

November 2013 – Intermediary Report

Ukraine and the EU:
Overcoming criminal
exploitation toward a modern
democracy ?

Version 2





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**Ukraine and the EU: Overcoming criminal exploitation toward
a modern democracy?**
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RESEARCH

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DISCLAIMER

This is an interim report and only the final report anticipated for September 2014 will be formally edited. This report does not reflect the position of the Global Studies Institute of the University of Geneva nor the Observatory on Security and neither does it imply any form of endorsement.

The TRACCC LLC has only provided background information on the topic for this research.

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Executive summary

The Organized Crime Observatory (OCO), a Swiss-based NGO, is undertaking a comprehensive assessment of organized crime and public corruption in Ukraine. This research began two months ago and is expected to conclude by September 2014.

The objective of this research project is to validate a methodology of assessing the impact of corruption and organized crime on the country and its institutions in order to provide fact-based evidence and analysis for policy makers.

The first intermediary report of the assessment presents the following key findings:

- 1) Ukraine seems not to be any more, as it has been often described, the « organized crime country ». For many reasons, the importance of organized crime groups is strongly decreasing.
- 2) Public corruption and conflict of interests remains a significant problem for Ukraine on its path toward the development of institutionalisation. Any party engaging with Ukraine will have to interact with groups that are linked to oligarchic structures. We however observed a trend to a stronger verticalization of power driven by President Yanukovitch.
- 3) Illegal activities and trafficking remain at a high level in Ukraine. Some of these activities have existed for many years, including narcotic and people trafficking. Others such as corporate raiding and corporate fraud are relatively new developments in the country.
- 4) Counterfeiting and cyber security are the two major causes of concerns for the Ukrainian law enforcement agencies over the coming years. We have observed an increasing of such activities with some strong international presence.

- 5) Ukraine has made great efforts to join and comply with European and international conventions and efforts to combat organized crime, corruption and other illicit activities. However, according to EU agencies, these initiatives face tough challenges toward a correct and successful implementation.



The OCO

OCO is a Swiss based association (NGO) founded in 2001. Its goals are to promote the understanding of structured criminal behaviours, patterns and facts, to educate specialists, including law enforcement agencies and officers, and also the public on the criminal trends through education, training, political engagement and public information campaigns. It also helps active participants in the fight against organized crime to communicate more effectively by building trust and secure channels of engagement. With more than 250 experts worldwide, OCO believes that organized crime is a danger to the security of democracy, privacy and freedom around the world and must be addressed as a global problem, through worldwide networking and the exchange of information.

OCO structure

The OCO association's structure is as light as possible. As all members are distributed around the planet, it is very difficult to meet all in one single place.

Thus, the OCO's structure responds to:

- The GENERAL ASSEMBLY which is the highest decisional level and regroups all members
- The EXECUTIVE COMMITTEE managing the current affairs for the association and elected by the General Assembly.
- The BOARDS are specific groups of members that are created to manage a specific topic, event, publication, project etc.
- The PARTNERS are formally out of the structure but are constantly involved in the different projects of the OCO

What we do

The press review is a long-term objective of the Association turning it into a real observatory of transnational crime facts around the planet. News information are gathered through the use of selected keywords in french, english, italian and spanish.

Together with its partners, the OCO's events and information aims at the sensibilization of corporate and civil society about the multiple angles and threats of criminal networks and criminal organizations.

The Association publishes a newsletter for its members with no time-string. This newsletter is made available in the news original language. The main objective of such a newsletter is to maintain and developpe a regular contact between all members.

The OCO Association publishes, together with partners or alone, some special reports about specific topics regarding organized crime and other criminal networks. These special reports will present a particular situation in a precise and documented way, improving information and transparency.

Why a research on Ukraine situation?

For many years, OCO members and partners have acknowledged that organized crime structures, supported by active institutional corruption, are a major problem for many nations and for democracy itself.

The integration of several eastern European former communist countries into the European Union has revealed that the challenge posed by organized crime structures are often not correctly addressed by European institutions themselves. As a result, many organized crime groups have benefitted both economically and politically from the entry of their country into the European Union, weakening the institutions of their own country and introducing criminal behaviours to the very heart of European institutions.

Whilst observing this for many years, OCO has been considering a research project to test various methodologies of assessing the impact of two key areas that may jeopardize the integrity of state institutions and harm European institutions also: public corruption and organized crime. The goal of our work is to offer a proper methodology that helps institutions to avoid traps and to build proper assessment models in order to drive policies based on real information. Kneejerk political reaction is no longer an option when dealing with countries in today's world. We want to offer a vehicle, in our specialized field, to enable more effective and informed policy makers. This is, after all, the role of NGOs like us and also of the media.

Initially we considered targeting Eastern European countries that are already included into the European Union, countries such as Bulgaria, Romania or Poland. But conducting such a research project on such a large scale requires extensive resources, funding and access to the proper information.

After 2 years of intense lobbying, we managed to secure the resources to focus on Ukraine, a country engaged since years with relationships with the European Union and taking steps toward a stronger engagement in a difficult political environment. This research is funded by private donors who all have interests in the development of European Union both in terms of economics, stability and democracy and who believe that Europe has a bright future if managed wisely.

Although the funding level is relatively small we are fortunate that the budget is supplemented by the dedication and the passion of our research teams and partners. We would like to express our gratitude to our donors who at this stage wish to remain anonymous.



But money is not the only issue: we have been granted access by the ukrainian authorities to information and documentation and we were very surprised of such a attitude. We also want to express our gratitude for the effective collaboration of the ukrainian authorities, mainly the office of the General Prosecutor that help us to gather already a huge amount of valuable and up to date information and documentation.

Because of the short time frame for the project, we have entered into partnerships with other institutions. We'd like to thank here the Terrorism and Transnational Crime and Corruption Center (TRACCC) in Washington, its Director Prof. Louise I. Shelley and her team for the the quality of their work and their dedication and the Basel Institute on Governance and M. Pedro Gomes Pereira and his team.

OCO's research will be fully presented in its final report in September 2014.

Why a press conference?

Ukraine is a hot topic in Europe at the moment. Discussions on a mutual agreement are about to conclude shortly. By the end of this month, at the Vilnius summit, the face of Europe is likely to change once again.

This Association Agreement has been the subject of some debate internationally, both due to the Russian dimension but also because of domestic debates with EU member states.

This summit attract attention and the reason why we proposed this press conference is both to attract attention on our work and possible replication in other situations and because of this debate, OCO felt it important, in this interim report, to set out our first key findings on organized crime, illegal traffickings and public corruption impacting Ukraine.

Ukraine has been regarded as one of the most corrupt countries in the world. But to what extent? How is corruption organized in the country? How does corruption influence its institutions' choices and decision-making processes? Similarly, to what extent does organized crime interact with the state's activities? The fact that organized crime has a strong presence in Ukraine is common knowledge, but to what extent? What form does illegal activity takes in the country today, how are these activities and actors structures and what is their impact on the institutions? How is Ukraine responding to these challenges?

Ukraine has signed up to many European, OECD and UN conventions and agreements on these topics. How does it comply with its obligations under these agreements? On what extend? What are the challenges Ukraine's institutions are facing in the compliance processes?

