Understanding the EU's Association Agreements
and Deep and Comprehensive Free Trade Areas
with Ukraine, Moldova and Georgia

Anti-Corruption Policies in Georgia, Moldova and Ukraine

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Abstract

Anti-corruption policy has in recent years become a well-structured subject, thanks to the work of several international organisations and NGOs. This provides a robust basis for inter-country comparisons, the present article taking the cases of Georgia, Moldova and Ukraine. Of these three countries Georgia stands out as having taken early and radical steps to largely eradicate corruption, from a deeply corrupted starting point similar to that of Moldova and Ukraine. The latter two countries have in recent years engaged in much of the extensive legislative agenda for curbing or preventing corruption. However, vested interests have continued to block the full potential impact of these measures. In the case of Moldova where some key measures to assure independence of key anti-corruption institutions have not yet been taken, and a single oligarch group exercises power amounting to 'state capture'. In Ukraine considerable progressive steps have been taken, but the overall picture is still marred by lack of clear and consistent political resolve over implementation. While the extensive legislative action does not automatically deliver results, it does represent an important legal infrastructure, which when supported by a real political will at the highest level can deliver the desired results

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1. Introduction and basic comparative data

What is corruption? A primary distinction is made between 'petty corruption' where individuals or small businesses have to pay small bribes for securing public services or for passing examination by inspectors in relation to various regulations; versus 'grand corruption' where top-level officials or politicians are involved in large financial transactions or significant policy decisions, including the role of oligarchs, in what is known as 'state capture'.[1] Other categories of corruption can include extortion, nepotism, exploiting conflicting interests, and the making of improper political contributions.

A comparative analysis of anti-corruption policies of Georgia, Moldova and Ukraine is of particular interest, since they have much in common due their Soviet past, and all follow now essentially the same course for economic and political reform set out in their Association Agreements with the European Union. Yet their experiences so far with anti-corruption policy are very different. While several sources available show Moldova and Ukraine to be perceived still to be the most corrupt of 40 European countries, Georgia is perceived to be one of the least corrupt of all post-communist Europe, and even ranks ahead of the EU average[2].

Whereas the question of perceptions is very general and subjective, the results are broadly confirmed in sources that pose more precise and varied questions, such as in Table 1 based on the World Bank's enterprise survey. For example, the percentage of firms experiencing at least one bribe request is a minimal 2% in both Georgia and the OECD's high income countries, while the corresponding figures for Moldova and Ukraine are 31% and 50% respectively.[3] A broadly similar picture emerges from the several other questions posed in this World Bank enterprise survey.

The Association Agreements and DCFTAs cite the fight against corruption as a general objective in the context of promoting the rule of law (Articles 3 and 22 in the Ukraine

[1] W. Konończuk, D. Cenusa, K. Kakachia, Oligarchs in Ukraine, Moldova and Georgia as key obstacles to reforms, CEPS, 14 June 2017, http://www.3dcftas.eu/publications/other/oligarchs-ukraine-moldova-and-georgia-key-obstacles-reforms

[2] Transparency International, 2016.

[3] The most recent World Bank Enterprise Surveys was conducted in Georgia, Moldova and Ukraine in 2013 (http://www.enterprisesurveys.org/)

agreement, for example), but do not address the issue in any specific or operational terms. However, certain sectoral chapters are relevant and operational for the fight against corruption, notably those concerning public procurement and corporate governance.

Work on anti-corruption policies by international organisations and NGOs has over the last few decades developed a well-defined set of analytical templates. These identify key institutional arrangements and categories of normative legal measures that are the backbone of anti-corruption policy. See notably the work of the World Bank, the OECD anti-corruption network for Eastern Europe and Central Asia, the Council of Europe GRECO programme, the UN Office on Drugs and Crime, and Transparency International. In what follows we make extensive use of the OECD's recent 2013-2015 report (OECD, 2016c), and the UN Guide for Anti-Corruption Policies (UNODC, 2003).

Table 1. World Bank's Enterprise Survey

	Bribery incidence (% of firms experience at least one bribe request)	Bribery depth (% of public transactions where bribe requested)	% of forms expected to give gifts in meetings with tax officials	% of firms expected to give gifts to secure government contracts	% of firms expected to give gifts to get a construction contract	% of firms expected to give gifts to public officials to get things done	% of firms identify corruption as a major constraint
OECD	2	1	1	11	2	8	11
East & Central Europe	17	14	13	26	25	20	22
Georgia	2	1	0	1	12	2	3
Moldova	31	22	14	11	49	16	38
Ukraine	50	45	50	99	73	73	38

Source OECD (2016), based on WB Enterprise Surveys conducted in Georgia, Moldova and Ukraine in 2013

Endemic corruption is the most costly of factors contributing to a negative investment climate, impeding investment and economic growth. In the cases of Moldova and Ukraine it is also undermining many of the measures being taken under the Association Agreements and DCFTAs to modernise the economies.

2. Strategic and overarching aspects

2.1 Political will

In what follows we compare how the three countries have progressed along the lines of the detailed templates of institutional arrangements and normative laws (Tables 2, 3 and 4). But first there is the crucial overarching question of political will to really fight corruption, going beyond political declarations of intent and basic legislation.

The fundamental feature of **Georgia's** fight against corruption was strong determination of the elite at the highest level to eradicate corruption, including the President in leading the Rose Revolution, starting in 2004. The objective was to defeat a wide-spread corruption in the shortest possible term. The Rose Revolution had been preceded by an anti-corruption movement, and public support for radical anti-corruption measures was strong. In practice the method of the Government was quite ruthless, with entire institutions or their functions completely abolished rather than reformed gradually. The logic behind this was that a step-by-step approach would not yield tangible results in the short term. Another distinguishing feature of the Georgian story was that economic liberalization and deregulation went hand in hand with anti-corruption reforms, and there was strong and genuine political support for both. Regulations, rules and requirements prone to corruption and burdensome for businesses were simply abolished with the same ruthless approach.

Some sceptics felt that this 'big bang' fight against corruption would prove to be only a short-term success, which could work only under the leadership that crafted the strategy, and would collapse with a subsequent change of government. This hypothesis proved to be wrong as five years after the change of government, the reforms have been broadly sustained, and Georgia's corruption rankings have improved further.

In **Moldova** the strong initial commitments to fight against corruption assumed by the pro-European governments in 2009-10 have subsequently been eroded after the governing parties agreed to divide between their respective nominees for the leadership positions in the judicial, anti-corruption and law enforcement institutions. Achievements in strengthening the anti-corruption legal and institutional framework were mainly due the external pressure in the form of aid and conditionality. But there is still limited political will to systematically fight corruption, as reforms of the prosecutorial and integrity system remain long overdue. Although significant work was done to build a legal and institutional anti-corruption framework, their implementation remains weak and enforcement inconsistent. In recent years the unprecedented scale of the politicization of state institutions revealed after the 2014 banking scandal and the increasing concentration of power in the hands of a single oligarchic group puts Moldova into an extreme 'state capture' category.

Corruption was one of the catalysts for **Ukraine's** Revolution of Dignity (or Euromaidan), which in February 2014 led to the fall of the Government and the flight of the President. The new regime saw a rapid improvement of political will to tackle corruption, with the adoption of a series important strategic documents, including the opening up many public registries free of charge or for a small fee. But since then anti-corruption 'policy' has become rather chaotic, especially when it comes to initiatives of the parliament members. None of the programs of parliamentary parties regarding anti-corruption measures correspond to the recommendations made by international institutions. Proposed measures are often more populist than substantive in nature. Despite the positive role of civil society organisation in anti-corruption efforts, government seems increasingly to view the civil society as a dangerous opponent rather than a partner. Grand corruption is not effectively addressed with prosecutions of high level officials, hence exemplary convictions are non-existent. There also

have been some worrying signs going in the direction of curtailing new anticorruption bodies, where some of them show disturbing vulnerability to political influence. Overall there is a huge doubt over the real political will to tackle corruption, not only with words, but also in practice.[4].

Summary assessment:

In Georgia, starting in 2004, there was a political will for radical and rapid anti-corruption reform, which has been broadly sustained. In Moldova an initially strong political will seen in 2009-10 has ceded to a system of 'state capture' from few to a single oligarch group. In Ukraine legislative regulation is slowly approaching international standards, but implementation is being stymied due to various factors, which may be summarised as a lack of political will.

