

Anti-corruption legislation and corruption prosecution in Ukraine

Like any state guided by the principles of democracy and the rule of law, Ukraine seeks to eliminate all forms of corruption. Its legal system provides for criminal sanctions for those who commit corruption offences, and law enforcement agencies make efforts to detect such persons and bring them to justice.

Polish and other foreign entrepreneurs trading with or planning to invest in Ukraine should be aware of what the Ukrainian legal system prohibits and how it can punish violations of such prohibitions.

Anti-corruption legislation

The Ukrainian legal system contains a catalogue of anti-corruption provisions, among which the most noteworthy are:

- The Criminal Code of Ukraine (Bulletin of the Verkhovna Rada of Ukraine (BBP), 2001, No. 25-26, st. 131) (hereinafter: “CCU”),
- The Law of Ukraine On Prevention of Corruption (Bulletin of the Verkhovna Rada of Ukraine (BBP), 2014, No. 49, st. 2056),
- The Law of Ukraine On the National Anti-Corruption Bureau of Ukraine (Bulletin of the Verkhovna Rada of Ukraine (BBP), 2014, No. 47, st. 2051),
- The Criminal Procedure Code of Ukraine (Bulletin of the Verkhovna Rada of Ukraine (BBP), 2013, No. 9-10, No. 11-12, No. 13, st. 88).

For committing corruption or corruption-related offences, the violator may be held liable not only criminally, but may also face administrative, civil and disciplinary sanctions in accordance with the procedure established by Ukrainian law.



International conventions

Ukraine is also party to international conventions on the fight against corruption:

- The United Nations Convention against corruption of 31 October 2003;
- The Criminal Law Convention on corruption of 27 January 1999;
- The Additional Protocol to the Criminal Law Convention on corruption of 15 May 2003;
- The Civil Law Convention on corruption of 4 November 1999;
- The Agreement on the establishment of the Group of States against Corruption (GRECO);
- The Statute of the Group of States against Corruption (GRECO).

The concept of “corruption”

There is a legal definition of corruption in Ukraine. According to Article 1(1) of the Law of Ukraine On Prevention of Corruption **it is:**

1. **the use by a person subject to this Act** (e.g. members of the Ukrainian parliament, civil servants, local government officials) **of the powers or official capacities granted to him or her in order to:**
 - obtain an unlawful advantage for themselves or others or
 - accepting such an advantage or the promise/offer of such an advantage for himself or others or, as the case may be
2. promising or giving unlawful advantage to the abovementioned person or at his request to any other natural or legal person, **for the purpose of inducing that person to make unlawful use of his official capacity or opportunities.**



Bodies subject to the Law of Ukraine On Prevention of Corruption

The Law of Ukraine On Prevention of Corruption applies to the following categories of persons:

1. persons authorised to hold state or local government office (e.g. the President of Ukraine, judges, civil servants);
2. persons who, for the purposes of this Law, are equated with persons authorised to perform state or local government functions (e.g. members of the Council of the Audit Chamber of Ukraine, notaries, representatives of public associations, officials of legal entities under public law);
3. persons who on a permanent or temporary basis occupy positions connected with the performance of organisational and administrative duties in legal entities governed by private law, as well as other persons who are not officials and who perform work or provide services pursuant to a contract with an enterprise, institution, organisation (for example, heads of planning, supply, finance and service departments, managers of warehouses, shops, workshops, workshops, their deputies, heads of enterprise departments, department auditors and heads of departments);
4. candidates for the office of President of Ukraine and candidates for deputies of the Ukrainian Parliament registered in accordance with the procedure established by law.

Corruption in the private sector

Ukrainian law also provides for penalties for corruption in the private sector. Criminal liability is provided for, among others:

1. **offering or promising** an unlawful advantage to an employee, a person working for a company, an institution or an organisation or to a third party; and
2. **procuring such an advantage** for the performance or non-performance by an employee of any act by virtue of his or her position or by a person working for an undertaking, institution or organisation, in the interest of the person offering, promising or providing such an advantage or in the interest of a third party.

