

## COUNTRY PROFILE

### Ukraine

#### I. BACKGROUND

<b>Area:</b>	603,628 Sq. km
<b>Population:</b>	42,6 million (2016)
<b>GDP:</b>	USD 131.81 billion (2014)
<b>GNI per capita:</b>	USD 3,560 (2014)
<b>HDI:</b>	0.747; ranked 81 out of 188 countries (2014)
<b>Life expectancy at birth:</b>	69.14 years (2014)
<b>Mean years of schooling:</b>	11.3 (2013)

Sources: World Bank; UNDP HDI; National Agency of Ukraine on Civil Service

##### a. Indicators on Quality of Public Service<sup>1</sup>:

Indicator <sup>2</sup>	2000	2005	2010	2013	2014
Government effectiveness	24.88	34.15	25.36	30.62	40.38
Regulatory quality	29.41	34.51	33.97	28.71	28.85
Rule of Law	12.92	27.27	24.64	23.22	23.08
Control of corruption	7.80	29.76	17.14	11.96	14.90

Sources: World Bank

##### b. Political and Administrative Structure

According to the Constitution (last amended in 2014), Ukraine is a democratic republic under a parliamentary-presidential system of government<sup>3</sup>. State power in Ukraine is exercised on the principles of its division into legislative, executive and judicial branches. The President is the head of state, elected by popular vote for a five-year term.

<sup>1</sup> Percentile ranks indicate the percentage of countries worldwide that rank lower than the indicated country, so that higher values indicate better governance scores.

<sup>2</sup> *Government effectiveness* captures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies. *Regulatory quality* captures perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development. *Rule of law* captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. *Control of corruption* captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.

<sup>3</sup> Constitutional reform of 2004 significantly reduced the powers of the President in favour of the Parliament. However, in 2010, those constitutional amendments were quashed, and the initial 1996 Constitutional provisions were reinstated giving the President the power to appoint and dismiss the Government. Consecutive Constitutional amendments of February 2014 again re-shifted the balance in the favour of the Parliament (OECD 2015, pp. 10–11).

The sole body of **legislative power** in Ukraine is the Parliament - the “*Verkhovna Rada*” of Ukraine. It consists of 450 members elected for a five-year term, of which half is elected through a closed-list proportional representation system in a single nationwide district, while the second half is elected in single-mandate constituencies. The Verkhovna Rada determines the principles of domestic and foreign policy, introduces amendments to the Constitution, impeaches the president, declares war and peace, appoints the Prime Minister, appoints or approves appointments of certain officials, appoints one-third of the Constitutional Court, elects judges for permanent terms, ratifies and denounces international treaties, and exercises certain control functions.

The Cabinet of Ministers is the highest authority in **the executive system** implementing domestic and foreign policy of the State. The Cabinet of Ministers is responsible to the President and the Verkhovna Rada, as well as under the control of the Verkhovna Rada, within the limits provided for by the national Constitution. The Cabinet of Ministers is composed of the Prime Minister, the First Vice Prime Minister, Vice Prime Ministers and Ministers. The Prime Minister is appointed by the Verkhovna Rada upon receipt of the President’s proposal.

The executive power at local level and in the Cities of Kyiv and Sevastopol is exercised by local state administrations. Heads of local state administrations are appointed to office and dismissed from office by the President upon nomination of the Cabinet of Ministers.

The Supreme Court is the **highest judicial body** in the system of courts of general jurisdiction. The system of courts of general jurisdiction is formed in accordance with the territorial principle and the principle of specialisation. Judges are appointed by the Parliament for permanent terms, except judges of the Constitutional Court, and judges appointed to the office of judge for the first time.

The **territorial structure** of Ukraine is based on the principles of unity and indivisibility of the state territory, the combination of centralisation and decentralisation in the exercise of state power. The system of the administrative and territorial structure of Ukraine is composed of the Autonomous Republic of Crimea, 24 regions, 490 districts, 460 cities, 111 city districts, 885 towns, 10,279 village councils and 28,388 villages<sup>4</sup>. The Cities of Kyiv and Sevastopol have special status as cities of republican subordination.

The Constitution recognises and guarantees local self-government in Ukraine as represented by district and regional councils.

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<sup>4</sup> Verkhovna Rada website: <http://portal.rada.gov.ua/en/news/11868.html> ; National Agency of Ukraine on Civil Service (2016)

## II. CIVIL SERVICE PROFILE

### *a. Legal basis of the civil service*

Legal regulation of the civil service in Ukraine is provided by the Constitution, the Law on Civil Service and other laws, international treaties, resolutions of the Verkhovna Rada, decrees of the President, Acts of the Cabinet of Ministers and central bodies of executive power.

Relations pertaining to the entry into civil service, service and termination of the service are regulated by the Civil Service Law of 2015. Provisions of the labour legislation apply to civil servants in parts, which are not covered by the Civil Service Law<sup>5</sup>.

The Civil Service Law of Ukraine (3723/1993) of 1993 regulated the civil service until May 2016. Following the dramatic events of the beginning of 2014 (also known as Euromaidan) that resulted in change in power and led to eventual signing of the Association Agreement (AA) between Ukraine and the European Union (EU), public administration reform has become a key component of the process of Ukraine's integration into the EU.