2.2 Anti-corruption strategies and action plans

The drawing up of such strategies and action plans has become general practice in the post-communist states, and is indeed one of the central elements of the reform process. But much depends on their quality. Such strategies and action plans need to define and prioritise the actions of various agencies, allocate domestic and foreign aid budgets, set timelines, and organise monitoring and the engagement of stakeholders. Anti-corruption strategies need to be comprehensive, non-partisan, transparent, and evidence-based.

Table 2. Anti-corruption strategies and institutions

	Georgia	Moldova	Ukraine
Anti-corruption strategies and action plans	Anti-Corruption Strategy and Action Plans since 2005, latest for 2015-16 adopted in 2015.	Anti-corruption Strategy and Action Plans since 2004, latest for 2017-2020 adopted in 2017	Anti-corruption strategy for 2014-17, first such legal text, adopted in 2014, updated for 2015-2017
Anti-corruption institutions	Anti-Corruption Council	Since 2012 National Anti-Corruption Centre, Anticorruption Prosecution Office, National Integrity Authority (undergoing a reform since 2016)	Established in 2015, operational since 2016: -National Anti-Corruption Bureau; -National Agency for Prevention of Corruption; -Specialized Anti-

[4] Andrei Marusov, 'Anti-Corruption Policy of Ukraine, first successes and growing resistance', Renaissance Foundation, December 2016.

			Corruption Prosecutor's Office Envisaged by law:[5] -Anti-Corruption Court
Integrity of public service	Competitive merit-based recruitment for civil service; a Code of Ethics under preparation	Mandatory competitive recruitment (incomplete); Civil Servant's Code of Conduct; sectoral codes of ethics	Competitive recruitment and promotion in civil service; several codes of ethics
Integrity of judiciary	High Council of Justice independently appoints judges since 2006, with life tenure since 2013	Supreme Council of Magistracy; Independence criticised for membership of Minister of Justice, and Prosecutor General	Independence of High Council of Justice since 2016 with life tenure for judges from 2016

Georgia's first National Anti-Corruption Strategy was adopted in 2005, followed later that year with a National Anti-Corruption Action Plan. There have been successive revisions of these key documents, the latest addressing the years 2015-16 adopted by the Anti-Corruption Council in February 2015, after extensive public consultations, and approved by the Government Decree on 20 April 2015. This document aims *"to develop a unified anti-corruption policy for preventing and combatting corruption; to boost public trust by increasing transparency and accountability of public entities; to enhance civil society and establish transparent and accountable governance."* The document goes on to list a comprehensive set of priorities for both the prevention and criminalisation of corruption. The Strategy served as a guiding document throughout years, but definitely has not been the primary tool in fighting corruption in practice.

Moldova has had a succession of anti-corruption strategy and action plan documents, starting already in 2004. The latest strategy addressing the period 2017-2020 and a subsequent action plan were adopted in March 2017, after extensive public consultations and entered into force in June 2017[6]. The strategy provides a new holistic approach in tackling and preventing corruption, based on the Transparency International methodology in assessing the national

[5] Law # 1402-VIII dated 02.06.2016 "On the Judiciary and the Status of Judges"

[6] Parliament Decision no.56 as of 30.03.2017, http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=370789

integrity system[7]. The strategic measures are structured according to eight 'integrity pillars'[8], and are mainly oriented towards removing barriers to effective implementation of the existing anti-corruption legislation. Each pillar has a separate action plan with specific progress indicators. However, this commendable document sits uneasily alongside non-compliant political practice.

Ukraine adopted in 2014 an 'Anti-Corruption Strategy for 2014-2017'[9], which was the first time that such a document was adopted as a legal text, followed by the drafting of an implementation programme. This detailed institutional innovations including establishment of a National Agency for Preventing Corruption (NACP - see further below). As of March 2017, out of 44 planned anti-corruption measures, only 9 have been completed in full. The more recent Anti-Corruption Strategy for 2015-2017 is also behind schedule. The NACP started working on a new strategy (2018-2020) that should be based on the evaluation of the implementation of the current Strategy.

Summary assessment:

All three countries have been adopting Anti-Corruption Strategy documents and action plans. Even in Georgia these are not viewed as main drivers of the action. In Moldova and Ukraine the documents are in themselves in line with international standards, but implementation lags behind.

2.3 Institutional issues.

Invariably there are three key institutions, the prosecutor's office, the judiciary, and a specific anti-corruption agency and/or inter-agency coordination system. As regards the specific anti-corruption mechanism there is no single model that has prevailed, notably over how far such entities should best be independent, stand-alone bodies, or coordinating mechanisms integrated within other government structures. There is the further issue of specialised anti-corruption units within the prosecutor's office and judiciary. A widespread trend has been the development of inter-agency policy coordination or consultative councils with the functions of anti-corruption policy development, coordination and monitoring of implementation.

Georgia's Anti-Corruption Council (ACC) has been operating since 2008 as an interagency coordination body that is accountable to the government. The composition of the Council includes public agencies, NGOs, businesses and international partner/donor organizations.

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[7] TI Moldova, "National Integrity Assessment Moldova 2014", https://www.transparency.org/whatwedo/nisarticle/moldova_2014.

[8] These pillars are: the Parliament; Government, public sector and local public administration; justice and anticorruption authorities; Central Election Commission and political parties; Court of Accounts; Ombudsman; private sector; civil society and media.

[9] Law no.1699-VII as of 14.10.2014, zakon.rada.gov.ua/laws/show/1699-18

The Minister of Justice of Georgia chairs the Council. It operates through an Expert Level Working Group, which mirrors the composition of the Council and has a broader representation of the non-governmental sector. While the ACC is judged by the OECD to have shown a high quality of strategic policy development and monitoring of its implementation, its role should not be exaggerated. Key decisions which resulted in eradication of corruption in various sectors were taken not in the ACC, but by the Government and/or single ministers in their areas of competence. It is notable that Georgia achieved bigger and faster results with a simpler and lighter set of anti-corruption institutions than in the cases of Moldova and Ukraine.

In Moldova the anti-corruption agency - National Anticorruption Centre (NAC) has gone through several waves of reformation since its establishment in 2002. The latest reform in 2012 revised the mandate of NAC, which has been authorised to conduct preventive, operational, investigative and integrity testing activities, to carry out anti-corruption screening of draft legal acts, to develop and implement integrity plans, monitoring of anti-corruption policies, research and studies. The agency is supposed to be independent from the government, but this is frequently questioned by civil society and opposition due to political interference in the appointment of the NAC leadership[10] and the selective approach of NAC in investigating corruption cases[11]. The independence and accountability of the NAC has been also subject to political disputes within the latest ruling coalitions, and resulted in changing the supervision of NAC from Parliament to Government in 2013, and back to Parliament in 2015.

In 2016 two reforms redesigned the anticorruption institutional framework in Moldova. First, a specialised office to target high-level corruption – the Anticorruption Prosecution Office (APO) – was upgraded with enhanced independence. However petty corruption was not excluded from its competences and generates a heavy workload, which risks prejudicing the original purpose.[12] Second, it is intended to reform the National Integrity Commission (NIC), in charge of controlling asset and interest declarations. Set up in 2012, the agency has proved to be very ineffective. The 2016 reform aims to strengthen its institutional independence and expand its competences, but there are long delays in making this operational, despite official commitments.

Ukraine. Its institutions for combatting corruption has four actual or proposed entities, which need to operate as inter-locking parts of a single system:

[10] The ruling coalition agreement signed in 2010 contained a secret annex, dividing offices between the constituent political parties, including the law-enforcement and inti-corruption institutions (NAC and Prosecutor General's Office). The secret annex was leaked to press in 2013 and is available at: http://unimedia.info/stiri/doc-acordul-aie2--mina-care-a-desfiintatalianta-cum-s-au-partajat-functiile-57321.

[11] TI-Moldova, ADEPT, CRJM and IDIS Viitorul report "State Capture: the Case of the Republic of Moldova", Chisinau 2017, http://www.transparency.md/wp-content/uploads/2017/06/TI_Moldova_State_Capture.pdf

[12] Idem.

- The National Agency for Prevention of Corruption (NACP),
- The National Anti-Corruption Bureau (NABU),
- The Specialised Anti-Corruption Prosecutor's Office (SAPO), and
- An Anti-Corruption Court (now questioned by the President)

The NACP is an executive agency to advance the formation and implementation of the state anti-corruption policy. The NACP, with important guarantees for the independence of its members, has wide-ranging competence for anti-corruption policy, verification of asset declarations, monitoring of public servants' lifestyle, control over observation of anti-corruption restrictions (plurality of offices, conflict of interests, gifts, etc.), cooperation with and protection of whistle-blowers; etc. An additional function of supervising political party and election financing was added in October 2015. With some delay, the NACP became operational since August 2016, albeit facing some obstacles, including conflicts with the Government and delays with the election of the NACP's members, etc. Questions have been raised regarding the proactivity of the NACP and the lack of well-articulated channels to make it accountable and fully transparent.

