



**EUACI**

EUROPEAN UNION  
ANTI-CORRUPTION  
INITIATIVE

# CORRUPTION RISK ASSESSMENTS IN UKRAINE: CURRENT STATE

## SUMMARY & RECOMMENDATIONS

Assessment drafted by Dr. Tilman Hoppe  
with input by Dr. Valts Kalniņš

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MINISTRY OF FOREIGN AFFAIRS  
OF DENMARK  
*Danida*

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# TABLE OF CONTENTS

1. SUMMARY .....	4
1.1. MAIN FINDINGS.....	4
1.2. STATISTICS.....	6
1.3. FLOW-CHART: STATE BODIES .....	7
2. RECOMMENDATIONS .....	8
2.1. RISK ASSESSMENT IN STATE BODIES (RECOMMENDATIONS 1-29) .....	8
2.2. PARTICULARITIES FOR LEGAL PERSONS (“COMPANIES”) (RECOMMENDATIONS 30-34) .....	10
2.3. CAPACITIES (RECOMMENDATIONS 35-36) .....	10

# 1. SUMMARY

## 1.1. MAIN FINDINGS

The legal framework and its implementation by the NACP and other State bodies show several good practices:

- All necessary methodological documents are basically in place regarding corruption risk assessment (CRA) of State bodies, state-owned companies, as well as private sector companies;
- The framework has been in place only for one year; nonetheless, there has been already a relatively high compliance rate of conducting CRAs in particular at the level of central authorities and with presentable results.

It is obvious that there are a number of mostly technical points that could be improved on about 120 pages of methodological guidance on anti-corruption programmes (AC-programmes), which is only one year old and by default a living document. Observations on such points are documented in 36 recommendations throughout this Report.

Three bigger external factors limit the effectiveness of CRA:

- If State bodies are not willing to conduct CRA, the NACP cannot do too much about this. It would be naïve to assume that one agency could align the entire range of State bodies into proper order in this regard. With corruption rampant in Ukraine, many high and lower ranking public officials would be “cutting off the hand that is feeding them” if they conducted CRA properly and divulged the true (relevant) corruption risks.
- The statutory framework sets limitations. The Law on Prevention of Corruption (LPC) does not foresee any strict timelines or effective sanctions for heads of State bodies or for CEOs of state-owned enterprises. Even a stronger framework will never be able to “force” State bodies into proper CRAs – the proper result of a CRA is a rather soft, debatable object which cannot be cast into the mould of a disciplinary or similar offence. This aside, detailing the obligations of State bodies in the LPC could increase the liability of their heads (through warrants by the NACP under Art. 12 part 2 LPC).
- While CRA has been a formal requirement of the anti-corruption framework for many years before 2014, it was not done in practice, or rather through a copy-paste approach. Thus, the perception among public officials (and among citizens) often still seems to be, that corruption risks are the same as corruption, or CRA is the same as a law enforcement investigation.

If one keeps such external limitations in mind, the progress made by the NACP within short time, is commendable. Obviously, the degree of internalisation of the CRA process in public institutions still reportedly varies largely. The main areas where donors could support the NACP with improving the CRA system will be the following:

- Establishing an online platform to which all subjects of CRA can link to allowing for standard identifying of corruption risks, publishing them, and measuring progress on their mitigation (as some other countries have done successfully).
- The user-friendliness and consistency of the methodological guidance should be enhanced, upgrading or complementing the more legalistically appearing documents into a more didactical guidance (structure, table of content, key word register, flow charts, summaries, key takeaways, reader-friendly wordings and flow of thoughts, etc.)

- The NACP has mainly provided guidance and conducted desk review of draft CRA reports during the first year of implementation. From now on, the NACP could expand its human and organisational capacities to cover the following aspects:
  - Conducting more in-depth quality checks on draft CRAs (a desk review of draft CRA-reports whether they comply with formal requirements and as to whether they appear plausible or provide only a very limited picture of what the real corruption risks might be);
  - Conducting its own CRAs in areas of priority (to mitigate the “conflict of interest” of State bodies conducting CRA through self-assessment);
  - Build capacity on sector specific risks by training its staff on such sector-specific risks and developing sector specific checklists for CRA.

This aside, there is potential in donors supporting selected State bodies with their CRAs.

