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## **ISTANBUL ANTI-CORRUPTION ACTION PLAN**

### **FOURTH ROUND OF MONITORING**

#### **UKRAINE**

#### **PROGRESS UPDATE**

This document contains the progress update and assessment of implementation of recommendations from the Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan for Ukraine.

**For the discussion of the ACN Plenary on 3-5 July 2018**

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## **BACKGROUND**

### **About the OECD**

The OECD is a forum in which governments compare and exchange policy experiences, identify good practices in light of emerging challenges, and promote decisions and recommendations to produce better policies for better lives. The OECD's mission is to promote policies that improve economic and social well-being of people around the world. Find out more at [www.oecd.org](http://www.oecd.org).

### **About the Anti-Corruption Network for Eastern Europe and Central Asia**

Established in 1998, the main objective of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is to support its member countries in their efforts to prevent and fight corruption. It provides a regional forum for the promotion of anti-corruption activities, the exchange of information, elaboration of best practices and donor co-ordination via regional meetings and seminars, peer-learning programmes and thematic projects. ACN also serves as the home for the Istanbul Anti-Corruption Action Plan. Find out more at [www.oecd.org/corruption/acn/](http://www.oecd.org/corruption/acn/).

### **About the Istanbul Anti-Corruption Action Plan**

The Istanbul Anti-Corruption Action Plan is a sub-regional peer-review programme launched in 2003 in the framework of the ACN. It supports anti-corruption reforms in Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan through country reviews and continuous monitoring of participating countries' implementation of recommendations to assist in the implementation of the UN Convention against Corruption (UNCAC) and other international standards and best practice. Find out more at [www.oecd.org/corruption/acn/istanbulactionplan/](http://www.oecd.org/corruption/acn/istanbulactionplan/).

## **PROGRESS UPDATE METHODOLOGY SUMMARY**

After the adoption of the Monitoring Report, the evaluated country presents a Progress Update at each subsequent ACN Plenary meeting.

The **Progress Update** begins with a description of the methodology, followed by the summary of the assessment of implementation of recommendations, as agreed during the Plenary Meeting of September 2016. It then goes into each recommendation separately, providing the country report, as well as the ACN and expert evaluation. Each recommendation section includes all progress updates since the last monitoring report.

**The Progress Update follows the following steps:**

### **1. Progress Update reports are prepared by country representatives**

These documents include information on implementation measures taken for each recommendation, and may also cover additional anti-corruption developments. Country representatives submit a written Progress Update report to the ACN Secretariat through appointed National Co-ordinators, together with supporting documents, such as laws and statistical data. Civil society also submits alternative reports on progress.

### **2. Preparation of preliminary assessment by ACN Secretariat and experts**

The Secretariat and the experts who contributed to the Monitoring Reports (or delegates replacing the experts) study the Progress Update reports and prepare a draft progress assessment for the Plenary Meeting. Civil society is also invited to contribute to the evaluation.

### **3. Discussion at ACN Plenary meeting**

ACN Secretariat and experts discuss the Progress Update during a bilateral preparatory meeting with country representatives. The Plenary then discusses and endorses the assessment.

### **4. Finalisation of Progress Update**

Following the Plenary Meeting, the Secretariat adds the final assessment to the Progress Update reports, finalises and publishes them on the ACN website.

## 4TH ROUND OF MONITORING OF UKRAINE

4<sup>th</sup> monitoring report for Ukraine was adopted at the ACN plenary in September 2017. The monitoring team was composed of experts from Croatia, Estonia, Latvia, Liechtenstein (former Chair of the Istanbul Action Plan), USA and EBRD. The sectoral review of integrity in SOEs was not completed in 2017, and was postponed to 2018.

