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**Forcefully Nudging Democracy: Evaluating the Effect of the European
Union's Leverage on Ukraine's Anti-Corruption Reforms**

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Abstract

This paper strives to understand the role of the European Union (amongst other actors) in the creation of Ukrainian institutional rule of law and anti-corruption reform. By using the European Neighborhood Policy—specifically the Association Agreement between the EU and Ukraine and its related conditionality—as a starting point, this study analyzes the influence of the EU in Ukraine’s institutional anti-corruption reform efforts. Institutional reform, here, refers to the restructuring, refocusing, or creation of anti-corruption institutions and practices which bolster the quality of democracy (as benchmarked by impartial organizations such as Transparency International) and rule of law in Ukraine. Conditionality refers to the specific conditions that international actors tie to aid and rewards in order to influence the development of a country. This paper argues that the European Union, while influential, does not take into account its incapacities and weaknesses as an organization which prevent it from better impacting the countries in its sphere of influence. This paper utilizes quantitative and qualitative methods such as interviews, document analysis, and parliamentary vote analysis in order to paint a picture of the current state of affairs in Ukraine, the shortcomings and successes of European policy, and the role of domestic actors in facilitating or preventing effective reforms. The findings of this study show that, despite a clear European influence in Ukraine, the European Union’s “Neighborhood Policy”—through its Association Agreement with Ukraine—continues to ignore pre-existing incentive structures within the country, mitigating many of the gains made through conditionality. Furthermore, this paper demonstrates a diminishing relevance of the EU’s Association Agreement in both Ukrainian political and civil society. In understanding the influence of the European Union and how it interacts with domestic actors, nuances of Ukrainian society and shortcomings of the European external affairs model are illuminated. Successes of European conditionality are also showcased, demonstrating which aspects of European soft power are most effective in the context of democratization. Policy recommendations will focus on the implications of this soft power and the ways in which it can be better leveraged to promote democratic values in Ukraine.

Introduction

“You have to understand, George. Ukraine is not even a country,” explained Vladimir Putin to George Bush in 2008.¹ Yet, in August, Ukraine will have been independent for 30 years. Throughout its relatively recent independent history, Ukraine has nevertheless been the site of a battle for influence between Russia and the West. Vladimir Putin, as supported by his quote, sees Ukraine as many Russians do, as “Malorossiya” or “Little Russia.” The West sees Ukraine as a separate country since the early 1990s, one which could be a triumph of democracy in Eastern Europe, but that instead is caught between Eastern and Western influences. Indeed, at the end of the Cold War, international relations experienced a shock which disrupted the ways the democratic, free-market West interacted with the entire Soviet bloc. Instead of preventing these nations’ rise and undermining their administrations, their newfound independence caused Western governments—notably Europe and the United States—to begin to see them as potential democracies. Thus, the new strategy became to influence them and nurture them into countries modeled after their own administrations and systems of government. With some countries, such as Poland and Latvia, it worked quite well, as evidenced by successful democratization according to prominent NGOs and watchdogs.²³ With others, such as Bulgaria and Ukraine, the progress is much more mixed. Due to a multitude of factors—including corruption, selective judiciaries, external influences, and internal turmoil—there are many post-Soviet countries which have struggled with democratization. Ukraine offers an especially revealing window into the successes

¹ Cogan, Charles G. ““You Have to Understand, George. Ukraine Is Not Even a Country.”” *HuffPost*, 25:59 400AD, sec. Politics. https://www.huffpost.com/entry/you-have-to-understand-ge_b_4976198.

² Transparency International. “Latvia.” Accessed February 21, 2021. <https://www.transparency.org/en/countries/latvia?token=6snrgzysdOvbqjjTrlm3mmhDFeRS4DrX>.

³ Transparency International. “Poland.” Accessed February 21, 2021. <https://www.transparency.org/en/countries/poland>.

and continuous setbacks of the post-Cold War geopolitical realignment, especially as it pertains to the successes and shortcomings of European influence.

Throughout the past 30 years, Ukraine has gone back and forth in terms of democratic progress. Many new presidents brought with them promises of reform and change, but the results have seldom lived up to Ukrainians' expectations, as voiced through subsequent elections and revolutions. When presidents Viktor Yushchenko and Petro Poroshenko came to power in 2004 after the Orange Revolution and 2014 after the Euromaidan Revolution, respectively, they promised anti-corruption reform and a general overhaul of the judicial system in order to put the country on the right track. These promises were made mainly due to public pressure brought on by the prospect of European association, and further *rapprochement* with the West. However, both presidents failed to deliver on their promises due to political infighting, accusations of corruption, and external pressures which slowed the paces of reform and caused both candidates to lose by a landslide in the next elections.⁴ Indeed, throughout the last 30 years, the Ukrainian people have borne witness to multiple administrations, endless accusations of corruption, and an overall struggle with democracy. Ukraine's government is characterized by cycles of reform, backsliding, and revolution; but seldom does it have an effect on the overall democratization of the young nation, which remains incomplete. Many see Ukraine as hopeless, a country which will never be able to rid itself of its institutional traps,⁵ but by analyzing Ukraine's progress as well as its setbacks with regards to history and external influence, this paper assesses the country's prospects for breaking out of familiar cycles.

⁴ Pifer, Steven. "Ukraine's Zelenskiy Ran on a Reform Platform — Is He Delivering?" *Brookings* (blog), July 22, 2020. <https://www.brookings.edu/blog/order-from-chaos/2020/07/22/ukraines-zelenskiy-ran-on-a-reform-platform-is-he-delivering/>.

⁵ Ibid

These cycles of backsliding are not unrelated to the Ukrainian-Russian relationship. The people of Ukraine, as well as many government officials, want to move towards the West with a gradual *rapprochement* to Europe in hopes of eventually achieving integration into the EU.⁶⁷ However, Russia has historically had immense economic influence over Ukraine as Russia is its largest importer of oil and gas. In fact, Russia has leveraged this power in the past, cutting off the supply of Russian energy to Ukraine in the middle of the winter.⁸ Moreover, since the construction of their Nord Stream pipeline, the Russian state-owned energy company, Gazprom, can cut off the gas to Ukraine without hindering their supply to Europe, making it easier to engage in political retribution with Ukraine.⁹ In 2006 and then again in 2009, Russia cut off gas to Ukraine after price disputes, alleging that the Ukrainians had been siphoning gas off that was meant for European customers.¹⁰ At the time, Ukraine still had significant leverage, as their pipelines were needed to transport the majority of Russian gas to Europe, but this is no longer the case. And so, Ukraine has begun to look towards other powers in order to counterbalance Russia's continuing campaign of influence and power in Ukraine.

Among the external efforts to curtail the effects of Ukraine's uncertain post-Soviet situation and bring democratic stability to Ukraine and other neighboring countries is a policy set forth by the European Union (EU): the European Neighborhood Policy (ENP). The ENP was

⁶ Grødeland, Åse Berit. "Elite Perceptions of Anti-Corruption Efforts in Ukraine." *Global Crime* 11, no. 2 (May 2010): 237–60. <https://doi.org/10.1080/17440571003669241>.

⁷ Wike, Richard, Jacob Poushter, Laura Silver, Kat Devlin, Jennell Fetterolf, Alexandra Castillo, and Christine Huang. "European Public Opinion Three Decades After the Fall of Communism." *Pew Research Center's Global Attitudes Project* (blog), October 15, 2019. <https://www.pewresearch.org/global/2019/10/15/european-public-opinion-three-decades-after-the-fall-of-communism/>.

⁸ Aris, Ben. "Ukraine Faces a Bleak Winter as Russia Prepares to Cut Off Gas." *The Moscow Times*, May 6, 2019. <https://www.themoscowtimes.com/2019/05/06/ukraine-faces-a-bleak-winter-as-russia-prepares-to-cut-off-gas-a65496>.

⁹ Gazprom. "Nord Stream." Accessed October 28, 2020. <https://www.gazprom.com/projects/nord-stream/>.

¹⁰ Pifer, Steven. "Heading for (Another) Ukraine-Russia Gas Fight?" *Brookings* (blog), August 30, 2019. <https://www.brookings.edu/blog/order-from-chaos/2019/08/30/heading-for-another-ukraine-russia-gas-fight/>.

created after the 2004 enlargement of the European Union, which saw fellow post-Soviet states Poland, Slovenia, and Hungary gain membership after extensive democratic reforms brought about thanks to European leverage.¹¹ It's considered an umbrella policy encompassing all foreign policy relating to the EU's sphere of influence ranging from Ukraine, Armenia, and Azerbaijan in the East to Tunisia, Syria, Egypt, and Morocco in the South. Some countries, such as Ukraine, signed Association Agreements with the European Union, trade agreements allowing developing nations access to the incredibly powerful European Common Market. These serve as mechanisms of EU soft power abroad and are often considered prerequisites for EU accession, particularly regarding the Balkan states. Interestingly, while there have been periodic and sporadic improvements to Ukrainian democracy, the nation still struggles with its regime and compliance to international norms, even though most politicians and the general public agree on the necessity of European association. However, Ukraine has an incredibly complicated relationship with Russia, which continues to pressure Ukrainian administrations into signing countervailing agreements in direct response to EU influence, forcing Ukrainian officials into a difficult decision. Coupled with Ukraine's incredibly wealthy and influential oligarchs, its deeply entrenched culture of corruption, and a largely unchanging "old-guard" administrative staff, the political elites in Ukraine have continuously circumvented effective reform.¹²¹³ This represents a particular intra-Ukrainian issue which is deeply rooted in Ukraine's history and norms and is often the target of European policy concerning Ukrainian democratization. The EU's reform agenda is rather centered around these issues of culture, as they are one of the largest causes of Ukraine's setbacks in recent years.

¹¹ Vachudova, Milada. "Corruption and Compliance in the EU's Post-Communist Members and Candidates." *Journal of Common Market Studies* 47 (September 1, 2009): 43–62. <https://doi.org/10.1111/j.1468-5965.2009.02013.x>.

¹² Nasuti, Peter. "Administrative Cohesion and Anti-Corruption Reforms in Georgia and Ukraine." *Europe-Asia Studies* 68, no. 5 (July 2016): 847–67.

¹³ Åslund, Anders. "The Maidan and Beyond: Oligarchs, Corruption, and European Integration." *Journal of Democracy* 24, no. 3 (July 2014): 64–73.

The topic of Ukraine has become more and more important in recent years with the renewal of tensions between Russia on one hand and Europe and the United States on the other, reminiscent of the Cold War. Despite this state of affairs, existing literature coming from the United States and Europe is outdated, as there are few contemporary studies of the effects of Western foreign policy on the democratization of Ukraine. Although government bodies publish in-depth reports, they often do little to explain the connection between foreign policy, anti-corruption reform, and democratization. In fact, there is literature which examines the links between anti-corruption reform and democratization, as well as foreign policy and democratization; but it is mostly theoretical, and very little of it is centered around contemporary Ukraine. This project aims to analyze the links between the Association Agreement, the European Neighborhood Policy, and Ukraine's embattled democracy. Specifically, it seeks to understand: a) whether these EU initiatives have met the goals set for themselves; b) what the effect of these initiatives have been on Ukrainian rule of law, corruption, and reform; and c) whether it is possible to draw broader conclusions about the health of Ukrainian democracy, its institutional reforms, and European influence. This project also aims to understand if the effect of the Association Agreement on Ukraine has been fruitful vis-à-vis the stated democratic interests and goals of the European Union. Corruption is one of the most prevalent forms of democratic backsliding in Ukraine and understanding the effect, if any, of the European Neighborhood Policy by way of the Association Agreement on corruption in Ukraine will allow for a comprehensive analysis of European influence on Ukrainian democracy. This project builds off of the vast research on democratic erosion and transition, European influence in Ukraine, and the EU's foreign policy. Rather than simply explore the political history of Ukraine, this paper uses a policy framework as a lens to

examine the ways in which ideal-driven democratic policy can work, particularly in the context of a post-Soviet state.

The ways in which the European Neighborhood Policy has succeeded and failed are incredibly important to inform future policy. Nations such as Ukraine are young compared to many countries throughout the world, which has made it more difficult to comprehend why some policies succeed and why other policies fail. The 30-year history of independent Ukraine is not enough to fully understand the intricacies and workings of its democracy and people, but periodic evaluations of current foreign policies can help to better grasp the progress they've encouraged or the adjustments they may need. Furthermore, by understanding the failings of current policies, future interventions and legislation can be improved to increase their effectiveness. Ukraine plays a pivotal role in Europe's foreign policy towards Russia and its geopolitical strategy; ineffective policy towards Ukraine could potentially push the country towards Russia, allowing them to expand their sphere of influence. Given the strong ideological differences between Russia and Europe, this could increase tensions in the region as well as call into question the viability of the European Union's Eastern European policies.

Past being a useful evaluation of European policies, the insights afforded by the project could have broad applications to other contexts in which international relations between states at different stages of democratic development remain in flux. These sorts of interventions have often been military operations and notoriously unsuccessful, but the use of institutional and economic policy to encourage democracy could potentially be a model for foreign policies across the world, though the shortcomings and drawbacks of soft power influence must also be taken into account. Understanding whether or not this policy works is incredibly important to determine the costs and benefits of soft power as a strategy for implementing ideology and institutions in a country at risk

for backsliding, both for to the entity acting and the entity being acted upon. This project will aim to rigorously evaluate this sort of policy, extrapolate the findings, and make recommendations for a larger global context.

Finally, there has been much debate regarding the relevance and status of international organizations. As the Cold War has been over for 30 years, many have questioned the evolving role of Cold War-era organizations. Analysis of this policy will also be important to understand the pertinence and place of organizations such as the European Union, IMF, and other Western-oriented institutions seeking to impart democratic values and gain influence in the region through conditionality and aid. The European Union, although not created to protect the West during the Cold War, has very strong ideological and values-based initiatives to promote democracy throughout their sphere of influence and the world, and thus the results of one of its policies could potentially demonstrate a need or a shift in our world's priorities. The world has greatly evolved since 1991, and our institutions need to be examined in order for them to better serve their constituents and affect change in the world. The end of the Cold War presented a foreign policy challenge to Western institutions and forced them to shift their priorities; this project aims to evaluate how successfully it has deployed its institutional strategies in contexts which, until very recently, were a world apart from Brussels.

History of Ukraine's European Integration

In order to better understand the significance of the signing and ratification of the European Union's Association Agreement with Ukraine, it is necessary to provide a brief history pertaining to the process of instating the agreement. In the late 1990s, President Leonid Kuchma had taken measures of *rapprochement* with the European Union, by signing a Ukraine-NATO Charter on

Distinctive Partnership in 1997 and issuing a decree that approved of a “Strategy for Ukraine’s Integration into the EU” in 1998. For years, however, Brussels refused to acknowledge Ukraine as a potential member of the European Union.¹⁴ Under Viktor Yushchenko—who had promised anti-corruption reforms and closeness with the EU—efforts were made to associate with the European Union in the eventual hopes of becoming a member, but the EU was too preoccupied with the veto of the EU Constitution in France and the Netherlands to engage.¹⁵

Upon the arrival of Viktor Yanukovich to power in 2010, the European-Ukrainian project began to pick up speed. Although Yanukovich had clear authoritarian tendencies, Brussels did not want to risk pushing Ukraine back towards Russia and mentioned the possibility of signing an Association Agreement with Ukraine at a summit in 2013.¹⁶ However, the project encountered many roadblocks due to Yanukovich’s authoritarianism. Indeed, the largest stipulation set forth by the EU was the release of opposition leader Yulia Tymoshenko, who was widely believed to have been wrongfully imprisoned by the Yanukovich regime.¹⁷ Other stipulations included improving election legislation and implementing reforms in line with previous commitments.¹⁸ Ukraine did not meet these stipulations, as Yanukovich notably refused to release Tymoshenko, causing any hopes of association to dissipate. Experts have posited that this was due to Russian influence, with Yanukovich placing the short-term considerations of access to the Russian market over the long-term benefits of access to the EU market.¹⁹ This refusal to accept the European

¹⁴ Haran, Olexiy. “Ukraine’s Long Road to European Integration.” *Ponars Eurasia*, February 18, 2014. <https://www.ponarseurasia.org/memo/ukraine%E2%80%99s-long-road-european-integration>.

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Sushko, Oleksandr. “A Fork in the Road? Ukraine between EU Association and the Eurasian Customs Union.” *Ponars Eurasia*, September 27, 2013. <https://www.ponarseurasia.org/memo/fork-road-ukraine-between-eu-association-and-eurasian-customs-union>.

¹⁸ Ibid

¹⁹ Pifer, Steven. “Why Did Ukraine’s Yanukovich Give in to Russian Pressure on EU Deal?” *The Brookings Institution* (blog), December 2, 2013. <https://www.brookings.edu/on-the-record/why-did-ukraines-yanukovich-give-in-to-russian-pressure-on-eu-deal/>.

Union's conditionality led to the aforementioned Euromaidan protests of 2013 and 2014, which ended in the removal of Yanukovich from office, his self-imposed exile to Russia, and the election of Petro Poroshenko. Conditionality refers to the conditions tied to aid and access to the European Union, often written into EU agreements allowing them to leverage their resources for democratization.

Finally, under Petro Poroshenko, the Association Agreement was signed in 2014 and fully ratified by the European Union in 2017. The deal remained unratified for three years as it needed unanimous approval by all member states, and a Dutch referendum found 61% of people in the Netherlands to oppose this deal, leading to the negotiation of a legally binding supplement to the deal that ensured that the agreement would not grant Ukraine automatic EU membership or provide any guarantees of military aid. This demonstrated Dutch (and more broadly, European) doubts as to the stability of Ukraine.²⁰ After the Dutch legislature voted in favor of the modified Association Agreement in July of 2017, the deal was officially ratified by the EU and a few months later, a visa liberalization regime was put in place which allowed Ukrainians visa-free entry into the EU. Many of the elements of the deal had already been provisionally applied since 2014, but its ratification allowed for the full effect of the agreement, including cooperation on matters of foreign policy, economy, justice, and science and technology.²¹ Although the deal was fully ratified in 2017—given the provisional application of many of the elements and the surge of reforms beginning in 2014—this paper will consider 2014 as the beginning of the implementation of the Association Agreement between the EU and Ukraine.

²⁰ Jozwiak, Richard. "After Four Years Of Drama, EU-Ukraine Association Agreement Comes Into Force." *RadioFreeEurope/RadioLiberty*. August 31, 2017. <https://www.rferl.org/a/eu-ukraine-association-agreement-goes-into-force-after-four-years-drama/28708426.html>.

²¹ Ibid

It is therefore evident that the ratification of the Association Agreement with Ukraine—at the time the largest, most extensive policy with a non-EU country ever published by the EU—was not a process that took place overnight.²² Four years of setbacks and hesitations finally culminated in this landmark agreement, and this paper demonstrates the mixed effects it has actually had on Ukraine and its reforms.

Literature Review

This paper focuses on the Association Agreement between the European Union and Ukraine, and the influence it has had in curtailing democratic backsliding—particularly regarding institutional reform—but it is necessary to acknowledge the findings that have influenced the study of democratic transition and erosion, specifically as it relates to Ukraine’s European relations.