The NABU, established in 2015, is a specialised investigative agency for high-level corruption cases. The prior regime was demonstrably ineffective. By the August 2017 the NABU had conducted 389 criminal investigations, submitted 81 to the courts, and obtained 225 convictions.[13] NABU has itself performed well and had investigated and prosecuted a number of high-ranking officials but the process has been stuck at court level. NABU also do not have authority to independently intercept (wiretap) information from communication channels, it has to submit a request to the State Security Service of Ukraine to install wiretapping, which undermines NABU's independence and risks information leakages in high-profile anti-corruption investigations.[14] There are persistent attempts to pressure NABU, in particular through failure to provide the adequate detective capacity, the threat of removal the NABU Director from office through a mechanism controlled by certain political forces, and a number of draft laws to limit NABU's investigative capacity.

The SAPO was established in 2015 as an independent unit of the Prosecutor General's Office, and subordinated exclusively to the Deputy Prosecutor General – Head of the Specialized Anti-Corruption Prosecutor's Office. It is entrusted with the supervision of the observance of laws during the detective and investigative activities, pre-trial investigation conducted by the NABU; prosecution duties in relevant proceedings; representation of citizens or the State's interests in court in cases connected with corruption. The accountability of SAO is in practice poor. Prosecutors are often inadequately trained.

[13] https://nabu.gov.ua

[14] The initiative to give the NABU an autonomous right to wiretap was a condition of Ukraine-IMF Memorandum signed in September, 2016 and was openly supported by the EU. Despite this, the relevant draft law was not adopted by the Parliament.

An Anti-Corruption Court is envisaged by the law,[15] in view of the inadequacy of the regular court system, and recommended by the IMF and EU. However its creation requires a specialised law, which is yet to be adopted, and in particular special procedures for the selection of judges[16]. The draft legislation[17] is under consideration by the Venice Commission[18]. Moreover, in September 2017, the President of Ukraine stated that the country does not need the specialised Anti-Corruption Court; instead, it is necessary "to create anti-corruption system in the whole court institution of Ukraine".[19] Experts criticised the idea, highlighting the low public trust in the ability of the current court system to hold the powerful to account. It would in any case be extremely important to ensure that the cases which were investigated and brought to court by the NABU and SAPO are properly adjudicated.

Summary assessment: All three countries have dedicated anti-corruption institutions. Georgia has the simplest system with its Anti-Corruption Council. Moldova and Ukraine have much more complex multi-institutional setups, with some successes but also failings, and without good overall results so far.

2.4 Integrity of public service

In Georgia the major effort in the public service that contributed to the successful fight against corruption was the reform that started in 2004 with two major objectives. First, it was aimed at downsizing and optimising a public sector, including public institutions, ministries and agencies which at that time had excessive and unnecessarily high number of employees. Second, the target was to increase salaries of public servants in order to prevent corruption and bribes and attract qualified human resources to work for the government. This reform was implemented across all ministries and agencies, and resulted in a huge (15-fold) increase of salaries of civil servants. This reforms was one of the most effective anti-corruption measures. Georgia has also introduced rules for vacancies in the civil service, including high level positions, to be published at the online recruitment portal www.hr.gov.ge, to be filled through competition. However, these new legal provisions have not been fully implemented in practice. After the 2012 elections and widespread dismissals, many civil servants working in ministries were appointed as acting officials, and had to undergo open competition at a later stage in order to stay in their positions. In April 2017, the Georgian Government has issued the decree on the definition of the General Rules of Ethics and Behaviour in the Public

[15] Law # 1402-VIII dated 02.06.2016 "On the Judiciary and the Status of Judges"

[16] Mykhailo Zhernakov, 'Independent Anti-Corruption courts in Ukraine: the missing link in anti-corruption chain'. Renaisance Foundation, December 2016.

[17] http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61038

[18] http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61934

[19] http://www.cbc.ca/news/politics/poroshenko-rejects-anti-corruption-court-1.4306843

Institutions[20], a so-called Code of Ethics in order to regulate the conduct of civil servants in civil service.

In Moldova the Civil Service Law[21] competition procedures are not mandatory for a number of high-level official positions, while in other cases are applied only after other recruitment procedures have been exhausted. This provision has been largely used by the ruling coalitions since 2009 to make numerous political appointments in senior positions. The new law on integrity that came into effect in July 2017 has introduced mandatory competition for all public positions, except elective and political positions. A controversial amendment to the Civil Service Law, in force since February 2016[22], has relaxed the incompatibility regime for public servants by allowing work in the private sector outside the program hours. In 2015 the raising the salaries for civil servants began to be implemented. The pressure to comply with EU conditions for visa liberalisation and the association process has contributed to the process of building up the integrity legal framework, but has not so far translated into significant improvements in the public administration, which has remained highly politicised and prone to corruption.

The new Law on Civil Service of Ukraine, enacted in May 2016, aims at creation of a professional and politically neutral senior civil service, with measures to improve remuneration, upgrade discipline, etc. Entry into the civil service shall be through a competitive selection process based exclusively on merit, as also for promotion. Many senior appointments in the Ukrainian administration are now effectively conducted on the basis of open and transparent competitions. One such example is the selection and appointment of the first Head of the National Anti-Corruption Bureau. Despite the significant breakthrough in civil service reform, there is a need for effective implementation of adopted regulations. There are several codes of conduct for civil servants. Monitoring and control over implementation of the rules of ethical conduct are intrusted to NACP.

Summary. All three countries have been taking steps to improve the integrity and quality of the civil service, with Georgia having moved first and most decisively. Both Moldova and Ukraine have been advancing reforms of the public services, but with limited results so far.

2.5 Integrity of the judiciary.

This is a core issue for anti-corruption policy, but one that extends into the far broader issue of the rule of law, and will be discussed in greater detail in another paper. The main component issues here concern:

[20] https://matsne.gov.ge/ka/document/view/3645402

[21] Law No. 158 on Public Office and the Status of Civil Servants, of 4 July 2008 with later amendments, http://lex.justice.md/md/330050/.

[22] Law no. 297 as of 22.12.2016 amending art.25 of the Civil Service Law, http://lex.justice.md/md/368700/.

Constitutional guarantees of independence. All three countries express guarantees of the independence of their judiciaries in their constitutions, but the devil is in the detail.

The role of judicial councils. Such councils, generally consisting mainly of judges elected by their peers, have a key role in the independence of appointment of judges. Georgia reformed its High Council of Justice in this sense in 2006, whereas previously the Council had only the role of advising the president. In Ukraine the pre-Maidan system did not assure independence of the High Council of Justice, but the Constitutional amendments regarding High Council of Justice were passed in June 2016. The special law was adopted in December 2016 and enacted in January 2017. In Moldova the composition of the Superior Council of Magistracy (SCM) is criticised for the ex-officio membership of the Prosecutor General, the Minister of Justice, who is an active politician, and the President of the Supreme Court of Justice, who has a strong influence on judiciary due to his double role as President of the Highest court and as member of the Council. Draft laws amending the Constitution regarding the judiciary have failed to be passed in 2016-2017 for lack of political will to promote them.

The secure term of judges. The main issue here is whether judges have secure tenure, with life tenure favoured by the Venice Commission, versus systems that see probationary periods or fixed limited terms. Georgia adopted life tenure in 2013, but retained exceptions for probationary periods and fixed terms for the Supreme Court. Ukraine moved to life tenure in June 2016, not before however a period of great turbulence with dismissal of thousands of judges in the wake of the Maidan. Moldova retains a system of five-year probation for judges before they get secure tenure until retirement age. This is a severe impediment to judicial independence.

Appointment procedures. All three countries have established objective criteria and competitive procedures for the nomination of judges. However, in Moldova the SCM has a record of ignoring the Career Board in many instances, without reasoning its decisions. Selection and promotion of judges in Moldova is selective and has been criticised both by civil society and international development partners.

Financial autonomy. In Ukraine there is a problem of inadequacy of financial resources for the judiciary, but situation gets better with judiciary reform in June 2016. In Moldova, financial autonomy of the judicial system has considerably improved. In Georgia, budgetary financial resources for judicial system in recent years has been continuously increasing.

Ethics rules. Codes of professional ethics have been generally established, but their enforcement is often weak.

