, the conditionality attached to them and the efficiency of their subsequent use is neither obvious nor straightforward. The biggest donors have established their own set of conditions which tend to be rather similar in their nature, and in their ways of measuring progress (use of similar indicators) too. For example, anti-corruption measures have been conditions attached to both the EU and the IMF assistance packages. Some interview respondents considered IMF conditionality to be the most efficient, probably due to the strictness of conditions and the direct link between carrot and stick – the release of funds and the fulfilment of requirements.

I think IMF has quite strict requirements as to what Ukraine needs to do. The EU generally and European countries like Germany are not as prescriptive as IMF is. There are a number of reasons for that. One is that the EU and the countries in particular are not in the custom of giving prescriptions. Generally IMF is the one who drives the conditions. It's been the same with Greece. It's only at the later stage they would start talking about reforms. The EU generally and the countries in particular are not good at it – they don't know how to be assertive. The second reason is that: the EU and the European countries are trying to make it very clear to Ukraine that it is not an accession country [...]. They are trying to keep Ukraine at arm's length. For that reason they treat Ukraine differently than how they treated accession countries in Eastern Europe. They don't form joint institutions, they don't provide political guidance [...] they say [...] 'Here is our advice. You guys may follow it'. It's only now that the EU and Germany in particular are becoming more assertive: 'It's not a free lunch [...] you need to meet certain conditions!' (SB, government).

More cynical respondents went as far as to posit that all the anti-corruption measures were put in place just to be able to take financial credit from IMF, and now that the money has been granted the political willingness to implement genuine reform might henceforth evaporate.

⁴⁰ International donors' conditionality is detailed in the State Building Contract for Ukraine adopted by the EC on 29 April 2014. The package, worth EUR 355 million, aimed to help the country through transition, was provided in the form of budget support and was conditional on progress being made regarding reform in the following areas: the fight against corruption in public administration, the constitution, electoral legislation and the justice system. An extra EUR 10 million was earmarked for enhancing the role of civil society through a call for proposals. Other important documents are the agreements signed with the IMF – which is actually, along with the EU, the most important donor to Ukraine. Donors' conditions for funding typically converge in the abovementioned thematic areas, but the general impression of the interviewees was that IMF policy is stricter than the EU's is – the former encompassing, for example, conditions relating to pension reform and cutting/reducing gas subsidies.

Conditionality is directly linked to the nature of funding, with different approaches leading to different types and degrees of effectiveness in inducing change. Conditions are more relaxed for micro-financial assistance and stricter for grants. For example, the EU has been supportive of the setting up of a new police patrol unit in both Kyiv and other major cities. In this particular case, international donors like Japan and the United States have also become involved in the process. This is a very direct and impactful project as nearly 300 people have been hired and trained, which will probably induce change at a medium level. It is very similar to many other projects for which EU experts are brought in to instruct local people. However in other cases, ones where EU funds go straight to the state budget, it is challenging to assess the overall effectiveness of aid given.

2. Engineering governance change in Ukraine

2.1. Drivers of change

There are three drivers carrying international donors' conditionality into the Ukrainian governance system: the international community, domestic civil society and street-level pressure.⁴¹ As the provider of funding, the international community is the main supplier of the conditions that aim to change the domestic governance system. Street pressure has become an important element in the post-Maidan context, existing as both a constant threat to politicians and as an articulation of the clear pro-Europe choice made by the people, the new government and the president. Domestic civil society is a key mediator between Ukrainian state institutions and the international community. Reflecting on the changing role of civil society, from observer of to active participant in the policy-making process, a top anti-corruption activist remarked that:

For Ukraine at this moment, international money is not only funding. It's not only great support for the economy, but a huge leverage to demand the reforms and real steps which have to be taken by the government. After the fleeing of Yanukovich we met with all these institutions (EU, IMF) to discuss what the realistic conditions with regard to anti-corruption are, and we were happy that all these institutions included most of these conditions into their official communications with the Ukrainian government as preconditions for their investment in the country (DK, NGO).

The role of mediator is explained further as follows:

We communicated with IMF, EU, WB and they reacted. This is very powerful leverage for us to say: 'Listen, the EU is not satisfied with that!' And we continue to say to the international donors: 'If they [the government] don't follow, don't give the money. Stop the

⁴¹ Kuzio (2011) argues that there are three main institutional factors that can lead to change in Ukraine: 1. a shift in oligarchs' mentality, so that they come to support the modernisation of the country; 2. enhanced pressure from domestic civil society; and, 3. the EU and the international community being strong supporters of institutional reforms. Without disregarding completely a shift in the oligarchic mentality and its impact on the modernisation of the country, this report has found that the last two factors to be essential drivers of change.

tranche!' This is the most powerful argument. And we will then communicate to the society who is guilty of that. We will communicate the names of the people who, just because of their need to maintain control, jeopardise the National Anti-corruption Bureau and put the entire country at risk of destroying its economy. So this is an argument which works! (DK, NGO).

For example, several interviewees recounted that in the establishment of the Agency for the Prevention of Corruption the delegation committee was elected in a non-transparent way. The 15 members of the committee were supposed to have been appointed via online voting. However civil society representatives argued that the online platform that facilitated the voting was not secure, allowing people to vote up to 300 times from the same IP address. The situation was resolved one week later with the help of NGOs like Nashi Groshi, TI Ukraine, Anti-corruption Action Centre, who not only held a press conference to inform the public about the problems but who also provided a new online platform that allowed voting to take place in a more secure fashion.

2.2. Means and ends of change

EU conditionality induces change in governance practices because it puts in place a set of means by which to create the framework for new routines. The most visible means of creating new anti-corrupt routines are: legislative, technological, institutional, expertise and financial.

a). Legislative changes

Every legal framework in the area of anti-corruption passed last year [2014] was possible because it was requested by international donors and then supported by civil society. Right now, we [civil society] are monitoring the implementation of these laws. It is even harder. We are monitoring this in close cooperation with the EU (DK, NGO).