All these questions need to be answered in order to design and enforce proper policies that shall ensure the respect of the integrity of European institutions and its legal framework and also facilitate the development of the Ukrainian institution themselves in terms of understanding how to deal with the threats posed by public corruption and organized crime.

A press conference today allows us to share some interesting results we have obtained in the first 2 months of our work. We hope to bring transparency to the discussions and debates around the EU-Ukraine Agreement. We hope also that sharing this information with the media will help European citizens and institutions to understand better the challenges and the problems that will need to be addressed in the coming years.

Key findings

Acknowledgment

The scope of our work is to assess organized crime and public corruption in Ukraine today. This means validating assessment methodologies that eventually can be used for other situations in other countries. Despite the particular situation in Ukraine today, we believe that such an assessment using the correct methodology could be conducted in every state.

Today, only Italy is providing quality data and analysis on these topics. For historical reasons, it's because Italy is not only the country of Mafia but also the one of Antimafia. A lot remains to be implemented at a European level to gain proper information and understanding about the topic of organized crime and corruption and thus, design and enforce the adequate responses and policies to fight these challenges to democracy.

The key findings we present today result from our first 2 months of research work. Four research teams have been working since mid-September 2013: two in Switzerland, one in the United States and one in France, all having the proper correspondent in Ukraine, between state institutions, NGOs and university fellows. We have been so far able to retrieve a massive volume of documentation about the topics, both in Ukraine, thanks to the collaboration with the authorities, and abroad. This documentation regards both particular legal cases, statistics, interviews and qualitative material and also trade and economic information. Obviously, we have only analyzed a limited amount to date, focusing on the main topics that will be presented here. Our final report will be published in September 2014.



Methodology validation

The base of any methodology is first to define the subject of the research. Focusing on organized crime and public corruption, we will examine the following areas :

1. Organized crime.
2. Illegal activities (such as narcotics, human beings, counterfeiting, piracy/cybercrime, racketeering/extortion, contract killing etc.).
3. Corruption of public agent (both passive and active) and bribery.
4. Abuse in office and/or frauds committed by public servants.
5. Corporate crime such as raiding and other economic crime.
6. Criminal-legal interactions and outcomes.

The first step is to identify indicators that shall bring information on each of these area, and as we deal with criminal activities, the very first step is to check which of these areas are covered by the country's regulatory framework, mainly the criminal code. If yes, then one shall analyse the way that each offence is defined and understood.

In the case that one or more area is not covered by institutional attention, we shall undergo a field data collection in order to assess the existence and eventually the extent and details of the researched topic.

Fortunately, our first study of the Ukrainian criminal and civil codes shows that all of these offences are recognized in the Ukrainian criminal code and Ukraine itself is part of numerous initiatives against corruption and organized crime (OECD, Council of Europe, EU, UN).

This situation brought us to our second methodological step. On one side, we need to analyse the wording and comprehension of the specific topics themselves both by Ukrainian legislators and Ukrainian law enforcement. On the other side, this allowed us to consider the crime statistics.

The classical methodology on crime assessment is to start from the larger point of view and focus on the points of interests, ours being organized crime and public corruption. This means going from the quantitative to the qualitative.

In the case of Ukraine, the classical methodology is not entirely valid. Statistics made public by the Ministry of Interior do not reflect the proper situation. Some are very detailed (organized crime statistics) some are confused (corporate fraud, extortion or raiding) some seems to be forgotten (racketeering) or largely underestimated (cybercrime, counterfeiting, corporate raiding). One part of our work is then to see if a reconciliation is possible between the common accepted denomination of our topics of interest and the specific ukrainian ones.

Some underestimation comes from the ukrainian agencies themselves. In the case of counterfeiting for example : the ukrainian agency SAUMP declared to have discovered and seized 3,9 million packages of counterfeited product only in the Kiev oblast but this is not referred in the statistics.

The same problem appears while reporting cybercrime activities. The special agency of the Ministry of Interior declared in 2012 more than 2'000 cases have been discovered but they are not reported in the official statistics.

The problem (as we outlined also 10 years ago in Switzerland) is not the fact that these topics are not considered by the agencies. It lies instead in the sharing of data and their integration in statistics. This is a one of the most vulnerability in every country's policy on organized crime and corruption.

We are thus undergoing an in-deep work to gather data, agency by agency, that will require time.

For this reason, we have also had to consider alternative methodologies. One of these is the presence and the extend of racketeering activities. This have been retained as a major indicator of organized crime presence in the first all-european study on organized crime realized in 2010 by the TRANSCRIME laboratory of the Universities of Milano and Trento. We are effectively gathering information about these kinds of activities even where they are reported under different names and labels, such as extortion, raiding, corporate extortion etc.

In order to gain the clearest image of the country's situation, the best way is to ensure that data gathering will be as broad as possible. Then, it is to ensure a constant review between quantitative data and qualitative data, between sources of information, which are mainly criminal investigation and prosecution agencies and specialist NGOs, and also qualitative sources (state officials, police forces, NGOs and study centers).

In this way, our methodology can ensure the analysis of the impact of such practices upon the policy decision making at all levels.

The international regulation framework

Successive Ukrainian governments have made political declarations and introduce measures designed to address corruption. After his election in 2010, President Victor Yanukovich created the National Anti-Corruption Committee (NAC), which is a consultative and advisory body to the head of state. Similarly, the Ukrainian Parliament in domestic reform programmes – such as in the “Stability and Reforms” programme – stated that among its core objectives was to reinforce the fight against



corruption (2010).¹ Recently, two strategies were approved: the National Anti-corruption Strategy for 2011-2015 and the State Programme for Prevention and Combating Corruption for the Period of 2011-2015.

On its international commitments, Ukraine ratified the United Nations Convention against Transnational Organized Crime (UNTOC) in 2004 and the United Nations Conventions Against Corruption (UNCAC) in 2009 as well as the Council of Europe (CoE) Civil Law (in 2005) and Criminal Law (in 2009) Conventions on Corruption. In addition it has become a member of the CoE's Group of States Against Corruption (GRECO) in 2006. Since then Ukraine has made significant efforts to address the legal provisions demanded by the CoE.

In 2012, the Criminal Code has been reviewed in close consultation with the CoE and, in April 2011, the Parliament of Ukraine adopted the Law “On Principles of Preventing and Counteracting Corruption” (Anti-corruption law) and the Law “On Amending Certain Legislative Acts of Ukraine Pertaining to Liability for Corruptive Offences” that came into force in January 2012. Additionally, the Law on Amendments to Certain Legislative Acts of Ukraine was passed in May 2013, which allows for criminal prosecution of legal entities.

As a result, progress was also achieved combating money laundering and the financing of terrorism in the criminal code.² In August 2010 the Law on Prevention and Counteraction to Legalisation (Laundering) of the Proceeds from Crime or Terrorist Financing came into force and has been subsequently amended in order to bring the national framework in line with the FATF recommendations.³

Deficiencies observed

While significant efforts have been made to initiate anti-corruption strategies and enacting new laws to prevent and combat serious, financial and organized crime in Ukraine, several provisions are ambiguous and do not fully comply with the requirements of the international standards Ukraine has an obligation to adopt. The GRECO has issued important recommendations to the country, to which proper follow-up or implementation has not yet been given or is unclear. Only fourteen out of twenty-five recommendations have been implemented satisfactorily as of March 2013.⁴ For example, the designation of an independent anti-corruption body to implement and monitor the Anti-Corruption Strategy has not been decided yet.