As a part of these reform efforts, the National Agency of Civil Service of Ukraine developed a new Law on Civil Service that was adopted by the Verkhovna Rada on 10 December 2015 (Law 889-VIII), and which entered into force on 1 May 2016<sup>6</sup>. The law was drafted based on the European best practices (primarily of Poland) and on SIGMA's recommendations on the principles of a professional civil service<sup>7</sup>. The draft law was also highly supported by the President and both the executive and legislative branches. In addition, it benefited from the rounds of elaborations and consultations with public organisations, international and local experts. This demonstrated consolidated stance of all stakeholders on the country's civil service development, and led to positive evaluation of the draft law by SIGMA experts as well.

The Civil Service Law of 2015 defines the principles, legal and organisational basis for providing public, professional, politically impartial, effective and citizen-oriented civil service, which functions in the interests of the state and society. It regulates the order of exercising Ukrainian nationals' right to equal access to the civil service based on personal competencies and merit.

<sup>5</sup> It should be noted that OECD expressed its concern in relation to this Article, stating "The law should establish explicitly that provisions on recruitment and promotion, but also with disciplinary procedures, demotions and dismissals are regulated solely by the Law on Civil Service and not by Labour Code" (2015, p. 92).

<sup>6</sup> Except the norms requiring knowledge of English and French by the Senior Civil Servants (planned to come into force on 1 January 2018) [http://lb.ua/news/2016/05/01/334298\\_vstupil\\_silu\\_revolyutsionniy\\_zakon.html](http://lb.ua/news/2016/05/01/334298_vstupil_silu_revolyutsionniy_zakon.html)

<sup>7</sup> New civil service – the European model of good governance for Ukraine. 2 March 2016, <http://www.center.gov.ua/en/component/k2/item/1875-new-civil-service-%E2%80%93-the-european-model-of-good-governance-for-ukraine>

The Law provides for clear delineation between political and administrative positions, hence ensures independence of civil service from influence of any political party and declares political impartiality of civil servants<sup>8</sup>.

The provisions of the Law apply to civil servants, in particular, of the Secretariat of the Cabinet of Ministers of Ukraine; ministries and other central bodies of executive power; local state administrations; bodies of the Prosecutor's office; bodies of military management; and foreign diplomatic institutions of Ukraine. The Law does not apply to the President of Ukraine; the head of the Presidential Administration and his deputies, members of the Cabinet of Ministers of Ukraine, first Deputies and Deputy Ministers; people's deputies of Ukraine and deputies of local councils<sup>9</sup>.

The law envisages the introduction of the post of state secretaries in relevant ministries responsible for the management of the ministry's office and its personnel. It also introduces a range of novelties in civil service, including open and competitive selection for all civil service posts, simplified and comprehensive system of position classifications (i.e., instead of previous seven categories with 15 ranks, there will now be three categories and 9 ranks), and a modified remuneration model (i.e., providing for two extra pays for seniority and rank).

Changes in the system of civil service management are also to be implemented. A Senior Civil Service Commission is to be established to coordinate the selection and recruitment into the senior civil service positions based on professional competencies and merit. This will be a collegial body on a voluntary basis<sup>10</sup>.

#### *b. Definition of civil servant*

The Civil Service Law of 2015 defines the **civil service** as a public, professional and politically impartial activity on practical implementation of the objectives and functions of the state, in particular, of the following:

- Analysis of public policy at the state, sector and local levels and preparation of proposals on its elaboration, including the development and provision of expertise of drafts of programmes, concepts, strategies, laws, legal act and international treaties;
- Ensuring the implementation of the state policy, nationwide, sector and local programmes, enforcement of laws and other legal acts;
- Provision of accessible and quality administrative services;
- Ensuring state control over legislation compliance;
- Management of public finances, assets and control over their use;
- Management of the civil service's human resources;
- Implementation of other duties of the state agencies defined by the legislation.

<sup>8</sup> Civil servants of A category are prohibited to join political parties, while civil servants of B and C categories shall not be involved in the executive boards of the political parties.

<sup>9</sup> Article 3 of the Law provides a full list of the positions regulated by the Law and exceptions.

<sup>10</sup> The composition of the Senior Civil Service Commission is defined by Article 14 of the Civil Service Law of 2015.



According to the Civil Service Law of 2015, a state **civil servant** is a citizen of Ukraine who holds a remunerated civil service position in the agency of state power, other state agency and its secretariat, and exercises duties defined for this post in accordance with the employing agency's mandate and in adherence to the principles of civil service.

Chapter II of the Law defines the civil servants' legal status including their rights and duties.

