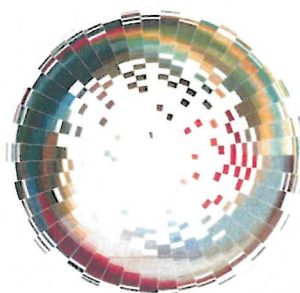




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# **4th Political Party Expert Workshop**

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## **Research Paper:**

### **The Reformed Ukrainian Party Law (2015): A Comparative Analysis**

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# The Reformed Ukrainian Party Law (2015): A Comparative Analysis

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*Prepared by Fernando Casal Bértoa, June 2016*

## **ABSTRACT**

On October 8th, 2015 and January 20th, 2016 the Supreme Council (Verkhovna Rada) of Ukraine approved various amendments to the 2001 Party Law (PL) in terms of the organization and funding of political parties. The current version of PL – called here from now on cvUPL – not only constitutes an increase in the amount of regulation, but also clearly improves the way in which political parties had been regulated until 2010. The current paper constitutes a first attempt to put the cvUPL in comparative perspective as well as examine the most important changes made by the Ukrainian legislator in view of the recommendations made by the OSCE/ODIHR and the CoE in a report published the third-quarter of last year (Frendo et al. 2015)

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## **The Ukrainian Party Law (2015) in a Comparative Perspective**

As it follows from table 1, which summarizes the key components of the regulatory frameworks for party organizations in 6 Central and Eastern European countries and in Ukraine, the cvUPL differs from its post-communist counterparts in 5 issues. First of all, it requires a particular geographical distribution of party supporters. Secondly, it leaves the competence of party registration to the Ministry of Justice, rather than to the Ministry of Interior or to a judicial court. Thirdly, it does not regulate the proceedings for (the democratic) selection of party committee and/or leaders. Fourthly, it consecrates Ukraine as the most important example of “militant democracy” in post-communist Europe. Last but not least, it does not include any special judicial guarantee when dealing with the banning of a political party. I will deal more in depth with some of these issues in the next two sections focusing on the birth and death of Ukrainian political parties.

### ***Party Formation (i.e. Registration)***

As in the previous version of the law, the cvUPL requires the support of at least 10,000 Ukrainian citizens for a political party to be registered. This makes Ukraine one of the most demanding European countries in terms of party formation. In fact, in most post-communist countries the minimum number of members and/or signatures ranges from just 10 in Hungary, 200 in Latvia, 1,000 in the Czech Republic, Poland and Lithuania, to 2,500 in Bulgaria. Only Slovakia with a similar threshold to Ukraine, plus the requirement of a registration fee (around €17,000) can be compared to Ukraine. Even Romania where a minimum of 25,000 members were required to form a party, has now changed to 3 (Casal Bértoa and Biezen, 2014).

Moreover, the fact that those 10,000 signatures need to be geographically distributed not only makes the formation of a political party in Ukraine even more difficult, but also in the current situation impossible as the requirement that “the signatures are collected in two-thirds of [...] the rayons of the Autonomous Republic of Crimea” cannot be fulfilled. This means that *rebus sic standibus* no new party will be able to be registered for future elections.

Despite what has been said, and notwithstanding the fact that the requirement of a group of 100 Ukrainian citizens to establish a political party on top of the abovementioned 10,000 signatures makes the whole process a bit convoluted, the cvUPL should be praised for the detail in which the process of formation (foundation congress, minutes, etc.) is regulated, which in the case of registration is appropriately left to a different (secondary) piece of legislation (i.e. Law of Ukraine on State Registration of Legal Persons and Natural Persons Acting as Private Entrepreneurs).