Over the past few years Ukraine has created a very solid anti-corruption legal framework⁴² that involves: a new anti-corruption strategy for 2014–2017; new laws and regulations for the National Anti-corruption Bureau; a Prosecutor's Office; the prevention of money laundering and corruption; civil service reform; legislation – revised twice, in 2011 and 2014 – for the disclosure of conflicts of interest, gifts, incompatibilities and assets; major changes to public procurement legislation, namely the 2011 Law on Access to Public Information; and, the adoption of several new laws to revise the legal framework on the judiciary, while a new law on the judiciary itself was adopted in 2015. Such a strong legislative framework is an extraordinary step forward in inducing change in governance, but it is still yet to be finalised, harmonised with existing legislation and implemented. On the one hand, judicial reform cannot be completed without revision of the constitution of Ukraine. On the other, politicians try to postpone the implementation of the new legislation:

A problem with our politicians is that they approved these laws before the elections, but now they are trying to postpone their entrance into force. For example the law on the

⁴² <http://www.oecd.org/corruption/acn/Ukraine-Round-3-Monitoring-Report-ENG.pdf>

Prosecutor's Office: Currently, the general prosecutor is appointed by the president. The new law will make him lose a lot of powers. So a major political player, Petro Poroshenko, and the president declared that they are in favour of the idea of prosecution reform, but in reality they do everything to postpone the entering into force of this law (AK, NGO).

b). Institutional development

At the institutional level, several important means of change can be observed:

- i) Specialisation of the institutional circuits, in order to accommodate new anti-corruption institutions. The most visible representative of this trend is the National Anti-corruption Bureau and the National Agency for the Prevention of Corruption. There is an expectation that the newly established agencies will produce annual reports for the parliament, president and government and that every year there will be an international audit that will have access to those cases that do not contain confidential information.
- ii) Reform of traditional institutions like the police and judiciary system, by promoting new legislation and setting up partnerships with international donors who can provide funding and expertise.

Probably the most notable development in the institutional area is the setting up of the aforementioned National Anti-corruption Bureau in 2014, founded on the ruins of the National Anti-Corruption Committee that had failed to deliver the expected results. NAB was set up at the direct request of the IMF, who made it a sine qua non element of its rescue package for Ukraine. The aim of this new institution is to prevent, publicise and punish grand corruption. At the time of conducting fieldwork (mid-June 2015), the head of NAB had just been appointed after a careful selection process; for the first time members of civil society sat on the selection panel. Artem Sytnyk – the head of NAB – had selected his deputy, Gizo Uglava, himself. Even though Sytnyk *'does not have a big anti-corruption reputation'* (AH, private sector), the observers are not worried as *'he is under close surveillance'* (presumably from Ukrainian civil society and the international community). The plan was that by October 2015 the NAB would be fully functional with a few hundred investigators working full time on anti-corruption matters. According to the *Kyivpost*, on 1 October 2015 the first 70 investigators started their new jobs at NAB.⁴³

As part of a wider trend of specialisation of the institutional circuits dealing with corruption, one important position is the Business Ombudsman for the country's Anti-Corruption Initiative that was set up at the initiative of European Bank for Reconstruction and Development (EBRD) – who was on target to invest about EUR 1 billion in private and public sector projects in 2015 alone. This institution brings together three types of constituent members: government (e.g. the Ministry of Economic Development), donors (OECD, EBRD) and business associations (American Chamber of Commerce).⁴⁴ Even though it has no legal powers, the institution issues recommendations on the basis of regular reports compiled around the complaints of unfair treatment and corruption received from Ukrainian businesses. The first report was issued

⁴³ <http://www.kyivpost.com/content/ukraine/reform-watch-oct-1-2015-399175.html>

⁴⁴ <http://www.ebrd.com/news/2014/-business-ombudsman-appointed-for-ukraines-anticorruption-initiative.html>

towards the end of July 2015,⁴⁵ within only three months of the institutional body's activities commencing.

Despite international donors' strong demands for specialised anti-corruption institutions, there are hesitant voices in the country who question the creation – or, as a matter of fact, the necessity – of such institutions:

Unfortunately, our politicians invented a good way to distract attention from the current problems in our agencies. They started to create new agencies: the new NAB [...] the Prevention of Corruption Agency [...]. But we have a huge police force, a Prosecutor's Office and the security services, and in these offices the number of staff is ten times higher than in European states. They have big budgets, but for the last year we had no results regarding their activity in the area of corruption. They must have some data, but nothing on the infamous corruption cases during Yanukovich's time. Also, there are no results about the people that were killed on the Maidan. Nobody was sent to jail for these crimes. Employees in this system are not interested in change! They represent the old system. To give an example: The former heads of local courts were dismissed because they were appointed politically. The judges were asked to vote in their own chief at the local courts. In 80 per cent of the cases they voted in the same person. They are quite ok with the old system, they're afraid of anything new because they think it might be worse. People are afraid of radical things (AK, NGO).

'[NAB] will be accountable to the government and parliament. But another dubious achievement is that there will be another institution in the Prosecutor's Office that will only work with NAB. But now there are attempts to make this prosecution unit highly dependent on the prosecutor general' (AK, NGO). These reluctant voices are indicative of how simply setting up new institutions does not automatically lead to profound structural changes, which seem to be more dependent on the subtle institutional culture that is associated with the 'old system'. Concerns are augmented by the fact that even if NAB does do its work well, the cases investigated would still have to enter the Ukrainian justice system – which is perceived to be very corrupt, as it is the carrier of post-Soviet tradition. Legislative reforms in the justice system were adopted at the end of 2014 and entered into force mid-2015, but their effects are still yet to be noticeable.

2.3. Innovative side effects of donors' conditionality

EU conditionality and the technical assistance provided have directly affected the incentives and capacities that local actors have in at least three major ways:

- 1. Increased salaries for key sectors** (e.g. justice, finance, economy, anti-corruption) **and key roles:** A concrete proposal envisaged increasing salaries for the Ministries of Economy, Finance, Justice and the Cabinet of Ministers Secretariat. Allegedly, the salaries would rise up to EUR 2,000 per month. *'The Ukrainian budget cannot put up with this, so EU funds will be used. For only 4–5 years, because they are assuming that after*

⁴⁵ https://boi.org.ua/media/uploads/boc_qreport_july_2015_pdf_eng.pdf

that the economic crisis will have passed, the fight against corruption will have advanced and then the Ukrainian budget will be able to support it afterwards' (AK, NGO). Another possible scenario for funding came from a senior consultant, who pointed to private funding as a possible source thereof: *'I heard from a presidential administration source that they are considering the idea that Saakashvili did in Georgia. They invited foreign finance like from the Soros Foundation or so, who would pay just normal market salaries to bureaucrats (EUR 5,000–EUR 10,000 per month to the top people in ministry or deputy ministry roles); they are considering inviting money from outside'* (TB, political analyst, NGO, private sector).