Article 6 of the Law stipulates that civil service positions are categorised based on the order of appointment, nature and scope of the duties and required for their realisation qualifications and professional competencies of civil servants. Accordingly, the law provides for following classification of categories:

- Category "A" - the highest corps of the civil service (state secretary of the Cabinet of Ministers, his deputies, state secretaries of the ministries, heads of the central executive bodies who are not members of the Cabinet of Ministers, and their deputies, heads of offices of the Constitutional Court, Supreme Court, higher specialised courts and their deputies, chairs of the local state administrations, heads of civil service of other state agencies, whose jurisdiction cover Ukrainian's all territory;
- Category "B" includes heads of the structural divisions of the Secretariat of the Cabinet of Ministers and his deputies; heads of structural divisions of the ministries, other central executive bodies and other state agencies, their deputies, heads of territorial bodies of the state agencies and their structural divisions, their deputies; deputies of the chairs of the local state administrations; heads of the offices of the courts of appeal and local courts, heads of the structural divisions of the courts' offices, their deputies; deputy heads of civil service of other state agencies, whose jurisdiction cover Ukrainian's all territory;
- Category "C" includes other civil service positions which do not belong to categories "A" and "B".

The number of civil service positions of the "A" and "B" categories in a state agency must be no more than one third of its staffing level.

### *c. Civil servants' profile*

#### *Eligibility criteria*

According to the CSL of 2015 (Articles 19), a Ukrainian citizen of the age of legal majority, who possesses the knowledge of the Ukrainian language, as well as holds an educational degree no lower than a master (for the positions of the categories "A" and "B") and bachelor level (for the positions of the category "C"), has a right to apply for a civil service position. Citizens older than 60 cannot enter the civil service.

The law further stipulates general and special requirements related to professional competencies for the candidates intending to enter the civil service. As such, applicants for the positions of the "A" category should have no less than seven years of experience including

service at the “A” or “B” categories’ positions or managing positions (no lower than head) at the structural divisions of the local self-government, or managing positions in the relevant area (no less than three years). They must also possess full proficiency in the national language and a foreign language of the Council of Europe.

Applicants for the positions of the “B” category should have work experience on the positions of the categories “B” or “C”, or previous experience of working for the local self-governance bodies or working in management positions in an organization regardless of its ownership type for no less than two years, as well as possess knowledge of the national language. Applicants for the positions of the category “C” must possess a bachelor degree and have knowledge of the national language.

#### ***Total number of civil servants***

The total number of civil servants and local self-government officials is 268,370 (National Agency of Ukraine on Civil Service, 2016).

#### ***Number of civil servants as proportion of the total population and of the labour force<sup>11</sup>***

It is estimated that proportional to the total population, there is one civil servant per 159 people.

#### ***Gender and age distribution of civil service***

Civil service in Ukraine is highly female dominated: in 2015, male civil servants accounted for 25 per cent (95,014), while female civil servants - for 75 per cent (221,096) of the total number of civil servants and local self-government officials.

#### ***d. Civil servants’ remuneration structure***

According to the CSL of 2015, civil servants’ remuneration consists of the basic salary, seniority pay, fixed supplement for rank, payment for substitution of a temporary absent civil servant (50 per cent of the latter’s basic salary), payment for performing additional duties of a vacant position, and bonuses if established<sup>12</sup>. The law sets nine remuneration groups based on the civil service positions<sup>13</sup>.

The basic salary’s scheme is defined by the Cabinet of Minister on an annual basis during preparation of the state law “On the State Budget of Ukraine”. The CSL of 2015 also specifies that a minimum basic salary of a civil servant would not be less than the amount of two minimum wages. In addition, the Law envisages such non-monetary incentives to

<sup>11</sup> Parrado (2014) notes “Civil service employment [in Ukraine] constitutes a very low proportion of public sector employment. In 2013, there were 335 270 civil servants, which represented 12.3% of public sector employment (2.7 million). Public sector employees constituted 13.3 per cent of the whole private and public sector employment (20.4 million)”.

<sup>12</sup> Bonuses include: annual performance evaluation bonus, monthly or quarterly bonus based on the civil servant’s contribution to the state agency’s overall performance. Total amount of all bonuses paid to civil servant per year shall not exceed 30 per cent of the total amount of his/her wage per year.

<sup>13</sup> These groups are specified in the Article 51 of the CSL of 2015.

acknowledge civil servant's merits as expression of gratitude, awarding certificate of honour, assigning a rank, recommendation for the government, state awards.

### III. BODY RESPONSIBLE FOR HR POLICY AND IMPLEMENTATION

Chapter III of the Civil Service Law specifies the system of the civil service management in the country as composed of the Cabinet of Ministers, the central executive body responsible for the formulation and implementation of the state policy in the civil service field (the National Agency of Ukraine on Civil Service), the Senior Civil Service Commission and relevant competition commissions, heads of civil service of the state agencies, and human resources management units.

The head of the authorised central executive body is appointed and dismissed from the post by the Cabinet of Ministers. Term of service on this position is five years with the possibility of extension for one more term.

**The National Agency of Ukraine on Civil Service (NAUCS)** was established for developing and implementing a coherent policy and the functional administration of civil service<sup>14</sup>. The Agency is supervised and coordinated by the Cabinet of Ministers through the Secretariat of the Cabinet. In July 2011, the Agency was reorganized into an independent body with a special status.