Table 1. Party Laws in post-communist Europe: Key Components

	Hungary	Czech R.	Poland	Bulgaria	Romania	Slovakia	Ukraine
	1989	1993	1997	2001	2003	2005	2015
<i>Registration requirements</i>							
Deposit fee	--	--	--	--	--	X	--
No. of members	*	--	--	X	X	--	--
No. of signatures	--	X	X	X	--	X	X
Geographical distribution (members/signatures)	--	--	--	--	X	--	X
Monitoring authority:							
Minister of Justice	--	--	--	--	--	--	*
Ministry of Interior	--	X	--	--	--	X	--
Court (in the country's capital)	*	--	X	X	X	--	--
<i>Party organization</i>							
Democratic elections	*	X	X	--	X	--	--
Minimum no. of meetings	*	--	--	X	X	--	--
Internal arbitration body	--	X	--	--	X	--	--
Ban on multi-party membership	--	X	--	X	X	--	X
Party membership records	*	--	--	--	X	--	--
Ban on party structures in work place	X	X	X	X	X	--	X
Exclusively regional structures	--	X	--	X	X	--	X
Membership incompatible with:							
Armed forces/Police	*	X	*	X	*	*	X
State administration	--	X	--	X	X	*	X
Judiciary	*	*	*	X	*	*	X
Religious institutions	--	--	--	X	--	--	--
<i>Judicial dissolution</i>							
Breach of Constitution and/or law	*	X	X	X	X	X	X
Threaten sovereignty/national unity	--	--	--	--	X	--	X
Threaten rights/freedoms of citizens	--	X	--	--	--	--	X
Anti-democratic behaviour	--	X	--	--	--	--	X
Proclaim fascism/communism	--	--	--	--	--	--	X
Organize (para-)military units/activities	--	X	--	--	X	--	X

Endanger morality and/or public order	--	X	--	--	X	--	X
Objectives not in party statutes/programme	--	--	--	--	--	--	--
Lack of:							
Financial reports	--	X	X	X	--	--	--
Participation in elections	X	--	--	X	X	X	X
Minimum number of votes	--	--	--	--	--	X	--
Meeting of party's Supreme Organ	--	--	--	--	X	X	--
Judicial authority:							
Ordinary Court	X	--	X	X	X	X	X
Supreme Court	--	X	--	--	--	--	--
Constitutional Court	--	--	X	X	X	--	--

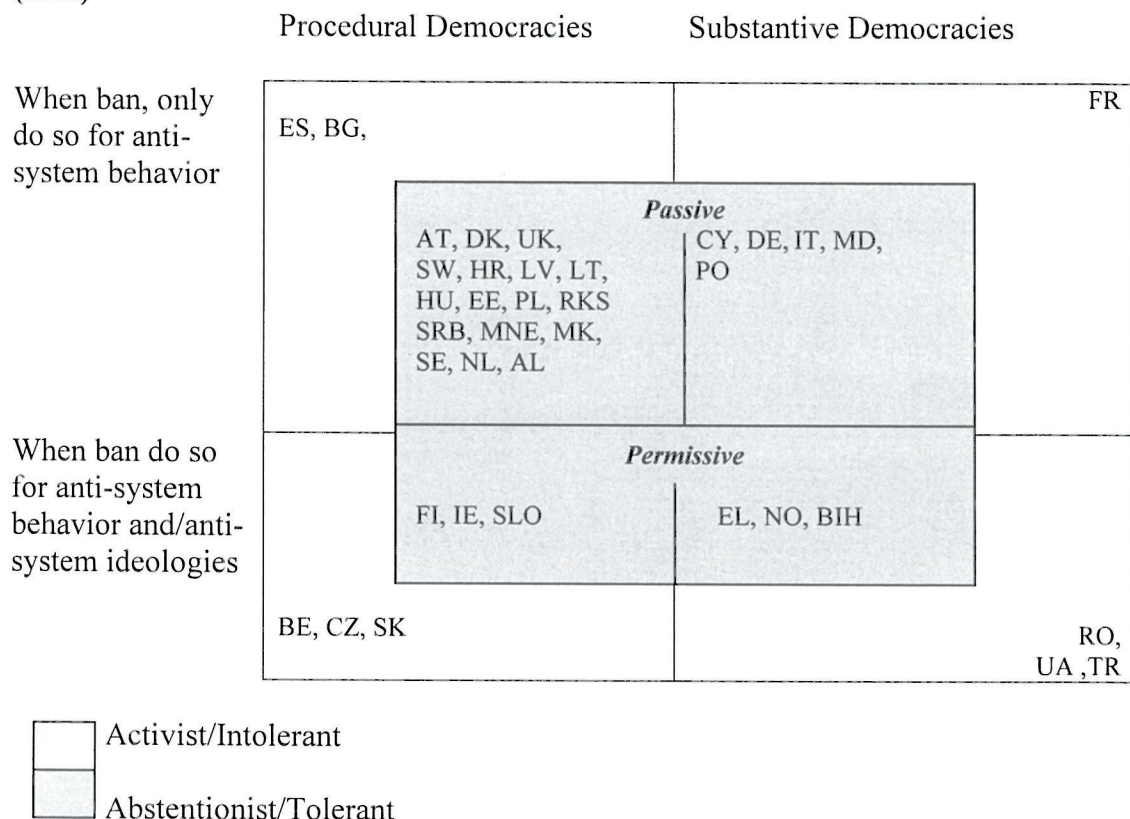
\* Provided in legislation other than the Party Law.