¹ OECD (2013), *Anti-corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges, 2009-2013*, Fighting Corruption in Eastern Europe and Central Asia, OECD Publishing,

² Ukraine introduced amendments to the Criminal Code, in particular as regards article 209 (Money laundering), and articles 258-3 and 258-4 (specific terrorist acts) and introduced a new article 258-5 (terrorist financing) and to the Law of Ukraine on Combating Terrorism; adopted on 18 May 2010 the Law No. 2258-VI on Prevention and Counteraction to Legalisation (Laundering) of the Proceeds from Crime or Terrorist Financing (hereinafter the AML/CFT Law) which entered into force on 21 August 2010.

³ European Commission, *Implementation of the European Neighbourhood Policy in Ukraine Progress in 2012 and recommendations for action, 2013* (hereinafter “EC 2012 Progress Report in Ukraine”)

⁴ GRECO Joint First and Second Evaluation Round Third Addendum to the Compliance Report on Ukraine 2013 (hereinafter “GRECO Compliance Report 2013”)

According to GRECO, the NAC is not considered fully independent in its monitoring function and its composition remains unclear or is undergoing constant amendments. The NAC also lacks proper involvement of civil society. Furthermore, GRECO expressed concern regarding the independence of the prosecutor's office and states that current reforms in this regard are not sufficient to fulfil the core objectives of its recommendations.⁵

Moreover, neither the Anti-Corruption Law nor the Criminal Code establishes liability of the officers and employees of the company for corruption offences committed by agents and other third parties.⁶ Ukraine's anti-corruption framework provides in some cases, such as in the criminal liability of legal entities, exceptions to public authorities, local governments, state-owned enterprises, and international organizations and thus limits the ability to fight corruption among government and municipal officials.⁷

Trends of Organized crime in Ukraine

According to official statistics, which are quite detailed in the topic, the presence of « classical » organized crime groups in Ukraine is declining rapidly. Detailed statistics shows an evolution of -34.2% which is a considerable achievement, given that the country has suffered extensively at the hands of organized crime groups for over a decade.

This trend is confirmed by local and foreign observers and specialized agencies.

Such positive information shall however consider that the same statistics are showing a positive trend on the internationalization of Ukrainian criminal groups. The analysis of the figures also shows that there seems to be a trend toward a concentration of people and criminal activities on less and less different organizations. 2012 statistics show that 193 groups out of the total 258 have existed for less than a year.

Such observation shall raise concern about the transnational law enforcement possibilities. We have numerous example where local organized crime groups have been forced to « delocalize » elsewhere to flee effective enforcement in their country of origin. Georgian organized crime groups is one of the most recent example. When former President Shakashvili imprisoned most of the top criminals of the country (*vor v zanoke*), criminal groups relocated successfully in other European countries such as Spain, France, Germany and Austria to escape hard opposition and continue their activities.

⁵ GRECO Compliance Report 2013

⁶ Expert Guide: Fraud & Whith Collar Crime 2013, *Ukrainian Anti-Corruption Legal Framework: Specifics & New Legislation*: <http://www.corporatelivewire.com/guide.html?id=expert-guide-fraud-and-white-collar-crime-2013>, accessed: 19 October 2013

⁷ Library of Congress – Global Legal Monitor, 24 June 2013 : http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403620_text, accessed: 18 October 2013



We also must note that, historically, Ukraine was a place from where very few *vor v zakone* originated, in contrast to Russia, Georgia or other former Soviet republics.

We also point out the relationship between institutions and organized crime groups. As we have seen these recent years in Italy and Russia, and Mexico is taking this path right now, the reinforcement of state powers creates a redistribution of powers among organized crime groups who then have to choose to abide to state authority or disappear. That's also why a lot of organized crime groups are disappearing, but activities might be retaken by other groups. As Roberto Saviano outlined, « It is not the mafia that choose the illegal markets, but the illegal markets that choose the mafia».

These trends leave the institutions with a difficult challenge: being able to stay in control of groups that become more and more powerful because of the disappearance of competitors. This is a very difficult task and the reinforcement of law enforcement agencies is one of the strategies Ukraine is trying to follow, but not only. In June 2013 Gennady Moskal, Deputy Chairman of the Rada's Committee on Organized Crime, initiated a law in Parliament that would make the punishment for any police officer found to be involved in organized criminal activity more severe and would categorize the police officers involved in crime as 'organizers' if they have a role in criminal activity.⁸ One of the major challenges Ukraine law enforcement leaders now face is to regain control over the country's agencies and agents, police officers, security officers, etc. who in some cases are considered to be « werewolves in epaulettes ».

Trends in illegal activities



Narcotics

According to the State Customs Committee, drugs were the item most frequently smuggled through Ukraine in 2012 (70% of all smuggling.) This is confirmed by the official crime statistics. In 2012, authorities intercepted 7 kg of heroin, 104 kg of cocaine and more than 30 kg of cannabis.⁹ But this was probably only the tip of the iceberg and some studies suggest that Ukraine is one of the key transit and consumer countries for drugs.¹⁰ In recent years the smuggling of synthetic drugs from China and India (for example tramadol from India) and increasing volumes of Latin American cocaine trafficking through Black Sea port of Odessa has been detected. Afghan heroin is also smuggled via the "Black Sea route" travelling through Iran, Azerbaijan and Georgia to Ukraine and Romania and onwards to the Baltic and Nordic countries.¹¹ (Officially there are 150,000 drug users in Ukraine but experts put the numbers much higher, i.e. between 300,000 and 500,000 consumers.¹²) Some

⁸ Vesti.ua, 19 June 2013

⁹ Ministry of Revenue and Duties of Ukraine 2012.

¹⁰ SOCTA 2013

¹¹ OCTA 2012

¹² Newru.ua 23 October 2012, US State Dept Narcotics Report 2013

evidence suggests that the Russian and Ukrainian heroin markets are already larger than the EU market.¹³

In 2012 four groups of policemen involved in drug sales were apprehended.¹⁴ The recurring cases in Dnepropetrovsk and Kharkov indicate that policemen either provide protection for the groups engaged in drugs distribution or sell the drugs themselves.¹⁵ Earlier field research in Odessa suggests that the representatives of security services, customs and police provide protection for the brokerage companies involved in smuggling.¹⁶ There is also an illegal market in synthetic drugs and psychotropic substances (katerpin, zestra, kadesan, tramadol) run through legal pharmacies. Some of these drugs are produced in legal pharmaceutical factories, others in small illicit labs in Ukraine.