### PROGRESS UPDATE SUMMARY

The first progress update since the adoption of the monitoring reports was provided by the Government in June 2018. The report was presented at the ACN plenary on 2-5 July 2018 by Mr. Oleksandr Seryogin, Commissioner of the National Agency for Corruption Prevention (NACP) together with the delegation composed of representatives from NACP, General Prosecutor's Office (GPO), National Agency for Civil Service (NACS) and Agency for Recovery and Management of Assets (ARMA). TI Ukraine and AnTac NGOs took part in the assessment. Preliminary assessment was conducted by the expert team composed of Mrs. Sintija Helviga-Eihvalde (Latvia), Mrs. Kätlin-Chris Kruusmaa (Estonia), Mr. Davor Dubravica (Croatia), Mrs. Mary Butler (USA), Mr. Dirk Plutz (EBRD), Mr. Wojciech Zielinski (SIGMA). The Plenary in July 2018 discussed the findings of the expert assessment and agreed that 3 recommendation show significant progress, 14 recommendations show progress and 9 show no progress.

<b>Recommendation</b>	<b>Assessment of Progress</b>		
September 2017	July 2018		
Recommendation 1: <b>Anti-Corruption Policy</b>	<b>No progress</b>		
Recommendation 2: <b>Awareness raising</b>	<b>Progress</b>		
Recommendation 3: <b>Prevention body</b>	<b>No progress</b>		
Recommendation 4: <b>Evidence-based civil service policy</b>	<b>Progress</b>		
Recommendation 5: <b>Civil service reform</b>	<b>Progress</b>		
Recommendation 6: Merit-based service	<b>Progress</b>		
Recommendation 7: <b>Performance appraisal</b>	<b>Progress</b>		
Recommendation 8: <b>Dismissals, discipline</b>	<b>Progress</b>		
Recommendation 9: <b>Remuneration</b>	<b>No progress</b>		

Recommendation 10: <b>Conflict of interest</b>	No progress		
Recommendation 11: <b>Ethics</b>	Progress		
Recommendation 12: <b>Asset Declarations</b>	No progress		
Recommendation 13: <b>Whistleblowing</b>	No progress		
Recommendation 14: <b>Political Officials</b>	No progress		
Recommendation 15: <b>Judiciary</b>	No progress		
Recommendation 16: <b>Prosecutors</b>	Progress		
Recommendation 17: <b>Transparency and data</b>	Progress		
Recommendation 18: <b>Access to information</b>	Significant progress		
Recommendation 19: <b>Public procurement</b>	Progress		
Recommendation 20: <b>Business integrity</b>	Significant progress		
Recommendation 21: <b>Elements of offence</b>	progress		
Recommendation 22: <b>ARMA</b>	Progress		
Recommendation 23: <b>Immunities</b>	No progress		
Recommendation 24: <b>Effective investigations</b>	Significant progress		
Recommendation 25: <b>Asset recovery</b>	Progress		

Recommendation 26:  <b>Anti-corruption court, NABU, SAPO</b>	<b>Progress</b>		
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**Note:**

**Significant progress-** important practical measures were taken by the country to adequately address many elements of the recommendation (more than a half). This can involve the adoption and/or enforcement of an important law.

**Progress -** some practical measures were taken towards the implementation of the recommendation. For example, drafts of laws that have been at least approved by the government and submitted to the parliament would constitute "progress" for the assessment of progress updates.

**No progress -** no such actions were taken.

Recommendations, that appear to be fully addressed can be closed for the progress update procedure and further evaluated only as a part of the monitoring procedure.

## PROGRESS UPDATES BY RECOMMENDATION

### CHAPTER 1: ANTI-CORRUPTION POLICY

#### Recommendation 1: Anti-Corruption Policy

1. Ensure full implementation of the Anti-Corruption Strategy and the State Programme regardless of the political sensitivity of the measures involved.
2. Ensure that the anti-corruption policy documents are evidence-based, developed with the meaningful participation of stakeholders and in coordination with the relevant state bodies. Ensure that the anti-corruption policy covers the regions. Provide resources necessary for policy implementation.
3. Conduct corruption surveys regularly. Evaluate results and impact and update policy documents accordingly. Publish the survey results in open data format.
4. Increase capacity and promote corruption risk assessment by public agencies. Support development and implementation of quality anti-corruption action plans across all public agencies.
5. Regularly monitor the progress and evaluate impact of anti-corruption policy implementation, including at the sector, individual agencies and regional level, involving civil society. Ensure operational mechanism of monitoring of anti-corruption programmes. Regularly publish the results of the monitoring.
6. Ensure that civil society conducts its anti-corruption activities free from interference.