The right to public hearings is a generally accepted principle. However, in Moldova closed court hearings tend to be used in politically significant cases, such as that of ex-prime-minister Filat, charged with corruption, and that of the businessmen Platon and Shor, charged with involvement in the major bank fraud revealed in late 2014. In addition, in September 2016, a regulation has imposed severe restrictions on access to the courts, which was

criticised by several media and civil society organizations[23] and later on suspended, with no new regulation adopted yet as of 28 September 2017.

Summary: Georgia has undertaken a number of reforms in the judiciary sector, but more is needed to reduce political influence. In Moldova the appointment and promotion of judges, and the use of closed court hearings is particularly problematic. Ukraine started judicial reform, but this sector still perceived as one of the most corrupted.

2.6 Role of Civil society

The work of NGOs is crucial, to enhance public awareness and feed public concerns into the work of public authorities.

In Georgia, NGOs were involved in drafting of the 2015-2016 Anti-Corruption Action Plan and are involved in its implementation and monitoring, in particular by contributing to elaboration of the new monitoring methodology. NGOs are active in thematic working groups of the Anti-Corruption Council, which are co-chaired by civil society and include NGOs as members.

In Moldova, NGOs have also played an important role in developing the National Anticorruption Strategy for 2011-2016, its evaluation and the drafting of the new National Integrity and Anticorruption Strategy for 2017-2020. Civil society representatives are included in the monitoring groups of the 2017-2020 strategy. However, recently there have been several signs of a worsening environment of NGOs, with actions aimed at discrediting civil society organizations. Among these, in July 2017, the Minister of Justice included three articles in a draft law on non-commercial organizations (NGOs) and published the draft for public consultations. In general the draft law was a progressive and necessary one, developed through an inclusive process by a group of civil society representatives and the Ministry of Justice. However the three added articles prohibit foreign funding for NGOs involved in activities aimed at influencing legislation or "political activities" defined very broadly. More than 65 NGOs criticised this attempt to limit foreign funding of NGOs and called upon the Ministry of Justice to withdraw these provisions.[24] On 12 September 2017, the leader of the Democratic Party Vladimir Plahotniuc announced at a press conference that the political bureau of the party had requested the Minister of Justice to stop any work on the draft law on NGOs. On the same day, the Minister of Justice issued an order cancelling further work on this draft law. Such interventions from Vladimir Plahotniuc, who has no elected position in the

[23] See, for example, a declaration available at: http://www.api.md/news/view/ro-declaratie-ong-urile-de-media-si-redactiile-protesteaza-impotriva-restrictiilor-abuzive-de-acces-la-sedintele-de-judecata-1343.

[24] Declaration in English available at http://crjm.org/wp-content/uploads/2017/07/2017-07-11-Declaration-MJ-initiative-contrary-to-law.pdf.

current government, underlines existing deficiencies in the democratic decision-making process.

In Ukraine, civil society has played a crucial role in developing anti-corruption legislation and policies following the Euromaidan in 2014, providing the roadmap for the reforms and making alarming statements when needed. The 2014-2017 Anti-Corruption Strategy and the following legislation were written with a significant contribution of civil society. In terms of conducting the anti-corruption expert evaluations, civil society institutions have also turned out to be the most strong. Investigative journalists and media actively continued to disclose corruption. But cooperation between the state and the civil society became fragile, as the sincerity of the Government's intention to cooperate is thrown into doubt. There is also a move made by the Parliament to subject the representatives of anticorruption NGOs to e-declaration requirements. This is a discriminatory and intimidating intent of such a requirement solely targeting anti-corruption activists. There are attempts to discredit civil society, initiating criminal prosecution and even beating or requesting to shut down some of the most active on. It creates an impression of a targeted systemic action by the Government to harass the anti-corruption activists.

Summary: civil society NGOs have been highly active in advancing anti-corruption policies in all three countries, but there have been some recent steps especially in Ukraine and Moldova seeking to weaken their effectiveness.

3. Specific legal mechanisms

There is a plethora of specific legal provisions employed in anti-corruption policies. The last decade has seen serious progress in the definition of international standards, and their application in many countries, including Georgia, Moldova and Ukraine. The broad picture is one in which Georgia was a leader in relatively early adoption of such measures after the Rose Revolution of 2003, while Ukraine lagged behind until the substantial progress made since the Maidan in 2014, whereas Moldova is still lagging. The main measures are those listed in Table 3, and commented on below. It has to be emphasised that legislative action can only be a beginning, and implementation at best takes years to follow through, and in worst cases may be persistently frustrated.

Table 3. Legal provisions related to anti-corruption policies

	Georgia	Moldova	Ukraine
Criminalisation of corruption	'Active' and 'passive' bribery is a criminal offence since 2006.	'Active' and 'passive' bribery criminalised in the Criminal Code of 2003.[25]	'Active' and 'passive' bribery defined and criminalised in 2014 law.

[25] Couldn't yet clarify since when exactly these two crimes were included in the Criminal Code, will get back as soon as I find credible sources on this

Corporate liability for corruption	Law already in 2006 introduces criminal liability of companies	A broader definition effective since 6 May 2016[26]	Law introduced in 2009, but abolished 2011, and then re-introduced in 2013
Illicit enrichment	No specific law; covered in money laundering law	Criminal offence since February 2014; Constitution presumes legality of assets held by persons;[27]	Criminal offense; Law (inadequate) in 2011, revised in 2014-15
Sanctions	Minimum fine €48,000; minimum sentence for bribery 6 months	*Passive bribery:* imprisonment from 3 to 7 years with a minimum fine of €9,700[28] . *Active bribery*: imprisonment up to 6 years with a minimum fines of €5,000 - €14,500[29].	Maximum imprisonment: 12 years. Fines can be applied in case of 'low-damage' offense (min: €55, max: €850)
Asset declarations	Senior officials must make on-line electronic declarations, which are publicly open	All public officials and some non-public officials should disclose wealth and interests. Starting 2018 electronic submission becomes mandatory.	All public officials covered since 2016 and senior officials since 2015; their declarations are electronic and open (system launched in 2016)
Confiscation of assets	Civil Procedure Code of Georgia since 2007 provides for this after criminal conviction	Criminal Code provides for 'extended'[30] confiscation since August 2016[31]	Provisions introduced in Criminal Code in 2016.
Statute of limitations	15 years	Minimum for public sector: 15 years; For private sector: 2 years	5-15 years
Immunities	MPs enjoy immunity	MPs enjoy extensive immunity[32]	2016 law limits immunities of judges; MPs enjoy immunity
Whistle blowers	Extensive protection, enhanced in 2015	Insufficient legislative regulation and no public authority assigned for whistle blowers protection	2014 law regulates and partly protects

[26] See art. 21 para. (4) of the Criminal Code.

[27] Offence introduced introduced by Law no. 326 of 23 December 2013, in force since 25 February 2014.

[28] The Criminal Cod Provision: 4,000 conventional units.

[29] 2,000 conventional units.

[30] Extended confiscation introduced by Law no. 326 of 23 December 2013, in force since 25 February 2014.

[31] Civil confiscation of undeclared assets introduced by Law no. 132 of 17 June 2016, in force since 1 August 2016.

[32] According to ar. 70 para. 3 of the Constitution, MPs cannot be apprehended, arrested, searched, except in flagrant crimes, and send to court without the Parliament's approval. There is a draft law adopted in the first reading, pending further approval, for eliminating this provision (not adopted yet as of 15 June 2017).

3.1 Criminalisation of corruption

Since 2006 the Criminal Code of **Georgia** provides for the criminal responsibility for promising, offering or giving of money or other material benefits to an official ("active" bribery), in order for such person to perform or not to perform any action. Direct or indirect demanding of a bribe by an official ("passive" bribery), is also criminalised. A physical handover of the bribe is not required.

In **Moldova,** under the criminal code passive and active bribery in public and private sectors, as well as trading in influence are criminalised. Sanctions for corruption were increased though amendments to the Criminal Code at the end of 2013. A physical handover of the bribe is not required in any of the two offences. The law includes a list of aggravating circumstances, which imply heavier sanctions.

In **Ukraine** anti-corruption legislation of 2014 significantly improved provisions for the criminalisation of corruption. Missing components of bribery offences and trading in influence had been included and sanctions have been strengthened. Some inconsistency in the definition of corruption crimes with international standards remains.

Summary assessment: At the legislative level all three countries now have such provisions.

3.2 Corporate liability for corruption

Georgia introduced already in 2006 the criminal liability of legal persons for money laundering, private sector bribery and active bribery in the public sector. However, very few cases of corporate liability have been observed.