Furthermore:

1. **the acceptance of an offer, promise or receipt** of an unlawful advantage by an employee or a person working for a company, institution or organisation; and
2. **requesting the procuring of such an advantage** to oneself or to a third party **for doing or refraining from doing any act** using one's position, in the interest of the person offering, promising or providing such an advantage, or in the interest of a third party

is also punishable.

What an unlawful advantage may consist of?

According to Article 1(1) of the Law of Ukraine On Prevention of Corruption, an unlawful advantage may be not only money, but also:

- other property,
- benefits,
- reliefs,
- services,
- intangibles,
- any other intangible or non-monetary benefits,

that are promised, offered, delivered or received **without a legal basis.**

Who bears the responsibility?

It should be emphasised that in Ukraine, both **the person offering an unlawful advantage and the person who accepts or even demands it** can be punished for corruption (Article 354 of the CCU). This means that if a Polish entrepreneur committed such an offence in Ukraine, he would be held criminally liable.

Which authorities prosecute corruption offences?

A system of state bodies has been set up in Ukraine to prosecute corruption offences:

- The National Anti-Corruption Bureau of Ukraine (hereinafter: “**NABU**”) is an executive body responsible for preventing, detecting, stopping, investigating and solving corruption and other criminal offences under its jurisdiction, as well as preventing the commission of new ones. On 14 October 2014, the Verkhovna Rada of Ukraine adopted the Law on the National Anti-Corruption Bureau of Ukraine. On 10 November 2021, **the NABU became a central executive body with a special status** but retained the key principles of its functioning: institutional independence and specialisation in investigating corruption and other criminal offences. **Currently, it has a Central Office and territorial offices in Lviv, Kharkiv and Odesa.**
- The Specialised Anti-Corruption Prosecutor's Office (hereinafter: “**SAPO**”) is an independent structural unit of the General Prosecutor's Office (under the rights of a Department), reporting to the Deputy General Prosecutor - Head of the Specialised Anti-Corruption Prosecutor's Office. The main tasks of the SAPO include supervision of compliance with the law during operational and investigative activities, pre-trial investigation of NABU-investigated crimes and support of the Prosecutor's Office in criminal proceedings conducted by NABU.

- The High Anti-Corruption Court (hereinafter: “**HACC**”) is the permanent highest specialised court in Ukraine's judicial system, tasked with:
 - a) administering justice to protect individuals, society and the State from corruption and related crimes, judicial control over pre-trial investigation of these crimes, as well as
 - b) deciding on the recognition of unjustified assets and their return to state revenues, and
 - c) administering justice in cases of sanctions.

The HACC was established in 2018, but actually started its activities on 5 September 2019. The HACC administers justice as a court of first instance and a court of appeal. It is composed of 38 judges. According to available statistics, in the first half of 2023 the HACC, as a court of first instance, dealt with 5,725 cases and materials. In the first half of 2022 the HACC issued 18 court decisions (all 18 are judgments) and in the first half of 2023 - 40 (33 of which are judgments).

All other corruption offences that do not fall under the jurisdiction of the NABU are investigated by the National Police of Ukraine.



What are the penalties?

For corruption and corruption-related offences, the court may impose the following types of punishment:

- **fine**;
- disqualification from holding certain positions or engaging in certain activities;
- community work;
- work in a correctional facility;
- **confiscation of property**;
- jail;
- restriction of freedom;
- **deprivation of liberty for a specified period.**

Types of corruption offences

In Ukraine, corruption offences under the CCU are divided into corruption offences and corruption-related offences.