Sources: Casal Bértoa and Biezen (2014: 308).

## Party Termination (i.e. Banning)

One of the most important innovations of the cvUPL, especially in relation to its original form in 2001, refers to the causes for termination of a political party and, more in particular, for its judicial banning. Thus, the cvUPL reinforces its “militant” conception of democracy by adding the propagandizing of Communist or Nazi ideology (and/or symbols) to the previous reasons for party banning which, among others included, aiming at the liquidation of Ukrainian independence or the undermining of national security or the incitation to war, violence, interethnic, racial or religious hatred (see table 1).

**Figure 1: Tolerant Democracies, Intolerant Democracies and Party bans in Europe (2015)**



*Note:* AL Albania, AT Austria, BE Belgium, BG Bulgaria, BIH Bosnia and Herzegovina, CH Switzerland, CY Cyprus, CZ Czech Republic, DK Denmark, DE Germany, EE Estonia, EL Greece, ES Spain, FI Finland, FR France, HR Croatia, HU Hungary, IT Italy, IE Ireland, LV Latvia, LT Lithuania, MD Moldova, MK Macedonia, MNE Montenegro, NL Netherlands, NI Northern Ireland, NO Norway, PL Poland, PT Portugal, RKS Kosovo, RO Romania, SE Sweden, SK Slovakia, SLO Slovenia, SRB Serbia, SW Switzerland, TR Turkey, UA Ukraine, UK United Kingdom - *Source:* Bourne and Casal Bértoa (2016: 15).

This converts Ukraine in one of the few European countries to have banned parties in the last 15 years for ideological reasons, and not just for anti-systemic behavior.<sup>1</sup> The other five are Belgium, Romania, Turkey, and the former Czechoslovak states (see figure 1).

<sup>1</sup> Between January 2014 and December 2015 up to 5 Ukrainian political parties have been banned: namely, the Communist Party (KPU), the (renewed) Communist Party (KPUo), the Communist Party

However, and notwithstanding the constitutionality of this legislative change, the truth is that this new source of party prohibition might end having an important (negative) effect on the already inchoate Ukrainian party system. Indeed, and as demonstrated by in a recent paper (Casal Bértoa and Bourne, 2016), the prohibition of political parties with a certain electoral support may not only increase electoral volatility as well as change the dynamics of party competition at the parliamentary and/or governmental level, but also damage democratic legitimacy by leaving an important proportion of the population - as reflected by an increase in the number of “spoiled ballots” – politically unrepresented, with the consequences this might have for the stability of the political system as a whole.

Secondly, and what is in my view extremely unfortunate, the cvUPL deletes the previous reference to the competence of the Supreme Court in such cases. Although there is not agreement in the literature about which should be the right court to exert such important function (i.e. the banning of a political party), the truth is that - as it follows from the table above - most post-communist countries leave the final decision to either their Supreme or Constitutional Courts. Moreover, out of 18 European democracies where parties have been banned at least once since the end of WWII, seven have empowered the Constitutional Court with such function while five prefer the Supreme Court. Only four (Greece, Italy, Norway and the United Kingdom) do not provide for such a special judicial guarantee (Bourne and Casal Bértoa, 2016; Frendo et al. 2015). For such reason, I would recommend to recover the specific reference to the Supreme Court in the last paragraph of art. 5 of the cvUPL, especially given the rather liberal character of the cvUPL in terms of the institutions with capacity to initiate the process of party banning.