Counterfeiting

Counterfeit pharmaceuticals are a serious problem in Ukraine as in most of the former Soviet Union, where the prevalence rate of counterfeit pharma is estimated to be approximately 20%. This relates to the production of counterfeit goods including pharmaceuticals. Numbers cited for specific drugs and markets in Ukraine go as high as 40 and even 80%, but it is not clear what data they are based on.¹⁷ In August 2013 the director of the Ukrainian distributor of a major German homeopathic medicine supplier (Heel) was arrested for counterfeiting. Ukraine's State Administration for Medical Products (SAUMP) reported that they found 3.9 million packages of counterfeit and unlicensed products with a market value approximating \$37million at the company's Kyiv premises.¹⁸

But counterfeiting reaches far beyond pharmaceuticals. Kyiv Post reported that the share of fake packaged cement on the market is at least 50% and more than 30% of petrol sold at Ukrainian petrol stations is counterfeit.¹⁹ In 2013 the US Government singled out Ukraine as the major centre of intellectual property theft and designated it as 'priority foreign country' citing unfair and non-transparent administration of the system for collecting penalties, widespread use of illegal software by Ukrainian government agencies; and failure to implement an effective means to combat the widespread online infringement of copyright and related rights.²⁰



Tobacco

Ukraine plays a central role in supplying the EU market with counterfeit tobacco products. In July 2012 Slovak officials discovered a 700-metre long, professionally built tunnel, equipped with its own train to smuggle tobacco and possibly people from Ukraine into the European

¹³ SOCTA 2013

¹⁴ Vesti.ua, 19 June 2013

¹⁵ Komsamolskaya Pravda 26 September 2013, Gorodskoy dazor 26 August 2013

¹⁶ Kupatadze, 2012, op.cit.

¹⁷ Sebastian Strobl, "Counterfeit drugs in industrialized and developing countries" http://dgra.de/media/pdf/studium/masterthesis/master_strobl_seb.pdf

¹⁸ Securin gindustry.com 16 August 2013.

¹⁹ See Kyiv Post 17 May 2013 and Interfax-Ukraine 5 June, 2013.

²⁰ USTR 2013.



Union (EU). Police seized more than 13 thousand cartons of tobacco and tobacco products, with a total tax and duty evasion of 350,744 euro.²¹

Smuggling operations in this region are usually a joint exercise of Ukrainian, Polish and Lithuanian groups. Polish groups have been caught smuggling cigarettes from Ukraine to Italy; Ukrainian front companies import the tobacco, while other ingredients are delivered through the Lithuanian port of Klaipeda, with the actual production taking place in Poland. Another case, Operation HOPE, uncovered by the European Anti-Fraud Office, (OLAF) involved the shipment of suspect tobacco from Brazil, through Lithuania, Poland and Ukraine, to Armenia.²² During the course of “Black Poseidon II” an Interpol-led operation, authorities in Ukraine discovered an illegal tobacco factory hidden underground and seized 250 thousand packs of counterfeit cigarettes.²³



Human trafficking

Human smuggling remains a major problem. IOM regards Ukraine as the top country with human trafficking problem since the number of victims seeking help from the organization is the highest. The number of victims assisted in 2012 (945 individuals) is at the level of 2006 that means that the problem is not diminishing in importance.²⁴ Ukraine is a source, transit, and, increasingly, destination country for men, women, and children subjected to forced labor and sex trafficking. The US department of State report places Ukraine in Tier 2 countries where governments do not fully comply with the standards but are making significant efforts. The most significant shortcoming is the failure to devote resources to investigating trafficking crimes and protecting trafficking victims. High level of corruption in law enforcement structures and general institutional ineffectiveness are the contributing factors that at least partially explain the shortcomings in fighting human trafficking.²⁵



Contract killing

Even though corporate raiding has become the dominant form of property re-distribution over the past several years, violent means are still used. A number of businessmen have been assassinated in Crimea, Odessa and Kharkiv. This also means that the demand for criminal actors specialising in violence is still high.

Contract killings are usually more difficult to conceal and they are captured in official statistic, except in case where they are disguised as car accidents, suicides, etc. The Ministry of Interior registered a total of 147 contract assassinations from 2007-2012 (30 in 2007, 30 in 2008, 16 in 2009, 25 in 2010, 28 in 2011 and 18 in 2012). According to the Ministry, the primary motives related to failure to pay debts, property distribution/division of spoils and elimination of the business competitors.²⁶

²¹ World Customs Organization 2013

²² See UNODC 2012, OCTA 2011, and “Illicit Trade in Tobacco” p.33.

²³ Interpol 18 July 2013.

²⁴ IOM Mission in Ukraine, 2013.

²⁵ US Department of State Trafficking in Persons (TIP) Report, 2013.

²⁶ Tizhden.ua 6 September 2013



Cybercrime

The business survey of PricewaterhouseCoopers (2011) indicates that number of internet frauds is perceived to have increased in 2011 compared to 2009 (by 22%). According to Oleg Zavorotnyi of the directorate for fighting cybercrime in Ukrainian Ministry of Interior in 2012 more than 2 thousand cases of internet fraud has been registered. The most prevalent schemes are the fraudulent sale of non-existent goods, online Ponzi schemes, identity theft and online banking theft from the accounts belonging to individuals and companies.²⁷ Every fifth Ukrainian company and every second internet user have been the targets of cyber criminals. According to some estimates 116 million Ukrainian hryvnas have been lost to cyber criminals in 2012 but 75% of this money was successfully returned.²⁸

Along with Russia and the Balkans, Ukraine is a known as a source country for cyber attacks and is often listed among the top 15 in the worldwide list compiled by Deutsche Telekom.²⁹ In 2008 the authorities closed down “Innovative Marketing Ukraine” which was a key link in an international business chain that developed “scareware” –software that poses as anti-virus protection, in order to infect computers and steal information from them. Authorities reported that the company had \$180 million in revenue in 2008. The Ukrainian branch where the scareware was developed had 200 employees when it was closed down.³⁰



Corporate raiding

The origins of “*reyderstvo*” are tied to organized crime during the late Soviet and early post-Soviet period, when owners of kiosks, small cooperatives and private businesses needed to pay off local organized crime groups to provide a “roof” (*krysha*) to protect them from having their businesses and assets taken over by corrupt officials or criminal groups. By the later 1990s and early 2000s raiding had grown substantially in scale and complexity, as privatization moved forward in fits and starts, and raiders used a combination of violence, fraud and intimidation to gain “legal” ownership over privatized and privatizing enterprises, many of which they already de-facto controlled

Ukraine is not the only country where political power confers economic benefits, but it is one of the most flagrant. However, since many of the country’s most valuable assets have already been privatized, new claimants to wealth increasingly need to take assets from other individuals, rather than from the state. This, in turn, has led to an upsurge in corporate raiding. the most visible sign of this inter-elite struggle for assets.

In Ukraine, as in Russia, corporate raiding has emerged as a major disincentive to foreign and domestic investment and a serious contributing factor for capital flight. Since 2005 there have been governmental bodies tasked with investigating complaints about raiding. The current “Inter-departmental Commission on Counteracting Illegal Takeovers and Raids” is headed by First Deputy Prime Minister Arbuzov. But none of this government activity has made a dent in popular perceptions that high-level officials not only protect the raiders, but are often themselves the ultimate beneficiaries of the raids.