Corruption offences

The note to Article 45 of the CCU specifies that corruption offences are offences under Articles 191, 262, 308, 312, 313, 320, 357, 410 of the CCU **if committed as a result of abuse of official position** (e.g. embezzlement, embezzlement or taking of property as a result of abuse of official position), as well as offences under Art. 210, 354, 364, 364¹, 365², 368-369² CCU (**e.g. bribery of an employee of an enterprise, institution or organisation, an official of a legal entity under private law regardless of its legal form, a person providing public services, offering, promising or giving an unlawful advantage to an official**).

Corruption-related offences

Corruption-related offences under the CCU include offences under Articles 366² and 366³ of the CCU (making false statements, failure to make a declaration by a person authorised to perform state or local government functions).

Is it possible to avoid punishment in corruption cases?

Ukraine **does not provide for the possibility of exemption from criminal liability for corruption offences** in connection with active repentance (Article 45 of the CCU), reconciliation between the perpetrator and the victim (Article 46 of the CCU), in connection with the transfer of a person on bail (Article 47 of the CCU) or a change of circumstances (Article 48 of the CCU). For example, **in Poland, a person giving a financial advantage may avoid liability if he or she informs the authority competent to prosecute such offences** that the financial or personal advantage or its promise was accepted by a person holding a public function and **discloses all relevant circumstances of the offence before the authority became aware of them.**

Thus, **under Ukrainian law, reporting a corruption offence will not allow a Polish entrepreneur to avoid criminal liability, as is the case in Poland.**



Statute of limitations

According to the general rule in Ukraine, the statute of limitations for criminal offences is:

- 1) **2 years** - in the case of the commission of an offence punishable by a milder penalty than restriction of liberty;
- 2) **3 years** - in the case of the commission of an offence punishable by restriction of liberty or imprisonment not exceeding 2 years;
- 3) **5 years** - in the case of the commission of a minor offence;
- 4) **10 years** - in the case of the commission of a serious offence;
- 5) **15 years** - in the case of the commission of a particularly serious offence.

This means that if more time elapses between the time of the offence and the time the sentence becomes final, the offender is absolved of criminal responsibility.

Legal position of a Polish citizen committing a corruption offence in Ukraine or Poland against a Ukrainian official

The commission of a corruption offence on the territory of Poland against a person holding a public function in Ukraine is punishable under the provisions of the Polish Criminal Code (hereinafter: the “CCP”). Indeed, pursuant to Article 229 § 5 of the CCP, **it is a criminal offence to give or promise to give a financial advantage** (popularly known as a bribe) or a personal advantage to **a person performing a public function in a foreign state or an international organisation** in connection with the performance of that function.

It is committed **as soon as the advantage or its promise is given**, regardless of whether the advantage or the promise is accepted by the holder of a public function.



Such “ordinary” corruption is punishable by 6 months' imprisonment to 8 years. If the purpose of the perpetrator's action is to induce a person holding a public function to infringe the law or an advantage is given or promised for the infringement of the law, then the penalty may range from 1 to 10 years' imprisonment. As of 1 October 2023, the threat has significantly increased - in the situation of granting or promising an advantage of significant value (i.e. exceeding PLN 200,000) or of great value (i.e. exceeding PLN 1,000,000), respectively, the threat of imprisonment will amount to 2 to 15 years and 3 to 20 years respectively.

Importantly, the same corrupt act may be considered to have been committed in both Poland and Ukraine. For the actions of a Polish citizen to be criminalized on the territory of Poland and Ukraine, it is sufficient that he commits a criminal act on the territory of Ukraine against a Ukrainian official. The CCP applies to a Polish citizen who commits an offence abroad, whereby it is necessary for the act to be recognized as a criminal offence also by the law in force in the place where it was committed. As is the case with corruption offences.

From a practical point of view, corruption of Ukrainian officials committed in Ukraine by a Polish citizen is subject to prosecution by both the Polish and Ukrainian justice systems, and the penalties are severe. In practice, it happens that **the same act is prosecuted in both Poland and Ukraine.**



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