- 2. New jobs in niches sectors:** The increased demand for anti-corruption, anti-trust, anti-money laundering compliance by financial institutions has led law firms to make compliance a special and separate service, one that has now become integrated into the traditional practice areas offered to clients (Ukrainian law firms 2015).
- 3. New hiring policies:** These are promoted as part of the anti-corruption ethos that envisages that hiring young and inexperienced investigators to the detriment of more experienced practitioners will have benefits. This is based on the assumption that young equals non-corrupt: *'They hire young people because if you were in the Ukrainian system for a long time it means that you could have experience with dishonest prosecution. Maybe your chief could have given you orders in some files [...], you were a member of such a corrupted system. Would it be possible to change such experienced, but not honest, people? Havel⁴⁶ said he refused to hire them: It may be the case that in the first year mistakes are made, but that is better than 20–30 years of my progress being stopped by former KGB officers and so on. And he invited people with no experience, but who were honest'* (SA, journalist).

The Maidan gave new impetus to the populace, politicians and international community, which in return empowered domestic civil society by providing it with extra funding and an attentive ear. Thus **new civic platforms** appeared – for example the Reanimation Package of Reforms set up in 2014 by a group of activists, experts, journalists and academics has since become one of the most powerful lobby groups for reform in Ukraine.

EU technical assistance also enhances the capacity of local actors, through their interaction with **new experts and forms of expertise**. As new and innovative policies are implemented, local actors are exposed to greater interaction with foreign experts who are the carriers of new technical languages and practices of governance. An infusion of foreign experts into the Ukrainian government can be noticed. Some of them were successful political figures in a different context – for example the former Georgian president, Mr Saakashvili, was appointed as the governor of Odessa.

⁴⁶ Former president of Czechoslovakia.

2.4. Evaluating change

An important part of international donors' strategy is conducting regular evaluations. This research shows that the EU is rather consistent in its assessments over time. In fact, most international donors use similar indicators to trace the evolution of the country. As detailed in Section 2c., the indicators used to assess progress towards good governance cover inputs, processes and outputs (the existence of relevant legislation, the institutional mechanisms for its implementation and their effectiveness and accessibility for citizens). The main indicators to measure progress are detailed in the State Building Contract and in the AA. The State Building Contract conditions the release of the second tranche of funding on progress being made in the following areas: anti-corruption, public finance management, civil service, constitutional reform, electoral legislation and justice.

For example, some concrete indicators (more are provided in Annex 3 too) of progress are:

1. Anti-corruption:
 - Establishment of a specialised anti-corruption agency that conducts pre-trial investigations of corruption-related offences. The NAB was thus set up, and started to be functional as soon as investigators were hired.
 - Adopting and making the necessary legislative changes in order to permit the setting up of the NAB, and more generally reform in the area of anti-corruption. The law was adopted by parliament in October 2014. In its initial form, it was mostly in line with EU requirements. Subsequently, the law was modified to include higher salaries for investigators and so as to extend its jurisdiction to former Ukrainian presidents.
 - Adopting an anti-corruption strategy. Fully implemented.
 - Establishment of the Agency for the Prevention of Corruption. This has as yet not been fully realised, but the process has already started at least.
2. Aligning the criminal code of Ukraine with international standards – e.g. introducing the crime of illicit enrichment. Fully implemented.
3. Judiciary reform in order to promote the independence of judges and members of parliament. This has not been fully implemented to date, but the process of preparing legal amendments started in March 2015.
4. Prevention and regulation of conflicts of interest, the strengthening of integrity and accountability in the public sector through improved procedures of declaration and the verification of assets. Not fully implemented at present.
5. Harmonisation of public procurement legislation that includes a mandatory switch to electronic procurement, starting 2018. This has not been fully implemented so far, but serious progress can be detected at least. For example, a civic initiative to establish a multi-platform for the EU procurement system for less than 100,000 hryvnia led to the development of **Prozorro**. This software was piloted by a coalition of NGOs and

afterwards transferred free of charge to the state (AK, NGO). Some ministers – e.g. from the Ministry of Infrastructure – highly recommended to all their clients that they move to **Prozorro**. Even though this system is not used by the entire public sphere, its partial implementation is a very good indicator of progress being made in the area of public procurement – as well as being a more general indication of cooperation between state institutions and civil society. In this case civil society acts as a guarantor of transparency, contributing to the reduction in perceptions and risks of corruption – and to the increase in transparency in the area of public procurement.

Ukrainian progress made in these areas is not only monitored by international donors, but is also closely scrutinised by civil society organisations and the media – who openly sanction public officials' slip ups. The evaluation of progress is made according to the evolution of concrete indicators, but also relative to both less formal signals and the more general feelings that professional technocrats specialised in international development might have. For example, one sign of progress being made in the area of anti-corruption was the dismissal of key bureaucratic figures – e.g. the chief of the traffic police, the deputy general prosecutor – and the initiation of various related investigations within the Ministers of Internal Affairs and Ministry of Defence. Along with anti-corruption, the processes of de-oligarchisation, lustration and public procurement transparency are also areas in which progress can be noticed. One respondent remarked on the general atmosphere of change, while also pointing to the areas that now need improvement on:

I met IMF officials two weeks ago. People are much more optimistic about these things. Nowadays tenders within ministers which used to be non-transparent are online and transparent, open to the public, media etc. All ministers introduced this procedure including the Ministry of Defence. Only the Ministry of Environment has not done it, because the minister is connected to oligarchs (TB, political analyst, NGO, private sector).