Moldova provides for corporate liability for corruption by providing specific sanctions for legal entities in several articles[33] and by extending the criminal liability of legal entities since May 2016. The Criminal Code also provides for specific sanctions for legal entities in several articles (see 3.4 below).

Ukraine introduced legislation in 2009, only for this to be abolished in January 2011. In May 2013 fresh legislation, particularly related to legalization of property, or with promising, offering, and providing an illicit benefit was introduced, which entered into force in 2014, with a limited list of sanctions.

Summary: All three countries have introduced legislation. However there is little evidence of its effectiveness.

[33] See art. 21 para. (5) of the Criminal Code.

3.3 Illicit enrichment

This is generally defined as wealth out of line with what could plausibly have been made from official public salaries.

While the Georgian Criminal Code does not contain a separate offence of illicit enrichment, its elements can be found in the money laundering legislation, where money laundering is defined as "the [attempted] legalization of illicit income".

In Moldova, illicit enrichment was introduced in art. 330^2 of the Criminal Code at the end of 2013.[34] The code defines illicit enrichment as follows:

> *'Holding by a person with responsible duties or by a public person, personally or through third parties, of goods when their value substantially exceeds the acquired means and it was established, based on evidence, that these could not have been obtained legally'*.

However the Constitution of Moldova includes an explicit presumption of the legality of assets in possession of the person. The responsibility of proof of the unlawful nature of the goods lies only with the state bodies. The very small number of cases makes it difficult to draw any significant conclusions.[35] The strongly embedded constitutional provisions and high requirements of the burden of proof on investigation authorities might be an impediment for bringing such cases.

Ukraine introduced into law the offence called "illicit enrichment" in 2011, but its definition was out of line with UN recommendations. In 2014-2015, the wording was revised and brought into line.

Summary: Provisions for tackling illicit enrichment have been introduced in all three countries, but there is little evidence of effectiveness, and special doubts in the case of Moldova.

3.4 Sanctions

In Georgia the lower limit for financial sanctions against corrupt practice is the large fixed sum of money (€44,000). There is no maximum. The minimum sentence for basic passive bribery is 6 years of imprisonment. This has been considered disproportionate, not leaving room for an appropriate sanction for small value bribes. Such practice risks that the cases may not be brought to court because the minimal sentence was inappropriate. These provisions reflect the urge to fight ruthlessly against corruption.

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[34] Art. 330/2 of the Criminal Code, introduced by Law no. 326 of 23 December 2013, in force since 25 February 2014.

[35] National Anticorruption Centre, activity reports for 2015 and 2016, available at www.cna.md.

In **Moldova**, passive bribery in the public sector is subject to imprisonment from 3 to 7 years with a minimum fine of €9,700[36] and deprivation of the right to hold certain public jobs or to exercise certain activities from 5 to 10 years. For small bribery (not more than €250)[37] there are lower sanctions. Active bribery in the public sector is subject to imprisonment up to 6 years with a minimum fine of €5,000[38], while for a legal entity the minimum fine is €14,600[39] with deprivation of the right to exercise a certain activity. Taking bribes in the private sector is subject to lower sanctions by around half. According to a study on corruption cases, archived in the courts for the period of 1 January 2010 to 30 June 2012, judges have made excessive use of certain provisions of Criminal Code that significantly reduce criminal punishment.[40] In four out of five corruption cases on which verdicts of conviction were pronounced, judges applied a plea bargain agreement and reduced by one third the maximum punishment. In a third of cases the courts decided to apply milder punishments in connection with certain exceptional circumstances, and to suspend imprisonment.

In **Ukraine**, fines are applied for 'low-damage' cases, while for more severe offenses the key sanction is imprisonment that could be complimented by deprivation of the right to hold certain public jobs or to exercise certain activities up to three years and confiscations of assets. For example, illicit enrichment and abuse of power are sanctioned by imprisonment. Passive bribery in the public sector can be subject to sanctions starting from a fine (€566 – €850) and up to a 12-year imprisonment plus additional sanctions, depending on the severity of the offense. A sentence for an active bribery varies from a fine (€283 – €425) to a 10-year imprisonment. A plea bargain agreement could reduce the punishment.

A study of 335 corruption-related sentences in 2016 shows[41] that 44 (13%) resulted in sentences of imprisonment (but the majority of these sentences are still under appeal), 194 (54%) fines, including 109 cases of plea bargain agreements, while the release from punishment (conditional imprisonment) was used in 22% of cases. Only 40 (11%) are acquittal.

Summary: Georgia's sanctions seem disproportionate, whereas Moldova and Ukraine face problems of insufficiently rigorous application by the courts.

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[36] The Criminal Code Provision: 4,000 conventional units.

[37] 100 conventional units

[38] 2,000 conventional units.

[39] 6,000 conventional units

[40] The study was developed by the National Anti-Corruption Centre with the support of the Supreme Court of Justice and together with the experts of MIAPAC Project and EUHLPAM Mission, available in Romanian and English, at http://www.cna.md/libview.php?l=ro&idc=117&id=205&t=/Studii-si-analize/Studii-despre-coruptie/Studiu-privind-dosarele-de-coruptie.

[41] The study concerned Article 368 of the Criminal Code of Ukraine only. http://nashigroshi.org/2017/02/23/habari-2016-koho-posadyly-i-za-scho/

3.5 Confiscation of assets

Georgia was the first to introduce in 2007 in its Civil Procedure Code provisions on confiscation of illegal property and unexplained wealth of public officials. Such confiscation is possible after criminal conviction. Some confiscation cases were publicly broadcast, especially in the case of high level officials in the aftermath of the Rose Revolution, aiming thus at a demonstration effect.

In Moldova legislation permitting 'extended confiscation' entered into force in February 2014. Similarly with the interpretation of the norms regarding illicit enrichment, the Constitutional Court reiterated its interpretation of the Constitution as providing for the principle of absolute presumption of the lawful acquisition of the goods, assigning the burden of proof only to the state bodies. In practice, confiscation of assets has never been applied effectively in Moldova. However in May 2017 a new law provided for creation of the Agency for Recovery of Criminal Assets, to be established within the National Anticorruption Centre. As of July 2017, a head of the agency was appointed based on a competitive selection process, but the agency still needs to be created.

In Ukraine provision for such confiscation was introduced as an amendment to the Criminal Code of Ukraine in February 2016. This was followed in November 2016 by establishment of the Asset Recovery Management Agency. The agency is not fully staffed yet, but the first necessary steps have been taken. Of particular importance for Ukraine is activation of possibilities for international 'mutual legal assistance', notably for recovery of the assets of former President Yanukovych. The General Prosecutors Office and National Anti-Corruption Bureau have issued numerous requests to partner states (149 during 2014 to 2016), as of August 2016, six requests had been fully executed, two partly executed, the others are pending. This is an unprecedented scale of investigative activity involving foreign evidence being undertaken on corruption matters by Ukrainian law enforcement, particularly by NABU and SAPO. However, there is little evidence yet, statistical or anecdotal, of effective implementation of the confiscation provisions.

Summary: Georgia's policy has been relatively strict. In Moldova the legal provisions have seen more lax application, but a new specialised agency for asset recovery should lead to improvements. In Ukraine also a new agency is being set up, and recovery of assets of the Yanukovich 'family' is high on the agenda, requiring international cooperation.

3.5 Statute of limitations

The statute of limitations for active bribery and other corrupt acts is a long 15 years in Georgia. For Moldova, with new legislation in effect since 2014, the limit is also 15 years for bribery in the public sector, but 5 years for bribes in the private sector. Similarly, in Ukraine there is a 5-15 year statute of limitations.

Summary: Georgia, Moldova and Ukraine are now similarly stringent.

3.6 Immunities

In **Georgia,** parliamentarians enjoy immunity. According to Article 52 of the Georgian Constitution, "arrest or detention of an MP, search of his/her place of residence, vehicle, workplace, or any personal search shall be permissible only by consent of Parliament, except when the MP is caught at the scene of crime, in which case Parliament shall be notified immediately. Unless Parliament gives its consent, the arrested or detained MP shall be released immediately". [42]

In **Moldova** parliamentarians enjoy full immunity against any judicial prosecution, except of cases of flagrant offence. There have been several attempts to amend the legislation to exclude or at least reduce this immunity, but none was carried out.