²⁷ Segodnya.ua 9/13/2013.

²⁸ Zn.ua 5 July 2013

²⁹ See Financial Times 5 May 2013 and <http://www.sicherheit.stacho.eu/>

³⁰ Oksana Prykhodko “Innovative Cybercrime: made in Ukraine” in Flarenetwork, July 1 2010



Arms trading

Ukraine's weapons trade in all of its forms – licit, quasi-licit, and outright illicit – is inextricably linked to its shipping and transport industries. Between 1992 and 1998, \$32 billion worth of heavy weapons, small arms, ammunition and other military equipment is estimated to have disappeared from Ukraine's post-Soviet stores. One major node along illicit weapons trafficking routes has traditionally been the port of Odessa, out of which notorious arms trader Leonid Minin operated in the 1990s in concert with Odessa organized crime boss Aleksandr Angert (criminal nickname "Angel") to deliver weapons to Charles Taylor in Liberia, the RUF, and others. Viktor Bout was known to have obtained weapons in Ukraine.

Even in the early years, at least some of the illicit arms sales from Ukraine were directed from the highest levels of power. In summer 2000, then-president Leonid Kuchma was recorded on cassette personally directing illicit weapons sales. In conversations secretly recorded by Kuchma's bodyguard Mykola Melnychenko, a voice identifiable as Kuchma's is heard both approving the sale of military-grade radar systems to Saddam Hussein for \$100 million and ordering the chief of Ukraine's intelligence agency to "take care of" Georgi Gongadze, a Ukrainian journalist who had doggedly tracked the involvement of the Ukrainian government in illicit arms sales. (Kuchma denies the authenticity of the tapes.)

The recent report by the Washington DC based non-profit C4ADS, which took a detailed look at the issue of Russian and Ukrainian arms transfers, concluded that by now, all major weapons transfers – whether licit or illicit – are directed by the Russian and Ukrainian governments. However, they still frequently use the logistical and financial networks known as the "Odessa Network" to facilitate and camouflage arms transfers.

"The Odessa Network" links suspicious port activity out of the river port Mykolaev ("Oktyabrsk"), which runs into the Black Sea, to several companies. The most prominent of these is a company called Kaalbye, which the report suggests owes its preeminence in the suspected maritime illicit arms trade to the political connections of its founder Igor Urbansky, Ukraine's Deputy Minister of Transport from 2006-2009 and co-founder Boris Kogan, who is closely linked with Russia's defense-industry firm RosTech.

A recent investigative-journalism report from January 2013 suggests that Odessa's new "dry port" Evroterminal, used as a transport logistics and processing facility and a transit center for seamless integration of land-rail-sea transport³¹.

Public corruption

Understanding public corruption is crucial to the gaining an understanding of the challenges the country faces. Corruption and among it, public corruption is one of the heaviest challenge of any government, that impact all levels of State's institutions, but also its own stability and democracy.

President Yanukovich told in a meeting of the World Economic Forum (WEF) in Kiev in early November 2013 that he intends to ensure a tough anti-corruption policy for

³¹ Tom Wallace & Farley Mesko, *The Odessa Network: Mapping Facilitators of Russian and Ukrainian Arms Transfers*, C4ADS, Washington DC, September 2013

the country. Indeed, "Since 2011, a series of steps has been made in order to establish modern preventive legislation. In 2013, 4 anti-corruption laws that fully meet European standards were adopted," the Head of State said. "The most difficult yet the one of the most principled tasks of the nearest future is bringing order to public purchases, particularly making the legislation transparent, and creating conditions for foreign partners to enter this market."

OCO distinguishes between the « low level public corruption » and the « high office public corruption» which often collides with "conflicts of interests". The history of Ukraine is strongly linked with both challenges. Indeed, Ukraine is the only country to have two recent Prime Ministers imprisoned for corruption, fraud and money laundering, a subject we shall return to shortly.

Public agent corruption is statistically documented and fought by authorities, with different successes. Statistics shows the following relevant data :

1. Misappropriation, embezzlement or propriety fraud by abuse of authority: - 26.1% (5998 cases in 2012)
2. Abuse of authority: -57% (1829 cases in 2012)
3. Bribery: -32.3% (1972 cases in 2012)

Ukraine has historically been characterized by widespread conflicts of interest in high levels and in the management of public finances due to a high impact of oligarchic groups on state decision-making. Particularly, the public procurement process and public access to information has been widely criticized by civil society organisations and investigative journalists, who exposed critical irregularities in the procurement process and an extensive use of front/shell companies by bidders and private-public owned enterprises.³² In order to address this issue Ukraine joined the Open Government Partnership and planned to establish online procurement system for the government agencies and the adoption of a law on access to public information.³³ However, an effective enforcement still requires closing legislative loopholes and an adequate monitoring, transparency and oversight of public finances.³⁴

³² Portal on Central Eastern and Balkan Europe, *Corruption and "Rules of the Game" in Ukrainian Economy*, 2013: <http://www.pecob.eu/corruption-ukraine>, accessed 14 October 2011. "The Ukrainian watch-dog association *Nashi Groshi* has been following Ukrainian public procurement since 2010. They have found numerous instances in which companies that received public contracts could be traced back through off-shores in Cyprus and the UK to family members of public servants and politicians controlling the public procurement tenders."

³³ Ukraine makes another step towards transparency - The Regional Anti-corruption Initiative (RAI): <http://www.rai-see.org/news/world/2496-ukraine-makes-another-step-toward-transparency.html>, accessed 13 October 2013

³⁴ EC Progress Report 2011 in Ukraine: "The amendments to the Public Procurement law adopted in July 2011 introduced framework agreements and abolished prior approval for single source procurements by the Ministry of Economy. However the amendments did not address two key issues: namely the proper definition of the concept of contracting authorities or entities which are bound by the law (state enterprises, in particular, are excluded from the scope of the law) and the exclusions under the EU procurement *acquis*. Technical assistance from the EU has helped the government in improving the new legislation."



The public corruption recent past : Lazarenko and Tymoshenko case

In Ukraine, as in many other post-Soviet states, the alliances between organized crime and the political elite began in Soviet times, have continued and strengthened in the intervening years, and today still play a key role in economic, political and foreign policy making at all levels.

It is fairly impossible to address the topic of public corruption in Ukraine without getting a close eye on the cases of the two former Prime Ministers, Pavol Lazarenko and Yulia Tymoshenko.

These stories are indeed very important today, as the Tymoshenko case has become part of the EU-Ukraine dialogue.

The best known of these have been former prime ministers Pavlo Lazarenko and Yulia Tymoshenko and Interior Minister Yuri Lutsenko, but there have been prosecutions of lower level officials as well. This public settling of accounts has greatly enhanced our understanding of corrupt interactions between politicians and organized crime at all levels. Interestingly, it has helped illuminate the international links of Ukrainian crime, and the financial transactions involved, as Ukrainian law enforcement has worked diligently with foreign counterparts to uncover these links, and to learn the latest techniques for “following the money” in corruption and criminal cases.