### *The Funding of Ukrainian Political Parties: Comparative Perspective*

As it follows from table A in the Appendix, which summarizes the evolution of the regulatory framework for party funding in Ukraine, the cvUPL constitutes truly a “legislative earthquake”, bringing Ukraine closer to most new EU democracies in the continent – as can be observed in table 2. First of all, it provides for the public funding of both electoral and organizational expenses, with extension of the latter to certain extra-parliamentary political forces. Secondly, it provides for both donation and expenditure caps, even if continues to allow company donations. Thirdly, it introduces a rather detailed process of funding control in the hands of political parties themselves, but also in various organs of the State administration. It improves the sanctionary framework by increasing the seriousness of both administrative and criminal sanctions, giving competence to various oversight organs to initiate the sanctionary judicial process. But let’s examine these and other of the most important aspects of party funding regulation in turn.

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of Workers and Peasants (KPRS), the Russian Bloc (RB), and Russian Unity (RY); converting Ukraine – at least in relative terms – in the least party friendly European democracy since the end of WWII (Casal Bértoa and Bourne, 2016).

**Table 2. Party (Finance) Laws in a comparative perspective: Key Components**

	Hungary	Czech R.	Poland	Bulgaria	Greece	Portugal	Slovakia	Romania	Spain	Italy	Cyprus	Ukraine
	1989	1993	1997	2001	2002	2003	2005	2006	2007	2012	2011	2015
<i>Direct subsidies for:</i>												
Electoral expenses	X (+)	X (+)	--	--	X	X	--	--	*	X	X (+)	X
Ordinary activities	X (+)	X (+)	X (+)	X (+)	X (+)	X (+)	X (+)	X (+)	X	X (+)	X (+)	X (+)
<i>Indirect subsidies:</i>												
Free access to media	*	*	*	*	X	*	*	*	*	*	*	X
Tax exemptions	*	--	*	--	X	X	*	X	X	X	X	*
<i>Ban on:</i>												
Foreign donations <sup>#</sup>	X	X	X	X	X	X	X	X	X	--	--	X
Private company donations	X	--	X	X	X	X	X	--	[--]	--	--	--
Donations from public entities	--	X	X	X	X	X	X	X	X	*	X	X
Anonymous donations	X	X	--	X	X	X	X	--	X	--	--	X
<i>Caps on:</i>												
Donations	--	--	X	X	X	X	--	X	X	--	X	X
Expenditure	X	--	X	X	X	*	--	X	*	X	*	X
<i>Monitoring:</i>												
Financial reports	X	X	X	X	X	X	X	X	X	X	X	X
Controlling authority:												
Political Party	--	X	--	X	--	--	--	--	X	X	--	X
Parliament	--	X	--	--	--	--	X	--	--	X	--	--
State Administration	X	--	X	X	X	--	X	X	X	--	X	X
Judiciary	--	--	--	--	--	X	--	--	--	X	--	--
<i>Sanctions</i>												
Administrative (e.g. fine)	*	X	X	X	X	X	X	X	X	X	X	*
Criminal (e.g. imprisonment)	*	*	X	--	X	X	--	X	*	*	*	*

X = provisions present in Party Finance Laws; \* = provisions present but provided in a different piece of legislation; + = guaranteed also to non-parliamentary parties.

<sup>#</sup> In Hungary bans on foreign donations are restricted only to those made by national states. In Bulgaria (since 1990) such bans do not include donations made by foreign natural persons. In Slovakia donations from foreign political parties, or entities established by them, are permitted.

*Note:* In both Spain and Portugal, bans on foreign donations are restricted to those made by legal persons only, while in Greece all foreign donations from both natural and legal persons are banned.