It should be kept in mind that corruption risk assessments have their limitations aside from stakeholders lacking the necessary will. CRA also might not be able to do much about networks of power elites involved in grand corruption schemes. Furthermore, lack of resources in staff or budget might often slow down reform efforts. Nonetheless CRA keeps the necessary awareness and discussion of corruption risks running. Furthermore, CRA brings progress over time in small steps even though its impact might not be immediately visible. All in all it seems a worthwhile engagement for donors to support above proposed future activities.

## 1.2. STATISTICS

For 2017, the NACP provided the following statistics (see Annex 6.7 for a narrative text):

CRA IN STATE BODIES (WITHOUT LEGAL PERSONS)	TOTAL	TOTAL MAX.	% OF MAX.
CRA conducted (as part of AC-programmes), out of which:	121	>142 <sup>1</sup>	85
Ministries (total: 18)	18	18	100
other central executive bodies (total: 46) <sup>2</sup>	44	46	96
Regional and city admin. (total: 24 oblast, 2 central cities)	25	26	96
24 oblast councils (different from state oblast administr.)	8	24	33
other State bodies (judiciary, Presidential admin., etc.)	26	28	93
Total which NACP approved with recommendations	109	142	77
Total NACP sent back (without feedback by state-bodies)	8	142	6
Others (end of year without result, etc., see Annex6.7)	4	142	3
Unannounced inspections of State bodies by NACP	5	142	4
Warnings by NACP to heads of State bodies	3	142	2
AC-programmes on which CSO's commented to NACP	1	142	1

Initially, the NACP received 60 draft AC-programmes without any CRA reports. The NACP refused to review these drafts and requested State bodies to conduct a CRA as well as to revise the draft programme.

TRAININGS AND ADVICE BY NACP RELATED TO CRA OF STATE BODIES	NUMBER	PARTICIPANTS
Verbal explanations	321	321
Trainings conducted on AC-programmes (risk assessment)	13	239
Average evaluation grade (5 being best grade)	4.72	n.a.

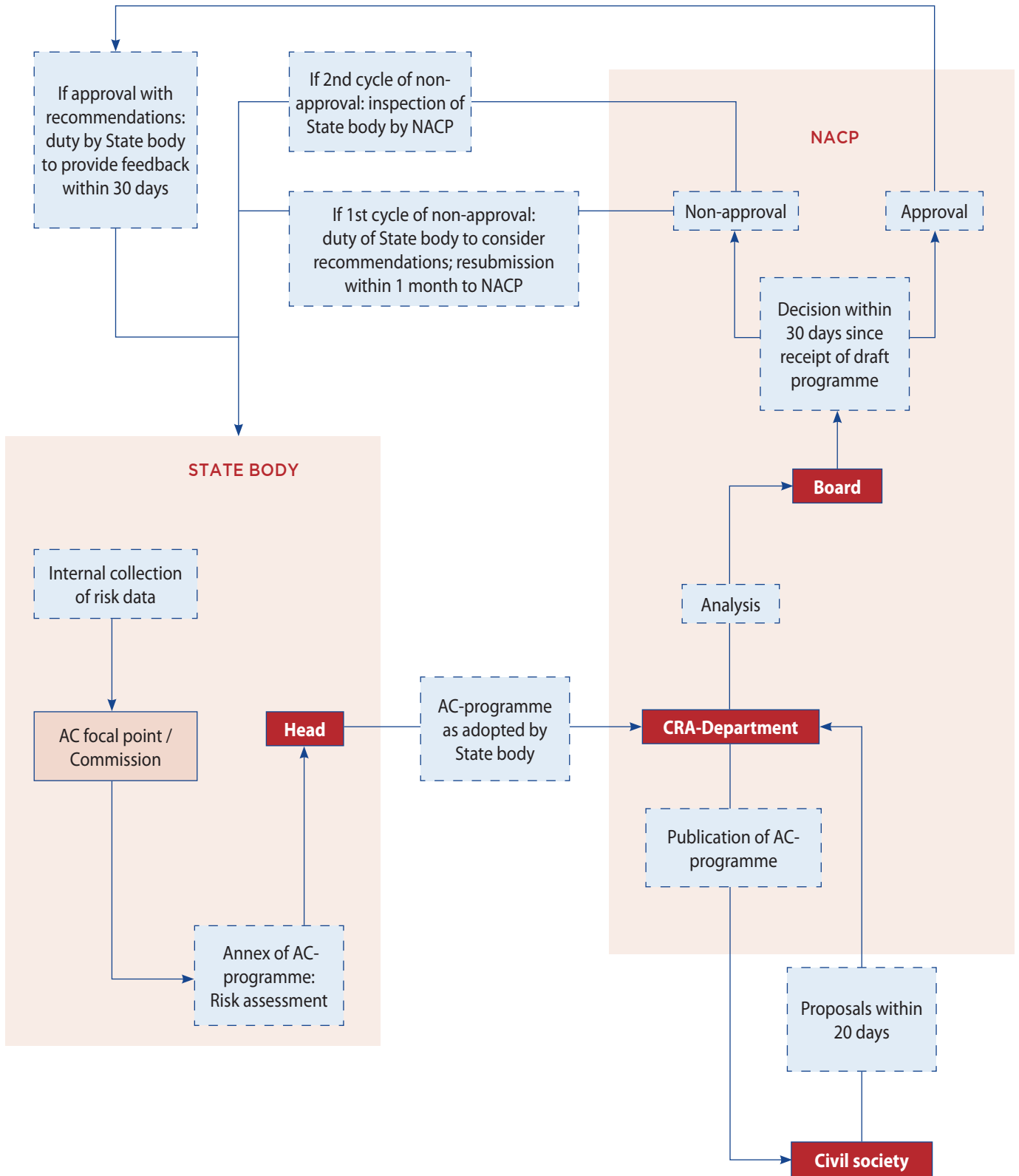
There is no statistical data available on the number of legal persons which conducted CRA/adopted AC-programmes. This includes 211 state-owned companies who do not have their AC-programmes to be approved by the NACP (Art. 62 LPC). An interested member of the public could deduct the total of private sector companies required to have AC-programmes from accessing the online procurement platform "ProZorro".

