Draft Law 2336 “On amending certain legislative acts of Ukraine on the prevention and counteraction of political corruption”

Background
On October 29, Draft Law 2336 “On amending certain legislative acts of Ukraine on the prevention and counteraction of political corruption,” was registered in the Verkhovna Rada by MPs from “Holos” and “Batkivshchyna” parliamentary factions. The draft law introduces changes to the current regulation of political finance, including new rules for donations to political parties and party financial reporting.

Key provisions
The main provisions of the draft law are as follows:

- Simplification of the procedure for making donations to political parties by allowing the use of online banking;
- Lifting the ban on donations to parties by private companies owned by deputies of local councils and people with tax debt;
- Exempting political parties that do not receive public funds from the obligation to undergo an external financial audit;
- Relaxing the eligibility requirements for audit companies to conduct external financial audits of parties; and,
- Introducing provisions necessary for the establishment of an electronic financial reporting system for political parties.

Analysis
Although the 2015 Political Finance Reform Law was a significant improvement of the regulation of political finance in Ukraine, its implementation has revealed numerous gaps and loopholes. Since then, the need to amend the current legal framework regulating political finance has been repeatedly stressed by international and domestic observers, as well as by IFES. IFES therefore welcomes the registration of the draft law that aims to address some of the pressing issues of political finance regulation.

The draft law offers reasonable solutions to important problems related to private funding and financial reporting of political parties that are in line with previous IFES recommendations, including:
• It introduces a simplified procedure for making donations to political parties, which could encourage individuals and small businesses to donate their money to parties and facilitate more effective fundraising campaigns by political parties;

• It lifts unjustified bans on contributions to political parties, including from companies owned by local deputies and from individuals and companies with tax debt. This could enhance the ability of parties to attract private funding and limit the possibility of political finance regulators to use these bans as a politically motivated tool;

• The provisions that introduce a system of electronic financial reporting for political parties, if adopted, will constitute a considerable step forward in terms of transparency. These provisions have the potential to simplify the reporting process for political parties, could allow the National Agency for Prevention of Corruption to scrutinize parties’ financial reports more thoroughly, and would provide CSOs, media, and the public with easier access to information about party finance.

Loosening the eligibility criteria for administering an external financial audit of political parties could reduce the cost of audit services for parties, which would be a positive development. However, it might be undermined by the limitation of the number of parties that must undergo audit. Although the current regulation that obliges all parties participating in national and local elections to undergo an external audit is too harsh, not requiring those parties that do not receive public funding to go through an audit might decrease the overall transparency of party finance.

In addition, the draft law does not address other gaps and issues that undermine effective implementation of political finance reform in Ukraine, including but not limited to:

• Unjustifiably high limits on donations to parties by individuals and companies and the absence of any correlation between the amount of money that can be donated and the level of a person’s income;

• The lack of meaningful regulation of third-party spending and in-kind donations;

• The absence of a clear definition of how parties can spend public funds allocated from the state budget;

• The lack of procedures for the receipt of public funds by party local organizations;

• The lack of effective, proportionate, and dissuasive sanctions for violations of political finance rules;

• Unnecessarily complicated procedures for documenting administrative offences and for their consideration by courts.

The draft law does not regulate any issues related to campaign finance and states that these procedures should be established separately in the election laws. While this might be a reasonable distinction, the lack of corresponding changes to election laws that would harmonize party finance and campaign finance rules could create legal loopholes and undermine the transparency of political finance and the ability of state oversight bodies to regulate it.
Conclusions

Draft Law 2336 is a welcome attempt to address several pressing issues in the existing political finance framework. However, before the draft law is adopted, its text should be amended to include provisions that regulate other important aspects of political finance. Specifically, the following amendments to the draft law should be considered:

- Decrease the limits on donations to political parties and individuals and establish a correlation between a person’s declared level of income and the amount of money he/she can contribute to a party;
- Establish regulation of third-party spending and in-kind donations to make them properly reflected in parties’ financial reports and subjected to meaningful state oversight;
- Clearly define how parties can or cannot spend public funds;
- Allow parties to use public funding for election-related purposes, while simultaneously eliminating the reimbursement of campaign expenses from the state budget;
- Oblige local party branches to open separate bank accounts to be eligible for receiving public funds;
- Introduce a requirement that all political parties that have participated in national presidential or parliamentary election should undergo external audit;
- Establish effective, proportionate, and dissuasive sanctions for violations of political finance rules;
- Simplify the procedures for documenting administrative offences and extend the statute of limitation for the consideration of administrative cases by courts.

It is further important that, if the draft law is adopted, the corresponding changes should be introduced into all elections laws to harmonize the rules governing party and campaign finance.

IFES reiterates that the process of drafting amendments to legislation that regulates political finance should be open and inclusive. The review of the draft law in the relevant Rada committee should engage all relevant stakeholders, and their input should be considered before the draft law is adopted in the final reading.

This analysis was developed by the International Foundation for Electoral Systems (IFES) through the support of the United States Agency for International Development (USAID), Global Affairs Canada and UK aid. The opinions expressed herein are those of the author and do not necessarily reflect the views of USAID, nor the governments of the United States, Canada, or the UK.