*Note:* Southern European and East Central European Party (Finance) Laws around mid-2014.

*Sources:* Biezen and Casal Bértoa (2014: 81), and Casal Bértoa and Biezen (2014: 309).

### *Public Funding*

Following the general trend in almost all European democracies, Switzerland being the most important exception,<sup>2</sup> the cvUPL guarantees political parties access to public subsidies. This is certainly an important innovation which will have relevant (and positive) consequences for the development of the Ukrainian party system. This is so because

while parties relying [exclusively] only on private funding will have it difficult to survive, publicly subsidized political forces will be able to survive as partisan organizations even in the event of important losses of electoral support (Casal Bértoa and Walecki, 2014: 342).

In particular, the cvUPL distinguishes between two different types of public subsidies. On the one hand, it guarantees all political parties with at least 2% of the vote in the last parliamentary elections direct annual funding for their statutory activities proportionate to its electoral support. On the other hand, it allows parties with parliamentary representation the reimbursement of the campaign expenses made at the time of legislative elections.

In relation to the first, and in comparison to previous drafts of the law, the cvUPL has decreased in one point the payout threshold: from 3% to 2%, allowing small parties enjoying a minimum level of citizen support to be granted access to public funding. This is certainly important because, contrary to parliamentary parties benefiting not only from public subsidies, but also from great political exposure, eventual participation in the executive and other patronage benefits, access to State subsidies for extra-parliamentary parties above the payout threshold might be the only mean to maintain their political existence (Casal Bértoa and Spirova, 2016).

In relation to the second, no reimbursement is envisaged for self-nominated candidates in single-member constituencies. If the aim of this type of public subsidies is to compensate citizens' representative for their campaign expenses, then they should not be made exclusive to political parties (Frendo et al. 2015).

The fact that public subsidies for statutory activities cannot be used to fund campaign expenses as it happens in other countries (e.g. Poland) should be certainly praised as it avoids the double state funding of the latter. However, the lack of a more clear definition/distinction between statutory and campaign activities (Frendo et al. 2015) might allow for exceptions to such prohibition (i.e. double state funding). In fact, the way the cvUPL has been written (at least in its English translation) seems to suggest that those who approved the new legislative reforms were interested in such confusion and did it on purpose. In fact, the cvUPL is only clear about the remuneration of the statutory bodies of the party and its local organizations which are considered to be part of the statutory activities and, therefore, eligible for reimbursement. Although even in this account the article is not very clear, at least in its English translation. In fact, and because such "remuneration of statutory bodies" is immediately located after the activities related to participation in elections, one could think that the former are

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<sup>2</sup> And, if nothing changes in the meantime, Italy from next year onwards.

an example of the latter and should be excluded from remuneration.<sup>3</sup> Moreover, and contrary to OSCE/ODIHR recommendations, the cvUPL guarantees the reimbursement of ALL statutory activities with just one exception: namely, those related to electoral participation. This is certainly controversial and could be potentially dangerous (in terms of the legitimacy of representative democracy).

On top of specifying what are statutory and campaign expenses, the cvUPL should also denote the time-frame of the “electoral campaign” during which expenses made by political parties should be reimbursed (to a certain limit).

Finally, and contrary to what happens in the case of the funding of parties’ statutory activities, the cvUPL still does not guarantee the CEC the right to suspend the reimbursement of campaign expenses allowing parties to have more time to complete their statements with missing/complementary information.<sup>4</sup>

As also mentioned in the abovementioned OSCE/ODIHR report (Frendo et al. 2015), the deadlines for submission and analysis of statements and auditing by the NAPC continue to be generally too short and certainly do not match the deadlines within which the CEC shall decide on the reimbursement of funds. It is important to remark also that the reformed Ukrainian legislation continues to be extremely generous with the maximum amount up to which a party could get its electoral expenses reimbursed.