TRAININGS AND ADVICE BY NACP RELATED TO LEGAL PERSONS	NUMBER
Trainings for representatives of state enterprises	6
Joint session with the "Compliance Club" and the American Chamber of Commerce	1

<sup>1</sup> It is unclear what the term "state trust fund" means and how many entities this covers. This aside, the total equals the number of total bodies listed in the lines below.

<sup>2</sup> ECD Territorial Reviews OECD Territorial Reviews: Ukraine 2013, page 114: total of central bodies including ministries is 77 as of mid-2012.

### 1.3. FLOW-CHART: STATE BODIES



## 2. RECOMMENDATIONS

### 2.1. RISK ASSESSMENT IN STATE BODIES (RECOMMENDATIONS 1-29)

**Recommendation 1:** The Methodology should be amended with multiple the amount of questions on corruption risks than exist today.

**Recommendation 2:** Questions should be self-explanatory. Each question should be combined with an illustration of what corruption risk, risk factor or counter factor it relates to and how this risk could be mitigated.

**Recommendation 3:** The NACP should consider developing modules of questions/risks for recurring functions in public administration.

**Recommendation 4:** The NACP should step-by-step expand its risk assessment work into sector specific risks such as education, health, customs, taxes, police, etc.

**Recommendation 5:** Several general statements by the Methodology need to be explained more concretely and step-by-step.

**Recommendation 6:** The Methodology should provide more “rules of thumbs” that are more easy to understand by laypersons and are easy to remember. This certainly holds true for the definition of “corruption” and “corruption risk”.

**Recommendation 7:** Annex 2 of the Methodology on AC-Programmes should be expanded into a full set of “Examples” reflecting all chapters of the Annex 1.

**Recommendation 8:** Clarify a coherent use of the terms “risk” and “risk factor” throughout the Methodology on AC-programmes.

**Recommendation 9:** The NACP should constantly update the list of risks based on the risk evaluation reports by State bodies and based on existing and new CRA reports by international and foreign organisations.

**Recommendation 10:** Consider in mid- or long-term introducing a participatory online platform for collecting relevant questions about corruption risks and options for their mitigation.

**Recommendation 11:** Consider introducing a separate section into the Methodology on AC-programmes that would expand the State body’s perspective to include the service to citizens and interaction with other stakeholders within the State body’s thematic sector, even if it is not the immediate responsibility of the State body.