3. Old habits die hard

Regardless of the (lack of) official statistical evidence, there is little doubt that the conditions attached to EU funding and increased levels of scrutiny from both the international community and domestic civil society have put pressure on the Yatsenyuk government to be more accountable to its citizens. By defining Ukraine as a European country, the government associates itself with European values through non-ambiguous actions such as the setting up of anti-corruption agencies. This essentially signals its intention to move away from the 'old patterns of corrupt behaviour'. However, at the local level the relationship between citizens and the local authorities has remained the same:

When it comes to the big guys in the suits [politicians] they do a good job; but when it comes to lowly people, the problems have not changed, but sometimes they became bigger. Because you can change the government, but if you have the same corrupt guy in your city you have a problem. He may change the colour of his suit and pledge his love to the new government, but if he remains a corrupt crook you have a problem. Unfortunately

the key element to fight regarding corruption has not been addressed yet. I am talking about the combination of police, investigative authorities and the judiciary. [There is] big work to be done in order to change something. The intervention of the EU has not come to affect this little, but very important, league (OK, government official).

Despite the new and shiny legislation regulating conflicts of interest and the declaration of assets, in practice the local representatives of central government are rather reluctant to disclose their holdings. A top investigative journalist recounted how he had repeatedly requested financial declarations from top-level police officers and judges to no avail, which made him determined to investigate them further.

Such a lack of penetration on the part of compliance at local levels begs the question of whether there is any corruption involved in the use and distribution of international funding. To the extent that there is rampant corruption everywhere in Ukraine, it could be argued that corruption is indeed involved in the dividing up of EU aid. As a large chunk of EU assistance has until now gone to budget support (approximately 70 per cent between 2007 and 2009 alone⁴⁷), it is not unlikely that EU funds have been indirectly affected by the endemic corruption found in various sectors. For example, Ukraine's co-hosting of the EURO 2012 football championship led to claims of massive corruption subsequently surfacing. It was alleged that local public officials had stolen USD 4 billion from state funds allocated for the tournament⁴⁸ (the funds were directed to building infrastructure). The management of public funds has a long history of corruption in the Ukrainian context, given that it favours complex arrangements and sophisticated deals that involve far more than one single government official. Investigative journalists uncovered evidence of former Prime Minister Timoshenko's mismanagement of public funds; the country's politicians afterwards used this information to marginalise her from Ukrainian political life. Present levels of close supervision from the international community and civil society would make it very difficult for corrupt behaviour to occur at the start of the distribution of international funding. The involvement of foreign expertise is saluted by some respondents, while others are more critical of it. The first of these camps claims that foreign expertise is a guarantor of integrity because:

Ukraine always needs cash and they get this cash from the EU based on very noble purposes and targets [...], but as soon as the money reaches the government or comes under the government's control [...] it has been a long tradition for the Ukrainian government to be [...] not the most efficient manager of funds (OS, consultant).

Under the current government (2014–2015), there is little evidence of EU funding management problems at the state level. According to the experts interviewed, some investigations were initiated during 2011–2013 but '*the current government cares about its reputation with international donors*' and so it did not allow suspicions to mount up. Unofficially, however, the respondents indicated that common practices of fraud, corruption and embezzlement may be visible in the area of EU funding. For example, one person recounted a case of an EU-funded project related to the coal industry in which a consultancy company from an EU country received

⁴⁷ http://ec.europa.eu/europeaid/how/evaluation/evaluation_reports/reports/2010/1283_vol2_en.pdf

⁴⁸ <http://www.theguardian.com/football/2012/jun/20/euro-2012-corruption-allegations-ukraine>

nearly EUR 10 million to offer guidance to the Ukrainian government for three years. By the beginning of the third year, these consultancy activities had only commenced on paper – in reality nothing had happened. The representative of an important ministry received kickbacks to the tune of about 40 per cent of the project's value. The respondent recounted that the press officer from that ministry refused to travel by train, instead using only planes – thus unnecessarily increasing the costs of the project. He considered such behaviour to be morally wrong, as the money should have been used instead for expanding the project and helping the local people. Officially the project was considered a great success, but the respondent who worked on the project thought very differently.

As such, the existence of success stories really depend on one's definition thereof – projects can look good on paper, but may hide ambiguous practices potentially associated with fraudulent behaviour.

Like you channel a million dollars on a particular project and then you realise that on paper everything is fine. The money has been spent with this purpose. Something has been achieved. Only if you scrutinise the project to the nuts and bolts do you realise that perhaps you [...] see the terms and conditions of purchase of something or services [...] how much it costs [...] you will see some ridiculous amounts (OS, consultant).

The strict regulations associated with EU funding can be bypassed in a variety of ways – for example, by purchasing goods and services at significantly inflated prices. Such practices were apparent in the run up to EURO 2012 in the building of highways and stadiums. However, it has not yet been determined whether it was the EU budget or the Ukrainian one that was violated by the fraud committed. Such practices of fraud and corruption used in the area of EU funding have developed out of the local, social and cultural structures of a society based on **krugovaya poruka**⁴⁹ – and out of a very hierarchical political culture in which the principles that guide professional life (e.g. lower-level employees being controlled by their bosses) are correlated positively with the distribution of bribes and negatively with the distribution of responsibility.

Some projects that are considered successful by European standards raise a lot of questions in Ukrainian society, especially among domestic civil society. A well-known civil society anti-corruption expert mentioned the case of Energoatom – a state company that produces technology for nuclear power stations, and one that has received roughly EUR 600 million in loans from European Investment Bank (EIB) and EBRD. The expert mentioned that there was evidence of private arrangements having been made in organising public procurements, as well as the violation of other laws – but repeated complaints made to law enforcement agencies did not produce any results (DK, NGO).

Local anti-corruption experts feel that there is a need for more transparency from international institutions like the EBRD on how they make their decisions about granting loans:

For example in December last year, there was information in the media about an EUR 80 million loan. I don't remember if it was from the EBRD. They gave it to a factory which

⁴⁹ Meaning a form of mutual cover-up: 'Mutual support and control within a circle of people, in which everybody is dependent upon the other' (Ledeneva 1998: 81).

produces eggs and poultry. It belonged to someone who was deputy head of the presidential administration. So this guy got a loan, quit his position and we don't know – as it was not public information – what the interest was, or how this project was selected (DK, NGO).