Under the new Law on Civil Service of 2015, its main scope of functions includes:

- Ensuring elaboration and implementation of the state policy on civil service;
- Drafting legal and regulatory acts pertaining to civil service;
- Providing clarifications and interpretations of the provisions of the CSL of 2015 and other relevant legal acts;
- Monitoring the enforcement of the CSL;
- Conducting civil servants' needs assessment in professional training and organising civil servants' trainings;
- Facilitating the development of the educational organisations' system providing professional training for civil servants;
- Providing equal terms for the recruitment and promotion of civil servants of the categories "B" and "C";

<sup>14</sup> The National Agency's Structure includes: Department of Organizational and Analytical Support of the Head and HR Management; Government and Local Self-Government Officials Department; Civil Service Policy Analysis and Strategic Development Department; Legal Department, Civil Servants and Self-Government Officials Training Department; Control and Audit Department; Organizational, Record-Keeping and Control Department; Administrative Department. It also has 27 regional branches and such subsidiary institutions as the Centre for Adaptation of Civil Service to the Standards of the European Union and the School of Senior Civil Service (National Agency of Ukraine on Civil Service, 2015).

- Ensuring the compilation and publication of a unified list of vacant positions in the civil service and of the winners of the competitive selections;
- Rendering methodological support to the HRM services of the state agencies;
- Monitoring of vacant positions in the Senior Civil Service and initiating recruitments to fill those vacancies;
- In consultation with the Senior Civil Service Commission, developing standard qualifications / competencies' requirements for the Senior Civil Servants (Category "A") to be approved by the Cabinet of Ministers;

Heads of the civil service of the state agencies, in turn, ensure the following (Article 17, clause 2 of the CSL):

- Planning of the work with a state agency's personnel, including organization of competitions to fill vacant positions of the civil service categories "B" and "C" and appointment to and dismissal from these posts,
- Career planning, regular filling of civil service positions with qualified specialists, incentivizing promotion of civil servants;
- Assigning of ranks to civil servants of the categories "B" and "C"; and
- Professional training for civil servants, etc.

Depending on the number of a state agency's staff, either an HR service or a position of an HR specialist is established at the relevant agency with direct subordination to the head of the concerned agency (Article 18 of the CSL). HR related tasks could also be assigned to one of the civil servants of the state agency. These personnel management divisions are responsible for the implementation of the state policy on civil service and HR related issues, provision of analytical and organisational support to personnel management, staff development and career planning, drafting regulations on the civil service and labour relations.

#### *a. Organisation of the selection and recruitment process in civil service*

The CSL of 2015 stipulates that open selection into civil service positions be carried out in line with the Regulation for conducting competition to fill vacant positions in the civil service<sup>15,16</sup> as approved by the Cabinet of Ministers of Ukraine.

In case of reorganisation or liquidation of a state agency, transfer of a civil servant to the equivalent or lower position (upon his/her consent) at a state agency overtaking the functions of the former is carried without obligatory competition.

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<sup>15</sup> This Regulation defines the terms of the competition, requirements for announcing vacancies, composition and duties of the selection committee, application and review of documents, procedure for conducting tests, interviews and other types of evaluation of candidates and such evaluations' methods.

<sup>16</sup> Competitive selection to the civil service positions in judicial bodies are set out in the relevant law. Closed competition could be conducted for the civil service positions dealing with the classified information, state security and defence issues.



According to the Article 23 of the CSL of 2015, a vacancy announcement is to be published on the official websites of the hiring state agency and the NAUCS. The hiring state agency submits an order on announcing a competition to fill vacant position to the NAUCS. The latter checks the order's compliance with the relevant legislation and further proceeds with the announcement.

Selection process consists of three stages: verification of professional qualifications of applicants by the HR service of the hiring state agency as based on their application documents, testing and interview (or other evaluation method) of short-listed candidates. Interviews are conducted by the Selection Commission<sup>17</sup>, which identify the winner and the second best candidate<sup>18</sup> by majority vote.

The CSL also provides for an additional competition process if the competition terms were found to be violated affecting the selection results, if there were no candidates selected, or if the first top candidate did not pass special check and there is no the second best candidate.

The Law also sets a requirement for the candidates who are entering the civil service for the first time to undergo a six months' probation period.

***b. Promotion process in civil service. What legal instruments regulate this area?***

Promotion in civil service, as well as the recruitment in civil service and other issues pertaining to civil service implementation, is performed based on the position category and rank.

According to Article 39 of the CSL of 2015, rank is assigned upon appointment to the civil service position; those who are entering the civil service for the first time are given the lowest rank. A civil servant is assigned the next rank every three years based on his/her performance evaluation results.

In relation to the promotion, the CSL of 2015 stipulates that a civil servant is promoted to a higher position considering his/her professional competencies and following the competition procedure in accordance with the Law.

The CSL of 2015 also provides for transfer of civil servants (upon their consent) implemented without an obligatory competition procedure and as based on their professional fit and competencies. A civil servant can be transferred to the equivalent or lower civil service position in the same or other state agency by the decision of the relevant head of the state agency.

A civil servant, who was appointed to the position without on non-competitive basis, cannot be transferred to higher position without a competition procedure.