The study of democratic transition is particularly applicable in the context of Ukraine as Ukraine is often not considered to have achieved a full democracy, meaning that it continues to be in a state of transition. The field of democratic transition studies countries’ progress and setbacks relative to the achievement of democracy by modern democratic standards. These standards are elaborated upon by Lipset, who argues that—in order to ensure the stability of a democratic system—there must be concerted efforts to ensure the “effectiveness and legitimacy” of the system.²³ This effectiveness and legitimacy is threatened by the gradual erosion or lack of democratic norms, institutions, and values; and while scholars may approach the understanding of democratic erosion through different lenses, the root causes are fairly unanimous. Indeed, political

²² Sushko, Oleksandr. “A Fork in the Road? Ukraine between EU Association and the Eurasian Customs Union.” *Ponars Eurasia*, September 27, 2013. <https://www.ponarseurasia.org/memo/fork-road-ukraine-between-eu-association-and-eurasian-customs-union>.

²³ Lipset, Seymour Martin. “Some Social Requisites of Democracy: Economic Development and Political Legitimacy.” *The American Political Science Review* 53, no. 1 (March 1959): 69–105.

leadership, political culture, political institutions, political economy, social structure, and international factors are all causes—individually or in combination—of democratic backsliding or inability to create a lasting democracy.²⁴ This paper will use these definitions and characteristics of democracy and erosion in order to analyze the state of democracy in Ukraine and trace the effect of the European Union on its democratization.

Specifically regarding Eastern and Central Europe, Linz and Stepan as well as Bernhard have explained the ways in which democratic transition has been hampered by Soviet legacies and bolstered by civil society. Linz and Stepan argue that the paths taken of liberalization (but not of democratization) and the republic-level competitive elections following the collapse of the Soviet Union had “severe disintegrative consequences” for post-Soviet states, doing little to create legitimate democratic structures.²⁵ They further argue that the USSR’s foremost successor state, Russia, would have complicated the democratic transition of post-Soviet states regardless of what choices were made, but that the prioritization of economic restructuring over democratic state restructuring led to particularly weak and delegitimized branches of government.²⁶ Bernhard builds upon these notions of transitional setback by introducing and analyzing the concept of civil society. He defines civil society as the autonomous public space situated between the official public life of the state and that of private or communal life, often characterized by associations, organizations, parties, and movements.²⁷ This is the definition of civil society which will be used in this paper. He argues that this same civil society is an integral condition for democratic

²⁴ Lust, Ellen, and David Waldner. “Unwelcome Change: Understanding, Evaluating, and Extending Theories of Democratic Backsliding.” USAID, June 11, 2015.

²⁵ Linz, Juan J., and Alfred C. Stepan. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Baltimore: Johns Hopkins University Press, 1996. <http://pi.lib.uchicago.edu/1001/cat/bib/2424667>.

²⁶ Ibid

²⁷ Bernhard, Michael. “Civil Society and Democratic Transition in East Central Europe.” *Political Science Quarterly* 108, no. 2 (1993): 307–26. <https://doi.org/10.2307/2152014>.

government, and that the reconstitution of civil society has played a significant role in the democratic breakthroughs of post-Soviet states.²⁸ This literature is particularly pertinent to Ukraine, which grapples with its Soviet legacy yet enjoys a particularly lively and active civil society, setting up both progresses and setbacks for democracy in contemporary Ukraine.

While the study of democratic erosion implies the existence of a stable democracy prior to backsliding (an implication which is inapplicable to Ukraine), many aspects of democratic erosion do apply to the tumultuous relationship Ukraine has had with democracy. The field of democratic erosion observes countries' slow and gradual turn towards authoritarianism, where political institutions are undermined, and the public becomes less and less relevant to decision-making. It is often agreed upon that today's authoritarianism tends to be sneakier, eroding institutions and consolidating power little by little until the eventual arrival at full-fledged dictatorship, often realized too late to stop.²⁹ However, scholars have approached democratic erosion from many different perspectives. Bermeo categorizes backsliding through six different categories: classic coups d'état, executive coups, election day vote fraud, strategic harassment and manipulation, promissory coups, and executive aggrandizement. Similarly to Bernhard, she presents the antidote to these sorts of backsliding; civil society which, according to her, can "claw back" democratic power.³⁰ Thus, without a civil society, this gradual authoritarianism or continuation of undemocratic norms is more likely. By contrast, Varol focuses on a different aspect of democratic erosion; according to him, authoritarianism today is "stealthy" because authoritarian practices are concealed by law as would-be autocrats work within existing laws or pass new laws which subtly

²⁸ Bernhard, Michael. "Civil Society and Democratic Transition in East Central Europe." *Political Science Quarterly* 108, no. 2 (1993): 307–26. <https://doi.org/10.2307/2152014>.

²⁹ Varol, Ozan. "Stealth Authoritarianism." *Iowa Law Review* 100 (n.d.): 1673–1742.

³⁰ Bermeo, Nancy. "On Democratic Backsliding." *Journal of Democracy* 27, no. 1 (January 2016): 5–19.

erode the foundations of democracy.³¹ This is important in understanding the situation in Ukraine, given Yanukovich and others' erosion of democratic norms such as freedoms of expression and transparent institutional governance, eventually leading to periods of authoritarianism.

Though democratic transition and erosion is an integral part of this paper, the core of the analysis concerns the EU's ability to engage in "Europeanization" or democratization through soft power leverage. This is a field which has been elaborated upon by numerous scholars, though usually regarding European leverage as it pertains to accession (EU membership), rather than association. Schimmelfennig and Sedelmeier demonstrate the mechanisms at play in order for the European Union to exert its leverage over new democracies. They explain the concept of rule adoption; when countries adopt EU legislation or values into national legislation prior to their accession to the EU in order to fulfill the requirements set forth by the Union and demonstrate their fitness as a future member.³² This rule adoption is influenced by multiple factors which complicate the EU's leverage including the credibility of the EU's membership conditionality, the domestic implementation costs of EU rules, and domestic veto players.³³³⁴ According to Guasti and Dobovsek, EU leverage—applied through conditionality of visa-free entry and access to the economic market—specifically pertaining to rule of law, is further complicated by the historical and political legacy in a country.³⁵ They define Europeanization as "the pressure of adaptation" of EU norms and rules in member states, but make it clear that EU measures of compliance are often

³¹ Varol, Ozan. "Stealth Authoritarianism." *Iowa Law Review* 100 (n.d.): 1673–1742.

³² Schimmelfennig, Frank, and Ulrich Sedelmeier. *The Europeanization of Central and Eastern Europe*. Cornell Studies in Political Economy. Ithaca, New York: Cornell University Press, 2005.

³³ Ibid

³⁴ Schimmelfennig, Frank, and Ulrich Sedelmeier. "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe." *Journal of European Public Policy* 11, no. 4 (August 2004): 661–79. <https://doi.org/10.1080/1350176042000248089>.

³⁵ Guasti, Petra, and Bojan Dobovsek. "Informal Institutions and EU Accession: Corruption and Clientelism in Central and Eastern Europe." Reykjavik, 2011. <https://ecpr.eu/Filestore/PaperProposal/55210a55-9335-4431-a0f6-d06a1097aca4.pdf>.

based on rule adoption alone and do not take into consideration the domestic enforcement and implementation of the rules.³⁶ The European Union's pre-accession leverage—gained by the EU's ability to block accession—is considered to be one of the most useful and powerful tools in influencing burgeoning democracies, but its power is not so black and white. Indeed, it has been shown that the European Union must fully democratize countries well before their accession into the Union, as their leverage is greatly reduced once countries have acceded.³⁷ Understanding this research is crucial to begin analyzing the influence of the European Union on Ukraine, but one must go further. The aforementioned authors have theorized the relationship between the EU and pre-accession countries, but not countries which are associated with the EU and have no current and credible EU accession plans. Furthermore, most of these studies were conducted over 10 years ago, before multiple extremely important events and periods in Ukrainian history.

In Mendelski's article, *Rule of Law Reforms in the Shadow of Clientelism*, he examines the influence of the European Union in instating rule of law reforms in Romania. In the article, Mendelski explains the historically supported claim that through conditionality, the EU empowers reform supporters and weakens veto players, redistributing domestic political power.³⁸ However, Mendelski then nuances this by explaining that EU leverage is strongly affected by the support for reforms by local coalitions; and that—if support is present—reforms will empower agents of change but—if not—then veto players will be able to regain political power.³⁹ By examining

³⁶ Guasti, Petra, and Bojan Dobovsek. "Informal Institutions and EU Accession: Corruption and Clientelism in Central and Eastern Europe." Reykjavik, 2011. <https://ecpr.eu/Filestore/PaperProposal/55210a55-9335-4431-a0f6-d06a1097aca4.pdf>.

³⁷ Osipian, Ararat. "Corruption and Reform in Higher Education in Ukraine." *Canadian and International Education* 38, no. 2 (December 1, 2009): 104–22.

³⁸ Mendelski, Martin. "Rule of Law Reforms in the Shadow of Clientelism: The Limits of the EU's Transformative Power in Romania." *Polish Sociological Review*, no. 174 (2011): 235.

³⁹ Ibid

Romania as a case study and tracing the EU's influence on domestic actors, Mendelski provides an interesting framework that I will be partially adopting for my examination of Ukraine.

There is, however, an abundance of research specific to Ukraine's implementation of institutional rule of law and anti-corruption reforms. Although this research is incredibly helpful in analyzing the implementation and effectiveness of reform, the research is often outdated and does not explicate the connection between the European Union's Association Agreement with Ukraine and the reforms. Importantly, scholars have shown the broad reaching impacts of corruption whether it be in higher education, police, or administrative sectors,⁴⁰⁴¹ demonstrating that corruption in Ukraine has become expected in everyday life whether it be by paying for university grades or to get out of a traffic ticket. As of 2016, scholars demonstrated that the Ukrainian state had a long way to go to rid itself of anti-corruption shortcomings,⁴²⁴³ and that the question regarding recent efforts and their relation to the Association Agreement remains.

Scholars have also commented upon the role of elite and public perceptions of corruption.⁴⁴

⁴⁵ Elite perception research has focused on elites' views on the need for change in Ukraine as well as their personal definitions of corruption, revealing a disappointment in the ways in which anti-corruption reform was being enacted in Ukraine. Grødeland's 2010 study identifies room for improvement in Ukrainian anti-corruption reform, as identified by the elites themselves, providing

⁴⁰ Osipian, Ararat. "Corruption and Reform in Higher Education in Ukraine." *Canadian and International Education* 38, no. 2 (December 1, 2009): 104–22.

⁴¹ Nasuti, Peter. "Administrative Cohesion and Anti-Corruption Reforms in Georgia and Ukraine." *Europe-Asia Studies* 68, no. 5 (July 2016): 847–67.

⁴² Ibid

⁴³ Hitch, James T., and Yuliya Kuchma. "Ukraine's New Anti-Corruption Law: Will It Really Stop Corruption in Ukraine?" *The International Lawyer* 45, no. 3 (2011): 839–55.

⁴⁴ Moldogaziev, Tima T., and Cheol Liu. "Public Sector Corruption and Perceived Government Performance in Transition." *GOVERNANCE*, 20200623. <https://doi.org/10.1111/gove.12519>.

⁴⁵ Grødeland, Åse Berit. "Elite Perceptions of Anti-Corruption Efforts in Ukraine." *Global Crime* 11, no. 2 (May 2010): 237–60. <https://doi.org/10.1080/17440571003669241>.

useful sectors and metrics for the evaluation of current anti-corruption efforts.⁴⁶ The perceptions of corruption in Grødeland's study can also be compared and contrasted with the European Union's definition of corruption, which is simply "the abuse of power for private gain," taking forms such as "bribery, trading in influence, abuse of functions, but can also hide behind nepotism, conflicts of interest, or revolving doors between the public and the private sectors."⁴⁷ Finally, Gallina explains the role of political elites and their change in conduct on the effectiveness of anti-corruption reform in Ukraine.⁴⁸ These recommendations—although mostly outdated—provide ample sectors in Ukrainian society for the analysis of potential policy implementation.

Methods

This study will include a variety of methodologies in order to examine variables which have not yet been analyzed by scholarship in the field of European foreign policy. In particular, these methodologies serve the primary purpose of establishing a causal link between the foreign policy of the European Union towards Ukraine (represented by the Association Agreement between both parties) and institutional anti-corruption reform implemented in Ukraine. In order to do this, this study's methods will be separated into three overarching types: qualitative document and literature analysis, interviews with experts, and quantitative analysis of party vote progression in the Ukrainian parliament.

Firstly, and most importantly, I engage in document and literature analysis in order to provide an understanding for the history and current situation of corruption in Ukraine as well as

⁴⁶ Grødeland, Åse Berit. "Elite Perceptions of Anti-Corruption Efforts in Ukraine." *Global Crime* 11, no. 2 (May 2010): 237–60. <https://doi.org/10.1080/17440571003669241>.

⁴⁷ Migration and Home Affairs - European Commission. "Corruption." December 6, 2016. https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption_en.

⁴⁸ Gallina, Nicole. "The Impact of Political Elite Conduct on State Reform: The Case of Ukraine." *CEU Political Science Journal*, no. 02 (2008): 187–200.

the prior effectiveness of European foreign policy concerning other countries. This also aims to synthesize an argument from various sources. In particular, academic articles are an integral part of this study, as they demonstrate well-argued and well-evidenced perspectives on the issue at hand. They provide a foundation of knowledge and understanding of the field in order to then delve into original research. In fact, to build upon academia, this study takes into consideration a variety of primary and secondary sources including blog posts, news articles, policy memos, European Commission and Parliament documents and reports, and Ukrainian national documents. For example, in order to examine and analyze the state of corruption in Ukraine, this study will find its basis in existing academic literature, but will rely heavily on news articles, blog posts, and policy memos on topics such as EU conditionality, corruption indices, and current Ukrainian government actions which pertain to rule of law and anti-corruption reform. The use of these sources will be integral to the analysis, as the academic literature on Ukrainian corruption is often dated and is not able to take into consideration recent developments in reforms or backsliding. This method simultaneously allows for a theoretical understanding of the EU-Ukrainian relationship as well as a practical understanding of Ukraine's current situation vis-à-vis institutional rule of law and anti-corruption reform.

Nevertheless, this method presents some challenges. Document analysis can only say so much on the nuances of the current situation in Ukraine and the influence of Europe, as this method is entirely limited to the writings of others. This makes it difficult to fully grasp current events from abroad. Furthermore, some important documents, such as Ukrainian parliament reports and internal European documents, are quite difficult to obtain (and, in certain cases, translate).

In order to address the limits to document analysis, this study will supplement this method with interviews. It must be noted that interview subjects will be mainly those who have on-the-

ground experience in Ukraine and can provide insight into the current situation regarding rule of law reforms and the actual state of corruption. Primary source interviews include Dr. Tymofiy Mylovanov, former Ukrainian Minister of Economic Development, Trade, and Agriculture; Ambassador Steven Pifer, former US Ambassador to Ukraine; and Andrii Borovyk, executive director of Transparency International Ukraine. These are people who have an intimate knowledge of how both the European and Ukrainian administrations work and interact, and how these interactions may form democratic reform policies. Interview questions covered topics such as their perception of corruption and rule of law in Ukraine as well as recent efforts to ameliorate it, their perception of European influence on Ukraine, their thoughts on a future EU accession for Ukraine, and the establishment of a causal link between the European Union's Association Agreement and reform policies enacted at the national level.

With interviews, there is the evident complication of access. Indeed, the aforementioned people are difficult to contact, let alone interview. Nevertheless, through contacts and simple outreach, important interviewees were willing to speak on the subject of this project. These interviews did not contain questions which compromised the interviewees' positions in any way or put them in a difficult ethical situation, they were simply questions about their perceptions of current events in Ukraine with the evidence they have experienced in their field (all of which they were free to abstain from answering). Thus, the main challenge of interviews for this project was establishing contact and scheduling interviews rather than ethical considerations.

Finally, this project incorporates quantitative methods into the research design by tracking votes of pro-Russian and pro-European parties in the Ukrainian parliament throughout the past 10 years. Due to longstanding public and political polarization, these party affiliations are known and quite evident, therefore, it's possible to track the average votes of the members of each party on

key reform issues. In theory, if parties have relatively fixed ideologies, external influence—such as Europeanization through the Association Agreement—could have an effect on the votes of parties through parliament members. In this case, the votes of pro-Russian parties, which would traditionally have focused less on reforms and Europeanization, will be studied in order to determine if Europe’s influence played a role in passing reform bills in the Ukrainian parliament. Pro-European parties will be used as a control, since they’re expected to vote affirmatively on Europeanization and reform issues, regardless of European influence. This research design builds off of and improves upon previous studies done on the evaluation of previous anti-corruption laws in Ukraine by consolidating votes on key policies into one study and updating outdated analysis on institutional reform.^{49 50} This study will also take into account changing party blocs, their membership growth (or lack thereof), the turnover of parliament members, and stability of public representation throughout the ten years studied (2011-2021).

This study will take into account eight separate bills between 2011 and 2021: the Law of Ukraine “On the Principles of Preventing and Combatting Corruption” (2011), the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning the Bringing of National Legislation into Compliance with the Standards of the Criminal Convention for the Suppression of Corruption” (2013), the Law of Ukraine “On Prevention of Corruption” (2014), the Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine” (2014), the Law of Ukraine “On Public Procurement” (2015), the Law of Ukraine “On the Establishment of the High Anti-Corruption Court” (2018), the Law of Ukraine “On modification of some legislative acts of

⁴⁹ Hitch, James T., and Yuliya Kuchma. “Ukraine’s New Anti-Corruption Law: Will It Really Stop Corruption in Ukraine?” *The International Lawyer* 45, no. 3 (2011): 839–55.

⁵⁰ Van der Loo, Guillaume, Peter Van Elsuwege, and Roman Petrov. “The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument.” *SSRN Electronic Journal*, 2014. <https://doi.org/10.2139/ssrn.2464681>.

Ukraine concerning establishment of responsibility for declaring unreliable information” (2020), and the Law of Ukraine on Amendments to the Law of Ukraine "On the Security Service of Ukraine" (2021). These bills are separated into three political and temporal categories; pre-Association Agreement (the first two, under authoritarian President Yanukovych), post-Association Agreement 1 (the next three, under President Poroshenko), and post-Association Agreement 2 (the final three, under President Zelenskiy).

In order to effectively implement this design, it was necessary to obtain votes and party affiliations for Ukrainian parliaments throughout the past 10 years. This data was quite easily accessible through Ukraine’s Verkhovna Rada—or parliament—website. The data was taken directly from Ukraine’s official data portal and was then analyzed in Excel in order to create graphics and better understand the trends exhibited.