### *Private Funding*

In clear contrast to its previous version, the cvUPL regulates private party funding at length. Thus, art. 14 clearly specifies the type of donations and who are entitled to make them. As in most other European democracies the cvUPL bans both anonymous and foreign donations, but allows legal persons to donate. In relation to the former it is important to note that contrary to its first draft, the cvUPL does not explicitly ban financial contributions from international organizations. However, one could still consider them implicitly forbidden: international organization = foreign legal person. For this reason, and following OSCE/ODIHR recommendations on the important role the contribution of international organizations might have for the institutionalization of party organizations and democratic consolidation, a specific exception on prohibited donations from legal persons in favour of international organizations should be included, provided that those donations will never be used for electoral campaigning.

In relation to the latter (i.e. contributions from legal companies), the cvUPL continues to allow donations from private and certain “semi-public” companies. Trying to avoid situations in which a particular company and/or citizen might try to buy and/or control a political party, the cvUPL includes in art. 15 what

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<sup>3</sup> But, as already pointed out, this can be simply something that has been lost in translation.

<sup>4</sup> Although the CEC has now the right to deny reimbursement of electoral expenses not only in cases of non-submission or deliberate misinterpretation, but also in cases of incomplete financial statements.

could be called an “anti-oligarchs” clause.<sup>5</sup> Similarly it has also reduced the percentage of public participation in a company required for a donation from a “semi-public” legal person to be allowed: from 25 to 10%.

Following OSCE/ODIHR recommendations, the cvUPL has also:

- a) Extended to 2 years the length of the ban on donations from companies which benefited from procurement contracts,
- b) Lowered the financial threshold for companies benefiting from public contrasts,
- c) Included loans (credits) as a type of donation, therefore making them subject to all the reporting/control obligations required for private contributions, and
- d) Regulated the possibility of “third-party” involvement. Although it has failed to expand art. 15 in the sense of including third parties which might act on behalf of persons disallowed from making donations.

In my view, bearing in mind the general tendency in new European democracies towards the banning of financial contributions from all types of private companies (see table 2), a recommendation towards the prohibition of donations from legal persons all together is certainly in point. This would:

1. Erase the influence of big private interests, a recognized problem in Ukraine, from politics,
2. Level the field of partisan competition, as there is a proven tendency of companies towards the funding of big parties,
3. Simplify the legislation, and its interpretation, and
4. Ease the control of party finances by the different competent authorities.

One important innovation of the cvUPL from its previous version is the prohibition of financial contribution from other parties within the same electoral bloc. In my view, and in clear contrast to OSCE/ODIHR recommendations, I think such disposition should be praised, not only in view of what has been said regarding the recommendation to ban donations from legal persons all-together, but also because it (1) avoids the misrepresentation of the electoral will of certain voters, and (2) impedes certain personalities or organizations from illegally contributing to party funding.

Last but not least, the yearly limits for donations either from natural or legal persons have been generously increased to four and eight hundred minimum

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<sup>5</sup> If one person is the owner, controller or has a decisive influence in various companies, the total amount of donations made by those companies cannot exceed eight hundred minimum monthly salaries. Although the current redaction of the article could be improved to make it a bit more clear. Is he/she allowed to make a donation as a natural person, on the one hand, and at the same time have also one of his companies to make a donation, on the other?

monthly salaries, respectively.<sup>6</sup> This constitutes certainly a clear improvement over the previous version of the law (2001) - which did not include donation limits, as well as over the proposed draft which established the limit in one (for natural persons) and four (for legal persons) hundred minimum monthly salaries. Moreover, and paradoxically at the same time, it not only avoids certain people with financial means from "owning" a party, but also it compensates small and/or completely new parties with a rather notable support without access to public subsidies.<sup>7</sup> In this context, the cvUPL certainly contributes to the leveling of the electoral playing field.

Finally, it is important to note that the cvUPL contains very little or no regulation in terms of the funding of non-partisan individual candidates or by political foundations or lobbyists.

### ***Control of Party Funding: Auditing and Report***

The current regime of control of party finances has a double character: internal and external. However, while the former - mandatory for any registered party is regulated in a very generic manner - leaving it to the goodwill of a party's organization, the regulation of the latter - mandatory only for those parties with an electorally active - is much more specific. In particular, such external independent financial audit will have a yearly character for parties with more than 2% of the votes, while the rest will only have such obligation in the year following (legislative, presidential or local) elections.