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<sup>17</sup> Composition of the Selection Commission varies depending on the categories of the civil service positions. The CSL envisages the participation of the representatives of public associations, civil servants from other state agencies, relevant experts, as well as trade unions' representatives.

<sup>18</sup> The second best candidate can be appointed for the position within a year if the position becomes vacant or the selected winner rejects the job offer or s/he does not pass the special check (Article 29 of the CSL of 2015).

*c. Performance evaluation, training, and career development. What legal instruments regulate this area?*

The CSL of 2015 guarantees civil servants' right for professional training and career promotion based on their professional competencies and responsible implementation of his/her duties.

The CSL of 2015 requires the civil servants' performance be evaluated annually to assess the quality of their performed tasks and activities and with an aim to decide on bonus award, career planning and to identify their needs in professional training.

Civil servants' performance is assessed based on the performance indicators, effectiveness and quality as defined against their duties, as well as considering their compliance with the rules of ethics and related anti-corruption legislation.

Performance evaluation of Category "A" civil servants is conducted by the appointing official, whereas civil servants of the categories "B" and "C" are evaluated by their immediate supervisor and the structural department's head.

A civil servant is informed of the results of his/her evaluation within three calendar days.

Performance evaluation results may be negative, positive and excellent with relevant justification<sup>19</sup> provided. A civil servant receiving an excellent evaluation is entitled to bonus award and significant career promotion.

According to the CSL of 2015, civil servants should be provided with professional training opportunities to improve their professional competencies at regular basis. Professional trainings are financed from the state budget and other financial sources not prohibited by the legislation. The Cabinet of Ministers approves the Regulation on the system of training, re-training, specialization and enhancing qualifications of civil servants upon the NAUCS's presentation<sup>20</sup>.

The CSL ensures civil servants are provided with career-long improvement of their professional competencies, whereas advanced professional training of civil servants (to enhance one's qualification level) is to be conducted at least once in three years.

A civil servant's immediate supervisor and the HR service should identify his/her training needs based on his/her performance evaluation results. Based on these results, a civil servant, jointly with the HR service of the agency, develops an individual programme for improving his/her level of professional competencies which is cleared by the direct supervisor and approved by the head of the structural department (Article 49 of the Law).

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<sup>19</sup> A civil servant who receives negative evaluation can appeal such decision. A civil servant who receives negative performance evaluation undergoes an additional assessment no earlier than three months after the evaluation. If a civil servant's two consecutive performance evaluations lead to negative results, s/he is dismissed from the civil service position.

<sup>20</sup> The National Academy of Public Administration under the President of Ukraine provides methodological support on this.

The CSL of 2015 also sets conditions for civil servants to carry out off-job traineeships for one up to six months' period on another civil service position at another state agency or abroad in accordance with the legislation<sup>21</sup>.

#### IV. ETHICS AND ANTI-CORRUPTION STRUCTURES

Recent Transparency International's regional study on the status of corruption (2015) indicates corruption as a major issue "threatening economic development and political stability as well as the credibility of government" in Ukraine.

According to Transparency International's *Corruption Perception Index 2014*, under the previous administration, Ukraine ranked 142 out of 174 countries (Transparency International 2015, p. 25)<sup>22</sup>. In its *Global Corruption Barometer 2013* Transparency International reported that "95 per cent of citizens believed that corruption levels had either worsened or stayed the same over the previous two years, with the judiciary and the police being perceived as the sectors most affected by corruption" (Ibid.).

The 2014 Anti-Corruption Strategy explained such high perception index results due to lack of effective anti-corruption reforms, as well as inefficient law enforcement to combat corruption cases. The document also notes that Ukraine had not succeeded in implementing recommendations of the Council of Europe Group of States against Corruption (GRECO)<sup>23</sup> provided following the results of its first and second assessment rounds (only 13 out of 25 recommendations were fulfilled during the past six years)<sup>24</sup>. Moreover, the previous anti-corruption strategy of 2011 was also claimed to be ineffective due to the lack of clear performance indicators and monitoring and evaluation mechanisms.

The most recent legal reforms were implemented in 2014, when the Parliament adopted the **Law on Prevention of Corruption** and a new strategic document underlining top priority measures to prevent and counter corruption, which was adopted in 2014 as the **Law "On the Principles of State Anti-Corruption Policy in Ukraine (the Anti-Corruption Strategy) for 2014 – 2017"**.

The Law on Prevention of Corruption provides for a comprehensive reform of the anti-corruption framework to be developed in line with international standards and foreign best practices. It defines legal and organizational basis of the system of corruption prevention in the country, content and procedure for applying preventive anti-corruption measures and the rules on the corruption offences' remedial measures. The Law also provides for the establishment of the National Agency for Prevention of Corruption; introduction of new terminology, including "anti-corruption due diligence", "potential conflict of interest", "real

<sup>21</sup> A civil servant's position and salary are preserved during such traineeship period (CSL of 2015, Article 48/8).

<sup>22</sup> Ukraine scored 26 on a scale from 0 (highly corrupt) to 100 (very clean) (Transparency International 2015).