Theoretical Framework

Corruption and Democracy

The European Union is primarily an economic union, but since its conception has also played a major role in promoting its democratic values abroad. For the European Union, stable and quality democracies are the cornerstones of high qualities of life. In fact, a European Union statistical study explicitly states that “civil society, a respect for human rights and the rule of law, as well as accountable government are some of the hallmarks of modern democracies which impact on the quality of life led by European citizens.”⁵¹ The goals of the European Union for its “neighborhood” are therefore explicitly tied to democracy and the instilling of their democratic

⁵¹ “Quality of Life Indicators - Governance and Basic Rights.” Statistical study. Quality of Life Indicators. Eurostat, October 29, 2020. https://ec.europa.eu/eurostat/statistics-explained/index.php/Quality_of_life_indicators_-_governance_and_basic_rights#Conclusions.

values abroad. The EU specifically explains that its Neighborhood Policy represents the “EU’s wish to build on common interests with partner countries of the East and South and commitment to work jointly in key priority areas, including in the promotion of democracy, rule of law, respect for human rights, and social cohesion.”⁵² This paper does not seek to make value judgements on systems of government, but will be evaluating the European Union’s Association Agreement with Ukraine (a part of the ENP), and thus will understand anti-corruption and rule of law reform as a part of the EU’s broader goal of democratization. It must also be understood that democratization is only one motivator for the EU; indeed, in democratizing countries and imparting their values abroad, they also gain influence in certain regions. This is a particularly important consideration with Ukraine given its importance vis-à-vis relations with Russia.

The European Union staunchly believes that democracy and corruption do not coexist well, presenting corruption as an inhibitor of democracy throughout its website. Although there are certainly instances of corruption in strong democracies, what is more telling of a democracy’s stability is its ability to respond in a way which serves the public interest. In newer democracies, particularly in developing countries, corruption is often quite present, and it is left unchecked enough to continue to thrive. Therefore, it would follow that corruption reduces as democracy is strengthened. Studies have shown that this is true, but with a caveat; democracy and corruption follow an inverted U relationship, meaning that at first corruption rises with democracy, but with the establishment of strong democratic institutions, corruption decreases.⁵³ Interestingly, this corruption inflection point is usually found within the first 10-12 years of a country’s democracy

⁵² European External Action Service - European Commission. “European Neighbourhood Policy (ENP).” Text. Accessed September 18, 2020. https://eeas.europa.eu/diplomatic-network/european-neighbourhood-policy-enp/330/european-neighbourhood-policy-enp_en.

⁵³ Rock, Michael T. “Corruption and Democracy.” *The Journal of Development Studies* 45, no. 1 (January 1, 2009): 55–75. <https://doi.org/10.1080/00220380802468579>.

as the institutions get strengthened. Thus—to an extent—strong democracy manages to root out corruption, but how does the relationship work in reverse? Does corruption lead to an eventual erosion or prevention of the institution of democracy?

As briefly mentioned in my literature review, scholars have posited on the requisites for democracy, and all mention government legitimacy, rule of law, and economic development as integral for the development of a democracy. Corruption has been shown to sap the democratic legitimacy of government institutions, causing people to lose trust in their institutions and eroding the democratic system.⁵⁴ In fact, studies of former Soviet bloc countries in Eastern and Southern Europe (of which Ukraine is a part), the Caucasus, and Central Asia have shown that higher levels of perceived corruption in government officials throughout all levels of government is negatively associated to the evaluation of the performance of a government by its people.⁵⁵ In other words, the more perceived corruption in a government, the less legitimacy and effectiveness vis-à-vis its constituents. However, others show that corruption is a symptom of democratic deficiency rather than the entire problem.⁵⁶ The reality seems to be somewhat both; in order to prevent corruption, democratic institutions must be strengthened, with this decrease in corruption furthering the reinforcement of democratic institutions. Although the type of relationship between democracy and corruption may be somewhat debated, it is certain that the two are related and affect one another. In theory, the bolstering of democratic institutions and the prevention of corruption should have a net positive effect on democracy.

⁵⁴ Pellegata, Alessandro, and Vincenzo Memoli. “Can Corruption Erode Confidence in Political Institutions Among European Countries? Comparing the Effects of Different Measures of Perceived Corruption.” *Social Indicators Research* 128, no. 1 (August 1, 2016): 391–412. <https://doi.org/10.1007/s11205-015-1036-0>.

⁵⁵ Moldogaziev, Tima T., and Cheol Liu. “Public Sector Corruption and Perceived Government Performance in Transition.” *GOVERNANCE*, 20200623. <https://doi.org/10.1111/gove.12519>.

⁵⁶ Warren, Mark E. “What Does Corruption Mean in a Democracy?” *American Journal of Political Science* 48, no. 2 (2004): 328–43. <https://doi.org/10.1111/j.0092-5853.2004.00073.x>.

European Soft Power Mechanisms

In order to promote democratization abroad, the European Union relies on a set of various soft power mechanisms. Soft power, in this case, is the ability of a powerful international actor (such as the EU) to persuade another actor to act in the interests of the more powerful actor through economic, cultural, or social influence. Currently a very common mode of international relations, soft power can be incredibly effective for an actor to ensure the achievement of their goals. In this case, the European Union's European Neighborhood Policy is an umbrella term for a variety of soft power mechanisms acting on its sphere of influence. In order to understand EU conditionality, it is necessary to identify the difference between accession and association; accession refers to EU membership whereas association refers to a closer relationship with the EU, access to the EU Single Market, and often times prospects of membership (though not yet with Ukraine). The EU's main sources of soft power, then, are its accession and association procedures as well as its punishment mechanisms.

The main tool that the European Union uses to exert its soft power influence is its procedure for accession and association. For developing countries, access to the European Union's Single Market can jumpstart or revitalize a burgeoning economy. Access to the Single Market entails preferential trade status and access to 450 million consumers and 22.5 million small businesses in 27 different countries. This sort of access is integral for the economic growth of countries bordering the EU, and therefore is an incredibly strong motivator for nations. The EU is aware of this and consistently ties access to the Single Market and EU benefits to rule of law, anti-corruption, and human rights conditions through association and accession procedures.⁵⁷ Incentives are particularly high when considering accession (or membership) to the EU; studies

⁵⁷ European Commission. "The European Single Market." Text, July 5, 2016. https://ec.europa.eu/growth/single-market_en.

have shown that the EU's pre-accession process was more effective in reforming the state and the economy than any other external actor.⁵⁸ In the case of accession, it is easy to see how the vast benefits of EU rule adoption, but in situations where association rather than accession is offered, costs and benefits are less clear. However, the benefits of association do often outweigh the costs of EU conditionality, thus leading to rule adoption and agreements between the EU and a country.

In Ukraine's Association Agreement with the European Union, the actual language surrounding conditionality is rather vague. Although the Agreement specifically prescribes certain necessary actions regarding anti-corruption—such as the immediate reporting of information regarding corruption to the EU Commission and the investigation and prosecution of any cases of corruption or fraud—it does not specifically state any particular measures to combat corruption or reform institutions. Rather, it emphasizes a partnership between the EU and Ukraine to “strengthen the judiciary, improve its efficiency, safeguard its independence and impartiality, and combat corruption.”⁵⁹ The Agreement also states reform and good governance as “central” to the relationship between the two actors, implicitly tying improvements to Ukraine's judicial and political systems as necessary for association with the EU. Specific conditionalities such as the visa-free movement of people between Ukraine and the EU are referred to in this document, but are elaborated upon in further negotiations, falling under the Association Agreement umbrella for the purposes of this project.

The association- and accession-motivated nature of the EU's conditionality begs an important question in the context of their stated goals; how can they ensure countries continue to align themselves with European values and interests after accession or after association –

⁵⁸ Vachudova, Milada. “Corruption and Compliance in the EU's Post-Communist Members and Candidates.” *Journal of Common Market Studies* 47 (September 1, 2009): 43–62. <https://doi.org/10.1111/j.1468-5965.2009.02013.x>.

⁵⁹ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, signed May 29, 2014, http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155103.pdf.

especially if there is no immediate prospect of accession? Scholars have argued that this is a major flaw in EU conditionality, and that the EU should strive to fully democratize countries well before their accession to the European Union.⁶⁰ However, the EU is not helpless against post-accession and post-association interest deviations. Upon deeming Bulgaria's post-accession reform progress unsatisfactory, in 2008 the European Union imposed financial sanctions on the country by blocking funding from the Instrument for Structural Policies. Thanks to this, the EU felt their goals had been met, as a 2009 EU report touted "significant progress" in Bulgaria since the financial sanctions.⁶¹ Post-accession leverage works similarly; instead of focusing on positive conditionality (like pre-accession and pre-association leverage), incentive structures are focused on negative conditionality by threatening to take away rewards gained through association.

These mechanisms are certainly effective, but in the past, the EU's conditionality has been considered too weak when compared to institutions such as the International Monetary Fund (IMF), who regularly withhold funding due to shortcomings regarding conditionality.⁶² The EU has exhibited lenience in their conditionality in the past, namely with the accession of Bulgaria and Romania, two countries which were widely considered unready for accession by people in and outside of the EU. Yet, the EU could not renege on its promises directly before accession, nor could it punish one and reward the other while still framing them as two "lagging" countries.⁶³ Moreover, a denial of membership only months before a scheduled accession could potentially have deterred other states from seeking membership (therefore reducing their influence). Thus, the

⁶⁰ Vachudova, Milada. "Corruption and Compliance in the EU's Post-Communist Members and Candidates." *Journal of Common Market Studies* 47 (September 1, 2009): 43–62. <https://doi.org/10.1111/j.1468-5965.2009.02013.x>.

⁶¹ Ibid

⁶² Jarábik, Balázs, Gwendolyn Sasse, Natalia Shapovalova, and Thomas de Waal. "The EU and Ukraine: Taking a Breath." *Carnegie Endowment for International Peace* (blog), February 27, 2018. <https://carnegieendowment.org/2018/02/27/eu-and-ukraine-taking-breath-pub-75648>.

⁶³ Noutcheva, Gergana. "Bulgaria and Romania's Accession to the EU: Postponement, Safeguards and the Rule of Law. CEPS Policy Briefs No. 102, 15 May 2006," November 17, 2020.

EU continued with the plans for Bulgaria and Romania's accession, leading to the problems mentioned above. Institutions such as the IMF are able to withhold funding and aid more easily as they are not a governing body, while the EU has more at stake in negotiations with developing countries and cannot abandon funding and aid as easily. Therefore, the EU faces a definite domestic incentive problem within countries which negatively affects the effectiveness of their conditionality.

Elite Decision Making in Ukraine

In order to fully understand the influence of the European Union in Ukraine, one has to understand the domestic political situation in the country. Given Ukraine's tumultuous political and economic history, it comes as no surprise that decision making in Ukraine is not black and white. It is important to note that here "elite decision making" refers to political decisions made by political elites such as members of parliament, the President, and other members of high-level government. In this section, I will illuminate the existing incentive structures in Ukraine and how they play into political decision making.

Traditional political decision makers in Ukraine, such as members of parliament and presidents, are more or less subject to the wills of the people as they officially operate under a democratic system. Although it has been said that parliamentarians and other elected officials are not very responsive to their constituents in between elections, there has been significant evidence that Ukrainians are incredibly responsive to the failings of their leaders.⁶⁴ Notably, the Ukrainian people have been extremely responsive to progress—or lack thereof—on issues of anti-corruption and democratization; all presidents elected thanks to promises of anti-corruption and reform have

⁶⁴ Steven Pifer (former U.S. Ambassador to Ukraine), in discussion with the author, December 22nd, 2020.

essentially fallen short of expectations, leading to their removal from office through electoral processes or public revolution.⁶⁵ Furthermore, the election of President Zelenskiy effectively shook up the political system and formed new political elites that weren't traditionally a part of the post-Soviet era, demonstrating the people's will, ability, and openness to cause change in Ukraine's political systems if unhappy.⁶⁶

Regarding matters of European influence, domestic incentive structures can be thought of in economic terms. In theory, according to Schimmelfennig and Sedelmeier, if the adoption costs of EU rules and *acquis* (the set of rules that constitute the body of EU law) are higher than the benefits gained from association (or accession) with the European Union, then EU Association will not happen.⁶⁷ This means that association or accession must be important enough for a country's well-being in order for that to outweigh the difficulties of implementing EU-prescribed reforms at home. Adoption costs take into account a range of factors such as physical cost of reforming or creating institutions, political cost of losing favor with the public or elites, and/or opportunity costs of foregoing other, potentially more beneficial non-EU rule adoption. Moreover, Schimmelfennig and Selemeier place an emphasis on veto players (people/organizations with political or economic influence) which must be taken into account as they have the potential to derail conditionality and subsequent rewards.⁶⁸ This cost-benefit reasoning has mainly been used to refer to EU accession rather than association, but the logic and conditionality employed in the

⁶⁵ Pifer, Steven. "Ukraine's Zelenskiy Ran on a Reform Platform — Is He Delivering?" *Brookings* (blog), July 22, 2020. <https://www.brookings.edu/blog/order-from-chaos/2020/07/22/ukraines-zelenskiy-ran-on-a-reform-platform-is-he-delivering/>.

⁶⁶ Minakov, Mykhailo. "Rearranging the Elite Landscape: Parliamentary Elections and New Political Cleavages in Ukraine." Think Tank. *Focus Ukraine* (blog), July 17, 2019. <https://www.wilsoncenter.org/blog-post/rearranging-the-elite-landscape-parliamentary-elections-and-new-political-cleavages>.

⁶⁷ Schimmelfennig, Frank, and Ulrich Sedelmeier. "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe." *Journal of European Public Policy* 11, no. 4 (August 2004): 661–79. <https://doi.org/10.1080/1350176042000248089>.

⁶⁸ *Ibid*

two processes are extremely similar and can easily be compared. It is also important to note that there are costs to not implementing EU rules; primarily the inability to accede to or associate with the EU. This may seem obvious, but pushing away the EU could result in widespread public discontentment and even revolt, as was the case in Ukraine in 2014 with the Euromaidan revolution brought about due to President Yanukovich's refusal to sign the Association Agreement.

Most pervasive, however, in political decision making in Ukraine is the influence of oligarchs. These are people, usually men, who possess extremely large amounts of wealth and resources, often thanks to acquisitions of formerly public companies following the end of socialism in Ukraine.⁶⁹ They often control financial institutions or oil companies, and the wealthiest—like Rinat Akhmetov, Ihor Kolomoyskyi, and Victor Pinchuk—own large Ukrainian media outlets. Although economic resources do not always translate into political ones, in Ukraine they are essentially the same. Oligarchs seem to follow a playbook of political influence in Ukraine; their financial means are often used in similar ways to gain political power. For example, oligarchs control enormous resources in Ukraine and thus are needed by presidential administrations in order to get things done. This is the case with Rinat Akhmetov, who controls thousands of jobs in the currently disputed Donbas region of Ukraine. If Ukraine were to regain control of the region, Ukrainian President Volodymyr Zelenskiy would need the cooperation of Akhmetov to ensure the functioning of the region.⁷⁰ This provides Akhmetov with considerable influence over political decision making. Oligarchs also often “buy” members of parliament or run for political office and become elected as members of parliament. Indeed, they have enormous amounts of money to spend on political campaigns, which often translates to electoral wins and direct legislative power.

⁶⁹ Pleines, Heiko. “Oligarchs and Politics in Ukraine.” *Demokratizatsiya: The Journal of Post-Soviet Democratization* 24, no. 1 (February 24, 2016): 105–27.

⁷⁰ Olearchyk, Roman. “Ukraine’s Oligarchs Jostle for Influence with President Zelensky.” *Financial Times*. February 19, 2020, sec. Ukrainian politics. <https://www.ft.com/content/1821b882-4366-11ea-abea-0c7a29cd66fe>.

However, once in office, they rarely participate in legislative activities unless they directly concern their financial or personal interests.⁷¹ Finally, as mentioned, oligarchs have significant influence over media outlets through ownership of large television or news media organizations in Ukraine, giving them the power to affect public opinion and select the media aired to the general public.

Oligarchs also present a significant potential challenge to rule of law reform. In post-Soviet countries, these oligarchs often invest in ways which allow them to run their own individual justice systems, something which is often referred to as selective justice. In fact, in my conversation with Tymofiy Mylovanov, the former Ukrainian Minister of Economic Development, Trade, and Agriculture, he explained to me that “if it’s cheaper for [oligarchs] to run individual justice systems, then they will not support societal justice systems.”⁷² He went on to explain that this has caused a sort of collective action problem, not dissimilar to the prisoner’s dilemma, in which no one oligarch will want to be the first to give up personal legal protection by backing societal legal reforms. Given oligarchs’ influential role in political decision making, this has the potential to create a large blockage regarding effective judicial reform.

Elite political actors in Ukraine often find themselves at a crossroads between Ukrainian public opinion and the influence of economic elites, which complicates decision making. Foreign influence—whether it be from Russia, the United States, or Europe—will only truly take hold in Ukraine and cause widespread change if both the public and oligarchs agree on its effectiveness and utility for the country; a condition which is extremely rare.

⁷¹ Pleines, Heiko. “Oligarchs and Politics in Ukraine.” *Demokratizatsiya: The Journal of Post-Soviet Democratization* 24, no. 1 (February 24, 2016): 105–27.

⁷² Tymofiy Mylovanov (former Ukrainian Minister of Economic Development, Trade, and Agriculture), in discussion with the author, January 25th, 2021.

Findings and Data Analysis

Current Situation in Ukraine

In order to understand the influence of the European Union's Association Agreement on reforms in Ukraine, it is first necessary to take stock of the current situation and progress of reforms in Ukraine. In this section, Ukraine's efforts to clean up corruption in their political system will be outlined and evaluated by comparing the current situation to European assessments, historical shortcomings, and expected results according to experts. This section will also outline the key reform bills studied in this paper and analyzed in the Vote Analysis section and will identify key actors which have helped to implement anti-corruption and rule of law reforms.

Overview of Ukrainian Progress on Anti-Corruption and Rule of Law

Ukraine has certainly come a long way in establishing reforms and institutions to combat the pervasive effects of corruption on governance, but there are many benchmarks which have yet to be achieved. Historically, corruption in Ukraine was rampant and pervasive; every level of government and society was affected. Indeed, under President Yanukovich, who served between 2010 and 2014, anti-corruption and rule of law reforms were ineffective and, in some cases nonexistent. In fact, Yanukovich and many in his administration were highly corrupt themselves. For example, Yanukovich was originally elected in 2004 through a rigged election process with the help of former president Leonid Kuchma and, in 2009, he enlisted the help of Viktor Yushchenko (his predecessor) in order to illegally privatize an estate worth almost \$20 million and transfer the property to his cabinet of ministers.⁷³⁷⁴ Under Yanukovich, only 4 parliamentarians

⁷³ Gorchinskaya, Katia. "A Brief History of Corruption in Ukraine: The Kuchma Era." Eurasianet, May 20, 2020. <https://eurasianet.org/a-brief-history-of-corruption-in-ukraine-the-kuchma-era>.