Still, the Lazarenko case is worth looking at in greater detail, since it is the best-documented case of corruption at the highest levels of the Ukrainian government, and its ramifications continue to this day. Pavlo Lazarenko was a leading member of the Dnepropetrovsk region, starting out as a tractor driver and then moving rapidly up the ladder to become President Kuchma’s representative in Dnepropetrovsk, governor of the region, First Deputy Prime Minister in charge of energy issues, and finally, in 1996, Prime Minister. Reports of corruption followed Lazarenko throughout his career, from his early years in agriculture through his tenure as Prime Minister, but all investigations were squelched as long as he was in favor with President Kuchma.³⁵

But in the summer of 1997 Kuchma and Lazarenko had a falling out. Lazarenko was forced out of office and decided to challenge Kuchma for the presidency. He thereupon formed an opposition party (Hromada) and won election to Parliament, gaining immunity from prosecution. By 1999, however, under threat of losing his immunity, he fled to Switzerland on a Panamanian passport, where he was charged with money laundering and jumped bail. Only then did the Ukrainian government open a criminal investigation into his case.

³⁵ Much of the analysis in these two paragraphs comes from “The Case of Pavlo Lazarenko: a study of High Level Corruption” Part I and Part II, by Roman Kupchinsky, published in *The Ukrainian Weekly*, Feb 17 and Feb 24 2002.

After jumping bail in Switzerland Lazarenko used a false passport to enter the U.S. and sought political asylum, but U.S. authorities instead indicted him on 53 counts of money laundering, conspiracy to commit money laundering, wire fraud and interstate transportation of stolen property. In 2004 during a lengthy trial in California, the judge threw out 24 of the counts and the jury found him guilty on the remaining 29. Five more years of legal wrangling ensued, until in 2009 he was finally convicted on eight counts of money laundering and sentenced to 97 months in prison, a fine of \$9 million and forfeiture of \$22 million in assets. Litigation continues over approximately \$250 million in assets that were unearthed during the course of the investigation, and have been frozen in accounts in the U.S., Antigua, Switzerland, Liechtenstein and Lithuania.³⁶ Only last month, the US authorities seized the former Prime Minister's 20 rooms mansion in San Francisco, purchased for almost \$7million, and a Picasso lithograph that it described as "the illicit spoils of office."

Lazarenko's trial did not produce a full accounting of his illicit activities, since it only considered criminal actions whose profits could directly be linked to money that was laundered through U.S. banks.

Still the basic pattern of Lazarenko's activities emerged clearly, even if the full extent of his profits did not. He essentially extorted a share of the profits (in some cases 10%, in some case 50%) from transactions and businesses for which he, in his official capacity, was able to provide contracts, permits, licenses or government guarantees. The transactions that figured in the U.S. trial allegedly netted Lazarenko approximately \$114 million over 2 years, although his overall profits may have been considerably larger.³⁷ The money and assets were registered in the names of associates and family members and the profits were sent out of the country and laundered through a variety of banks in numerous countries including the U.S. The individual cases referred to during the trial ranged over a wide number of sectors, including imports of cows, pre-fabricated houses, gas and metal trading. The indictment noted that several associates of Lazarenko had amassed multi-million dollar fortunes through their association with Lazarenko. Those cited included Itera founder Igor Makarov and Yulia Tymoshenko.³⁸

Although Lazarenko's links with organized criminal groups were not investigated in the case, some information emerged during the proceedings. One of Lazarenko's closest associates was Petr Kyrychenko, who had been arrested along with

³⁶ Jason Felch "To Catch an Oligarch " in San Francisco Magazine, Oct. 4 2004. (www.centerforinvestigativereporting.org/articles/to-catch-an-oligarch), see also "The Case Against Pavlo Lazarenko, BBC News, August 25 2006.

³⁷ The World Bank estimates that Lazarenko embezzled between 114 and 200 million dollars over the course of two years (1996-97) from the Ukrainian government, a sum which, on an annual basis represents between 0.2 and 0.4 % of the country's GDP. This report, which cites Transparency International statistics, puts Lazarenko at #8 of the world's 10 most corrupt leaders, but it is based on very incomplete data. See "Stolen Asset Recovery Initiative: Challenges, Opportunities and Action Plan, June 2007 p11 by the World Bank.

³⁸ Lazarenko, USDDC Amended Complaint June 30 2005,pdf (See www.star.worldbank.org/corruption-cases/node/18566)



Lazarenko both in Switzerland and in the U.S. but won a shortened sentence and the right to remain in the U.S. by becoming a cooperating witness for the U.S. and testifying against Lazarenko. During the proceedings it became known that in 1995 Kyrychenko had been arrested in Poland and charged with possession of a gun that had been used in a 1994 organized crime killing. However, because Kyrychenko had the official position of “Advisor” in Lazarenko’s government at the time, the Polish government allowed him to be released on bail. Kyrychenko then jumped bail, went to the U.S. and continued to work on Lazarenko’s behalf.³⁹

For today’s Ukraine, the most explosive aspects of the charges against Lazarenko concern his business relations with Yulia Tymoshenko, a longtime political ally, who at that time was the president of United Energy Systems of Ukraine (UESU), a natural gas distribution company that Lazarenko was involved with. As Deputy Prime Minister (1995-6) Lazarenko was in charge of the energy sector, and “reformed” the natural gas importation and distribution system to provide monopoly rights for individual companies to purchase natural gas from Russia’s Gazprom and re-sell it to specific regions of Ukraine. UESU was awarded the lucrative monopoly for the Dnepropetrovsk region from 1995-1997. According to the court documents at Lazarenko’s 2004 trial in California, in 1996, Lazarenko obtained for UESU a Ukrainian state guarantee to pay for \$200 million of gas from Gazprom. In 1995, according to the documents Tymoshenko had created a separate company, United Energy International Limited, (UEIL) which was given title to the gas from Gazprom, and received the payments from the customers who received the gas, instead of UESU. All total, the complaint recorded, over the course of six months in 1996, that UEIL transferred approximately \$140 million in payments to Somolli Enterprises, a Cypriote company controlled by Tymoshenko. UESU, UEIL and Somolli Enterprises in turn paid Lazarenko nearly \$161 million during 1996 and 1997. Meanwhile, since UESU defaulted on its payments to Gazprom for the gas, the Ukrainian state ended up footing the bill.⁴⁰

All judicial actors who have been involved into the Lazarenko proceedings have agreed and demonstrated the very close link between the latter and Tymoshenko. On one hand, the former PM Lazarenko faced two trials, one in Switzerland and one in the United States and served years of prison, being considered as the paradigm of the political corruption. The other, the former PM Tymoshenko, was sentenced in Ukraine for abuse of power and took an active part in the Lazarenko’s wrondoings seems still to be considered as a political victim.

Geography of wealth

As American energy expert Edward Chow has commented:

³⁹ See James Kostiw, “Pavlo Lazarenko: Is the Former Ukrainian Prime Minister a Political Refugee or a Financial Criminal?” in *Organized Crime and Corruption Watch*, published by Transnational Crime and Corruption Center (TraCCC), Volume 2, Number 2, Summer 2000.

⁴⁰ Lazarenko US DOC Verified Complaint May 14 2004 pdf.