<sup>23</sup> Ukraine joined GRECO in 2006.

<sup>24</sup> In particular, until 2014, the GRECO's key recommendations to establish anti-corruption institutions, reform the prosecutor's office and civil service, introduce control systems to prevent conflicts of interest and ensure integrity of officials remained unimplemented.



conflict of interest”, “personal interest”, “corruption offence”, “gift”; regulation, prevention and resolution of conflict of interest; development of the rules of ethical conduct of public officials of local self-government bodies<sup>25</sup>.

OECD (2015) considers that the **Anti-Corruption Strategy**, adopted in the form of law for the first time, can facilitate its better implementation<sup>26</sup>. The Strategy, developed in close collaboration with civil society<sup>27</sup>, better defines priorities and includes indicators measuring its implementation effectiveness. It also provides a framework for further anti-corruption reforms in the country. In particular, it includes:

- Development and implementation of the state anti-corruption policy (i.e., establishment of a special independent state anti-corruption authority; ensuring adherence to the legislation on the conflict of interest; increasing public participation in the fight against corruption and ensuring public access to information);
- Prevention of corruption, including through transparent financing of political parties<sup>28</sup>; adopting a comprehensive legal framework for political lobbying; corruption prevention in the operation of central executive authorities and state-owned enterprises; reducing corruption within public procurement through reforming the laws that regulate public procurement and increasing the public procurement transparency; reducing corruption within the judicial system;
- Prosecution of corruption, including establishment of an independent agency to deal with corruption-related offences among top-level officials; introducing a position of specialized anti-corruption prosecutors; defining the list of corruption-related offences (including a new criminal offence of submitting false information in asset declaration);

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<sup>25</sup> The Law also sets limits for the cost of a one-time gift, as well as the total cost of gifts allowed to be obtained from a single source within the year, and stricter rules on monitoring income and expense statements of civil servants and officials. In addition, the law makes it obligatory for companies’ subject to the public procurement procedures under the Law of Ukraine “On Public Procurement” to implement anti-corruption compliance programmes and appoint compliance officers to be in charge of these programs.

<sup>26</sup> Although, OECD stresses the fact that “... the new Strategy is not based on in-depth study and analysis of corruption situation. It refers to several perception studies which confirm that corruption is seen as one the key problems and is wide spread. No evaluation of the implementation of the previous strategy was conducted as a basis for the new Strategy. However, the monitoring team agrees that the main directions established in the Strategy may be sufficient at the present time of rapid changes in Ukraine” (OECD, 2015, p. 24).

<sup>27</sup> In general, it should be noted that civil society became the most active driving force of the anti-corruption reforms after the Euromaidan events: NGOs and experts formed the so-called Reanimation Package of Reforms, proposing a detailed action plan for immediate reforms including in anti-corruption (OECD, 2015; see also Transparency International, 2015).

<sup>28</sup> The OECD Monitoring Report of the Istanbul Anti-Corruption Action Plan emphasises that “Ukraine should also reinforce rules on integrity and corruption prevention for officials holding political offices, in particular by establishing special regulations and enforcement mechanism for conflict of interests for the parliament and Government members.” (2015, p. 7).



- Promotion of public intolerance to corruption that envisages adoption of an action plan developed in collaboration with civil society representatives and conducting information campaigns to raise public awareness;
- Evaluation of anti-corruption strategy effectiveness<sup>29</sup>.

However, noting Euromaidan's significant effect on the country's anti-corruption policy, OECD in its report (2015, p. 5) points out that the new administration "pledged to eradicate corruption, but has so far failed to deliver convincing results going beyond revision of the legal framework, although there are promising signs, notably with regard to radical overhaul of anti-corruption institutional landscape"<sup>30</sup>.

According to the Strategy, two new institutions are to be established: The **National Agency for Corruption Prevention** (the Agency) and the **National Council for Anti-Corruption Policy** as an advisory body under the President<sup>31</sup>. The latter represents "a high-level forum for coordination of anti-corruption measures" (OECD, 2015).

The Agency is a central executive body with special status, established by the Cabinet of Ministers to ensure the development and implementation of the national anti-corruption policy and monitor the compliance with the anti-corruption legislation<sup>32</sup>. Specifically, the Agency's main tasks are following:

- Anti-corruption policy (corruption research and analysis; developing, coordinating and monitoring implementation of the anti-corruption policy);
- Control of asset declarations (monitoring of declarations and lifestyle of persons authorized to perform the functions of the state or local self-government, verification and disclosure of declarations on a single web-portal);
- Protection of whistle-blowers;
- Methodological support to anti-corruption work of other state and local self-governance bodies;
- Endorsement of anti-corruption programmes to be adopted in all public agencies;

<sup>29</sup> This includes conducting broad statistical surveys and analysis of the effectiveness of the adopted anti-corruption legislation annually; determining the level of implementation of international standards in the field of anti-corruption policy; and publication of an annual report on the status of corruption and implementation of anti-corruption policies.