⁷⁴ "Lawyer Reveals Details Of Yushchenko Corruption Probe." *RadioFreeEurope/RadioLiberty*, June 7, 2019. <https://www.rferl.org/a/lawyer-reveals-details-of-yushchenko-corruption-charges/29986363.html>.

lived off of their salaries and did not take bribes, the traffic police were known to take bribes in order to forgive of tickets and fines, and even those in public higher education institutions were accustomed to paying professors for grades.⁷⁵⁷⁶

In 2009, the National Anti-Corruption Committee (NACC) was established, continuing to work throughout the Yanukovich presidency.⁷⁷ However, this committee was widely considered to be ineffective; a 2015 report from the OECD (Organization for Economic Co-operation and Development) condemned the institution as “not functioning” and praised its 2014 dissolution.⁷⁸ By 2010, the European Union had begun to look towards Ukraine in order to curb the influence of Russia which meant beginning negotiations for a potential Association Agreement. Despite this renewed European interest in Ukraine, in July 2010, the Ukrainian parliament adopted a new foreign policy of “non-alignment” while emphasizing the importance of EU association, a policy aimed at appeasing the Kremlin and pro-EU Ukrainian voters.⁷⁹ This was a clear move that Yanukovich was not yet ready to adopt the conditions of the Association Agreement, many of which were focused on releasing political prisoners and taking legitimate action against the problem of corruption.

With the 2014 Revolution of Dignity (otherwise known as the Euromaidan revolution), it seemed as though corruption and opacity in Ukraine’s government would be a thing of the past. Indeed, this revolution, which deposed President Yanukovich, was a sign of hope that things

⁷⁵ Anders Åslund (Senior Fellow at the Atlantic Council), in discussion with the author, January 20th, 2021.

⁷⁶ Osipian, Ararat. “Corruption and Reform in Higher Education in Ukraine.” *Canadian and International Education* 38, no. 2 (December 1, 2009): 104–22.

⁷⁷ “Про Затвердження Положення Про Урядового Уповноваженого з Питань Антикорупційної Політики.” Cabinet of Ministers of Ukraine, April 24, 2009. <https://zakon.rada.gov.ua/go/410-2009-%D0%BF>.

⁷⁸ “Anti-Corruption Reforms in Ukraine.” Paris: Organization for Economic Co-operation and Development, March 24, 2015. <https://www.oecd.org/daf/anti-bribery/Ukraine-Round-3-Monitoring-Report-ENG.pdf>.

⁷⁹ Haran, Olexiy. “Ukraine’s Long Road to European Integration.” *Ponars Eurasia*, February 18, 2014. <https://www.ponarseurasia.org/memo/ukraine%E2%80%99s-long-road-european-integration>.

would change, and that reform would be taken seriously.⁸⁰ This hope, although not entirely fulfilled, was not in vain. There has certainly been important progress since 2014, reflected in steady change in Ukraine’s score on various corruption indices. As reflected Figure 1, Ukraine has increased their score on Transparency International’s Corruption Perceptions Index by 10 points over the last 10 years.⁸¹ It must be noted that a score of 33 places Ukraine 117th out of 180 countries, so it is far from a perfect score but still demonstrates significant progress. This progress evaluation is also reflected in Ukraine’s Freedom House Global Freedom score for 2020 of 62/100, up two points from 2019 but still maintaining its categorization as “partly free.”⁸²

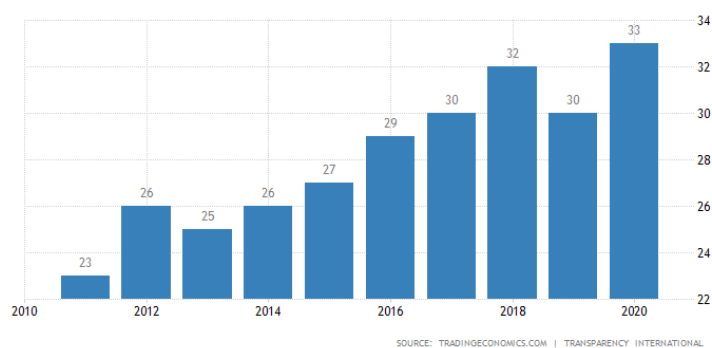


Figure 1: Ukraine’s Corruption Perceptions Index Score 2010-2020

This progress is echoed by the European Union’s 2020 “European Implementation Assessment,” in which the European Parliament hails progress made in Ukraine such as the establishment of the High Anti-Corruption Court (HACC), the ability of the National Anti-Corruption Bureau of Ukraine (NABU) to wiretap Ukrainian officials, and a new law protecting

⁸⁰ Pifer, Steven. “Ukraine’s Zelenskiy Ran on a Reform Platform — Is He Delivering?” *Brookings* (blog), July 22, 2020. <https://www.brookings.edu/blog/order-from-chaos/2020/07/22/ukraines-zelenskiy-ran-on-a-reform-platform-is-he-delivering/>.

⁸¹ “Ukraine Corruption Index | 1998-2020 Data.” Accessed February 21, 2021. <https://tradingeconomics.com/ukraine/corruption-index>.

⁸² Freedom House. “Ukraine, Freedom in the World 2020,” 2020. <https://freedomhouse.org/country/ukraine/freedom-world/2020>.

corruption whistleblowers.⁸³ To be sure, these are highly significant reforms which mark genuine progress in Ukraine, but the report does not paint a sufficiently broad picture of the problems still facing Ukraine. Although the report does place an emphasis on the need for more reform in areas “including consumer protection, intellectual property rights and telecommunications,” it does not mention conditionality further than a resolution passed by the European Parliament.⁸⁴ The terms used in the report—such as “urges” and “emphasizes”—are highly diplomatic and do not imply any serious action on the part of the EU, pointing to a contentment with the progress already made in Ukraine. Furthermore, one of the strongest suggestions from the report is to “strengthen parliamentary oversight of the executive, which has at the moment been put on hold.”⁸⁵ However, the report does not mention the much-needed reform of the parliament which is meant to provide oversight on the executive. The report, although well researched and a great jumping off point for understanding Ukraine currently, does not seem to portray Ukraine’s situation in its entirety. This is to be expected, given there is an expectation that a European Union report will be at least slightly biased in favor of the EU’s efforts, especially since the employment of EU workers in Ukraine (those writing the progress reports) is contingent on the proper functioning of EU conditionality.⁸⁶ It is important to note, though, that the report paints what seems to be an accurate picture of Ukraine as a state “in progress” towards becoming a clean and stable democracy, as evidenced by Figure 2.⁸⁷ The most important takeaway is that the report does not broadly state Ukraine as having achieved everything desired by the European Union, but it also (inaccurately) does not demonstrate concern for the current state of the country.

⁸³ Zygierewicz, Anna, Ilaria Giustacchini, Daniel Szeligowski, Maria Piechowska, Melchior Szczepanik, Damian Wnukowski, and Maciej Zaniewicz. “Association Agreement between the EU and Ukraine: European Implementation Assessment (Update).” European Parliamentary Research Service, July 2020.

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Anders Åslund (Senior Fellow at the Atlantic Council), in discussion with the author, January 20th, 2021.

⁸⁷ Ibid

Deliverables	Six EaP countries in 2018	Ukraine in 2018	Ukraine in 2019
CROSS-CUTTING DELIVERABLES			
Structured engagement with civil society	Moderate progress	On track	On-track
Gender equality and non-discrimination	Moderate progress	On track	On-track
Strategic communication and plurality and independence of media	On track	On track	On-track
ECONOMIC DEVELOPMENT AND MARKET OPPORTUNITIES			
Regulatory environment and SMEs development	On track	On track	On-track
Gaps in access to finance and financial infrastructure	On track	On track	On-track
New job opportunities at local and regional level	On track	On track	On-track
Harmonisation of digital markets	Moderate progress	Moderate progress	On-track
Trade and DCFTA implementation	On track	On track	On-track
STRENGTHENING INSTITUTIONS AND GOOD GOVERNANCE			
Rule of law and anti-corruption mechanisms	Moderate progress	On track	On track
Implementation of key judicial reforms	Moderate progress	Moderate progress	On track
Implementation of public administration reform	Moderate progress	On track	On track
Security	On track	On track	On track
CONNECTIVITY, ENERGY EFFICIENCY, ENVIRONMENT			
Extension of the TEN-T core networks	On track	On track	On track
Energy supply	On track	Moderate progress	Moderate progress
Energy efficiency, renewable energy and reduction of greenhouse gas emissions	Moderate progress	On track	On track
Environment and adaptation to climate change	Moderate progress	On track	On track
MOBILITY AND PEOPLE-TO-PEOPLE CONTACTS			
Visa liberalisation and mobility partnerships	On track	On track	On track
Youth, education, skills development and culture	On track	On track	On track
Eastern Partnership European school	On track	On track	Completed
Research and innovation	On track	On track	On track

Figure 2: Status of EU Deliverables in Ukraine

Similar types of claims are made in a resolution passed by the European Parliament in April 2020 regarding Eastern Partnership countries, of which Ukraine is one. This resolution better illustrates the work left to do in Ukraine, as it “calls on the European Commission for a dedicated program aiming at strengthening parliamentary oversight in Eastern Neighborhood countries,” and addresses the severity of the corruption claims made in these countries.⁸⁸ Although this resolution doesn’t only concern Ukraine, it does call the European Union to action in Ukraine’s entire region following an amalgamation of previous reports which indicate the need for continuing change. When taken as a whole, the European body of work concerning Ukrainian reform and progress gives a good overview of Ukraine’s situation, but further research demonstrates that the situation is not as perfect as some reports may lead us to believe.

⁸⁸ “Resolution by the Euronest Parliamentary Assembly on Parliamentary Oversight as a Tool to Strengthen Democracy, Accountability and Effectiveness of State Institutions in the Eastern Partner Countries.” Official Journal of the European Union, April 24, 2020.

In the U.S. State Department's 2018 and 2019 Human Rights Practices reports, these figures are brought to light with further information on the state of anti-corruption and transparency reforms. Notably, the 2018 and 2019 reports praise the establishment of the High Anti-Corruption Court (HACC), though neither have enough information on trial results to make a judgement on its effectiveness.^{89,90} The 2019 report also praises the successes of NABU in penalizing false asset declarations. However, the reports both note that there are significant shortcomings to Ukraine's anti-corruption infrastructure, most notably the Constitutional Court's declaration that an article of the criminal code proscribing criminal liability for illegal enrichment was unconstitutional.⁹¹ In the 2019 report's overview of the situation, the State Department labeled corruption as continuing to be "endemic" to Ukraine's political system. This is echoed by what Tymofiy Mylovanov explained in our conversation, that "corruption is the blood in the organism, it's what feeds the system."⁹² Again, it is important to note the potential bias in a State Department report given their vested interests in the region. Thus, although the reports from the U.S. and EU seem to portray an accurate picture, interviews with Ukrainians are important to confirm the current situation in Ukraine.

However bleak the situation may seem in Ukraine, nearly everyone I interviewed expressed their hope for Ukraine and their opinion that the country was on the right track. Among those fighting corruption in Ukraine, I interviewed Tetiana Shevchuk, legal counsel at the Anti-corruption Action Center (AntAC), and Andrii Borovyk, Executive Director of Transparency International Ukraine. Both of them echoed the findings of State Department and EU reports; that

⁸⁹ Bureau of Democracy, Human Rights, and Labor. "Ukraine." Country Reports on Human Rights Practices. Washington D.C.: United States Department of State, 2018. <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/ukraine/>.

⁹⁰ Ibid

⁹¹ Ibid

⁹² Tymofiy Mylovanov (former Ukrainian Minister of Economic Development, Trade, and Agriculture), in discussion with the author, January 25th, 2021.

the biggest achievements in the field of anti-corruption and institutional reform were the creation of both NABU and the HACC, as well as the implementation of the asset declaration system. In fact, Shevchuk mentioned that this declaration system was “the most comprehensive system in the entire world.”⁹³ In synthesizing reports from outside actors (such as the U.S. State Department and non-profit transparency organizations), the European Union, and speaking with those experiencing Ukrainian reform, it becomes clear that Ukraine’s progress is mixed and characterized by a “two steps forward, one step back” type of progression. Nevertheless, there has been clear progress in the past 10 years, as well as a clear willingness from the public and civil society to clean up Ukraine’s political system.

Key Reforms

The general progress of Ukraine regarding anti-corruption and rule of law reforms is mixed, but there have been several key pieces of legislation throughout the past 10 years. These reforms either established agencies and systems or attempted to reform existing systems in Ukraine. In the Vote Analysis section of this paper, the voting patterns of Ukrainian parliamentary groups on these bills will be analyzed, along with other, less consequential pieces of legislation from the Yanukovich and Zelenskiy eras.

In 2014, two key institutions were created to combat corruption. The first came with the Law of Ukraine “On the Prevention of Corruption.” Although its name may seem broad and unspecific, this law is one of the founding documents for Ukrainian anti-corruption and is an incredibly comprehensive document detailing corruption prevention strategy. Amongst other things, it establishes the National Agency for the Prevention of Corruption (NAPC), one of the

⁹³ Tetiana Shevchuk (Legal Counsel at the Anti-Corruption Action Center), in discussion with the author, February 9th, 2021.

three post-Euromaidan anti-corruption institutions (along with the National Anti-Corruption Bureau of Ukraine—NABU—and the Specialized Anti-Corruption Prosecutor's Office—SAPO).⁹⁴ This Agency has a preventative function, developing anti-corruption regulations and measuring compliance. This law also aims to prevent corruption by providing an extremely comprehensive overview of the regulations to which public officials are subject, including rules of ethical behavior, the prevention and settlement of conflict of interests, and restrictions on the use of one's office. Finally, this law outlines the anti-corruption strategy for Ukraine and identifies how and when this strategy can be adapted. The second institution was created through the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine," which establishes NABU.⁹⁵ NABU is the enforcement body of Ukraine's anti-corruption institutions which allows the Ukrainian government to prosecute cases of corruption, providing Ukraine with a complementary body to NABU and allowing it to better prosecute cases of corruption. The creation of SAPO came later, in 2015, with the passing of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Ensuring the Activities of the National Anti-Corruption Bureau of Ukraine and the National Agency for the Prevention of Corruption" which outlined amendments to various pieces of legislation pertaining to the functioning of NABU and NACC.⁹⁶ In order to strengthen Ukraine's anti-corruption pillars (and in accordance with EU pressure), this law establishes Ukraine's third anti-corruption institution, whose role is to support and oversee criminal investigations launched by NABU.

⁹⁴ Law of Ukraine "On Prevention of Corruption," № 1700-VII, The Verkhovna Rada of Ukraine (2014). <https://zakon.rada.gov.ua/laws/show/1700-18/print1433752907333485#Text>.

⁹⁵ Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine," № 1698-VII, The Verkhovna Rada of Ukraine (2014). <https://zakon.rada.gov.ua/laws/show/1698-18#Text>.

⁹⁶ Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Ensuring the Activities of the National Anti-Corruption Bureau of Ukraine and the National Agency for the Prevention of Corruption," № 198-VII, The Verkhovna Rada of Ukraine (2015). <https://zakon.rada.gov.ua/laws/show/198-19#n169>.

Equally as important to Ukraine's anti-corruption reforms was the 2015 creation of the public procurement system. This was done through the Law of Ukraine "On Public Procurement," which established an electronic system in order to document all procurement of "goods, works and services to meet the needs of the state, territorial communities and united territorial communities."⁹⁷ Although taken for granted in many Western European and North American countries, transparent and competitive procurement for government contracts is an incredibly important part of a functioning democracy. Laws such as these prevent public officials from employing friends (or companies which they have stake in) through uncompetitive government contracts based upon personal motivations. According to Andrii Borovyk, this system is the most transparent in the world and has won multiple awards for its effectiveness.⁹⁸

More recently, the 2019 Law of Ukraine "On the Establishment of the High Anti-Corruption Court" provided a legal basis for the operation of the HACC.⁹⁹ The HACC is a permanent specialized court within the Ukrainian judicial system that hears cases related to the corruption of public officials. Its establishment was hailed as a major step in Ukrainian anti-corruption institutional reform as it gives Ukraine a chance to declutter its judicial system and better organize the attribution and resolution of their cases, especially for an issue as prevalent and important as corruption.¹⁰⁰

In January 2021, the Ukrainian parliament also passed a resolution amending the Law of Ukraine "On the Security Service of Ukraine" which prescribed reforms for the SBU, Ukraine's

⁹⁷ Law of Ukraine "On Public Procurement," № 922-VII, The Verkhovna Rada of Ukraine (2015). <https://zakon.rada.gov.ua/laws/show/922-19#Text>.

⁹⁸ Andrii Borovyk (Executive Director of Transparency International Ukraine), in discussion with the author, February 19th, 2021.

⁹⁹ Law of Ukraine "On the Establishment of the High Anti-Corruption Court," № 2447-VII, The Verkhovna Rada of Ukraine (2018). <https://zakon.rada.gov.ua/laws/show/2447-19#Text>.

¹⁰⁰ Bureau of Democracy, Human Rights, and Labor. "Ukraine." Country Reports on Human Rights Practices. Washington, D.C.: United States Department of State, 2019. <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/ukraine/>.

security service.¹⁰¹ Most notably, with the new reform, the SBU no longer deals with matters of corruption, passing these enforcement matters onto the National Anti-Corruption Bureau. This allows for further separation between agencies and institutions, bolstering their credibility and allowing them to focus on more specific tasks, theoretically rendering them more efficient. The United States and Europe both had an explicit vested interest in this reform.¹⁰²

Actual Effectiveness of Ukrainian Laws

For laws to be effective, they have to be properly enforced. This is an aspect of reform we often take for granted, but it must be recognized that laws do not always translate into the desired effect. While the aforementioned laws are all theoretically conducive to Ukraine's anti-corruption efforts, there are genuine questions about the legitimacy of the legislation when applied to actual situations. Many can agree that the laws, if nothing else, are a crucial starting point, but those familiar with the situation express their discontentment at the effectiveness of the reforms.

In our conversation, Anders Åslund, Senior Fellow at the Atlantic Council, explained to me that he believed reforms in Ukraine had barely made a dent in the Ukraine's corruption problem. He did not reproach the actual legislation, but rather the law enforcement bodies which he characterized as incompetent, going on to describe President Zelenskiy as inept and inexperienced and the parliament as "corrupt."¹⁰³ This description of effectiveness was somewhat echoed by Tymofiy Mylovanov; when asked about whether or not reforms were making a genuine difference in Ukraine, Mylovanov responded by saying "unequivocally, no," leaving very little

¹⁰¹ Law of Ukraine "On Amendments to the Law of Ukraine 'On the Security Service of Ukraine,'" № 1151-IX, The Verkhovna Rada of Ukraine (2021)

¹⁰² Ustinova, Oleksandra, and Steven Pifer. "Time to Play Hardball on Reforming Ukraine's Security Service." *Atlantic Council* (blog), March 28, 2019. <https://www.atlanticcouncil.org/blogs/ukrainealert/time-to-play-hardball-on-reforming-ukraine-s-security-service/>.