“If you were to design an energy system that is optimized for corruption, it might look very much like Ukraine’s. You would start with a wholly state-owned monopoly that is not accountable to anyone but the head of the country who appoints the management of this company. It would operate non-transparently without being held accountable by shareholders (who might demand legal rights as owners) or capital markets since its chronic indebtedness is periodically repaid by the state treasury. Domestic production would be priced artificially low, ostensibly for social welfare reasons, leading to a large gray market in gas supply that is allocated by privileged access rather than price. Low gas prices suppress domestic production and energy efficiency improvement, thereby necessitating the import of large volumes of gas, which, coincidentally is controlled by the same state monopoly or its chosen middleman company. The opaque middleman is frequently paid handsomely in kind, rather than in cash, which allows him to re-export the gas or to resell to high value domestic customers leaving the state company with the import debt and social obligations.”⁴¹

Ukraine’s oligarchic structure developed largely around several types of business—the extractive/productive industries, shipping and transport, and various services and trade. These types of business, in turn, roughly correlate to several economic regions in Ukraine: eastern Ukraine, the Black Sea region, and Kyiv and its environs. It should be noted that similar asset grabbing went on in almost every sector of the economy, but these are the sectors where the biggest fortunes were made.

Eastern Ukraine: The Extractive and Productive Sectors

Many of Ukraine’s earliest—and wealthiest—economic elites, including Viktor Pinchuk, Rinat Akhmetov, Vitali Haiduk, Sergei Taruta, Viktor Nusenkis, Igor Kolomoysky and Gennady Bogolyubov, hail from eastern Ukraine. This is unsurprising given the region’s history: the vast majority of Soviet Ukraine’s largest industries, including mining and metallurgy as well as the manufacture of transportation and industrial machinery, were located in the Donetsk Basin in eastern Ukraine. Therefore, high-level officials in state enterprises related to these industries in Donetsk and Dnepropetrovsk oblasts, in collusion with other government officials and/or members of organized crime groups in these regions, availed themselves of the rock-bottom-priced insider privatization opportunities afforded them to privatize these industrial concerns to themselves. As a result, the oligarchic structure that emerged in newly-independent Ukraine, and which endures today, reflects those who entered business through these sectors.

The Black Sea Region: Shipping, Transport and (Illicit) Trade

In addition to the eastern-Ukraine group of oligarchs, a subset of the nation’s economic elite got its start by doing business in the Black Sea region. Ukraine’s

⁴¹ Quoted in Forum Ukraine, Feb. 1 2012, reporting on Chow’s testimony at Congressional Hearings on “Ukraine at a Crossroads: What’s at Stake for the U.S. and Europe?”



strategic position along land and water trade routes from the Soviet Union into Europe, the Middle East and beyond, and especially the ports of Mykolaev, Odessa, and Sevastopol—offered well-connected “criminal entrepreneurs,” the opportunity to amass significant wealth from shipping and transport, including illicitly-traded goods like weapons, cigarettes, and counterfeit pharmaceuticals.

Kyiv and its Environs

As might be expected, several oligarchs rose to Ukraine’s economic elite from business undertaken in the capital city of Kyiv. This group, which includes Dmitry Firtash and Kostyantyn Zhevago, hailed from across Ukraine, but their rise in business results from their careers in Kyiv. Important sources of enrichment for Kyiv’s class of oligarchs include banking and financial services, the oil and gas trade, the media, and their ability to benefit from their political ties and/or positions in government or the legislature. As Prime Minister Mykola Azarov said in a speech in 2010, he used to tell his fellow ministers, when he worked as Finance Minister: (2002-4 and 2006-7) “Have a conscience. (Steal) five percent and the hell with you because there is no way we can track this money down, but please, don’t steal 50 percent. Show some conscience.”⁴²

Current situations

The economic downturn of 2009 appears to have resulted in a slowdown in corporate raiding, but this was followed by a sharp rise since the 2010 elections. Slawomir Matuszak reports that the number of complaints filed by businesses with the state anti-raiding committee increased more than tenfold between 2010 and 2011 from 75 complaints to nearly a thousand. Ukrainian experts estimate the number of raids at between 2000 and 3000 a year, with an annual cost to the economy of \$3 billion. They have identified 30 to 50 “raiding groups” who are in the “business” of carrying out raids. And it is reportedly a lucrative business, with success rates above 90% and profit margins of 1000%.

A 2013 study of corporate raiding in Ukraine by Matthew Rojansky⁴³ distinguished four main techniques, often used in tandem by Ukrainian raiders:

1. Forced bankruptcies where the raider first creates problems for the business, and then takes advantage of them to seize control.
2. Acquiring a minority share in a company and then turning it into majority “ownership” by means of fraudulent documents, bribed court decisions or other forms of pressure.
3. Bribing judges to impose huge fines on companies, and then taking over the company to force payment.

⁴² Kupatadze, op.cit., p 111

⁴³ Corporate Raiding in Ukraine” IREX Scholar Research Brief, Matthew Rojansky, Kennan Institute, July 2013

4. Extortion, using a variety of threats-- ranging from inspections, denials of permits and licenses, tax exactions and criminal prosecution-- to overt violence, in order to force a change of ownership.

Raiding can be found in every sector of the economy, in large enterprises and small. Rojansky reports that it is less common in high tech sectors, such as IT, where the employees are the main assets. Much of the raiding appears to be concentrated in sectors with expensive physical assets, such as land, machinery and buildings, and with a large and steady cash flow. These include, in particular, extractive industries, the food industry, large factories and successful retail outlets such as shopping malls, restaurants and hotels.

The media industry is also subject to rapid and sometimes concerning changes. « In April 2013, TVi was the last remaining television channel in the hands of the opposition, and had become famous for its investigations of corruption. It was not a financially profitable enterprise, nor did it have a large listener base.

On April 23 a new group of owners banned the former management from entering the building and announced that they had taken control of the station from Russian oligarch Konstantin Kagalovsky, who had co-founded the station along with other Russian oligarchs in 2008. A U.S. investor of Ukrainian origin, Alexandr Altman, was presented as the new owner.

After that, things began to unravel quickly, as Kagalovsky claimed he had not sold the company and a flurry of claims and counter-claims, suits and counter-suits ensued. Altman claimed that he too had been swindled. Courts in London and Ukraine froze the assets of the various claimants, but over a period of about 3 months, 17 different companies, registered in 5 countries (Ukraine, UK, Estonia, Panama and BVI) claimed to have bought and sold claims to the company.

While much about the transactions remains a mystery—including the real identity of the individual or individuals behind it, OCCRP was able to document a number of elements, individual and practices that are frequently found in Ukrainian corporate raiding:

- (1) Creation of several levels of ownership, often through multiple shell companies, to hide the real owners. In several cases the nominee directors either denied knowledge of the companies and/or were listed as running hundreds of companies.
- (2) Use of “registration agents” linked to organized crime, and registration of companies in localities, such as Panama and British Virgin Islands where regulations are notoriously lax.
- (3) Use of a law firm that is linked to other questionable business deals in Ukraine, including those by “family” associates.