The request for more transparency from EU agencies is also linked to the frustration that oligarchs can access such funding by using shady practices, and without being punished. A respondent gave an example from the area of solar energy: companies belonging to Andriy Klyuyev, a businessman who is now on the EU sanctions list, have won public bids in the past. *'There was a scandal [...] one EU official informed us that yes, there was a violation [...] and then another EU official said no, there was no violation [...]. I heard from various sources that yes, there was a clear violation, but the EU was not interested in investigating the case'* (DK, NGO).

V. CONCLUSION

Since the Maidan, Ukraine has undergone profound changes – ones supported by the generous financial package put forward by the EU with the aim of setting up new anti-corruption routines. However, the lack of substantial reforms and the numerous setbacks raises questions about the overall effectiveness of international aid in general and EU funding in particular. This report has showed how and why international donors' conditionality has succeeded in some cases, including in recent times in Ukraine, while failing in others. EU funding and conditionality are essentially technical solutions. Trying to implement them in a profoundly political environment like Ukraine can be challenging, because despite the will to change the local context may still preference the traditional ways of doing things. Other factors that impact negatively on the efficiency of EU assistance relate to a lack of transparency in awarding important grants/loans to well-known businesses and political figures, as well as the peculiarity of a system in which grand corruption is rarely handed over to the judiciary.

Furthermore, the lack of expert knowledge and a weak institutional framework in Ukraine lead to the perception that EU funding is 'free money' that can be easily abused. A former institutional deputy minister uncovered the practices of institutional hypocrisy used by Ukrainian civil servants: to perform well in front of EU partners, secure grants and pretend that major checks and balances are in place. This leads to the conclusion that, despite valuable changes having recently been implemented, there is still a need for greater control being exercised – in order to ensure the appropriate use of international funding and to improve overall governance.

VI. RECOMMENDATIONS

Interviews with local experts as well as secondary data analysis together offer up a series of recommendations for enacting positive change. In order to improve the efficiency and effectiveness of international technical assistance, it would thus be advisable to:

1. Control the use and distribution of EU funding by setting up a specialised unit to conduct EU–Ukraine joint investigations

One key recommendation is to increase the levels of control in the area of EU funding, specifically by **setting up a specialised unit to conduct joint EU–Ukraine investigations** of any abuses thereof. Respondents argued that:

At this point, when you set up new anti-corruption agencies and when Ukraine receives billions in donors' aid, including 1 billion from the EU, there could be a small law enforcement team under the control of the EU, composed of both EU and Ukrainian investigators and prosecutors, funded by the EU, which would have criminal investigative powers over cases and EU funds (DK, NGO).

The need for such an investigative group is detailed further within the context of the profound lack of trust that currently exists regarding the Ukrainian institutional framework:

Office Européen de Lutte Contre la Fraude (OLAF) is only doing administrative investigations. This is the key problem. This means that you read a report and make another report, but with administrative powers you would never have access to bank records, wiretapping. If you reveal that EU money has been spent improperly, you would request the refund from the Ukrainian government and you would give the file to Ukrainian authorities to investigate who stole the money. But they would never do this! So it would be like 'Give us the money back!', but those who actually stole the money would not be punished. And Ukrainian law enforcement is not ready to punish! So for me I am not interested in this approach, as a citizen of Ukraine (DK, NGO).

So far, according to the experts interviewed, the EU has been reluctant to commit to this. Such reluctance was interpreted by the locals as being a lack of interest from the EU's side in sharing responsibilities and risks regarding reform. They argued that: *'In Ukraine [there] is an extraordinary situation, so we need to create new tools for this. The EU has to take risks as well (YK, NGO).*

2. Employ EU/foreign experts with adequate salaries

The future progress of Ukraine is closely linked with the issue of expertise. Local interviewees indicated the need for foreign specialists in a number of areas, with them being paid proper compensation for their work. *'Generally, when people say to me that Ukraine is a good investment opportunity and bring the issue of low salaries, I think that in order to do something properly you need to bring in foreign specialists. And you can only do that by giving them big expat compensation packages' (SB, government).*

Aware of the possible pitfalls of hiring foreign experts only informally, one interviewee proposed the idea of formalising the appointments by giving the foreign experts a special status:

I know why a lot of these foreign advisors fail [...] because they have only formal interactions with ministers. Our bureaucratic system works like this for instance: If you are just an outsourced specialist and you were to give some recommendations, they don't care about this. You could write hundreds of pages [...]. But if you are given special status – if you become an advisor to a minister or so – then they will listen to you. If they want to be really influential and make a difference, they should have a special status (OK, government).

3. Set up mentoring schemes for specialised anti-corruption prosecutors

In close connection with the previous recommendation, experts outlined the necessity of bringing in foreign specialists with expertise in the area of anti-corruption: *'Expertise from other East European countries who have experienced the same problems with corruption: the Baltics,*

Czech Republic, Poland, Romania. Send their specialists to work here in the National Anti-corruption Bureau for instance just to explain in concrete cases how to investigate' (OK, government).

4. Reform of the public sector, particularly of the police and the security service (SBU)

More generally, the public sector needs to be reformed by decentralising the decision-making processes and outsourcing traditional governmental responsibilities to both the private sector and civil society.

So, we need to make the state slim, less obnoxious and we need to say that there are a few things that the state needs to do at the central level [...]. The rest just needs to go out of the centre and that would allow Ukraine to bring better and stronger people to the central government and allow people to be functional (SB, government).

A particularly sore point in the reform of the public sector is the transformation of the police and the SBU. It would be important to modernise them gradually, doing so by bringing in additional material and human resources as well as by investing in skills development. These are traditionally opaque institutions that could benefit from having their own internal anti-corruption departments, tasked with monitoring and preventing corruption from within.

5. Increase assistance from the EU in helping to both absorb existing funding and attract additional funds

The need for more money is closely connected to the importance of further building up Ukraine's institutional capacity, its reputation as a credible partner and its expertise. However international donors are now becoming more cautious and more prescriptive, in an attempt to better control the use and distribution of foreign aid.