¹⁰³ Anders Åslund (Senior Fellow at the Atlantic Council), in discussion with the author, January 20th, 2021.

room for interpretation. Having served in the Ukrainian cabinet of ministers, Mylovanov is especially well placed to speak on the effectiveness of legislation and the actions of the executive, both of which he reproached like Åslund. He did note, however, that the corruption problem was “degrees of magnitude” smaller than compared to the first 20-25 years of Ukraine’s history, explaining that petty corruption is no longer the problem it used to be.¹⁰⁴ In a separate conversation with Francis Fukuyama, he also noted that actions such as the reformation of fiscal and monetary policy, oversight of financial institutions, and cleanup of state-owned companies have been quite effective in Ukraine and have contributed to its reform efforts.¹⁰⁵

Responses were rather similar from those fighting for anti-corruption reforms in civil society. Tetiana Shevchuk of AntAC explained that Ukraine had made significant headway regarding transparency through its reforms (notably through its public procurement reform), but that “transparency isn’t enough” and that Ukraine was still lacking effective accountability mechanisms. She also noted that institutions such as the HACC have not been around long enough to be evaluated for their effectiveness, reflecting the views of the State Department.¹⁰⁶¹⁰⁷ Indeed, the latest wave of reforms and institutions hold a lot of hope for Ukrainians but have yet to prove themselves as effective mechanisms against a deep-seeded culture of corruption.

Understanding European Influence in Ukraine

According to Guasti et al., Europeanization refers to the “pressure of adaptation, which the process exercises over individual member states” in all domains relevant to European

¹⁰⁴ Tymofiy Mylovanov (former Ukrainian Minister of Economic Development, Trade, and Agriculture), in discussion with the author, January 25th, 2021.

¹⁰⁵ Mylovanov, Tymofiy. A Virtual Conversation: Francis Fukuyama and Tymofiy Mylovanov. Zoom, October 16, 2020.
https://www.youtube.com/watch?v=_mwTmZhCM7A&feature=youtu.be&ab_channel=CenterforGovernanceandMarkets.

¹⁰⁶ Tetiana Shevchuk (Legal Counsel at AntAC), in discussion with the author, February 9th, 2021.

¹⁰⁷ See footnote 85 above

conditionality.¹⁰⁸ Having understood the current state of affairs in Ukraine, and the wholly mixed progress they have made on anti-corruption institutional reforms, the role of the European Union must be examined in order to understand this process in the Ukrainian context. This paper strives to understand the role that the EU plays in influencing Ukrainian policy through its Association Agreement and associated conditionality, and this section will analyze just that. It will study European involvement in Ukrainian institutional reform, the language used in Ukrainian legislation, the vote patterns of parliamentary groups and the change of parliamentary membership, the discourse surrounding Europe in Ukraine, other actors' roles, and comparative countries' relationships with the EU.

European Conditionality and Influence in Ukrainian Institutional Reform

Conditionality, in theory, is an effective tool for the EU to ensure favorable outcomes in countries for which it is providing access to the EU economic market. In practice, this conditionality is primarily implemented in Ukraine through the visa liberalization regime with the European Union. This condition, mentioned in the Association Agreement and elaborated upon after its ratification, is the basis of the EU's post-association conditionality. Indeed, in a speech by European Commission Vice President, Věra Jourová, on the subject of Ukrainian corruption reforms during the COVID crisis, the Vice President explained that corruption progress was closely monitored by the Commission and used as a determinant for continuing visa free access for Ukrainian citizens to the EU.¹⁰⁹

¹⁰⁸ Guasti, Petra, and Bojan Dobovsek. "Informal Institutions and EU Accession: Corruption and Clientelism in Central and Eastern Europe." Reykjavik, 2011. <https://ecpr.eu/Filestore/PaperProposal/55210a55-9335-4431-a0f6-d06a1097aca4.pdf>.

¹⁰⁹ Jourová, Věra. "The COVID crisis must not become an excuse for backtracking of achievements" (speech, June 6th, 2020), AntAC, <https://antac.org.ua/en/news/the-covid-crisis-must-not-become-an-excuse-for-backtracking-of-achievements-vera-jourova/>

This visa-free regime serves to mitigate incentive problems associated with EU conditionality. That is, the EU faces the aforementioned problem of continuing leverage over states who have gotten what they want. In the case of Ukraine, EU membership has not yet been achieved, and as of 2018 there was no membership prospect for Ukraine, theoretically affording the EU very little influence.¹¹⁰ However, the ability of the European Union to renege on visa-free access to the EU at any time goes some way in convincing Ukrainian administrations to take action in line with EU goals. Theoretically, visa free access to the EU's Schengen Area and corruption prevention are not directly linked, but revoking visa free access is an effective threat, as 25% of Ukrainians said they thought visa liberalization was the political event of 2017.¹¹¹ This dynamic can be illuminated in terms of Schimmelfennig and Sedelmeier's theory of domestic adoption costs. In this case, this visa-free regime is evidently symbolic and important for the Ukrainian people, making the cost of deviating from EU policy (and subsequently losing visa-free access) higher than adopting European rules and institutions.

This theory is proven by the existence and continuing importance of the Special Anti-Corruption Prosecutor's Office (SAPO) and the asset declaration system. The establishment of both of these mechanisms was a key condition of visa liberalization in Ukraine and their establishment directly led to the implementation of this visa policy.^{112 113} In fact, when the

¹¹⁰ "Ukraine Has No Prospect for EU Membership, - EU Ambassador to Ukraine." *112 Ukraine*, May 11, 2018. <https://112.international/ukraine-and-eu/ukraine-has-no-prospect-for-eu-membership-eu-ambassador-to-ukraine-28419.html>.

¹¹¹ Jarábik, Balázs, Gwendolyn Sasse, Natalia Shapovalova, and Thomas de Waal. "The EU and Ukraine: Taking a Breath." *Carnegie Endowment for International Peace* (blog), February 27, 2018. <https://carnegieendowment.org/2018/02/27/eu-and-ukraine-taking-breath-pub-75648>.

¹¹² Sasse, Gwendolyn. "Ukraine's Visa Liberalization Saga." Think Tank. *Carnegie Europe* (blog), November 28, 2016. <https://carnegieeurope.eu/strategieurope/66262>.

¹¹³ Parandii, Christina. "EU's Anti-Corruption Conditionalities in Ukraine: Between External Governance and Strategic Actorness?" College of Europe, 2019. <https://doi.org/10.13140/RG.2.2.33995.34082>.

European Union found the SAPO selection commission to have fallen short of its commitments, there was speculation concerning the precarious state of the country's visa-free regime.

The precarity surrounding the SAPO selection commission also highlighted another one of the European Union's mechanisms of conditionality, its macro-financial assistance (MFA) program. This program is essentially a financial aid program for Ukraine and has been implemented five separate times since its creation in 2014, disbursing a total of about five billion euros to Ukraine.¹¹⁴ This financial support was provided in order to support macroeconomic reforms and economic uncertainty, with the latest disbursement aimed at reducing the negative effects of the COVID-19 crisis on the Ukrainian economy.¹¹⁵ Furthermore, within the Association Agreement, macro-financial assistance is tied to all major corruption reforms, such as the establishment of public procurement and the regulation of the financial sector.¹¹⁶ The SAPO selection commission shortcoming prompted the European Union to remind Ukraine that its decision on the matter could jeopardize their upcoming 1.2 billion euro disbursement from the macro-financial assistance program.¹¹⁷ Although this program may have less salience with the Ukrainian public, it is certainly salient in the Ukrainian administration, which relies on financial assistance from various international institutions to ensure Ukraine's finances keep their head above water.

Even before its Association to the European Union was a credible prospect, the EU provided Ukraine with economic aid in order to reform and strengthen the independence of its

¹¹⁴ European Commission. "Ukraine." Text. Accessed February 24, 2021. https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/international-economic-relations/enlargement-and-neighbouring-countries/neighbouring-countries-eu/neighbourhood-countries/ukraine_en.

¹¹⁵ Ibid

¹¹⁶ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, signed May 29, 2014, http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155103.pdf

¹¹⁷ Dickinson, Peter. "EU-Ukraine Tensions Mount Ahead of Annual Summit." Think Tank. *Atlantic Council* (blog), September 29, 2020. <https://www.atlanticcouncil.org/blogs/ukrainealert/eu-ukraine-tensions-mount-ahead-of-annual-summit/>.

judiciary. By providing almost 500 million euros from 2007 to 2010 attached to conditions such as judicial reform and intensification of relations with international organizations such as the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE), the European Union laid the groundwork for the eventual *rapprochement* of relations between the two actors.¹¹⁸ Indeed, conditionality through economic aid and positive incentives is nothing new for the European Union and continues to be an important part of their foreign policy towards countries in their sphere of influence.

It must be noted that the European Union does not simply provide Ukraine with “carrots” and ultimatums such as visa-liberalization and economic assistance, they also aid the country in forming its anti-corruption institutions, ensuring its influence along the way. In order to help Ukraine with its work on reforms—given the project’s importance and size—the European Union established the Parliamentary Support and Capacity Building program to help the country deal with the large amounts of reform needed to pass the Verkhovna Rada.¹¹⁹ It has done important work in collaborating with Ukrainian parliamentarians in order to fine-tune reforms. This allows the European Union to directly act within Ukraine and become a legitimate political actor within the Ukrainian political sphere, directly influencing the policy being adopted by the parliament.

In my conversation with Tetiana Shevchuk, she explained to me that the document of the Association Agreement itself, as it is mainly an economic agreement, did not affect much anti-corruption policy in Ukraine, but that the EU’s political involvement in Ukraine was drastically

¹¹⁸ Petrov, Roman, and Paul Kalinichenko. “The Europeanization of Third Country Judiciaries Through the Application of the EU Acquis: The Cases of Russia and Ukraine.” *The International and Comparative Law Quarterly* 60, no. 2 (2011): 325–53.

¹¹⁹ Jarábik, Balázs, Gwendolyn Sasse, Natalia Shapovalova, and Thomas de Waal. “The EU and Ukraine: Taking a Breath.” *Carnegie Endowment for International Peace* (blog), February 27, 2018. <https://carnegieendowment.org/2018/02/27/eu-and-ukraine-taking-breath-pub-75648>.

increased after the ratification of the agreement, granting the EU a certain influence.¹²⁰ This furthers the idea of the European Union as a *de facto* political actor in Ukraine and demonstrates the reach that they have within policymaking. This sentiment was echoed in my conversation with an EU official familiar with Ukraine, in which he explained that “the Agreement itself does not really foresee legally binding obligations to Ukraine to fight corruption in specific ways,” but that the Association Agreement had a highly symbolic role, representing Ukrainian citizens’ “desire to move away from the Russia/Soviet space and closer to the EU/Western democracy and market economies.”¹²¹ In our conversation, Andrii Borovyk highlighted another way in which the EU provided support for reforms; he explained that reforms have often been met with attacks from veto players such as oligarchs and political opposition and that “without EU/IMF/US support then it wouldn’t be possible to put these [reforms] in place.”¹²² The European Union, then, also works as a defender of reform, putting their weight and political influence behind the causes aligned with its mission in order to defend them from domestic political attacks. This is in line with the way that Mendelski speaks about the European Union’s influence in reform in Romania, that it is able to back reform players, effectively redistributing political power.¹²³ This is also similar to the ways in which the EU influenced human rights promotion in Slovenia; they reduced the political power of elites and redistributed it to those who are traditionally underrepresented, allowing them to form domestic interest groups and influence policy.¹²⁴

¹²⁰ Tetiana Shevchuk (Legal Counsel at the Anti-Corruption Action Center), in discussion with the author, February 9th, 2021.

¹²¹ European Union Official, in discussion with the author, March 22nd, 2021

¹²² Andrii Borovyk (Executive Director of Transparency International Ukraine), in discussion with the author, February 19th, 2021.

¹²³ Mendelski, Martin. “Rule of Law Reforms in the Shadow of Clientelism: The Limits of the EU’s Transformative Power in Romania.” *Polish Sociological Review*, no. 174 (2011): 235.

¹²⁴ Bracic, Ana. “EU Accession, NGOs, and Human Rights: Discrimination Against the Roma in Slovenia and Croatia.” SSRN Scholarly Paper. Rochester, NY: Stanford University - Center on Democracy, Development and the Rule of Law, August 27, 2013. <https://doi.org/10.2139/ssrn.2335125>.

Predictably, this influence over domestic politics isn't only exerted within the country, but also through international organizations and conferences. Ambassador Steven Pifer explained to me that, at the 2014 Yalta EU Strategy Conference, Ukrainian President Poroshenko maintained that a High Anti-Corruption Court was not necessary, and that Ukraine would be fine reforming its existing judicial system. Alongside American diplomats such as John Kerry, the European Union "pushed hard" for a new court vetted by international judicial groups, giving Ukraine a chance to start anew with new judges.¹²⁵ Although not under Poroshenko, this pressure from the EU worked, eventually leading to the establishment of the HACC. The European Union's conditionality is certainly strong in a country like Ukraine which has a strong public desire for European influence and accession, but the approach is not without its shortcomings. Shortcomings to this conditionality will be evaluated in the "Shortcomings and Challenges" section of this paper.

Ukrainian Law Analysis

In certain aforementioned key reforms, the language used to refer to the European Union explains the influence of the EU and the hand it's played in legislative activities. For example, in the Law of Ukraine "On Public Procurement," a summary of the law's importance and goals is provided, explicitly mentioning that "this law also aims to adapt the legislation of Ukraine to the *acquis* of the European Union to implement the Association Agreement [between Ukraine and the EU]." By mentioning the EU *acquis* and this law's explicit aim to align itself with them, it becomes clear that this law was adopted thanks to pressure by the European Union. Although the European Union was not alone in supporting this law, it is identified as an important aspect of the EU's conditionality with Ukraine and demonstrates a clear influence on the legislative process.

¹²⁵ Steven Pifer (former U.S. Ambassador to Ukraine), in discussion with the author, December 22nd, 2020.

It is also important to note that—as the Association Agreement is not only an agreement pertaining to anti-corruption reform in Ukraine—there are also various other Ukrainian laws, unrelated to anti-corruption work, which help to demonstrate the influence that the European Union has had on domestic Ukrainian politics. In fact, Ukraine’s parliament, the Verkhovana Rada, has an entire section of its website dedicated to the translation of EU *acquis*, some of which are only there for documentation, but many of which have been adopted. They also publish public reports providing updates on the progress of EU rule adoption. These translated and adopted EU rules span a variety of issues, from human rights to public finance management and taxation.¹²⁶ Many of these adopted rules contain the exact same language as European documents, having literally been translated into Ukrainian and adapted to a Ukrainian context; leaving no room for doubt as to the role of the European Union in adopting these rules. This translation and adoption of EU rules directly within a country’s legal system is quite common according to Schimmelfennig and Sedelmeier. They explain that the institutionalization of EU rules can include the transposition of EU law into domestic law or the restructuring of institutions in accordance with EU rules, which represents exactly what has been occurring in Ukraine since the signing and ratification of the Association Agreement.¹²⁷ According to a 2020 EU report, Ukraine continues to adopt EU rules and *acquis* and has not yet arrived at a level with which the EU is satisfied, highlighting the fact that full compliance with EU regulation is no small task.¹²⁸

¹²⁶ “Report on the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand for the first quarter of 2019.” Government Report. Kiev: Ukrainian Ministry of Finance, 2019.

¹²⁷ Schimmelfennig, Frank, and Ulrich Sedelmeier. “Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe.” *Journal of European Public Policy* 11, no. 4 (August 2004): 661–79. <https://doi.org/10.1080/1350176042000248089>.

¹²⁸ “Association Implementation Report on Ukraine.” Brussels: European Commission, November 27, 2020. https://eeas.europa.eu/sites/eeas/files/2020_ukraine_association_implementation_report_final.pdf.

The compliance of Ukraine regarding European regulation is vast, spanning the variety of issues the EU is able to regulate, and serves as a testament to the progress that Ukraine has achieved, the influence of European *acquis* in the Ukrainian context, and the continuing work left to do in Ukraine. Upon encountering the volume and content of Ukraine's EU rule adoption, it becomes clear that there is a very strong European influence on a broad range of domestic issues—not limited to anti-corruption reform.

Parliamentary Coalition Analysis

This paper also aims to understand the influence of Europe by measuring changes in the Ukrainian parliament from 2011 until the present day (2021). Given Ukraine's stark political divisions (although notably less pronounced than they were 10 years ago), there is a marked political divide in the Ukrainian parliament between pro-Russian and pro-European coalitions. Certain parties and coalitions, such as *Batkivshchyna*, *Servant of the People*, and *European Solidarity* are explicitly associated with ideas of pro-Europeanism, while parties and coalitions such as the *Opposition "For Life"* and the *Party of Regions* are explicitly associated with ideas of *russophilia* (pro-Russian ideology). In knowing this, it is possible to analyze the voting patterns of these parties in the *Verkhovna Rada* on key reforms (many of which are explained in this paper) before and after the signing of the *Association Agreement* in 2014 to see if it had an effect on the ways in which parties vote. It is also possible to track the change in pro-Russian and pro-European coalition sizes in order to gain a better understanding of the alignment of Ukraine's legislators and political elites.

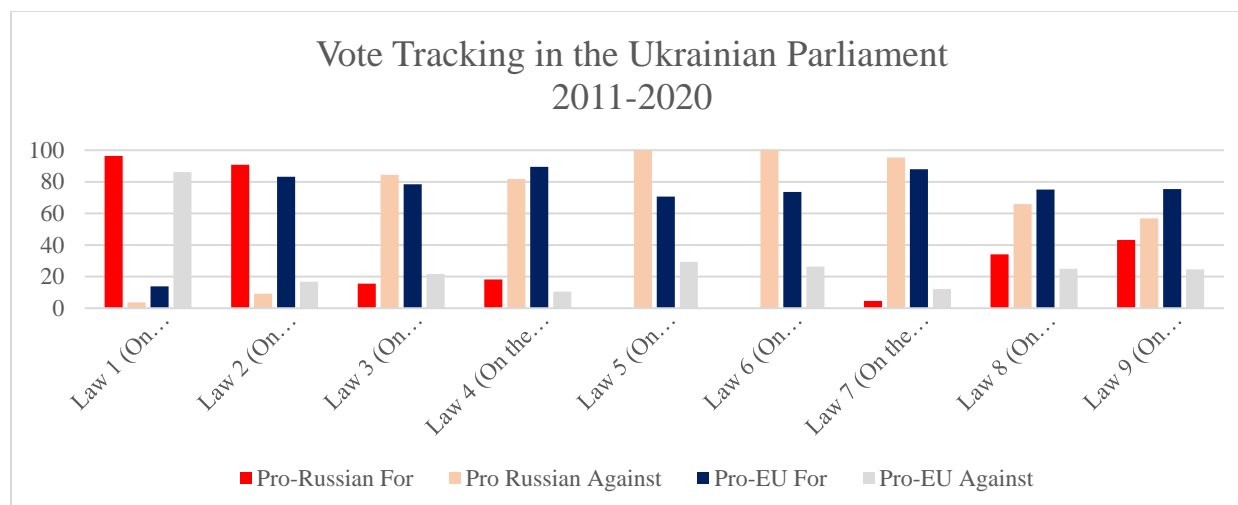


Figure 3: Graphic representation of Table 1

Table 1 (see appendix) shows the results of my coalition vote analysis. The highlighted boxes are those which represent the winning outcomes for each law and coalition. In my conversation with Tymofiy Mylovanov, he explained that all votes which were not explicitly “for” (i.e., against, abstaining, did not vote, absent) effectively constitute votes “against” a bill in the Ukrainian parliament.¹²⁹ Therefore, when analyzing vote outcomes, any votes which are not explicitly “for” a bill are considered votes “against” a bill. In Figure 3, we can see that the majority of key reforms studied have received votes “for” from pro-European coalitions and votes “against” from pro-Russian coalitions. This trend is slightly upset by the first two bills studied, both of which were passed during the Yanukovich era. Given Yanukovich’s pro-Russian affiliations, it makes sense that these would be the only reform bills favorably voted upon by the pro-Russian coalition. More surprising, however, is the vote of the pro-European coalition against the first reform bill studied, as pro-European coalitions are generally expected to vote for any reform bills. One possible explanation for this deviation could be that this particular reform bill was considered

¹²⁹ Tymofiy Mylovanov (former Ukrainian Minister of Economic Development, Trade, and Agriculture), in discussion with the author, January 25th, 2021.

ineffective and toothless, having been proposed mostly as empty virtue signaling.¹³⁰ Thus, a pro-European coalition would not have seen the need to vote in favor of a largely symbolic bill.