However in October 2015 the immunity of an MP and former prime minister (Vlad Filat) was lifted by Parliament and he was arrested for passive corruption, which was seen in strong connection with the major bank fraud at the end of 2014[43]. This was the first time an MP's immunity had been lifted since 2006, out of six requests by the Prosecutor General.[44] Judges also have special rules on immunity. A judge cannot be detained, arrested or searched, except in case of a flagrant offence, without the prior approval of the Supreme Council of Magistrates. Criminal investigation against a judge may only be initiated by the Prosecutor General or his/her First Deputy, or in the latter's absence by another prosecutor appointed by the Prosecutor General, with the prior consent of the Superior Council of Magistracy. In cases of flagrant offences and, since 2013, also in cases of offences of money laundering, passive corruption, trading in influence and illicit enrichment, the Superior Council of Magistracy consent is not necessary. A judge cannot be detained, arrested or searched, except in case of a flagrant offence, without the prior approval of the SCM. Judges have also extensive administrative immunity. [45]

In **Ukraine** the parliament has been criticised for the misuse of immunity provisions by MPs, including for acts of corruption. MPs cannot be held criminally liable, detained or arrested without the consent of Parliament itself. Over 2016-2017, the Prosecution Office asked for lifting immunity from several MPs, but partly successfully as not all decisions were passed. It is necessary therefore to narrow the content and scope of their immunity, for example

[42] The Constitution of Georgia - https://matsne.gov.ge/en/document/view/30346

[43] „Billion fraud" or „billion theft" case refers to the disappearance of around 1 billion USD from the Moldovan banking sector, including the nearly a third of the National Bank Reserves, or the equivalent of 15% of Moldovan GDP, within several years, with the information publicly released at the end of 2014. For a detailed explanation of the issue see http://www.transparency.md/2016/12/20/radiography-of-a-bank-fraud-in-moldova-from-money-laundering-to-billion-fraud-and-state-debt/

[44] GRECO op. cit.

[45] Art. 19 of the Law no. 544 on the status of judges of 20 July 1995.

authorizing the conduct of covert investigations into actions of a MP without having to first obtain Parliament's consent.

The removal of MPs' immunity has been promised during several parliamentary elections, but never realised. In 2015, the President submitted the draft law regarding this issue to the Parliament, but the draft was not voted. In July 2017, the MPs submitted the draft law aiming to remove the MPs' immunity. However, as the changes are to be made in the Constitution, it is unlikely that the current parliamentary coalition will find votes for this initiative.

In June 2016 a law on amendments to the constitution was passed to limit the immunities of judges to a limited extent, for example by allowing arrest in cases of flagrant offence. Influence by politicians on judicial activity and pressure by prosecutors on judges not to acquit the accused has been frequently observed.

Summary: In Georgia MPs enjoy immunity, but with rules that permit its lifting. Moldovan MPs enjoy extensive immunity, with no clear criteria for Parliament to lift immunity. Judges' immunity was restricted in 2013 for corruption related charges. In Ukraine there was limited progress in limiting the immunity of judges in 2016.

3.7 Asset declarations

In Georgia, only senior officials (about 5,600 in number) are obliged to submit asset declarations. In 2010 an Online Asset Declaration System was launched to replace the paper declaration system. Officials are required to submit the information regarding both themselves and their immediate family members for real estate, cars, jewellery, bank accounts, cash, shares, and other assets worth over €5,000. The submitted declarations are public and are available on the web-site https://declaration.gov.ge. However, many important officials at the local level are presently exempted.

In Moldova the system of assets declarations is currently undergoing an institutional reform, after a legislative package adopted in mid-2016, under considerable external pressure[46]. The new legislation has also extended the list of subjects obliged to submit asset declaration to 70,000 persons, and the scope of declarations, including cash over ,15 average monthly wages (≈€ 4000[47]), gifts of comparable amounts received from family members and relatives, jewellery artworks, and different types of collections worth more than 20 average monthly wages (over € 5000). The declarations are submitted on paper and made public on a single website platform www.declaratii.ani.md, after they are processed and scanned. An electronic submission of declarations is in principle to become mandatory in January 2018, is uncertain

[46] The adoption of the legislative package on integrity was among the conditions put by the EU for resumption of its financial aid to Moldova after it was frozen in 2015.

[47] The value is calculated based on the nationwide monthly average wage, which in according to July 2017 Governmental Decision 2017 is about 5,300 600 Moldovan Lei (MDL) in 2017.

as the institutional reform of the ANI has stalled, and the verification of assets has been blocked.

The system of asset declarations in **Ukraine** has undergone major changes. Legislation in 2011 established the obligation for a huge number of public officials (1 million) to declare their assets, income, expenses and financial liabilities, submitted at their place of work in paper form. New legislation in 2014 made the National Agency for Corruption Prevention (NACP) responsible for the asset declaration system, and requires all declarations to be submitted in an electronic form via the NACP's web-site, where they are to be automatically published. The new law extended the scope of disclosure to include cash, assets such as jewellery, antiques and works of art worth over €5,250, and intangible assets (e.g. intellectual property rights) etc. The officials of the State Security Service, an institution perceived by citizens as corruption-prone, are exempt from the public disclosure requirements. Persons with high status and responsibility and high level of corruption risks are subject to mandatory full examination. The list of positions with high corruption risk was approved by NACP in 2016. However several bills were tabled in Parliament aiming at either watering down the reform, or delaying it to the extent possible. Technical bugs have been a continued problem delaying e-declarations, resulting in a call by the Prime Minister for the NACP members to resign.

Summary: In Georgia annual e-declarations are publicly available for anyone interested. In Moldova the reform of asset declaration and verification has stalled. In Ukraine, e-declarations are publicly available, but there are efforts to reverse the reform.

3.8 Protection of whistle-blowers, mechanisms for reporting corruption

Georgia is a frontrunner of countries regarding whistle-blowers' protection. Whistleblowing may be made anonymously, and there are extensive guarantees to protect whistle-blowers and close relatives. The whistle-blower's identity is confidential, unless s/he chooses to the contrary. In addition, the whistle-blower may not be subjected to prosecution, or be otherwise held responsible for the circumstances related to the facts of whistle-blowing. In 2015 amendments to the law allow whistle-blowers to inform civil society or mass media promptly.

In **Moldova,** there is no law protecting the whistle-blowers and no public authority assigned for whistle blowers protection. A framework Regulation on whistle-blowers covering only the public sector was adopted by the Government in 2013. Based on it, all public institutions had to adopt their internal regulations, but not all public institutions that have done this until mid-2017. The approval of a law on protection of whistle-blowers is included in the new 2017-2020 National Strategy of Integrity and Anticorruption (SNIA).

In **Ukraine**, since 2014 the law establishes a definition of a whistle-blower and procedures for protecting the whistle-blower from personal harm, and from negative measures by a supervisor or employer. The Law also provides that information about the whistle-blower may

be disclosed only with his or her consent. It also provides that anonymous reports can be accepted. The NAPC has approved methodological guidelines for the organization of work with whistleblower's reports of corruption, but has not started yet to develop the practice of whistleblower protection measures. Presently there is no information about cases of NACP's support of whistleblowers. Further guarantees and incentives for whistleblowers' activity are stipulated in the special draft law currently promoted by civic activists and reform-minded MPs and public officials.

Summary: Georgia protects and Ukraine partly protects whistle-blowers. Moldova lags behind but plans to catch up in the next years.

4. Broader policy issues

This section covers a number of important preventive measures, mainly governing the transparency of funding or ownership of important institutions (political parties) or corporate entities, including the media, public procurement. A final far-reaching question concerns the complexity or simplification of the regulatory system, which effectively concerns every sector of the economy.

Table 4. Broader corruption-related issues

	Georgia	Moldova	Ukraine
Financing of political parties	State funding, with limitations on private funding	State subventions since 2015, high thresholds for private funding	Limitations on private funding, state funding since 2015
Media ownership transparency	2016, legislation for media ownership transparency being prepared	2015-16 amendments to the Broadcasting Code improved the transparency of media ownership	2015 law establishes transparency of media ownership
Corporate governance	Georgia commits in 2016 to establishing transparency of beneficial ownership	2017, legislation on mandatory disclosure of beneficial ownership being prepared	Since 2015 mandatory disclosure of beneficial ownership
Public procurement	Independent state procurement agency; entirely electronic; system wins awards	2016 law in compliance with EU directives pending implementation	2015-16, new law and electronic tendering, wins award
Regulatory complexity	Saakashvili regime radically de-regulated; regulations now relatively simple.	Technical inspectorates reluctant toreform	Significant deregulation in 2014-17

4.1 Financing of political parties

In **Georgia** in 2013 the parliament passed amendments to the 2011 law on financing political parties. Parties with 4% of votes in parliamentary polls or 3% in local polls will get state financing. Companies gained permission to grant political parties a maximum of 120,000 GEL (about €40,000). Individuals may donate no more than 60,000 GEL (about €15,000) to parties.