<sup>30</sup> At the same time, OECD notes that Ukraine has finally brought its criminal law on corruption in accordance with international standards – "All corruption offences and their elements are now criminalised, including the crime of illicit enrichment" (OECD, 2015, pp. 5-6). For its successful implementation, OECD calls for strengthening capacity of law enforcement agencies, prosecutors and judges through trainings, guidelines and additional resources.

<sup>31</sup> OECD noted that "President Yanukovich established the National Anti-Corruption Committee (NAC) in February 2010. This institution, however, turned out to be dysfunctional. Since its establishment it had held only three meetings. The NAC was abolished by President Poroshenko on 14 October 2014 and replaced with National Council on Anti-Corruption Policy" (OECD, 2015).

<sup>32</sup> The Agency is established as a collegiate body consisting of five members who are selected through an open competition and appointed by the Cabinet of Ministers for 4 years. The Chairman of the Agency is elected by its members for a 2-year term.

- Public awareness raising and international cooperation.

The Agency is accountable to the Verkhovna Rada. Its work is also subject to public oversight exercised by the Public Council comprising 15 members.

OECD also notes that Ukraine has finally brought its criminal law on corruption in accordance with international standards – “All corruption offences and their elements are now criminalised, including the crime of illicit enrichment” (2015, p. 5-6).

Enacted in 2015 **the Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine”** (NAB) led to the establishment of an independent national law enforcement agency<sup>33</sup> charged with prevention, detection, suppression and investigation of corruption offenses under its competence, as well as prevention of committing new ones. It focuses on corruption crimes committed by high-level public officials and corruption crimes involving significant amounts of bribes even if no high-level public official was involved<sup>34</sup>. NAB is subordinate to the Government. The Director of the NAB is selected by a special commission based on results of an open competition, and serves a term of seven years. Selection commission is composed of independent experts chosen by the Parliament, the President and the Government (each appoints three members).

In relation to ethics of civil servants, rules of conduct of civil servants were regulated by the Law on Rules of Ethical Behaviour of 2012 until superseded by the Law on Prevention of Corruption of 2014. The new anti-corruption Law defines general requirements for civil servants’ conduct, while the National Agency for Corruption Prevention is authorized to approve the rules of ethical conduct for state civil servants and local self-government officials, organize training, retraining and advanced training of civil servants of state authorities and local self-government officials, and provide clarification, guidance and consulting on issues of application of legislation on ethical conduct, prevention and settlement of conflicts of interest.

The Law on Prevention of Corruption also regulates reporting and protection of whistle-blowers. It is stipulated that the National Agency, as well as other state authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities provide conditions for their employees to notify about violations of requirements of this Law by other persons, in particular through the phone lines, official websites, electronic means of communication (including without attribution).

**There is no special position of an officer in charge of ethics compliance** within the ministries or civil service agencies.

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<sup>33</sup> According to the Law on the National Anti-Corruption Bureau of Ukraine, the National Bureau consists of the central and territorial administrations that are legal entities under public law. The maximum number of staff of the Bureau (central and territorial bodies included) is 700, of which senior staff shall not exceed 200.

<sup>34</sup> The National Bureau also has “exclusive investigative jurisdiction for foreign bribery regardless of the amount of bribe or officials involved” (OECD, 2015, p. 80).

## V. CIVIL SERVICE REFORMS: PAST, CURRENT AND PLANNED

### a. Past reforms

Ukraine started gradually reforming its public administration system in the early 1990s upon gaining independence from the Soviet Union, in its effort to ensure transition from the Soviet-type bureaucracy to a new public management system.

It is noted that the development of civil service in Ukraine underwent the following stages:

The first stage, preceded by the adoption of the 1993 Civil Service Law and supporting Presidential Decrees and the Cabinet of Ministers' Resolutions<sup>35</sup>, includes the period between 1994 and 1999, when the principles for the development of a modern civil service were established and the specialised agency dealing with the civil service related issues was set up in 1994<sup>36</sup>.

Starting from early 2000s, the strategy of the civil service system in Ukraine determined the directions of reforms and further development of the civil service. The Strategy also amended procedures on the personnel reserve and competition for vacant positions, introduced annual evaluation of civil servants, as well as launched the research programme in the area of civil service development. During this phase, the concept of adapting Ukraine's civil service to the standards of the European Union laid the foundations for further transformation of the civil service. In 2005, the Civil Service Development Programme for the period of 2005-2010 was launched, and corresponding activities were undertaken to bring the civil service in line with the European administrative law principles. In 2006, SIGMA experts conducted a public administration assessment in Ukraine by identifying the main challenges in the national civil service system. However, those issues remained unaddressed, and the new Civil Service Law adopted in 2011 was never enacted then. Indeed, Condrey et al (2013) cite the UNDP 2011 report<sup>37</sup>, which while acknowledging the country's progress achieved in economic stabilisation noted that "significant reforms still need to be conducted, notably to improve the operations and responsiveness of the civil service".

### b. Current reforms

Relatedly, OECD (2015) notes that, overall, civil service reform in Ukraine has long been overdue. Following the Euromaidan events, the Association Agreement between Ukraine and the European Union was signed in June 2014 that paved the way for large-scale institutional and structural reforms in the country, including in the civil service area.