Despite a slightly different trend under Yanukovich, it is evident in the data that, by and large, pro-Russian coalitions vote against anti-corruption and institutional reform bills, whereas pro-European coalitions vote for anti-corruption and institutional reform bills. Coalitions and parties not directly affiliated with European or Russian ideology did not exhibit any sort of trend, which serves to demonstrate the ideological variety of the bills studied and the consistency with which pro-Russian and pro-European coalitions vote. One of the most important takeaways of these findings, though, is that the signing and ratification of the Association Agreement did not cause pro-Russian coalitions to begin voting for reform bills. In fact, based on the data and timeline of the votes, it seems as though the votes of pro-Russian parliamentarians are more based on the domestic political situation (i.e., the ideology and affiliation of the President) than European influence. The data in context demonstrates little to no shift in pro-European and pro-Russian voting patterns in the Verkhovna Rada before, during, or after the implementation of the Association Agreement. Indeed, any deviations from the observed trends are most likely due to domestic politics rather than external influence. Thus, at first glance it seems as though the EU's Association Agreement had very little impact on political decision-making in the parliament.

This is not entirely true, however. Although vote trends do not seem to indicate a shift due to European influence, there is significant change in the size of each coalition. Figure 4 graphs the change in coalition size from 2011 to 2021, demonstrating a significant increase in the number of parliamentarians associated with pro-European coalitions. This increase is most drastic after 2014, in the wake of the Revolution of Dignity and begs the question of whether these statistics are due

¹³⁰ Transparency International Ukraine, "The Ukrainian Way of Fighting Corruption - A Vicious Circle or an Absolute," Press release, January 20th, 2011.

to election results or faction switching (a common trend in the Ukrainian parliament). Research suggests that coalition size change was due to the switching of parliamentary coalitions rather than new elections; there were 186 cases of parliamentary coalition switching directly after the 2014 revolution, comprising 90% of all coalition switching cases for that session of the parliament.¹³¹ Many members of parliament switched coalition affiliation to mirror the clear opinions of the public. That being said, while party switching was significant in 2014, what was more significant was the election of new members of parliament. According to my research—which compared parliamentarians before and after the 2014 parliamentary elections—308 of the Rada’s 423 members were newly elected representatives, with only 114 incumbents being reelected. This is significant as it constitutes a turnover of about 73% of Ukraine’s parliament following the Euromaidan revolution—so significant, in fact, that it has been commented upon by Ukraine experts such as Ambassador Steven Pifer.¹³² With Yanukovich’s removal from power (due to his inability to take action to intensify relations with the European Union), many politicians began to distance themselves from the ideology promoted by Yanukovich and his Party of Regions. Thus, although the European Union did not have a direct hand in influencing the size of coalitions in the Ukrainian parliament, the subject of their *rapprochement* to Ukraine was the key issue in the 2014 revolution and subsequent parliamentary shifts.

¹³¹ VoxUkraine. “How MPs Moved Between Factions: The Analysis Of Party Switching In Ukrainian Parliaments,” November 18, 2019. <https://voxukraine.org/en/how-mps-moved-between-factions-the-analysis-of-party-switching-in-ukrainian-parliaments/>.

¹³² Pifer, Steven. “Ukraine’s Parliamentary Election: What Happened? What’s Next?” *Brookings* (blog), November 30, 1AD. <https://www.brookings.edu/blog/up-front/2014/10/27/ukraines-parliamentary-election-what-happened-whats-next/>.

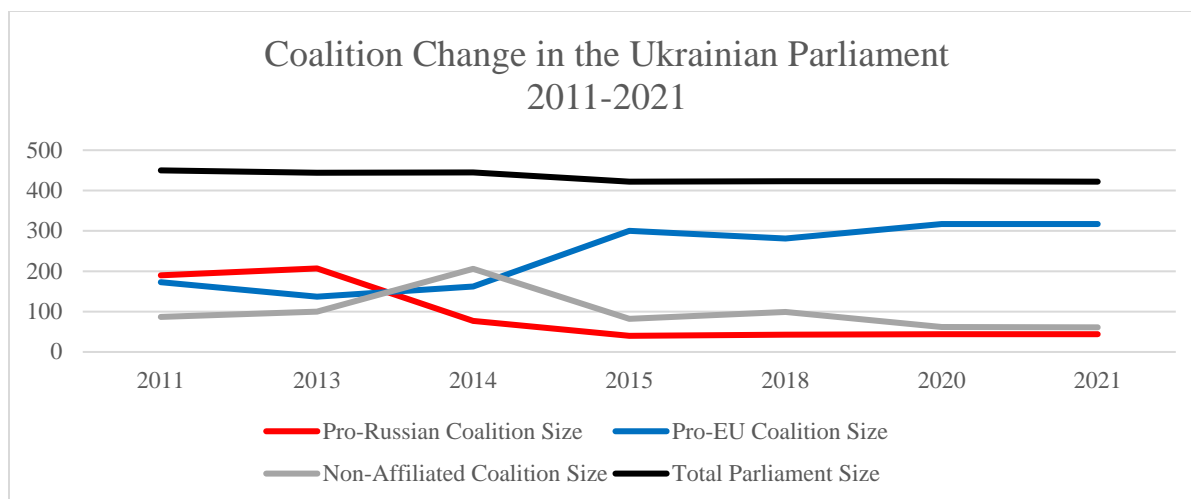


Figure 4: Change in coalition size in the Verkhovna Rada, 2011-2021

There was effectively no change in coalition-wide vote patterns before and after the signing and ratification of the Association Agreement other than those brought on by domestic political factors such as presidential party and symbolism. However, there was a significant change in parliamentary coalition size and parliament makeup after the 2014 revolution, which aimed to increase European influence and closeness with Ukraine. Therefore, although it is clear that the European Union's influence did not change the actual legislative decisions of political elites in the parliament, the European Union's ideology and values were a driving force in a widespread revolution which catalyzed a mass switching of parliamentary coalitions, leading to the situation seen today.

European Discourse in Ukraine

Understanding the public and political discourse surrounding the European Union (often referred to as simply "Europe") can help to illuminate not only the perception and influence of Europe in Ukraine's civil and political society, but also why many members of parliament may

have switched coalitions in 2014. Overall, perceptions of Europe in Ukraine are overwhelmingly positive. In everyday life, Europe is used as a signifier to denote the best possible products or services and is used very often in advertising, with the “euro” prefix having extremely positive connotations.¹³³ European models are considered “normal” and desirable, representing Europe as a sort of role model for Ukraine and its society.¹³⁴ This sentiment was echoed by Tetiana Shevchuk who currently resides in Ukraine, explaining that “everything that is good is ‘European.’”¹³⁵

This normative model of Europeanness is reflected in the polling done on issues of European influence in Ukraine. In a 2013 poll by the Razumkov Centre, about 49% of people agreed with the statement “a modern European model of state and society is more attractive than a Russian model,” and when asked to choose one foreign policy for Ukraine, almost 42% of respondents supported European integration compared to about 33% of respondents supporting integrating into the Eurasian Customs Union (a Russian-backed trade union).¹³⁶ In 2019, a Pew Research Center Global Attitudes Survey found that the percentage of Ukrainians who feel positively about the EU jumped to 79%.¹³⁷ Moreover, this survey found that 83% of Ukrainians prioritized a fair judiciary, with other top priorities including free speech and free media.¹³⁸ Research has also demonstrated that these statistics were furthered by Russia’s invasion of the Donbas and Crimea regions of Ukraine, dramatically decreasing the allyship felt for Russia within

¹³³ Orlova, Dariya. “‘Europe’ as a Normative Model in the Mediatized Discourse of Ukrainian Political Elites.” *Europe-Asia Studies* 69, no. 2 (March 2017): 222–41. <https://doi.org/10.1080/09668136.2017.1295302>.

¹³⁴ Ibid

¹³⁵ Tetiana Shevchuk (Legal Counsel at the Anti-Corruption Action Center), in discussion with the author, February 9th, 2021.

¹³⁶ Orlova, Dariya. “‘Europe’ as a Normative Model in the Mediatized Discourse of Ukrainian Political Elites.” *Europe-Asia Studies* 69, no. 2 (March 2017): 222–41. <https://doi.org/10.1080/09668136.2017.1295302>.

¹³⁷ Delvin, Kat. “Attitudes toward EU Are Largely Positive, Both within Europe and Outside It.” *Pew Research Center* (blog), October 21, 2019. <https://www.pewresearch.org/fact-tank/2019/10/21/attitudes-toward-eu-are-largely-positive-both-within-europe-and-outside-it/>.

¹³⁸ Wike, Richard, Jacob Poushter, Laura Silver, Kat Devlin, Jennell Fetterolf, Alexandra Castillo, and Christine Huang. “European Public Opinion Three Decades After the Fall of Communism.” *Pew Research Center’s Global Attitudes Project* (blog), October 15, 2019. <https://www.pewresearch.org/global/2019/10/15/european-public-opinion-three-decades-after-the-fall-of-communism/>.

Ukrainian society and pushing Ukrainians towards institutions such as the EU and NATO.¹³⁹ Overall, Ukrainian public attitudes towards the European Union have only gotten more positive, allowing the EU to gain broader influence over political affairs.

In a study done by Dariya Orlova in 2017, she studies the political elites' discourse surrounding Europe on the well-known talk show, *Shuster Live*, between 2005 and 2010 (before the Euromaidan revolution and Association Agreement). She finds that Europe was mentioned more than Russia, and that Europeanness was presented as an inherent quality, centering most discussion around political and civic culture.¹⁴⁰ Furthermore, Ukrainian political actors defined democracy, lawfulness, and human rights as core “European” values while constructing them as universal, with many politicians describing “Europe as a model”.¹⁴¹ Although this study is dated, public and elite views on Europeanization have only gotten more positive in the wake of the 2014 Euromaidan protests, leading to the conclusion that many political elites see Europe as the way forward. This is reflected in various Ukrainian leaders' public commitments to closer relations with the EU including presidents Yushchenko, Yanukovich, Poroshenko, and Zelenskiy.¹⁴² Although Ukrainian leaders may find a political advantage in endorsing European views and values at certain points in time, the scale of Europeanness' positive connotation in Ukraine demonstrates a widespread understanding of European models as desirable.

¹³⁹ Haran, Olexiy, and Maria Zolkina. “The Demise of Ukraine’s ‘Eurasian Vector’ and the Rise of Pro-NATO Sentiment.” *Ponars Eurasia*, February 16, 2017. <https://www.ponarseurasia.org/memo/demise-ukraines-eurasian-vector-and-rise-pro-nato-sentiment>.

¹⁴⁰ Orlova, Dariya. “‘Europe’ as a Normative Model in the Mediatized Discourse of Ukrainian Political Elites.” *Europe-Asia Studies* 69, no. 2 (March 2017): 222–41. <https://doi.org/10.1080/09668136.2017.1295302>.

¹⁴¹ Ibid

¹⁴² Pifer, Steven. “Ukraine’s Zelenskiy Ran on a Reform Platform — Is He Delivering?” *Brookings* (blog), July 22, 2020. <https://www.brookings.edu/blog/order-from-chaos/2020/07/22/ukraines-zelenskiy-ran-on-a-reform-platform-is-he-delivering/>.

Non-EU Actors Promoting Ukrainian Reform

The majority of this paper has focused on reform developments in Ukraine and the role of the European Union in promoting or influencing these reforms, but they are far from the only political actors with influence in Ukraine. Indeed, international organizations such as the International Monetary Fund (IMF) and domestic activism organizations play a large role in the passage of effective reform in Ukraine.

The International Monetary Fund is an international financial institution which works to monitor and support the global financial and monetary system, often providing aid to developing countries with similar conditionality as the European Union. Although the IMF's structure of conditionality and aid is similar to the EU, it has often been more effective in implementing conditionality than the European Union. In my conversation with Anders Åslund, he explained his viewpoint that the International Monetary Fund is the most important organization in terms of financial support and conditionality, given that they provide larger sums of money in aid and are stricter with their conditionality than the European Union.¹⁴³ Although this may be the subject of reproach for some, the IMF is certainly quicker than the EU to retract agreed-upon monetary aid if its conditions are not met. This has been evidenced multiple times in Ukraine, most recently when the IMF blocked a \$5 billion COVID relief deal due to patchy anti-corruption reform progress.¹⁴⁴ According to Ambassador Steven Pifer, in the 1990s, developed nations leaned on the IMF to be more lenient with its conditionality, but this proved to be a mistake as it did not promote reform and democratization in the new country. He also echoed the statements of Åslund, explaining that the IMF is the most effective institution regarding conditionality.¹⁴⁵ Nevertheless,

¹⁴³ Anders Åslund (Senior Fellow at the Atlantic Council), in discussion with the author, January 20th, 2021.

¹⁴⁴ Zinets, Natalia, and Ilya Zhegulev. "Ukraine's Leader Warns of 'Bloody Chaos' If Anti-Graft Laws Are Not Restored." *Reuters*. November 2, 2020. <https://www.reuters.com/article/ukraine-politics-idUSL8N2HO37D>.

¹⁴⁵ Steven Pifer (former U.S. Ambassador to Ukraine), in discussion with the author, December 22nd, 2020.

it must be noted that the IMF only associates conditionality with aid (as that is its most effective mechanism), while the European Union associates conditionality with a range of factors, including association or membership, which the IMF cannot offer.

Domestically, there are also a multitude of civil society actors working to push for further transparency and accountability in Ukraine in order to clean up the government and fight corruption. Two of these groups are the Anti-Corruption Action Center (AntAC) and Transparency International Ukraine. I was able to speak with key people in both organizations on the roles of their organizations in promoting reform in Ukraine. Tetiana Shevchuk of AntAC explained to me that they are able to influence government policy rather sporadically, adding that “the government is not always eager to hear us, unfortunately.”¹⁴⁶ She explained that in certain sectors, the work of NGOs and activist groups are included in political decision-making, but that in other sectors such as law enforcement and anti-corruption, criticism is less appreciated and thus their advice isn’t heeded. Importantly, though, activist groups are able to use traditional and social media to communicate their positions and influence stakeholders. Indeed, organizations like AntAC are very active on platforms such as Twitter. In certain instances, anti-corruption activist groups actually create products which directly facilitate adherence to EU conditions. Andrii Borovyk from Transparency International explained to me that his organization actually developed the public procurement system, piloted it for state-owned enterprises, and then gave it to the Ukrainian government.¹⁴⁷ Thus, it is clear that non-governmental organizations in Ukraine play a crucial role in the implementation of EU-prescribed reforms at the domestic level.

¹⁴⁶ Tetiana Shevchuk (Legal Counsel at the Anti-Corruption Action Center), in discussion with the author, February 9th, 2021.

¹⁴⁷ Andrii Borovyk (Executive Director of Transparency International Ukraine), in discussion with the author, February 19th, 2021.

More generally, Ukraine's civil society is incredibly active, especially when compared to its neighbors such as Belarus and Russia. According to Anne Applebaum, historian and political scientist focused on the development of civil society in Central and Eastern Europe, Ukraine has a very strong civil society, noting that "the problem in Ukraine is not lack of formal civil society, it's the state institutions."¹⁴⁸ She explained that Ukraine has a problem translating this active civil society into effective government institutions. In essence, the will of the people is there, but there exist many institutional blockages to reform and anti-corruption work.

Shortcomings and Challenges to Ukrainian Reform

Up until this point, this paper has focused on the successes of European conditionality, but the reality is such that the EU's campaign of influence in Ukraine is not only characterized by success, but also by setback. This section will touch upon recent setbacks to anti-corruption reform, the flaws of European conditionality, as well as external and domestic influences and shortcomings in order to paint a more holistic picture of the situation in Ukraine and the EU's influence.

Shortcomings of Reforms and Recent Setbacks

Although Ukraine has certainly made progress in the realm of anti-corruption and institutional reform, its evolution has also been characterized by various setbacks. Perhaps most famously is the corruption scandal exposed by U.S. President Donald Trump's impeachment trial. The trial was centered around an illegal *quid pro quo*, or bribe deal, made by the Trump administration to President Zelenskiy. On July 10th, 2019, Ukrainian officials met with the White House Chief of Staff, Mick Mulvaney, who referenced the illegal *quid pro quo* that American

¹⁴⁸ Anne Applebaum (Historian and political scientist), in discussion with the author, January 13th, 2021.

President Donald Trump would later offer to President Zelenskiy.¹⁴⁹ This meeting was followed up on July 25th, 2019 by a call between Presidents Zelenskiy and Trump, before which the Ukrainian administration was made aware of President Trump's meeting offer conditional on Ukrainian investigations into current U.S. President Joe Biden's family's activities in Ukraine.¹⁵⁰ In essence, the Trump administration had made it clear to Zelenskiy's team that aid for Ukraine would be contingent on investigations into Joe Biden's family. According to CNN journalist, Fareed Zakaria, Zelenskiy was scheduled to be on Zakaria's show, apparently to announce investigations into the Biden family and confirming that Zelenskiy had decided to take the deal. However, in mid-September 2019, the Washington Post broke the story about the *quid pro quo* and the interview was called off.¹⁵¹ In the end, aid had been released without conditions, which confused Zelenskiy's team as he was reportedly on the precipice of making a deal with the Trump administration regarding investigations and aid.¹⁵² His willingness to make this deal, although reluctantly, demonstrates an intention to engage in transnational corruption which would have enforced the very culture of corruption and bribery in the highest levels of Ukrainian administration that Zelenskiy claims he's fighting. According to Samantha Vinograd, a former member of the National Security Council and national security correspondent for CNN, these investigations into dealings between the Trump and Zelenskiy administrations demonstrate that there is much progress left to be made in the country.¹⁵³

¹⁴⁹ Prokop, Andrew. "The 2 Quid pro Quos at the Heart of the Impeachment Inquiry." *Vox*, November 12, 2019. <https://www.vox.com/2019/11/12/20954985/impeachment-trump-quid-pro-quo>.