The current version of art. 17 clearly specifies who is entitled to perform such external audit as well as extends to parties the general obligation of facilitating the control of their finances (also present in art. 18, last paragraph). However, it continues to lack a proper regulation on the process of such audit, which remains extremely general. The article contains no reference to the remuneration of those external auditors.

On top of being the objects of an independent audit, ALL parties without exception are obliged to submit to the NAPC every 130 days (more or less) a financial report on "property, incomes, expenses and financial obligations". This might certainly constitute a burden for some of the smaller parties whose financial activities might have - by nature - a very reduced character. Moreover, such continuous reporting (almost every 4 months) might be also burdensome both for parties and for the NAPC. In this context, it would perhaps be better to establish a general obligation of all political parties to submit an annual financial report (perhaps just two months after the end of the financial year) on the basis of (1) their internal audit for non-electoral parties, and (2) their external audit for electorally active ones.

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<sup>6</sup> In my view, this certainly constitutes an improvement also from the point of view of the necessary balance between public and private funding requested (and recommended) also in the above-cited OSCE/ODIHR report.

<sup>7</sup> Either because their electoral support does not reach 2% or because they have not had a chance to participate yet in elections.

In any case, the current redaction of art. 17 is extremely confusing, not only in terms of the deadlines imposed, but also because - as it currently stands - it is not at all clear if the above-cited obligation (i.e. report to the NAPC roughly every 4 months) applies to all parties - as stated - or only to parties with the obligation to have an external independent audit.

It is important to note that the current version of the cvUPL not only obliges the NAPC to make available to parties a financial report template, facilitating the standardization of the reporting activity as well as the control, but also requires online publication of party reports and of NAPC's analysis<sup>8</sup> in order to make it accessible to citizens. In this context the establishment of a period of 5 years in which the information has to be publicly accessible should be praised. What the cvUPL does not guarantee at the moment is the public accessibility to the original invoices (currently only to copies).

### ***Oversight Organs***

In clear contrast to the 2001 PL, the cvUPL clearly establishes the organs in charge of the control of party funding and their respective functions,<sup>9</sup> putting the newly created National Agency for the Prevention of Corruption (NAPC) at the centre of such supervisory regime. Thus, the NAPC is in charge of controlling most matters related to party finances both at organizational and electoral level. Moreover, it corresponds to the NAPC the decision on the administrative suspension or the termination of public funding of statutory activities of a political party in most cases. This is not to say, however, that it has exclusive competences in all matters. Thus, it shares with the Accounting Chamber (ACh) the supervision of public funding of statutory activities of political parties and with the Central Electoral Committee (CEC) the supervision of public funding of electoral expenses. Although this double procedure for checking the correctness of public funding at both organizational and electoral level could be seen as a guarantee, the truth is that it could also lead to contradictory resolutions and overlaps, especially because in many instances the functions of the different oversight organisms are not specified.

In this context a recommendation should be made either to centralize the control of all types and levels of party funding in one central agency, most notably the NAPC, or make a clear distinction between the organizational and electoral level, with the former in charge of the NAPC and the latter in charge of the CEC. This is, by the way, the option adopted in most cases. In any case, such clear division of labour should not prevent those two agencies from sharing information gathered in their respective control spheres.

Notwithstanding what has been said, the most important problem one could find is that of the lack of independence of the abovementioned central agencies as all seem to depend on the Ukrainian parliament, not only in terms of their composition, but also of functioning (i.e. budget), clearly undermining the

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<sup>8</sup> The objectives of such analysis continue to be too general, especially for the rather short-time frame provided.

<sup>9</sup> The courts and the Ministry of Justice are, in turn, in charge of the control of parties as organizations.

principle of independence that should inform any control over the funding of political parties.

### ***Sanctions***

Contrary to the liberal character of the 2001 PL, the cvUPL provides - even if in most cases in a subsidiary manner - for disciplinary, civil, criminal, and administrative sanctions. Among the latter, most of which are specifically regulated in the law, one can include (1) the suspension and (2) termination of public funding as well as (3) the removal of the party from the Register.