In **Moldova,** a new law on party and campaign funding was adopted in 2015 in order to address some previous recommendations by international organizations[48]. All political parties that participated in the last parliamentary and local elections are eligible for public subsidies, allocated according to votes received in elections. Contrary to international recommendations, the Parliament has increased several times caps on private donations[49]. The 2017 amendments to the Electoral Code[50] reduced to some extent this amount and only for election campaigns[51], while the excessive donations ceiling for political parties remains. The ban for donations from the out-of-country sources of income (e.g. the Moldova diaspora) remains too[52]. A vague and permissive regulation and disproportionately low fines for eventual violations encourage parties to obscure their sources of funding. A thorough revision of the legislation on party and campaign funding is still required.

In **Ukraine** the law on political parties limits contributions by individual citizens to not more than 400 times the minimum wage (€41 290). Legal entities cannot make contributions exceeding 800 times the minimum wage (€ 82 580). In October 2015 a law was passed to determine state funding for political parties that won not less than 2% of the popular vote in the last general election. These measures are broadly in line with Council of Europe standards. But Ukrainian politics hardly become more open and accountable. The NACP so far failed to use its powers to hold parties' leaders and accountants liable for violating legislative requirements. [53]

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[48] https://rm.coe.int/16806c9a94.

[49] The initial proposed caps for private donations (20 average monthly wages for individuals and 40 average monthly wages for legal entities) have been increased tenfold and currently amount about 50.000 EUR for individuals and about 100.000 EUR for legal entities per year.

[50] Law no. 154 as of 20.07.2017, http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=370943.

[51] The caps for private donations were reduced to 50 average monthly wages for individuals (more than 13.000 EUR) and 100-monthly average wages for legal entities (more than 26.000 EUR) per election campaign.

[52] See for details the Constitutional Court decision of 6 September 2016 and the analysis of political party financing in the Republic of Moldova in 2016, issued by Promo-Lex, https://promolex.md/wp-content/uploads/2017/05/raport_EN_web.pdf

[53] Monitoring Report by the Center of Policy and Legal Reform, December 2016. Available in Ukrainian at: http://pravo.org.ua/img/zstored/files/FD(2).pdf

Summary: Georgia seems to have a satisfactory regime. In Moldova the amended legislation has not significantly improved the transparency of party and campaign financing, and in Ukraine the legislation has not been implemented effectively.

4.2 Media-ownership transparency

In Georgia it is planned that legislation will be presented to parliament in 2017 to assure transparency of media ownership. This issue attracted a lot of attention in 2016-17, notably in the case of the largest private TV station, critical of government policies, Rustavi 2. The government tried to use a legal dispute between its former and current owners to change ownership in order to get a more government-loyal editorial policy. While the Georgian court ruled in favour of the Government-backed owners, the European Court of Human Rights in Strasbourg took an unprecedented decision to suspend the enforcement of the Georgian court decision, until there is a decision at the Council of Europe level.

In Moldova a detailed 2012 study[54] argued that a lack of transparency in media ownership leads to concentration in the hands of interest groups, jeopardizing media pluralism. In 2015, the Parliament passed the amendment to the Broadcasting Code, introducing transparency on media ownership[55], but failed to prohibit the registration of media ownership in offshore companies[56]. The private radio and TV broadcasters were obliged to disclose the identity of their beneficial owners and their shares in the company. This information was made public in November 2015[57] and confirmed that the media market is facing a media ownership concentration[58], with over 80 % of TV stations owned by politicians or people close to political parties[59]. These generated a highly politicised and polarised media sector, where owners often interfere into the editorial policy. The sanctions for breaching the provision on transparency of media ownership were introduced only in March 2017[60]. However, the

[54] Transparency of Media Ownership in the Republic of Moldova
http://www.ijc.md/Publicatii/studii_mlu/transparenta%20media%20eng/studiu-transparenta-eng.pdf

[55] Law no. 28 as of 05.03.15 introduced the provision on transparency of media ownership (art. 66, pct. 6).

[56] "The Law on Media ownership transparency voted in Parliament without the amendment on offshore zones", http://media-azi.md/en/stiri/law-media-ownership-transparency-voted-parliament-without-amendment-offshore-zones.

[57] Mold-street.com, "TV owners in Moldova: American billionaires, local businessmen, Russian banks and millionaires from Tiraspol", http://www.mold-street. com/?go=news&n=4266.

[58] Until May 2017, 5 out of 5 TV stations with a nationwide coverage were owned by a single person- the leader of the ruling Democratic Party.

[59] Nations in Transit 2017, Moldova, https://freedomhouse.org/report/nations-transit/2017/moldova

[60] A gradual sanction was introduced, starting with a fine of about €750 up to license withdrawal (Law no. 50 as of 30.03.2017)

existing regulation on media transparency ownership remains inadequate as it allows the circumvention of legislation by using interposed entities[61], or offshore companies.

Ukraine adopted in September 2015 a law to ensure the transparency of ownership of broadcasting companies.[62] As a result, all the national TV radio broadcasters are now obliged to disclose information about their final beneficiaries and their political affiliations, including their families' commercial and political ties. Around 75% of the audience in TV and radio broadcasting is in the hands of four owners: Kolomoisky, Pinchuk, Firtash and Akhmetov, which shows rather high media ownership concentration. Another positive development in the media sector is new legislation that resulted in an establishment of the first public broadcasting company in January 2017.

Summary: Georgia threatens media independence through a TV case. In Moldova media ownership transparency remains inadequate despite improvements. In Ukraine media ownership is transparent, but concentrated in the hands of oligarchs.

4.3 Corporate governance, beneficial ownership of companies.

Disclosure of beneficial ownership in companies is important to ensure business integrity and to prevent conflicts of interest and illicit enrichment of public officials.

Georgia made commitments to explore the feasibility of establishing a public central register of company beneficial ownership information, and seeks bilateral arrangements that to ensure full access to the beneficial ownership information of companies incorporated in partner countries. Currently, Georgia has an online public register of companies about ownership. But if a company, registered in Georgia, is owned by an offshore-registered entity, no information about a real owner of the shares is publicly accessible. Only the broadcasters are obligated to disclose their beneficial owners; Georgia banned ownership of broadcasters by offshore-registered firms in 2011.

In Moldova, under the Anti-money laundering and Counter-Terrorism Financing legal framework the reporting entities must identify and verify the beneficial owners when suspicious transactions or transactions exceeding a certain amount are concerned[63]. In addition since October 2014 Moldovan banks have been obliged to make public the identity of their shareholders and beneficial owners[64]. However the 2015 banking fraud scandal and

[61] In May 2017, the media monopolist Vladimir Plahotniuc gave up the ownership rights of 2 TV companies he owned to his image adviser, Oleg Cristal.

[62] 'Media Ownership in Ukraine', http://ukraine.mom-rsf.org

[63] Occasional transactions amounting more than 50000 MDL (about €2500) and wire transfers of more than 15000 MDL (about € 750%).

[64]http://www.bnm.org/ro/content/recomandari-cu-privire-la-identificarea-beneficiarului-efectiv-aprobate-prin-hca-al-bnm-nr.

the Laundromat case brought to light the political dependency of the reporting institutions, which have failed to apply the existing tools and intervene according to their mandate. The bank fraud pointed also to the problem of offshorization faced by the business and banking sectors. This resulted in stricter conditions on transparency of beneficial ownership imposed by FMI and the EU for resuming the financial assistance[65]. In 2016, the National Bank launched a process of complete identification of ultimate beneficial owners of all Moldovan banks, which was due on June 2017. In March 2017, the Parliament passed the first reading a new law on money laundering which will ban the registration of legal entities that refuse to submit the information on their ultimate beneficial owners.

Ukraine has been the first country in the region to establish the mandatory universal disclosure of beneficial ownership of legal entities. Such information is accessible to anyone. In February 2015, the Parliament extended the scope of information to be disclosed by public officials in their electronic annual declarations, notably to disclose the legal entities in which they or their family members are beneficial owners. In addition, Ukraine became the first country to integrate its national central register of beneficial ownership with the Open Ownership Register – a global register of ultimate beneficiaries.[66]

Summary: The Georgian government is committed to exploring feasibility of establishing a public central register of company beneficial ownership information. In Moldova the legal framework for disclosure of beneficial ownership of companies has been improved after the 2015 bank fraud. Ukraine has made major progress in this field.

4.4 Public procurement

This has been always a major site for corrupt behaviour. The three Association Agreements and DCFTAs contain commitments to approximate EU legislation in this field to a substantial degree.