6. Maintain a close relationship and cooperation with the EU and other international donors so as to build up a healthy system of governance

Since the Maidan, Ukraine's relationship with the international community has become more open. In order to receive further financial assistance, Ukraine has committed to making improvements in governance and observing donors' conditionality – especially in the area of anti-corruption. Having built up momentum by adopting new laws and setting up new anti-corruption agencies, local leaders should now find the right mechanisms with which to duly implement the comprehensive anti-corruption legal package at all levels and across all structures. Civil society and the media can play key roles in fundamentally changing the present organisational culture and societal mindset, putting pressure on the government to continue reforms and openly communicating with the international community.

7. Depoliticise the anti-corruption system

In the past few years anti-corruption initiatives have gained more support from various types of actor, coming in numerous forms. The international community has increased its financial assistance; people have started to request and support more severe anti-corruption measures; and, civil society has started to gravitate around this concept by creating clusters of NGOs that work in the area. Promoting and implementing anti-corruption measures has become prestigious, which can bring in not only financial (in the form of direct funding) but also social (as network support) and symbolic capital (as a vote winner) too. Political figures who run the country have understood this all too well, and thus started to use accusations of corruption as a way to discredit their political opponents. For example it is claimed that allies of President Poroshenko have started to discredit Prime Minister Yatsenyuk, by accusing him of involvement in a USD 90 million a year corruption scheme.⁵⁰ The public scandal between Mikheil Saakashvili (former Georgian president and current governor of Odessa) and Arsen Avakov (Minister of Internal Affairs and a close ally of President Yatsenyuk) also relied for its lifeblood on accusations of corruption.⁵¹ The use of the language of corruption in personal and political disputes should hence be avoided, as it shakes the already fragile public confidence in the current political system.

⁵⁰ <http://www.thetimes.co.uk/tto/news/world/europe/article4634900.ece>

⁵¹ <http://www.kyivpost.com/article/opinion/op-ed/olga-bielkova-ukraine-the-good-the-bad-and-the-irreversible-405698.html>

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ANNEX 1

EC assistance to Ukraine, 1991–2006 (in EUR million)*

	1991–1998	1999	2000	2001	2002	2003	2004	2005	2006	Total
TACIS National Programme	407**	38.6	48	43	47	50	70	88	100	891.6
TACIS Nuclear Safety (including Chernobyl Shelter Fund and UKR G7 Action Plan)***	304.3	50.3	3.5	69.4	44	46.6	34.3	28.4	40.3	621.1
TACIS Cross-border Cooperation****		5.2	1	5.5	0.5	3	3	18	4	40.2
TACIS Regional Programme****		3.7	6	9.1	10.5	6	6	8.7	tbc	50.0
Fuel gap	-	-	25	20	20	-	-	-	-	65
ECHO (humanitarian assistance)	12	6.3	1.3	0.9	0.-	-	-	-	-	20.5
Macro-financial assistance (loan)	565	-	-	-	110	-	-	-	-	675
Human rights (EIDHR)		0.2	-	1.3	0.6	0.6	0.5	1.8	0.95	5.95
Migration (AENEAS)	-	-	-	-	-	1.3	-	1.5	tbc	2.8
Anti-landmines	-	-	-	-	-	-	7.0	-	-	7.0
Contribution to STCU		3	4.5	4	4	4	4	5.5	5	34.0
Total	1288.3	107.3	89.3	153.2	236.6	111.5	124.8	151.9	150.3	2413.2

Source: file:///C:/Users/user2/Downloads/enpi_csp_ukraine_en%20(1).pdf

* 2006 figures indicative, and not available for each item.

** Overall figure for technical assistance in 1991–1998 (mostly TACIS). Source: AIDCO A/1.

*** Includes both national projects and estimated share of multi-country projects, 2005 and 2006 Chernobyl allocations still subject to possible modification.

**** Estimated pro-rata share for Ukraine in cross-border and regional programmes.

ANNEX 2

List of indicators used by the EU to assess progress towards good governance (non-exhaustive)⁵²

Democratic practice, respect of human rights and fundamental freedoms, and the rule of law

—Democracy

- checks and balances among the legislative, executive and judicial powers
- transparency and accountability of institutions
- administrative reform, including decentralisation and local government reform
- conduct of elections in line with international standards for genuine, democratic elections
- pluralism in the political process
- legislation on political parties (e.g. right to establishment, financial support)
- civilian control of the military
- facilitation of the development and strengthening of civil society

Respect of human rights and fundamental freedoms

- abolition of the death penalty
- prevention of torture and other forms of political ill-treatment
- improvement of detention and prison conditions
- freedom of association (including development and strengthening of civil society); freedom of assembly
- freedom of the media and freedom of expression, including access to the internet
- freedom of thought, conscience and religion
- legislative framework on private data protection
- fight against discrimination, intolerance, racism and xenophobia
- Rights of children, minorities, women and disabled people;
- core labour rights
- social rights, including the right to social protection, right to health and the right to education
- cultural rights
- right to development
- the rights of refugees, asylum seekers and migrants
- adherence to and effective implementation of the core international human rights conventions and their optional protocols
- cooperation with international human rights mechanisms and implementation of relevant recommendations
- establishment of effective national human rights institutions
- training on human rights (judiciary, civil servants, law enforcement officials, NGOs)
- ensure international justice through the International Criminal Court
- cooperation in international human rights fora

Rule of law

⁵² file:///C:/Users/user2/Downloads/governance_facility_en%20(1).pdf

- the independence, impartiality and administrative capacity of the judiciary
- access to justice for citizens
- consistency and predictability of judicial decisions
- effective implementation of judgments, especially European Court of Human Rights judgments (for Eastern partners only)
- fight against corruption
- fight against impunity

Other governance-related issues

Governance in human security and migration issues

- fight against terrorism and organised crime, judicial and police cooperation with member states
- fight against trafficking in human beings
- procedures relating to asylum seekers and refugees
- protection of personal data

Economic, regulatory and social governance

- transparency in the management and control of public finances
- transparency and predictability of the regulatory environment
- independence of regulatory authorities
- rationalisation and simplification of administrative and legal procedures
- transparency in privatisation and public procurement
- anti-trust legislation; non-discrimination and transparency in the field of state aid
- financial services supervision
- combating customs fraud and corruption
- access to information
- access to basic social services
- environmental governance (including access to information, public consultation and participation in decision making); sustainable management of natural resources