What remains yet to be seen is the efficacy of Ukrainian administrative and judicial institutions when applying and implementing those sanctions.<sup>10</sup>

### ***Deadlines***

In general, the deadlines included in the cvUPL in terms of reporting by political parties/banks/etc. as well as of analysis and auditing by regulatory bodies are a bit too short. Moreover, some of the deadlines included in the cvUPL do not always add up (see example above in page 9), making the implementation of the law certainly confusing.

### ***Recommendations***

Taking into consideration all what has been said, the following recommendations could be made:

- a) Clear up the confusion created in art. 10 with the introduction of the requirement of 100 persons to create a party.<sup>11</sup>
- b) Reintroduce the reference in art. 5 to the Supreme Court as the organ competent in cases of party banning.
- c) Contain a clear definition of “statutory” and “campaign” expenses, allowing parties/institutions/regulatory bodies to avoid any confusion regarding which incidentals belong to the former and which to the latter.
- d) Specify the time-frame of the “electoral campaign” during which expenses made by political parties should be reimbursed (under certain limits).
- e) Guarantee the CEC the right to suspend the reimbursement of campaign expenses as well as allow parties more time to complete their statements with missing and/or complementary information, documentation, etc.
- f) Introduce an explicit exception on prohibited donations from legal persons in favour of international organizations, with the provision that such type of donations might never be used for electoral purposes.

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<sup>10</sup> This is certainly too early to tell as most of the reforms here outlined will only enter into force at the beginning of July 2016.

<sup>11</sup> Also, perhaps, suspend temporarily the need to gather signatures in certain parts of the country.

- g) Ban donations from legal persons all together.
- h) Proceed to regulate the issue of the funding of non-partisan individual candidates or by political foundations or lobbyists.
- i) Establish a general obligation for all political parties to submit an annual financial report (perhaps just two months after the end of the financial year) on the basis of (1) their internal audit for non-electoral parties, and (2) their external audit for electorally active ones.
- j) The law should also contain a proper, more detailed, regulation of the auditing process.<sup>12</sup> Currently it is extremely too general.
- k) In fact, art. 17 should be carefully re-written in order to avoid confusion regarding deadlines, reporting obligations, etc. Moreover, it could include a guarantee to public accessibility to original invoices.
- l) Either clearly specify each of the functions of the different oversight organisms, or give exclusive control competences in a particular area to just one regulatory body in order to avoid waste of time, waste of resources, implementation voids, and confusion due to eventual competence clashes.
- m) Perhaps one solution could be to give exclusive competences in different arenas: CEC could look over the electoral one, while NAPC could take care of the organizational arena.
- n) Guarantee the proper independence of all the control organisms starting with their appointment, but also in terms of their functions, powers, budgetary capacities, etc.
- o) In general, ALARGAR the deadlines regarding reporting by political parties and other institutions as well as analysis and auditing by regulatory bodies

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<sup>12</sup> With a specific reference to the remuneration of “external auditors”.

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## Appendix

Table 2. Ukrainian Party (Finance) Laws over time: Key Components

	2001	2015
<i>Direct subsidies for:</i>		
Electoral expenses	--	X
Ordinary activities	--	X (+)
<i>Indirect subsidies:</i>		
Free access to media	X	X
Tax exemptions	*	*
<i>Ban on:</i>		
Foreign donations	X	X
Private company donations	--	--
Donations from public entities	X	X
Anonymous donations	X	X
<i>Caps on:</i>		
Donations	--	X
Expenditure	--	X
<i>Monitoring:</i>		
Financial reports	X	X
Controlling authority:		
Political Party	--	X
Parliament	--	--
State Administration	--	X
Judiciary	--	--
<i>Sanctions</i>		
Administrative (e.g. fine)	*	*
Criminal (e.g. imprisonment)	*	*

X = provisions present in Party (Finance) Law; \* = provisions present but provided in a different piece of legislation; + = guaranteed also to non-parliamentary parties.

Source: Own elaboration.