- (4) Use of a “factoring” company that buys company debts at a discount and then collects the debts, often through confiscation of the company’s assets.
- (5) Use of complicated legal maneuvers such as cross-suits to “establish” legal ownership.
- (6) Frequent changes of ownership structure, even after a court decision has ostensibly frozen ownership. »⁴⁴

The energy sector in Ukraine, in that current context, needs also to be analyzed in regards of the changes in Ukraine’s energy policy since President Yanukovich began his term. Many analysts see a “European” tilt to Ukraine’s energy policy under President Yanukovich, with the decisions to join the European Energy Community, to move forward with the privatization of local gas and electric distribution companies; to lift Naftohaz’s import monopoly and import gas from western neighbors and to work with western companies to develop shale gas and other non-traditional gas sources. But all of these decisions have paid off handsomely for the oligarchs that support the President.⁴⁵

Through the 2011-12 privatization of local electricity-generation stations, for instance, the company DTEK Corporation won control of four local thermal power plants in a tender process that had no other viable bidders. This transaction awarded M.Akhmetov’s companies the control over four of the six thermal generating companies in Ukraine which produce more than 30% of the electricity consumed in Ukraine, as well as electricity that is exported to the EU.⁴⁶

The 2012 privatization of regional and local gas distribution companies, meanwhile, benefitted companies owned by M. Dmitry Firtash, who won control of 14 out of the 17 local companies that were tendered. As a result, out of 25 local gas companies in Ukraine, M. Firtash fully owns 14 and partially controls an additional 7. Some analysts speculate that M. Firtash is building up his own company, in order to bankrupt Naftohaz and then take over the entire gas transport, storage and distribution system. This, in turn could either protect the system from Gazprom – or deliver it into their hands.⁴⁷

While oligarchs linked to President Yanukovich’s “Party of Regions” have benefited from these decisions, a whole new group of beneficiaries has also arisen since 2010.

⁴⁴ see OCCRP, “Ukraine’s TVi Channel Keeps On Changing Hands” by Denys Bigus, Sept 20 2013) www.reportingproject.net/occrp/index.php/en/ccwatch/cc-watch-indepth/2150-ukraines-tvi-channel-keeps-on-changing-hands

⁴⁵ “Kyiv’s gas strategy: closer cooperation with Gazprom or a genuine diversification?” by Arkadiusz Sarna in Eastweek, Center for Eastern Studies, Warsaw, 7/15/2013 (www.osw.waw.pl)

⁴⁶ Slawomir Masuszak, “Akhmetov’s expansion onto the Ukrainian electricity market” Eastweek, 1/18/2012.

⁴⁷ Arkadiusz Sarna, “Dmytro Firtash’s companies are monopolizing the retail gas market in Ukraine”, EastWeek, 10/24/2012.

One of the most visible signs of shift of power has been the meteoric rise of M. Serhey Kurchenko, a 27-year-old businessman with close connections to M. Oleksandr Yanukovych. M. Kurchenko's rapid enrichment was chronicled in a special report in 2012 entitled "The Gas King of All Ukraine" by *Forbes Ukraine*⁴⁸ – a publication which was later acquired by M. Kurchenko's company.⁴⁹ The report traced the origins of M. Kurchenko's company Gaz Ukraina 2009 to a series of more than 50 companies, many of them domiciled in Kharkov and Simferopol.

Forbes reported that these companies have mushroomed since the 2010 elections, buying and selling natural gas, oil and oil products, and making large profits. By 2012, according to Forbes, the company had become one of the country's largest petroleum product importers, and owner of a chain of 150 gas stations in Ukraine and Germany and developed a large array of investments in the energy sector and in sports.

The Anti Corruption Action Center of Ukraine (ANTAC) is currently investigating companies in different energy deals, and tries to track down their ownership structures. As is often the case in Ukraine, it is still very difficult to find the actual owners, and the only some address could be tracked back and turned out to be a karaoke club in the Kiev suburbs. However, lots of overlaps in their directors led to the conclusion that they were set up to shelter the identities of the same people.⁵⁰

Ukraine and the UE

Observing Ukrainian political structures, we noted a trend toward a verticalization and reinforcement of central power of the state and strategic industries, either directly done by President Yanukovich team or indirectly by certain oligarchs. The battle for power is not yet finished in Ukraine but the trend is similar to what happened in Russia when Vladimir Putin came to power.

The major difference is that each oligarch, including Ms. Tymoshenko, have all representatives at the national parliament, the Rada, which turns difficult to be in the front of a totally stable partner for foreign states such as the EU because of the major risk of commercial and personal issues heavily impacting all official and political issues.

Many questions remain about the real impact of corruption, organized crime and illicit trafficking upon Ukraine's decisions and policies. The EU Association

⁴⁸ "Rassledovaniya: Gazovyy Korol Vseya Ukrainy" by Sevgil Museyeva and Aleksandr Akimenko, *Forbes Ukraine*, November 12, 2012.

⁴⁹ "The Gas King turned Media Mogul" *The Economist*, June 28 2013

⁵⁰ "Kings of Ukrainian Gas" (parts 1 & 2) at www.antac.org.ua/en/2012/09/kings-of-ukrainian-gas-2/. Also see "First steps into the unknown. The prospects of unconventional gas extraction in Ukraine" OSW (Center for Eastern Studies) Warsaw, commentary, 4/27/2013.



Agreement to be discussed and eventually signed in Vilnius at the end of the month of November 2013 raises many strategic questions, both inside and outside of Ukraine.

Does the EU have a positive impact into a stronger and structured institutionalisation throughout democracy and the State of law, even partially implemented ? The experience of the eastern european countries shows that this might be the case, but the path ahead is likely to be difficult.

The other question is whether the EU has the capacity to enforce the same the same policies already exercised in other Eastern European countries ? Ukraine is one of the largest countries of the European continent and efforts will be huge to get closer to it, as the opportunities will be. Managing the problems of corruption and organized crime will be one of the most important issues for EU trade because private interests shall easily overcome public interest and have strong impact both for Europe and Ukraine.

In that difficult moment, policy-makers shall concentrate on what is really important and leave the rest aside.

Through all the various dangers, threats, incertitude and challenges, are these countries mutual interests in line with the dream of the founders of Europe to build a continent that will never suffer from poverty and war again?

Conclusion and further steps

The first results of our Ukrainian research shows that even in difficult environment, it is possible to establish assessment on organized crime and public corruption in a structured and scientific way.

The demonstration is not yet finished. Our further research steps will however much more targeted and will meet positive responses, among them :

- the consolidation of figures according to main topics regarding illegal activities, organized crime, public corruption and conflict of interests
- the qualitative data search through interviews, on site researches and case studies
- the qualitative and quantitative data search about the presence and impact in foreign countries of ukrainian organized crime groups and corruption networks.

All these data supported by academic social and network analysis will allow us to provide useful data and situation's insight for policy-makers, media and the public in general.

We believe that organized crime such as corruption are not the affair of a few elite, governmental or not, but the one of every citizen that cares about its rights, as the fundamental chart of European Union outlines.

We're looking for developing our Ukrainian research and replicate the methodology to all western and eastern countries toward an effective and independent organized crime and corruption policy making.

Geneva, the 11th of November 2013