ANNEX 3

Performance indicators used for disbursements⁵³

Conditionality	Performance indicators	Source of verification
<p>1. Serious progress being made in the fight against corruption by setting up and ensuring the effective functioning of a specialised anti-corruption investigative agency. In line with international standards, aligning criminal corruption offences with international standards and the introduction and enforcement of provisions on illicit enrichment. Particular attention should be paid to reform of the justice sector in this regard.</p>	<p>1.1 An operational, specialised agency for the detection and pre-trial investigation of corruption-related criminal offences. The agency should comply with international standards of independence and effectiveness (autonomy from executive authorities and other public agencies, transparent and competitive selection of the head of the agency and main staff, sufficient human and financial resources), foresee the involvement of civil society representatives in the monitoring of its activities and deal with grand corruption (offences committed by persons holding political offices or other high-level public officials, judges, prosecutors; or, offences posing a significant threat to the public interest due to high degree of bribery or serious damage caused). Availability of statistics on investigations started by mid-2015.</p> <p>1.2 Finalised alignment of the Criminal Code of Ukraine with international standards (in particular according to the recommendations of GRECO and OECD), including on liability of legal persons.</p> <p>1.3 Adding the crime of illicit enrichment (a significant increase in the assets of a public official that cannot be explained by his or her lawful sources of income) into the criminal code of Ukraine in line with the UN Convention against Corruption. Availability of statistics on the number of cases of illicit enrichment investigated by prosecutors sent for trial by end of June 2015.</p> <p>1.4 Adoption of a law by the parliament allowing reform of the Prosecutor General's Office and its entering into force.</p> <p>1.5 Adoption of the amendments to the Constitution by the parliament, ensuring the strengthening of the independence of judges and its entering into force.</p>	<p>Relevant legislative acts GRECO, UN and OECD reports Government reports, including statistics on the specific cases Media reports</p>

⁵³ http://eeas.europa.eu/delegations/ukraine/documents/eu_ua/performance_indicators_sbc_1.pdf

	1.6 Adoption of laws by the parliament setting out the status of the High Council of Justice, the justice system and the status of judges and their entering into force.	
2. Strengthened integrity and accountability in the public sector, through improved and effectively enforced procedures for the declaration and verification of incomes, assets and expenses . Also for the prevention of conflicts of interest between different categories of public official.	2.1 Effective system for verification of the declared assets, income and expenses of public officials is in place, and operational, dissuasive sanctions for the 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 the publication of declarations (with open access to the portal) is set up. Another provision on asset disclosure is improvement in cooperation with civil society and international stakeholders. 2.2 Reformed system of prevention and resolution of conflicts of interest of civil servants, persons holding political offices, judges, prosecutors and other public officials. Improved provisions on declaring interests by public officials (ownership by the official or affiliated persons of company shares, membership in management or supervisory bodies of civic associations etc.).	Relevant legislative acts GRECO, UN and OECD reports CSO reports Progress reports on VLAP implementation Government reports, including statistics on verified media reports
3. Transparency and competitiveness in public procurement via a significant reduction in the list of exceptions from the sphere of public procurement. Thereby ensuring competitive procurement and access to information related to public procurement, in particular by public enterprises.	3.1. List of exceptions from Ukrainian Public Procurement Law is significantly reduced and put in line with the categories of exceptions foreseen by the EU PP Directives. 3.2. Decrease in use of non-competitive procurement (negotiated procedure) to 10% of total public procurement in the first half of 2015. 3.3. Publication of the information on procurement going through non-competitive channels and procurement by public enterprises, annual public procurement plans and reports on the execution of contracts on the websites of the procuring entities. Information about sub-contractors and any amendments to substantial provisions of contracts, procurement contracts; information on the consideration of complaints by the review body.	Public procurement Legislation and other relevant legislative acts, government reports including official statistics, CSO reports, media reports and experts' reports (SIGMA and others)
4. Seriously improved access to information of public interest, through alignment of the Access to Public Information Law with other	4.1. Full implementation of the Access to Public Information Law by bringing it in line with other (currently contradictory) acts, including via consultation with civil society.	Relevant legislative acts, government reports, CSO reports, experts' reports

<p>legislative acts. Also, setting up an institutional basis for independent oversight of the Access to Public Information Law's implementation and ensuring open access to public registers.</p>	<p>4.2. Establishment of an effective institutional basis for independent oversight of the Access to Public Information Law. Implementation via consultation process with civil society and relevant stakeholders, as well as in line with good European practices.</p> <p>4.3. Access to public registers (including through the internet): namely, the Single State Register of Legal Entities and Private Entrepreneurs (including information on their beneficial owners), the State Register of Immovable Property Rights (including information on the persons who hold these rights) and the land cadastres.</p>	
<p>5. Increased transparency and accountability in Public Finance Management (PFM) via the quarterly publication of a report and press release on the PFM Strategy and Action Plan's implementation on the Ministry of Finance's website. Also, regular consultation with civil society and international stakeholders.</p>	<p>5.1 Publication of quarterly reports on the PFM Strategy and Action Plan's implementation, covering achievements of the previous quarter and objectives for the following one too.</p> <p>5.2 Quarterly publication of a clear summary note for the general public and media, presenting achieved results as well as the short- and medium-term objectives of the PFM Strategy and Action Plan so as to further improve quality, transparency and accountability in the management of public finances.</p> <p>5.3 Press releases reflecting consultation with civil society and international stakeholders on the PFM Strategy and Action Plan's implementation.</p>	<p>Government reports, Central executive bodies' websites Experts' reports (SIGMA and others) Media reports</p>
<p>6. A comprehensive reform of civil service and of the administration in local self-government bodies. Focusing on European principles of public administration such as the separation between the civil service and political positions, and between the public and private spheres. Also, a merit-based approach to recruitment and promotion, stability of employment and guarantees against discretionary dismissal are adopted and effectively implemented.</p> <p>Administrative legal framework and public</p>	<p>6.1. A Strategy and Implementation Plan on reform of the civil service and service in local self-government bodies – based on European principles of public administration – are adopted and published. Both documents should take into account the need to reform the salary system of civil servants and those in local self-government bodies. Also, the need to ensure overall management in the area of the civil service, though the institutional improvement of a specially authorised central executive body for the civil service at the national level and for its territorial bodies at the local one.</p> <p>6.2. Law 'On Civil Service' (or amendments to the current one) based on European principles of public administration is adopted by the Verkhovna Rada, with it entering into force. Laws 'On Cabinet of</p>	<p>Relevant government acts, including a reliable monitoring framework Government reports, including official statistics SIGMA and other reports</p>