Georgia's public procurement system has seen progressive reform and development since its first law in 1998 and reforms in 2005 and 2006. The system is being aligned on international best practice, with a leading role for its independent State Procurement Agency. The system has been entirely electronic since 2010, and has won awards for its outstanding quality by the UN and EBRD.

Moldovan public procurement legislation has been under continuous adaptation since its first law adopted in 1997. Digital e-procurement has been under preparation for some years, and

[65] https://www.imf.org/en/Publications/CR/Issues/2017/05/01/Republic-of-Moldova-First-Reviews-Under-the-Extended-Credit-Facility-and-Extended-Fund-44870

[66] TI Ukraine (2017) Information about beneficial owners will be listed in a public register. https://ti-ukraine.org/en/news/information-about-beneficial-owners-will-be-included-in-a-public-register/

is expected to begin functioning in 2018[67]. The latest law of April 2016 secures approximation on key EU directives[68]. However, these significant legislative improvements were undermined by delay in recruiting key personnel for the Agency for Solving Complaints, eroding confidence in the newly-created institution[69], [70].

In Ukraine government policies are currently engaged in a programme of public procurement reform in line with European practice, introducing since April 2016 a system of transparent electronic tendering (called Prozorro), which has won an international 'World Procurement Award'. Anyone, including civil society and general public, can check the analytical data in the real time. Ukraine also acceded to the World Trade Organisation (WTO) Agreement on Government Procurement (GPA). This allowed GPA countries to bid for Ukrainian public contracts and gave Ukrainian businesses access to public procurement markets in the EU states. Remaining problems include the quality of the tender committees, and controls over execution of the contracts. To engage citizens in controlling the process, the Prozorro website provides information on how to submit appeals and complaints.

Summary: The overall picture is one of high quality systems in Georgia and Ukraine, but delay in reform measures in Moldova.

4.5 Minimisation of regulatory obligations

It is well recognized that business regulations that require inspectorates to control for their implementation are a main source of corruption. Visits of the 'inspector' calls for bribes for the needed certificate to be delivered. In the typical post-Soviet states enterprises are subject to a continuous stream of inspectors. This introduces a serious trade-off for the policy maker. De-regulation may be good to reduce corruption, but under some circumstances it can mean under-regulation, for example unsafe food and work practices, etc.

Georgia is the outstanding case of a country whose reformist government under President Saakashvili, starting in 2004, adopted radical de-regulatory approach under the slogan, 'if an agency cannot be reformed, abolish it'. Concretely the traffic police, labour inspectorate, technical safety checks for cars and food safety inspectorate were all abolished. The traffic policy was replaced by a patrol policy with reformed functions, increased remuneration and extensive training for policy to live up to international standards. The Association Agreement and DCFTA with the EU on the other hand makes for many legal approximation requirements to conform with EU regulations, many of which have to be backed up by state control

[67] Deadline established by the two-year Action Plan of the Public Procurement System Development Strategy for 2016-2020, http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=368482

[68] http://www.gov.md/en/content/government-approved-new-rules-public-procurement-systems-work

[69] https://www.zdg.md/editia-print/investigatii/licitatii-pentru-familia-sefului-de-la-achizitii/.

[70] Iurie Morcotilo, Position paper "Republic of Moldova-one year without an institution for solving complains in the public procuremn", thttp://www.expert-grup.org/media/k2/attachments/NotI_de_poziyie_ANSC.pdf

mechanisms and inspections, in particular for food safety and the labour market, where Georgia has had to re-introduce inspectorates that had been abolished. There is no particular evidence that corruption is being re-introduced as a result, but the risk that this may happen is appreciated, and the search for minimal or most efficient regulations remains a keen concern.

In Moldova, the general trend is to adopt European standards mainly due to the insistence of the national standardization body. According the Cost of Doing Business survey for 2016, the share of companies inspected, and length of inspections, has decreased significantly after a moratorium on state inspections was applied during 2016. This also cut by half the number of companies fined. However, the number of companies that paid bribes during the inspections has increased compared to 2015, with notable black spots in environmental and standard-monitoring bodies etc. However there is considerable resistance to reform of traditional regulatory regimes, such as technical standards for industrial and food products based on former Soviet GOST standards.

In 2017, Ukraine abolished a number of mandatory licensing and permits for some industry sectors and introduced the principle of "silent consent" whereby companies wishing to engage in a certain activity need only to make a declaration to the state, instead of requesting permit. The former Soviet system of GOST standards has been dismantled, and a completely new system of technical regulations was introduced, together with new institutions and online services. In 2016, the Cabinet of Ministers approved measures proposed by the World Bank in its 'Doing Business Roadmap' for Ukraine, but its implementation in practice suffers from considerable delays. In 2017 the Government launching an automatic system of VAT reimbursement – one of the notorious corruption risks for companies. The process of harmonisation with the EU norms and practices requires further efforts.

Summary. In Georgia a fundamental feature of its anti-corruption reforms was its coupling to comprehensive economic liberalisation and deregulation reforms. In Moldova, though the number of inspections has recently decreased, the level of bribery did not go down. Ukraine took several important measures to simplify business regulations.

5. Conclusions

From the above it is clear that anti-corruption policy has extremely wide-ranging and cross-cutting aspects. It is far from being a single policy that is switched on or off. This paper has identified 20 headings that range across the broad matters of political will and strategy down to many quite technical fields of legislation. It is admittedly hazardous and probably contentious to distil this mass of information into overarching assessments. Nonetheless, having assembled the information item by item, an attempt can be made.

Table 5 therefore offers a very simple summary of all the 20 elements treated in this paper. Of course each item deserves a more refined assessment, which the texts above have provided within the limits of a compact paper, rather than a whole book. Still, the table allows

a counting of the number of headings that seem to be 'more or less' OK, versus those that remain problematic. The picture that emerges is:

- Georgia scores 17 out of twenty, by far the best score
- Ukraine scores 10 out of twenty, with partial progress qualified by remaining political ambiguities
- Moldova scores 4 out of 20, with many, deep problems remaining

Table 5: Summary assessments of anti-corruption policies

	Georgia	Moldova	Ukraine
Anti-corruption strategies and institutions			
1. Political will	OK	Not OK	Not OK
2. Anti-corruption strategies and plans	OK	OK	OK
3. Anti-corruption institutions	OK	Failings	Failings
4. Integrity of public service	OK	Not OK	Improving
5. Integrity of judiciary	OK	Not OK	Incomplete
6. Role of civil society	OK	Undermined?	Undermined?
Legal provisions related to anti-corruption policies			
7. Criminalisation of corruption	OK	OK	OK
8. Corporate liability for corruption	OK	OK	OK
9. Illicit enrichment	OK	Lax	OK
10. Sanctions	Overdone	Lax	Lax
11. Asset declarations	OK	Stalled	Uncertain
12. Confiscation of assets	OK	Lax	Big open task
13. Statute of limitations	OK	OK	OK
14. Immunities	OK	Unclear	Not OK
15. Whistle blowers	OK	Lagging	OK
Broader corruption-related issues			
16. Financing of political parties	OK	Not OK	OK
17. Media ownership independence, transparency	Not OK	Not OK	OK
18. Corporate governance	Ongoing	Not OK	OK
19. Public procurement	OK	Lags	OK

20. Regulatory simplification	OK	Improving	Improving

Note: 'OK' should only be interpreted as 'more or less' OK, since each entry can be subject to qualifications. The intention is to provide only a broad brush summary.

Of the three countries Georgia has clearly been the front-runner in combatting corruption. This was due to radical policies, ruthlessly implemented by the Saakashvili administration following the Rise Revolution. Despite scepticism over whether this would be sustained under subsequent governments, in fact the achievement of a largely de-corrupted society seems intact. The encouraging lesson from Georgia is therefore that 'it can be done', albeit with the caution that this was achieved with a particularly strong political will and radical measures that many countries are unwilling to implement.

For their part Moldova and Ukraine have been trying to catch up, with much legislative activity following internationally accepted templates for institutional initiatives and specific legislative measures. There have been more reforms in Ukraine than in Moldova; or on the side of problems, Moldova is a more extreme case of oligarchal 'state capture' than in the bigger and more complex Ukraine. However, in both cases there remains ambiguity over the political will at the highest level to back up this considerable legislative activity sufficiently to ensure its adequate implementation. Establishment of the institutional and legislative 'infrastructure' for anti-corruption policy has been important and necessary achievement in both Moldova and Ukraine. But to some significant degree this infrastructure lies still in wait of adequate political momentum to give strategic impact to the declared policy.

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