**Recommendation 12:** Consider conducting spot checks on a sample of CRAs.

**Recommendation 13:** Introduce a legal basis for the NACP to conduct its own CRAs in State bodies and to oblige State bodies to cooperate on such activities. This should include the power for extraordinary CRAs.

**Recommendation 14:** Review options for solidifying the NACP’s role in coordinating CRAs (e.g. participation in CRA-sessions of AC-commissions) through a legal basis in the LPC.

**Recommendation 15:** Consider establishing AC-commissions as the mandatory platform for conducting CRA (as foreseen in draft Art. 19-1 LPC) while clearly retaining the ultimate responsibility for the CRA and the AC programme with the head of the institution.



**Recommendation 16:** The didactical appearance of the Methodology should be upgraded with a table of content, illustrations, flow charts, examples, key takeaways, etc. and complemented with public awareness material for public officials and citizens.

**Recommendation 17:** Consider making at least a reasonable effort to include civil society representatives into the CRA process as a mandatory part of the process.

**Recommendation 18:** Revise Art. 19 LPC in the form of or based on the principles contained in Art. 19-1 of the draft Law (see Annex) and consider introducing stronger sanctions as are foreseen for example in the Moldovan Law on integrity assessment (see Annex).

**Recommendation 19:** Review options to harmonise corruption proofing methodologies and to allocate competencies completely at the NACP (together with the necessary resources).

**Recommendation 20:** Review both Methodologies on AC-programmes and on CRA in order to fully align both documents regarding CRA.

**Recommendation 21:** The NACP should consider picking up previous efforts of introducing integrity testing inter alia as a tool for risk assessments.

**Recommendation 22:** The Methodology on CRA should be reviewed for its methodological consistency to be fully rounded up.

**Recommendation 23:** The Methodology on AC-programmes should be reviewed for providing additional guidance regarding the “scope of losses”.

**Recommendation 24:** Past case statistics should only be a minor criteria when assessing “probability” of a risk materialising. All kinds of informal sources and the common sense of the assessors are fully valid sources for determining the probability of a risk.

**Recommendation 25:** The NACP should review to what extent the Methodologies could provide some more guidance on prioritising corruption risks.

**Recommendation 26:** The Methodology on AC-programmes should be expanded over time to contain more countermeasures and with more concrete details.

**Recommendation 27:** While State bodies should be allowed to formulate the results of their risk-reduction measures at their own discretion, residual risks should be a mandatory element defined by the Methodology on AC-programmes.

**Recommendation 28:** Consider moving the CRA process into an online platform.

**Recommendation 29:** Consider making it mandatory to list all sources of CRA in the CRA reports as well as the number of working sessions of the CRA-Commission, thus further increasing the transparency of the process.

## 2.2. PARTICULARITIES FOR LEGAL PERSONS (“COMPANIES”) (RECOMMENDATIONS 30-34)

**Recommendation 30:** Consider expanding the quality control of AC-programmes to state-owned enterprises.

**Recommendation 31:** Consider clarifying how foreign legal persons comply with Art. 62 part. 2 no. 2 LPC.

**Recommendation 32:** Incorporate into the Guidelines at least the basic links between criminal liability of legal persons and corruption prevention programmes.

**Recommendation 33:** Integrate the aspect of “pre-acquisition due diligence and post-acquisition integration” into the Guidelines and the Model Programme for legal persons.

**Recommendation 34:** Review, as to whether the NACP should take a stronger role in monitoring compliance of private sector legal persons with their obligations to set up anti-corruption programmes.

## 2.3. CAPACITIES (RECOMMENDATIONS 35-36)

**Recommendation 35:** Increase level of staff in line with new tasks and deeper involvement of the NACP in CRA as contained in previous recommendations throughout this report.

**Recommendation 36:** Leaders of state bodies need to appoint staff as AC Focal Points who have the necessary level of skills and motivation, and need to back them up with full support by management.



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*Danida*

EU Anti-Corruption Initiative in Ukraine  
4V, Volodymyrskyi Uzviz  
Kyiv, Ukraine, 01001  
[info@ukraine-aci.com](mailto:info@ukraine-aci.com)  
[www.euaci.eu](http://www.euaci.eu)