<p>service delivery are improved, as part of efforts to increase the effectiveness of public administration.</p>	<p>Ministers of Ukraine’, ‘Central Executive Bodies’ and ‘Local State Administrations’ and other ones related to public service are aligned with law ‘On Civil Service’ – and effectively enforced. Relevant sub-laws are adopted and/or existing ones are amended.</p> <p>6.3 Law ‘On Service in Local Self-Government Bodies’ – based on European principles of public administration and good European practices, as well aligned with the law ‘On Civil Service’ – is adopted by the Verkhovna Rada and enters into force. Other legislative acts related to service in local self-government bodies are aligned with the law ‘On Service in Local Self-Government Bodies’. Relevant sub-laws are adopted and/or existing ones are amended.</p> <p>6.4. An Administrative Procedure Code is adopted by the Verkhovna Rada, and enters into force through an Implementation Plan aimed at the revision and improvement of sector-related administrative procedures.</p> <p>6.5. Law on ‘Administrative services’ is effectively implemented, including via the establishment of new Administrative Services Centres and the effective performance of existing ones.</p>	
<p>7. Completion of constitutional reform through an inclusive and participatory process, including active consultation with civil society and in line with the Venice Commission’s recommendations.</p>	<p>7.1. CSOs are consulted in a structured and regular manner.</p> <p>7.2. Recommendations of the Venice Commission are taken on board.</p> <p>7.3 Law on the ‘Amendment of the Constitution’ is enacted.</p> <p>7.4 Independent investigations of the violent acts on both sides that occurred during the civil protests in November 2013–February 2014 are conducted with the support of the International Advisory Panel proposed by the Council of Europe.</p>	<p>Website of the parliament</p> <p>Reports of the Council of Europe and the Venice Commission</p> <p>Reports of relevant CSOs involved in the process</p> <p>Investigation reports</p>
<p>8. Harmonisation of electoral legislation and political parties financing (including on state financing), completed through an inclusive and participatory process in line with the OSCE/ODIHR’s and GRECO’s recommendations.</p>	<p>8.1. Recommendations of the ODIHR are taken on board.</p> <p>8.2 Adoption of the relevant laws by the Verkhovna Rada, harmonising the Electoral Legislation – with it entering into force.</p> <p>8.3 Recommendations of GRECO on Transparency of Party Funding are taken on board.</p>	<p>Website of the Rada</p> <p>Reports of the ODIHR</p> <p>Reports of relevant CSOs involved in the process</p> <p>Reports of GRECO</p>

ANNEX 4

2014–2020 EU funding outlook for Ukraine

Due to the Ukrainian crisis, the EC developed a special package for this country in order to help stabilise the economic and financial situation and assist with the transition-related reforms. This special package is based on concrete short- and medium-term measures that combined bring overall support given to EUR 11 billion.

Highlights:
<ul style="list-style-type: none">• EUR 3 billion from the EU budget in the coming years, EUR 1.6 billion in macro-financial assistance (MFA) loans and an assistance package made up of grants of EUR 1.4 billion• Up to EUR 8 billion from the EIB and EBRD• Potentially EUR 3.5 billion leveraged through the Neighbourhood Investment Facility• Setting up of a donor coordination platform• Provisional application of the Deep and Comprehensive Free Trade Area when the Association Agreement is signed – and, if need be, by the autonomous frontloading of trade measures• Organisation of a High-Level Investment Forum/Task Force• Modernisation of the Ukraine Gas Transit System and work on reverse flows, notably via Slovakia• Acceleration of the Visa Liberalisation Action Plan within the established framework; offer of a Mobility Partnership• Technical assistance on a number of areas, from constitutional to judicial reform and preparation of elections

Source: http://europa.eu/newsroom/files/pdf/ukraine_en.pdf

Thematically, the funds will be distributed as follows:

Source	Indicative amounts/ranges (in € million)
I. EUROPEAN COMMISSION (2014–2020)	1,565
<i>I.1 Overall development assistance (grants)</i>	
Bilateral envelope, where:	
- Annual Action Programme (AAP) for 2014	140–200
- AAPs (average) for 2015–2020	780
- Umbrella programme ('more for more') for 2015–2020	240–300
Neighbourhood Investment Facility	200–250
Instrument contributing to Stability and Peace (IcSP)	20
CFSP	15
<i>I.2 Macro-financial assistance (loans)</i>	1,610
I.2 EUROPEAN FINANCIAL INSTITUTIONS	
EIB	up to 3,000
EBRD	5,000
GRAND TOTAL	11,175

Source: http://europa.eu/rapid/press-release_MEMO-14-159_en.htm

ANNEX 5

List of respondents interviewed

No.	Name (Initials)	Position	On/Off record	How the interview was conducted	Sector
1	OS	Consultant	On and off	Skype	Private
2	AK	TI Ukraine	On	Skype	NGO
3	YK	ICPS	On	Face to face	NGO
4	DK	<i>Anti-Corruption Action Centre (AntAC)</i>	On and off	Face to face	NGO
5	OK	Government	Off	Face to face	Government
6	AH	American Chamber of Commerce	Off	Face to face	Private
7	AB	American Chamber of Commerce	On	Face to face	Private
8	AC	American Chamber of Commerce	Off	Face to face	Private
9	SB	Minister advisor	On and off	Face to face	Government
10	SA	Investigative journalist	On and off	Face to face	Media
11	TB	Political analyst	On and off	Face to face	Civil society
12	OS	Political analyst	On	Face to face	Civil society and academia
13	PG	Consultant	Off	Skype	Consultant
14	TN	PhD student	Off	Face to face	British University