¹⁵⁰ Ibid

¹⁵¹ Zakaria, Fareed. "Zelensky Planned to Announce Trump's 'Quo' on My Show. Here's What Happened." *Washington Post*, November 14, 2019, sec. Opinion. https://www.washingtonpost.com/opinions/zelensky-was-planning-to-announce-trumps-quid-pro-quo-on-my-show-heres-what-happened/2019/11/14/47938f32-072a-11ea-8292-c46ee8cb3dce_story.html.

¹⁵² Ibid

¹⁵³ Samantha Vinograd (Former member of the National Security Council), in discussion with the author, October 22nd, 2020.

Arguably, the most important blow dealt to Ukraine's anti-corruption reform came in October 2020 with a Constitutional Court ruling which sapped the country's NACP and parts of the electronic asset declaration system.¹⁵⁴ The ruling abolished criminal liability for intentional false declaration of assets or intentional failure to declare assets and declared unconstitutional the NACP's ability to control and verify declarations and open round-the-clock access to the register of e-declarations and lifestyle monitoring. Many posited that this move was due to influence within the country from oligarchs and certain anti-reform members of parliament and claimed that the decision was achieved based on distorted or isolated portions of the law in question (Law of Ukraine "On the Prevention of Corruption").¹⁵⁵ Nevertheless, this decision essentially removed some of the main powers of the agency and protected many under investigation of corruption. In an attempt to retaliate, on October 29th, 2020, President Zelenskiy registered draft bill No. 4288 in the Verkhovna Rada which would deprive justices on the Constitutional Court of their authorities and restore the anti-graft laws on financial declarations struck down by the Court.¹⁵⁶ However, this law is blatantly unconstitutional and significantly oversteps the powers of the Ukrainian presidency, leading political leader Yulia Tymoshenko to categorize Zelenskiy's law as a "coup d'état."¹⁵⁷ This crisis is ongoing and a solution has yet to be found, demonstrating the continuing adversity facing reformers in Ukraine.

In June 2020, AntAC called out the Cabinet of Ministers for allegedly rolling back public procurement reforms, integral parts of Ukraine's current anti-corruption framework, by essentially

¹⁵⁴ Channel-Justice, Emily. "Ukraine's Constitutional Court Crisis, Explained." Ukraine Research Institute Harvard University. Accessed March 1, 2021. <https://huri.harvard.edu/ukraine-constitutional-court-crisis-explained>.

¹⁵⁵ "Constitutional Court Puts an End to E-Declarations and Undermines NACP Powers." *Transparency International Ukraine*, October 28, 2020. <https://ti-ukraine.org/en/news/breaking-constitutional-court-effectively-terminates-e-declarations/>.

¹⁵⁶ Chazan, Yigal, and Nathan Andrews. "Ukraine: Corruption Fight Devolves Into New Constitutional Crisis - Analysis." *Eurasia Review*, November 17, 2020. <http://www.eurasiareview.com/17112020-ukraine-corruption-fight-devolves-into-new-constitutional-crisis-analysis/>.

¹⁵⁷ Ibid

implementing “nationality” or “localization” as a criterion for the procurement of public contracts.¹⁵⁸ This is among the many institutional shortcomings which NGOs such as AntAC uncover and report on in an effort to increase transparency. Other examples include Zelenskiy’s delayed appointment of key anti-corruption figures as well as the rewriting (and subsequent dampening) of anti-corruption legislation. Although these events may seem to be small compared to the large-scale and high-profile instances of corruption and setbacks which have occurred in Ukraine, they each chip away at the existing Ukrainian anti-corruption framework and complicate the European Union’s leverage within the country.

Flaws of the EU’s Foreign Policy in the Ukrainian Context

Ukrainian institutions are not the only ones to blame for setbacks in Ukrainian reform; the European Union and its internal politics also play a large role in the implementation (or lack thereof) of anti-corruption and institutional reforms. In our conversation, Anders Åslund actually characterized the European Union as particularly weak, explaining that a multitude of structural factors complicate the influence it exerts over neighboring countries. He primarily pointed out that the European Union is “too diverse,” citing a lack of strong leadership on issues, leading to undeveloped policy towards third countries.¹⁵⁹ This lack of a clear guiding voice from the EU complicates influence as messaging is often confusing or difficult to ascertain from the varying opinions within the EU. This was most evident with the ratification of the Association Agreement; it was clear that the EU was willing to sign and ratify it, but it was delayed by a public referendum voting against the Agreement in the Netherlands. This complication was echoed in my

¹⁵⁸ Anticorruption Action Centre. “We Call on the Cabinet of Ministers to Stop Rolling Back the Procurement Reform,” June 22, 2020. <https://antac.org.ua/en/news/we-call-on-the-cabinet-of-ministers-to-stop-rolling-back-the-procurement-reform/>.

¹⁵⁹ Anders Åslund (Senior Fellow at the Atlantic Council), in discussion with the author, January 20th, 2021.

conversation with an EU official familiar with Ukraine, who explained that “one of the major shortcomings [of the EU’s policy in Ukraine] is that EU institutions and member states are separate layers in Ukraine, and thus coherent foreign policy is not there.”¹⁶⁰ Indeed, these democratic aspects of the EU system are what give it strength and promote equity, but are not united by one guiding voice. This ultimately causes the EU to have relatively weak conditionality compared to institutions such as the IMF, which list out conditionalities and provide countries with comprehensive and clear lists of benchmarks. Interestingly, in my interview with the same EU official, he pushed back on this notion of weak conditionality, citing the EU’s withholding of the third MFA payment due to Ukraine’s failure to meet conditions.¹⁶¹ However, this represents just one instance of punishment and does not take into account the times at which the European Union has been relatively relaxed regarding its conditionality.

This difficulty with unity is reflected in the language the European Union uses when expressing its concern or discontentment with Ukraine. In its resolution on oversight for Ukrainian reforms, the EU employs action words such as “calls for,” “urges,” and “stresses.”¹⁶² These are words which demonstrate a hesitance to condemn and an inability to take further action. Much like United Nations resolutions, which are constrained by the extremely limited powers of the institution, EU resolutions such as this one only serve to demonstrate a consensus on an issue and do not amount to binding or actionable legal documents. Although documents such as these aid Ukrainian officials and lawmakers in focusing their efforts on issues of importance, they also demonstrate the very real limitations of EU oversight.

¹⁶⁰ European Union Official, in conversation with the author, March 22nd, 2021

¹⁶¹ Ibid

¹⁶² “Resolution by the Euronest Parliamentary Assembly on Parliamentary Oversight as a Tool to Strengthen Democracy, Accountability and Effectiveness of State Institutions in the Eastern Partner Countries.” Official Journal of the European Union, April 24, 2020.

Interestingly, another flaw in European conditionality is its prescription for wide-reaching reforms. While this may seem positive, reform efforts that are too broad (especially in the context of a developing state such as Ukraine) do not often meet their benchmarks and result in outcomes which make little difference. According to Tymofiy Mylovanov, although the EU's Association Agreement has had a net positive effect on Ukraine, he explained that it "could have been much better if focused on details," as the Agreement's broad nature has made it difficult for Ukraine to single out the biggest, most important reforms at first, leading the way to broader reforms. Indeed, in our conversation, Mylovanov explained that due to this broad-reaching conditionality, "at the level of [domestic] agencies, there's been a mistake from directors where they try to fight all battles at once, so they can't win the war."¹⁶³ Domestically, EU breadth of conditionality translates into a tradeoff between quantity and quality, leading domestic Ukrainian political actors to prioritize quantity over quality of reforms.

Finally, one of the most interesting progressions at the core of many of the EU's issues with Ukraine is the change in the EU's view of Ukraine over time. While optimistic in the beginning of reform efforts in Ukraine, the EU has gradually become more jaded with the state of affairs in Ukraine, much like its people. Ambassador Steven Pifer characterized this progression as "Ukraine fatigue," noting that the election of President Zelenskiy represented the fifth time expectations for Ukraine were heightened since the beginning of its history, with every other time leading to disappointment.¹⁶⁴ In fact, even back in 2011, many Europeans began to think that Ukraine and its oligarchs were stuck in their ways, and that no amount of help could change the

¹⁶³ Tymofiy Mylovanov (former Ukrainian Minister of Economic Development, Trade, and Agriculture), in discussion with the author, January 25th, 2021.

¹⁶⁴ Steven Pifer (former U.S. Ambassador to Ukraine), in discussion with the author, December 22nd, 2020.

situation.¹⁶⁵ Although this perception is no longer very relevant (as evidenced by the EU's continuing cooperation with Ukraine for the past 10 years), Europe's "Ukraine fatigue" is still a very real threat to continuing relations between the two actors. Thankfully, some of the recent milestones for Ukrainian anti-corruption have prevented this threat from coming to fruition, but it does beg the question of how long the EU will want to continue its current relationship with Ukraine. In fact, Ambassador Pifer explained that, every time Ukraine experiences a major misstep, there are more and more voices within Europe advocating for "business as usual" with Moscow, which could lead to a reduction or elimination of Russian sanctions; a very precarious possibility for Ukraine.¹⁶⁶

Russian Influence

Not all external influence in Ukraine advocates for rule of law and anti-corruption. In fact, the Russian presence in Ukraine has been a major cause for concern among Europeans and Ukrainians alike. While Russia has openly invaded the Ukrainian territories of Crimea and Donbas, they have also engaged in more covert influence tactics such as disinformation and soft power leverage over Ukrainian officials.

In Anne Applebaum's book, *The Red Famine*, she highlights that poor relations between Ukraine and Russia are nothing new. She explains that, in 1931-32, Ukraine experienced a brutal famine—referred to as the *Holodomor*—which killed 4 million Ukrainians, a famine brought on intentionally by Stalin in order to suppress any potential rebellion.¹⁶⁷ This event still colors

¹⁶⁵ Hitch, James T., and Yuliya Kuchma. "Ukraine's New Anti-Corruption Law: Will It Really Stop Corruption in Ukraine?" *The International Lawyer* 45, no. 3 (2011): 839–55.

¹⁶⁶ Steven Pifer (former U.S. Ambassador to Ukraine), in discussion with the author, December 22nd, 2020.

¹⁶⁷ Golitsina, Natalya. "Historian Anne Applebaum Details Stalin's War Against Ukraine: 'I Believe It Was Genocide.'" *RadioFreeEurope/RadioLiberty*, September 25, 2017. <https://www.rferl.org/a/historican-anne-applebaum-interview-ukraine-holodomor-famine-stalin/28756181.html>.

relations between Ukraine and Russia today, especially given Russia's continuing involvement in Ukrainian affairs. When asked about the link between Ukraine's history with Russia and its current relationship, Applebaum explained that, although Putin may not be thinking historically when engaging in relations with Ukraine, moves are modeled off of previous invasions and "KGB playbooks." According to Applebaum, Putin (as well as former Russian leaders) sees Ukraine as a sort of province of Russia where they have a slightly different language and culture. Applebaum explained that "Ukrainians resent this Russian superiority complex and seek allies in the rest of the world" in order to counterbalance their influence.¹⁶⁸ Seeking allies is precisely what Ukraine is doing by vying for and maintaining EU association, but it is hindered by the continuing disinformation and influence that Russia has within Ukrainian society. Applebaum makes clear that Russia has historically been a force of destruction for Ukrainian institutions and society, and that Ukrainian foreign policy is characterized by a focus on mitigating Russian influence.

Specifically, RAND Corporation's book on Russian social media influence in Eastern Europe explains that Russian propaganda on social media seeks to leverage shared elements of the post-Soviet experience in order to drive wedges in society and sow confusion and distrust surrounding Western institutions and influence.¹⁶⁹ Although it has been demonstrated that disinformation campaigns erode over time, Russia's ability to sow seeds of distrust and doubt for Western and Ukrainian institutions has proved to be quite effective at causing crisis within the country.¹⁷⁰ This is confirmed by Applebaum, who explains that Russia's policy towards Ukraine takes multiple forms: the war in East to ensure they never join NATO, overt and covert support

¹⁶⁸ Anne Applebaum (Historian and political scientist), in discussion with the author, January 13th, 2021.

¹⁶⁹ Helmus, Todd C. *Russian Social Media Influence: Understanding Russian Propaganda in Eastern Europe*. Santa Monica, Calif: RAND Corporation, 2018.
https://www.rand.org/content/dam/rand/pubs/research_reports/RR2200/RR2237/RAND_RR2237.pdf.

¹⁷⁰ "Analysis of Russia's Information Campaign Against Ukraine." Riga: North Atlantic Treaty Organization, 2015.

for anti-systemic Ukrainian political parties, and open Russian propaganda as well as covert social media propaganda. This propaganda “seeks to push narrative that democracy is weak and will fail, that the EU seeks to make everyone gay and is weak, and that the EU is degenerate, highlighting the decadence of EU.”¹⁷¹

Despite this rather bleak outlook on Russian influence, in our conversation, Tymofiy Mylovanov explained that Russia’s influence is becoming less pervasive thanks to rather strong freedom of speech in Ukraine.¹⁷² According to Andrii Borovyk, Russia is also pushing Ukrainian supporters away due to their invasion of Ukrainian territory and the growing recognition of Russian disinformation in Ukraine.¹⁷³ This is slowly chipping away at pro-Russian support in Ukraine, as demonstrated by aforementioned statistics which show growing pro-EU support. There is also the added support of the EU which has undertaken various humanitarian aid missions to parts of Ukraine victim to Russian aggression.¹⁷⁴ In these situations, the EU seems to play the role of the responsible caretaker rather than the aggressive and vengeful neighbor, gaining popularity within the afflicted regions and the broader nation.

Domestic Factors

Although setbacks and slow progress on anti-corruption measures can be partially attributed to external actors and their flaws, there exist a variety of pervasive domestic factors

¹⁷¹ Anne Applebaum (Historian and political scientist), in discussion with the author, January 13th, 2021.

¹⁷² Tymofiy Mylovanov (former Ukrainian Minister of Economic Development, Trade, and Agriculture), in discussion with the author, January 25th, 2021.

¹⁷³ Andrii Borovyk (Executive Director of Transparency International Ukraine), in discussion with the author, February 19th, 2021.

¹⁷⁴ Tetiana Shevchuk (Legal Counsel at the Anti-Corruption Action Center), in discussion with the author, February 9th, 2021.

including oligarchic influence, parliamentary corruption, and a culture of corruption that slow down and challenge the progress of reforms.

Often considered the most pervasive is the influence of oligarchs on political decision-making in Ukraine. As aforementioned in the Theoretical Framework, these oligarchs secure economic interests inside Ukraine to then obtain political influence over decision makers. Through their enormous economic influence, they're able to "buy" parliamentarians and run for public office themselves. According to Anders Åslund, before becoming president, Zelenskiy did not understand how the political system worked, and thus his party was excessively dependent on one Ukrainian oligarch, Ihor Kolomoyskyi, who had delivered about thirty of his MPs to begin with.¹⁷⁵ According to Tymofiy Mylovanov, for people that the oligarchs are unable to buy off, they are masters at finding other levers of influence in order to profit off of their political capital.¹⁷⁶ Political leaders see these oligarchs as a sort of necessary evil, working with them to implement and support policy as long as it remains in their best interest. For example, in order to get airtime on television during and after his presidential campaign, President Zelenskiy befriended Kolomoyskyi, but has since distanced himself due to recent controversies regarding Kolomoyskyi's shady dealings which eventually led to the fall of Ukraine's largest lender, PrivatBank.¹⁷⁷ In fact, in early March 2021, the Biden administration placed sanctions on Kolomoyskyi and his family, citing his use of "his political influence and official power for his personal benefit."¹⁷⁸ However, Zelenskiy has still not

¹⁷⁵ Anders Åslund (Senior Fellow at the Atlantic Council), in discussion with the author, January 20th, 2021.

¹⁷⁶ Mylovanov, Tymofiy. A Virtual Conversation: Francis Fukuyama and Tymofiy Mylovanov. Zoom, October 16, 2020.

https://www.youtube.com/watch?v=_mwTmZhCM7A&feature=youtu.be&ab_channel=CenterforGovernanceandMarkets.

¹⁷⁷ Olearchyk, Roman. "Ukraine's Oligarchs Jostle for Influence with President Zelensky." *Financial Times*. February 19, 2020, sec. Ukrainian politics. <https://www.ft.com/content/1821b882-4366-11ea-abea-0c7a29cd66fe>.

¹⁷⁸ Seddon, Max. "US Sanctions Ukrainian Oligarch Kolomoisky over Corruption." *Financial Times*. March 5, 2021. <https://www.ft.com/content/57cfa2bd-834d-43bd-ba1c-20a1ba2b16f4>.

taken a public stand against Kolomoyskyi and is in the process of befriending another media oligarch, Rinat Akhmetov, in order to continue to receive coverage.¹⁷⁹

If these oligarchs sided with the European Union on issues of reform and anti-corruption, it is likely their role would be overlooked. However, oligarchs almost always stand to lose from anti-corruption and institutional reform measures. Oligarchs often benefit from trade with Russia (especially concerning gas and energy) and thus don't want to implement policies that would sour ties with Russia, including Western-oriented reforms.¹⁸⁰ In fact, there have been instances of oligarchic influence explicitly tied to attempts to sidetrack or block reform, especially in the past few years. Members of parliament considered to be under Ihor Kolomoyskyi's control have engaged in "lawfare," pushing the Constitutional Court to hand down dubious or politically motivated decisions concerning matters of anti-corruption reform.¹⁸¹ Decisions include declaring unconstitutional the 2015 appointment of the director of NABU and punitive measures in asset declaration legislation. Members of parliament associated with Kolomoyskyi in Zelenskiy's "Servant of the People" party have also voted to remove renowned reformist prosecutor Ruslan Ryaboshapka, replacing him with a former adviser to Zelenskiy and lawmaker from his party, Iryna Venediktova.¹⁸²

The parallel judicial and political systems that oligarchs create (as aforementioned in the Theoretical Framework) are extremely pervasive in all sectors of Ukrainian political decision-

¹⁷⁹ Seddon, Max. "US Sanctions Ukrainian Oligarch Kolomoisky over Corruption." *Financial Times*. March 5, 2021. <https://www.ft.com/content/57cfa2bd-834d-43bd-ba1c-20a1ba2b16f4>.

¹⁸⁰ Dimitrova, Antoaneta, and Rilka Dragneva. "Shaping Convergence with the EU in Foreign Policy and State Aid in Post-Orange Ukraine: Weak External Incentives, Powerful Veto Players." *Europe-Asia Studies* 65, no. 4 (June 2013): 658–81. <https://doi.org/10.1080/09668136.2013.766040>.

¹⁸¹ Shevchuk, Tetiana. "Pro-Kremlin MPs and Oligarchs Wage Lawfare on Ukraine's Reform Agenda." *Atlantic Council* (blog), September 1, 2020. <https://www.atlanticcouncil.org/blogs/ukrainealert/pro-kremlin-mps-and-oligarchs-wage-lawfare-on-ukraines-reform-agenda/>.