<sup>35</sup> In particular, these include Presidential Decrees "On Measures to Improve the Work of Staff in the Executive Branch, with the Heads of Enterprises, Institutions and Organizations"; "On the Position of the Council of the Staff"; "On the System of Training, Retraining and Advanced Training of Civil Servants"; as well Governmental Resolutions "On the Formation of Personnel Reserve for Civil Service"; "On Approval of the Official Investigation"; "On Measures for the Training of Civil Servants".

<sup>36</sup> The Department of the Civil Service under the Cabinet of Ministers.

<sup>37</sup> United Nations Development Programme Report "Support to civil service reform in Ukraine" (2011).



A number of OECD/SIGMA comparative studies on the professionalization of the state civil service as well as anti-corruption further mapped pertaining issues in the development of human resources policies in the civil service and service in local government administrations<sup>38</sup>. the state's commitment to reform the civil service is provided in a number of documents such as the Contract for Ukraine on the development of the state concluded by the Government and the European Commission in May 2014, the Coalition agreement of the "European Ukraine" deputy factions of November 2014, the Programme of the Cabinet of Ministers of Ukraine approved by the Verkhovna Rada of Ukraine in 2014 and the Sustainable Development Strategy "Ukraine - 2020" approved by the President in early 2015.

Provision of a legislative framework for the new principles of the civil service, which are in line with the European ones, is one of the tasks of the Action Plan on the Implementing Association Agreement for the period of 2014 to 2017. Reforms initiated under this framework are to contribute to the optimisation of the functions of the state authorities, and delineation of their responsibilities and duties.

Accordingly, the National Agency of Ukraine on Civil Service developed a Strategy to reform civil service and service in local government in Ukraine for the period up to 2017, which was approved by the Cabinet of Ministers of Ukraine in March 2015. The new Civil Service Law and Law on Service in Local Self-government bodies were relatedly adopted in 2015, also harmonising the provisions of the two legal acts<sup>39</sup>.

As discussed earlier in this document, de-politicisation, delineation of political and administrative positions, in particular the introduction of the institute of state secretaries of ministries are considered as one of the priorities of the reform. In addition, it envisaged changes in the senior civil service management with the establishment of the Senior Civil Service Commission.

The reforms are also planned to provide for transparent competitive selection for all civil service positions including senior management posts with the introduction of a competency-based approach in HR management, in general. The position classification has been simplified to introduce comprehensively three categories and nine ranks instead of earlier used seven and 15, respectively.

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<sup>38</sup> Specifically, the following issues were indicated: [a] lack of clear distinction between the norms of private and public law; [b] inefficient systems of the appointment to the service and career promotion; [c] excessive politicization; [d] ineffective human resource management system; [e] ineffective remuneration system in the civil service; [f] ineffective system of professional training, retraining and advanced training of civil servants and local government officials; [g] inadequate system of public and state control over the activities of the staff of public authorities and local governments; and [h] insufficient measures of implementing corruption prevention policy.

<sup>39</sup> For instance, the new legislature now allows for the mobility of civil servants of the central government to the same positions at the bodies of local self-government without competition process.



It is considered that such civil service reform initiatives will assist building a professional merit-based civil service based on the European standards of good governance and improve the quality of public service delivery.

### *c. Planned reforms*

According to information provided by the National Agency of Ukraine on Civil Service, following the adoption of the new CSL of 2015 and elaboration of the Public Administration Reform Strategy 2015–2020 and the Action Plan on its implementation for 2015–2017, the following reform activities are planned to be further implemented:

- Adoption of supporting regulations and further enforcement of the new CSL;
- Establishment of the Senior Civil Service Commission;
- Appointment of the State Secretaries at the Cabinet of Ministers and ministries;
- Establishment of personnel management divisions in the ministries and civil service bodies to promote a modernised HR management practices under the coordination of the National Agency of Ukraine on Civil Service;
- Introduction of the integrated information and HRM systems in the civil service;
- Structural optimisation of the state agencies' apparatus and the number of civil servants based on their functional analysis; implementation of the revised remuneration system;
- Enhancement of the institutional capacity of the central executive body, responsible for the implementation of the national policy in the civil service.

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*The Regional Hub of Civil Service in Astana (ACSH), an initiative of the Government of Kazakhstan and the United Nations Development Programme, was established in March 2013, when representatives of 25 countries, as well as of 5 international organisations, unanimously adopted the ACSH's Founding Declaration. The ACSH is a multilateral institutional platform for the continuous exchange of knowledge and experience in the field of civil service development, aiming to stimulate civil service transformation through fostering partnerships, capacity building and peer-to-peer learning development activities, and by disseminating innovative approaches to civil service reform, through evidence-based solutions, informed by a comprehensive research and policy agenda. It has financial and institutional support from the Government of Kazakhstan, and backing of the UNDP as the key implementing partner. The geographical range of the participating countries – currently encompassing 34 countries – stretches from North America and Europe through the CIS, Central Asia and Caucasus to ASEAN countries, which demonstrates that partnerships for civil service excellence are a constant and universal need for all nations.*

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