¹⁸² Dixon, Robyn, and David L. Stern. "How Ukraine's Zelensky Lost the Anti-Corruption Movement." *Washington Post*. Accessed December 6, 2020. https://www.washingtonpost.com/world/europe/ukraine-corruption-zelensky-ryaboshapka-venediktova-trump-biden/2020/03/17/7dcab542-6636-11ea-912d-d98032ec8e25_story.html.

making, and their Russian- and corruption-aligned interests cause oligarchs to be a major roadblock in the path to effective reform, transparency, and accountability. It must be noted, however, that Zelenskiy's administration has also engaged in "de-oligarchization" measures in Ukraine, charging former PrivatBank executives with embezzlement as well as shutting down television channels and seizing assets associated with oligarch and politician Viktor Medvedchuk.¹⁸³ These are steps in the right direction which help mitigate oligarchic influence, but until the power of oligarchs is reined in, steady progress on anti-corruption and institutional reform in Ukraine will be difficult, especially given widespread doubt that Zelenskiy will go after Ukraine's most influential oligarchs.¹⁸⁴

The influence of oligarchs is intimately connected with the structural and competency shortcomings of the Ukrainian government. In an article written in November 2020 (and again in an article written in February 2021), Anders Åslund describes the current Zelenskiy administration—despite its anti-corruption, anti-oligarchic, and pro-European messaging—as slow-moving, inept, and disinterested in true reform, especially when it comes to oligarchic influence.¹⁸⁵¹⁸⁶ Interviewed experts—some of whom wish to remain anonymous—have stated that Zelenskiy's administration, much like the European Union, has focused on too many reforms at once and has been unable to make significant headway in specific instances. Moreover, many international watchdogs, former anti-corruption prosecutors, and officials have characterized Zelenskiy and his administration as well-meaning but incompetent and wholly unaware of the workings of Ukraine's political systems (in part due to Zelenskiy's surrounding himself with

¹⁸³ Seddon, Max. "US Sanctions Ukrainian Oligarch Kolomoisky over Corruption." *Financial Times*. March 5, 2021. <https://www.ft.com/content/57cfa2bd-834d-43bd-ba1c-20a1ba2b16f4>.

¹⁸⁴ Fisher, Jonah. "Zelenskiy's Ukraine: Why Comic's Dream of Transformation May Be Over." *BBC News*, May 20, 2020, sec. Europe. <https://www.bbc.com/news/world-europe-52721154>.

¹⁸⁵ Åslund, Anders. "IMF Puts Ukraine on Pause over Corruption Concerns." *Atlantic Council* (blog), February 16, 2021. <https://www.atlanticcouncil.org/blogs/ukrainealert/imf-puts-ukraine-on-pause-over-corruption-concerns/>.

¹⁸⁶ Ibid

friends and former television colleagues).¹⁸⁷ This seems to be an accurate portrayal, as de-oligarchization has made very shaky progress in Ukraine.

In our conversation, Ambassador Steven Pifer outlined some of the structural problems that face Ukraine's political system with regards to anti-corruption reform. Notably, there are no mass parties built around ideas or values, rather parties are built around individuals and quickly collapse with the individual. Furthermore, as a Ukrainian citizen, influencing one's member of parliament is difficult as they are not very responsive to constituent work.¹⁸⁸ Thus, it is difficult for citizens' desires to be translated into policy, which hinders the effectiveness of grassroots reform work unless accompanied by large national movements. This lack of motivation by certain members of parliament to introduce anti-corruption and institutional reform is, in part, what perpetuates another one of Ukraine's structural problems: its veritable culture of corruption. In the past, scholars claimed that Ukraine would never democratize if not for widespread structural changes in post-Soviet elite conduct.¹⁸⁹ This problem still exists today; corruption in Ukraine's parliament is extremely widespread, even after reform efforts, and is largely due to the low salaries and budgets afforded to members of parliament. However, corruption in Ukraine does not stop at the parliament; it doesn't even stop at the government. Research has demonstrated that a culture of corruption is even present in Ukraine's higher education system. Indeed, certain professors have been known to distribute a "price list" for grades within Ukrainian universities, with many students acknowledging this as a norm in Ukrainian higher education.¹⁹⁰ It is thought that the same causes apply here: low salaries and a high cost of education are at work behind some of the economic

¹⁸⁷ Fisher, Jonah. "Zelensky's Ukraine: Why Comic's Dream of Transformation May Be Over." *BBC News*, May 20, 2020, sec. Europe. <https://www.bbc.com/news/world-europe-52721154>.

¹⁸⁸ Steven Pifer (former U.S. Ambassador to Ukraine), in discussion with the author, December 22nd, 2020.

¹⁸⁹ Gallina, Nicole. "The Impact of Political Elite Conduct on State Reform: The Case of Ukraine." *CEU Political Science Journal*, no. 02 (2008): 187–200.

¹⁹⁰ Osipian, Ararat. "Corruption and Reform in Higher Education in Ukraine." *Canadian and International Education* 38, no. 2 (December 1, 2009): 104–22.

motivation for professor-level corruption. Although corruption in higher education does not necessarily amount to high-level public-sector corruption, it serves to demonstrate the pervasiveness of corruption culture throughout various sectors of Ukrainian society. Nevertheless, throughout my interviews Ukrainians made it clear to me that progress had been made and that Ukraine was not a state entirely overrun by corruption; the problem remains but the country has made measurable progress in fighting the problem.

Conclusions and Policy Recommendations

Given that the subject of this project is the policy of an international body, it would not be appropriate to propose genuine policy recommendations or changes to their foreign policy. The barriers to the implementation of an overhaul of the European Union's foreign policy with Ukraine are far too great to prescribe policy changes. However, this section strives to synthesize the data analyzed above in order to examine the implications of the current policy and explore potential recommendations to further the European Union's mission in Ukraine.

Lessons Learned from the Current Policy

In analyzing the Association Agreement's effect on anti-corruption policy in Ukraine, three main lessons can be drawn about the effectiveness of external influence in Ukraine, specifically regarding anti-corruption reform.

- I. **Demands for reform must be targeted and specific.** Although the European Union's strength lies in its value-based policy, attempting to change the entirety of a country's anti-corruption system at once does not necessarily lead to the best results. In Ukraine, the European Union influenced officials to tackle judicial, parliamentary, and private

corruption all at once, causing it to focus on a variety of issues without making significant headway on targeted aspects of anti-corruption. Additionally, the European Union has historically measured compliance based on legislation adoption, rather than its enforcement and implementation, furthering the problem of ineffective and superficial reforms.¹⁹¹ In order for policy to be effective, it needs to target specific problems within the larger issue, at first focusing on certain root causes of corruption. Recently, targeted reforms such as the creation of the High Anti-Corruption Court have placed Ukraine on the right track by instating a focused and accountable institution.

- II. **Conditions must be associated with specific rewards.** In order for demands to be taken seriously, there must be tangible rewards for the Ukrainian state and people. Indeed, the most effective conditionality has been through specific rewards such as visa-free regimes and promises of aid. Before the signing and ratification of the Association Agreement, conditionality tied to EU association was most effective. After the implementation of the Agreement, conditionality tied to visa-free regimes and economic aid were the most effective in influencing and bolstering reforms within the country.
- III. **Public support is a strong driver of change.** Statistics have shown a dramatic increase in Ukrainian public support for the European Union throughout the past 10 years. This public support for Western ideals and values has permeated legislative bodies, causing members of parliament to shift party affiliation after two public revolutions in the span of 10 years. Civil society is incredibly active and can be effective in reinforcing EU ideals and institutions. Thus, the EU's empowerment and involvement of civil society organizations

¹⁹¹ Guasti, Petra, and Bojan Dobovsek. "Informal Institutions and EU Accession: Corruption and Clientelism in Central and Eastern Europe." Reykjavik, 2011. <https://ecpr.eu/Filestore/PaperProposal/55210a55-9335-4431-a0f6-d06a1097aca4.pdf>.

and the general public is a very effective and compelling factor in reform success. There is incredible strength in Ukrainian public support, especially given its ability to be astoundingly responsive to failures to deliver on reform promises. That being the case, structural problems often remain, even after changes of parties and candidates, thus public support can only be a part of the solution. The EU's ability to empower actors of change within Ukraine has been incredibly important in implementing reforms, but widespread institutional change through conditionality also has to happen at the highest levels of government.

Evaluating the Thinking Regarding Future Policy

The European Union's policy towards Ukraine exhibits quite a clear message about the ways in which reform must happen; the EU prescribes literal rules and policy that must be transposed into Ukrainian law, even going so far as to require the creation and implementation of specific anti-corruption institutions. It's a policy which imposes reform as a part of conditionality. The idea of "imported" versus "exported" anti-corruption movements helps to illuminate the thinking and logic behind European influence. While "imported" reforms are those welcomed or initiated by the people and government, "exported" reforms are those forced onto a country.¹⁹² Although the European Union's efforts cannot be fully described as "exported"—as they have been largely welcomed by the Ukrainian people—they certainly exhibit a paternalistic quality in the sense that they are requirements imposed by a Western international body, considered to be more developed than the country of Ukraine. While these perceptions of development are largely true according to widely accepted benchmarks, the European Union must be careful not to

¹⁹² Grødeland, Åse Berit. "Elite Perceptions of Anti-Corruption Efforts in Ukraine." *Global Crime* 11, no. 2 (May 2010): 237–60. <https://doi.org/10.1080/17440571003669241>.

infantilize Ukraine and its people. Reforms prescribed by the EU have become more and more focused on “importing” ideas and values with the support of civil society and the general public, but many of the institutions and reforms are based upon direct requirements based upon what the European Union’s External Affairs deem necessary. The EU should ensure that it does not overbear on matters of anti-corruption and limit its involvement to political and financial support rather than imposition, so as to not alienate key political actors.

Indeed, Ukraine has been infantilized for generations under Soviet rule and through Russian information and military campaigns. This has recently been shown to push people away from Russia and direct them towards the European Union, providing the EU with a very specific opportunity to bring about change in Ukraine through nudging and support rather than imposition. As of now, the EU has mainly served to nudge unwilling politicians and officials to implement policies desired by the people, effectively empowering the voices of Ukrainian citizens and NGOs. Policies such as de-oligarchization are examples of policies which are incredibly popular within Ukrainian society, but that have been largely unacted upon by politicians. Although the European Union—along with partners such as the United States—have emphasized the importance of de-oligarchization, they have not written it into specific conditionality. Specific conditions related to anti-oligarchic measures could be a way of nudging institutional and legislative change to reflect the priorities of the people. Indeed, most blockages in Ukrainian institutional and anti-corruption reform can be attributed in some way to the influence of oligarchs. This is a problem which is heavily touched upon by not only literature concerning Ukraine’s situation, but by Ukrainian citizens themselves, demonstrating a public understanding of Ukraine’s political shortcomings and a desire for change.

The European Union's influence in Ukraine's anti-corruption sphere has mostly been effective in supporting reform actors and decreasing the relevance of veto players, to borrow from Schimmelfennig and Sedelmeier's terminology.¹⁹³ This has been an immense strength of European policy towards Ukraine, as it legitimizes the requests of the people and facilitates their translation into law. However, the European Union has also literally dictated legislation to be transposed into Ukrainian national law. This has so far been acceptable within the country, as it is a common practice of the European Union, but the EU must be careful to moderate this activity (especially in a non-member state) to avoid "exporting" reforms and alienating Ukrainian officials.

Overall Recommendation

It would be inappropriate and unrealistic for this paper to recommend broad-reaching policy changes to the European Union's overall foreign policy, especially since such a change would involve the rewriting, resigning, and re-ratification of an agreement between the EU and Ukraine. Nevertheless, this study illustrates challenges and setbacks that the EU has experienced vis-à-vis Ukrainian anti-corruption reform and demonstrates there is certainly room for improvement. These recommendations will focus on certain obstacles to EU influence through conditionality and will strive to analyze potential solutions or shifts which could help mitigate these blockages. It is also important to recognize that the case of Ukraine is unique. While it can be compared to other post-Soviet Balkan states, Ukraine's relationship with Russia and its importance in geopolitics—as well as its active civil society—present particular challenges and opportunities that are not present in countries such as Bulgaria, Romania, and Moldova.

¹⁹³ Schimmelfennig, Frank, and Ulrich Sedelmeier. *The Europeanization of Central and Eastern Europe*. Cornell Studies in Political Economy. Ithaca, New York: Cornell University Press, 2005.

As mentioned above, specificity in conditionality and rewards is crucial to the success of reforms in Ukraine. Thus, the European Union should focus on expanding targeted efforts in the different spheres of anti-corruption policy, emphasizing specific rewards and sources of leverage such as the visa-free regime and macro-financial assistance program. Other potential incentives could include financial incentives such as research and development funding for Ukrainian companies and symbolic incentives such as increased Erasmus-type academic exchange programs between Ukraine and EU countries, motivating civil society and private industry to push for EU compliance. Targeted efforts include those which are already in the course of implementation, such as the establishment of specified institutions like the High Anti-Corruption Court, de-oligarchization through the freezing of assets and seizing of power sources, and the instatement of specific systems to keep track of and identify corrupt practices. However, certain areas still lack focus. Ukraine's parliament continues to be an incredibly corrupt institution, widely left unchecked by European conditionality. Targeted reforms such as salary increases for members of parliament must be emphasized in order to deter corruption and clean up illegitimate and undemocratic practices. Indeed, placing emphasis on particular laws, institutions, and even people provides Ukraine with more specific targets for reforms rather than requiring general clean-ups of corruption. Interventions and recommendations could be based on effective reforms from other Eastern European countries or burgeoning democracies. Take Georgia, for example, which implemented a strategy of drastic change in the demographics of its administration. There was a concerted effort in Georgia to replace "old-guard" political elites with younger Western-educated technocrats, in part causing its Transparency International ranking to go from 124 in 2003 to 51 in 2012.¹⁹⁴ This is not to make a value judgement regarding Western education but serves to

¹⁹⁴ Nasuti, Peter. "Administrative Cohesion and Anti-Corruption Reforms in Georgia and Ukraine." *Europe-Asia Studies* 68, no. 5 (July 2016): 847–67.

demonstrate that externally educated administrators are more likely to be objective and promote reform in a country. Within the European Union, Estonia is often lauded as a model country for anti-corruption. Since 2012, Estonia has moved up 11 spots Transparency International's Corruption Perceptions Index (CPI), currently ranked 17th in the entire world.¹⁹⁵ Interestingly, Estonia implemented similar policies as Georgia during their post-Soviet transition period, excluding Russian-speaking minorities from public administration positions in an attempt to break problematic and corrupt post-Soviet legacies.¹⁹⁶ Although a rather drastic (and potentially undemocratic) measure, it succeeded in preventing abuse during the privatization of public industry and in breaking a culture of corruption which runs so rampant in states such as Ukraine. This breaking of corruption culture is the crux of successful anti-corruption strategies in post-Soviet states, but it is not easy to achieve. Insistence from the European Union on the changing of the administrative "guard" in Ukrainian bureaucracy (in tandem with parliamentary cleanup policies) could go a long way in changing the culture within Ukrainian institutions.

The European Union should also provide further specific incentives for reform efforts. Although visas and economic aid are important for Ukrainian people and officials, they lose importance as time goes on, especially if the European Union does not revoke them in the face of unmet conditions. In order for the European Union to have the most possible leverage over reform efforts and domestic Ukrainian politics, the prospect of EU membership must be opened up. Thus far, the European Union has refused to publicly acknowledge a Ukrainian prospect for EU accession. In fact, in my interview with an EU official close to Ukraine, he explained that "at the

¹⁹⁵ Transparency.org. "Corruption Perceptions Index 2020 for Estonia," 2020. <https://www.transparency.org/en/cpi/2020>.

¹⁹⁶ Johannsen, Lars, and Karin Hilmer Pedersen. "The Institutional Roots of Anti-Corruption Policies: Comparing the Three Baltic States." *Journal of Baltic Studies* 42, no. 3 (September 2011): 329–46. <https://doi.org/10.1080/01629778.2011.597128>.

moment, politically speaking, there is no such capacity or willingness to accept Ukraine into the EU,” most likely due to its lack of implementation of the Copenhagen Criteria as well as its political and emotional distance from Europe.¹⁹⁷ He notes, however, that EU membership was integral in unifying political elites and promoting EU conditions in 1995 Lithuania prior to their accession.¹⁹⁸ Indeed, according to Ambassador Steven Pifer, the European Union has “unused soft power” in refusing to create this membership perspective for Ukraine.¹⁹⁹ In addition, Anders Åslund explained that the EU is most powerful and has the most leverage before accession, echoing the conclusions of many scholars regarding European influence through pre-accession conditionality; but this leverage cannot be used without a membership perspective.²⁰⁰ Not only would establishing a membership perspective for Ukraine help the EU achieve its goals domestically, but (in theory) it would eventually lead to membership for Ukraine, allowing it to enjoy the variety of EU benefits that come with membership. The EU membership perspective strategy must be carefully executed, and Ukraine must not be granted accession until it is ready, as the premature accession of a country to the European Union can have adverse effects for the organization, especially since post-accession leverage can be extremely limited.²⁰¹ If the strategy is well implemented, though, and accession is not granted prematurely to Ukraine, there is potential for vast political influence. Although I am hesitant to recommend EU membership as a solution to all of Ukraine’s problems (not least because there seems to be little to no desire on the part of the EU to open the door to accession proceedings), there is a demonstrated want from a majority of the Ukrainian people for this outcome and Europe seems to have been a net positive in Ukraine.

¹⁹⁷ EU Official, in conversation with the author, March 22nd, 2021.

¹⁹⁸ Ibid

¹⁹⁹ Steven Pifer (former U.S. Ambassador to Ukraine), in discussion with the author, December 22nd, 2020.

²⁰⁰ Anders Åslund (Senior Fellow at the Atlantic Council), in discussion with the author, January 20th, 2021.

²⁰¹ Vachudova, Milada. “Corruption and Compliance in the EU’s Post-Communist Members and Candidates.” *Journal of Common Market Studies* 47 (September 1, 2009): 43–62. <https://doi.org/10.1111/j.1468-5965.2009.02013.x>.

Concluding Remarks

This paper has strived to present and analyze Ukraine's progress and setbacks in anti-corruption reform and understand how the European Union's influence has acted upon domestic actors regarding anti-corruption and institutional reform. It has found that, although Ukraine has not yet arrived at the European Union's benchmarks of success, there has been commendable progress on issues of anti-corruption. Recently, there has certainly been progress, namely in de-oligarchization and rule of law reform, demonstrating genuine efforts to rid Ukraine's political system of corruption. There is also evidence, however, of setbacks within Ukraine's government and political system, demonstrating a legitimate need for continuing reform and support. The European Union, although heavily influential in many aspects of Ukrainian reform, have opportunities to further their influence and better affect change within the country, especially through conditionality. Indeed, Ukraine's progress has been characterized by a "one step forward and two steps back" progression, but after undertaking this project, I am hopeful for the future of Ukraine's burgeoning democracy.

Appendix

Table 1: Verkhovna Rada coalition vote data

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