#### 19th ACN Monitoring Meeting, July 2018

##### *Government report*

1. On April 25, 2018, the Cabinet of Ministers of Ukraine approved the Draft Law "On the Anticorruption Strategy for 2018-2020" and submitted it for the Verkhovna Rada's of Ukraine consideration (Reg. No. 8324 of April 26, 2018).<sup>1</sup>

In order to prepare a draft state program on the implementation of the Anticorruption Strategy for 2018-2020 properly, the National Agency on Corruption Prevention (NACP) initiated the creation of an intergovernmental working group.

2. The National Report on the Implementation of Anti-Corruption Policy Principles covers the prevention of corruption in all spheres of public relations from representative authorities to the private sector. Each chapter provides conclusions on the effectiveness of anti-corruption measures in one area or another, as well as recommendations for taking measures to minimize corruption. The document has been prepared using materials from central executive authorities, specially authorized

<sup>1</sup> <https://www.kmu.gov.ua/ua/news/uryad-shvaliv-proekt-zakonu-ukrayini-pro-antikorupcijnu-strategiyu-na-2018-2020-roki>;



persons (General Prosecutor's Office of Ukraine, National Police of Ukraine and National Anti-Corruption Bureau of Ukraine), and taking into account public opinion.<sup>2</sup>

3. An analysis of the situation regarding corruption in 2017 is reflected in the report "Corruption in Ukraine: Understanding, Perception, Prevalence" prepared by the OSCE experts, with the participation of NACP, independent research company IP GFK Ukraine and the Institute for Applied Humanitarian Research based on the results of a pilot study on the level of corruption in Ukraine based on the Standard Corruption Survey Methodology in Ukraine.<sup>3</sup> Based on the results of the analysis of the situation regarding corruption, as well as the results of the implementation of the Anticorruption Strategy for 2015-2017, taking into account the proposals of the interested bodies, public organizations, leading national and international experts, the working group has elaborated a draft Law of Ukraine "On Anticorruption Strategy for 2018-2020" (hereinafter - Draft Law).<sup>4</sup>

The draft law sets annual research on the level of corruption in Ukraine.

4. In 2017, 121 anti-corruption programs were received from the authorities for approval by the National Agency, including: from ministries - 18, from other central bodies of executive power - 44, from regional and city state administrations - 25, from other authorities - 34 (in including 8 from local self-government bodies).

From the 121 anti-corruption programs outlined, 109 proposals were agreed with the proposals, without comments in connection with the expiration of the programs - 3 (2 at the same time as the decisions on inspections regarding the unsatisfactory organization of work on the prevention and detection of corruption) were approved. At the end of the year, there was 1 program on processing, returned without consideration - 8 (the relevant subjects did not reapply).

As of June 21, 2018, 74 anti-corruption programs of the authorities were received by the National Agency for the Prevention of Corruption, of which 15 were agreed with the proposals, 10 were denied consent. Others are currently being processed by the National Agency, or left unattended and returned in connection with the incomplete set of documents.<sup>5</sup>

5. Anticorruption strategy is implemented through the implementation of a state program developed by the National Agency within three months after the adoption of the Anticorruption Strategy and approved by the Cabinet of Ministers of Ukraine (part four of Article 18 of the Law of Ukraine "On Corruption Prevention"). Monitoring, coordination and evaluation of the effectiveness of the implementation of the Anti-Corruption Strategy are envisaged by paragraph 2 of Article 11 of the

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<sup>2</sup>[https://nazk.gov.ua/sites/default/files/docs/2017/%D1%96%D0%BD%D1%88%D0%B5/%D0%9D%D0%B0%D1%86%D0%B4%D0%BE%D0%BF%D0%BE%D0%B2%D1%96%D0%B4%D1%8C\\_19.04.2017.pdf](https://nazk.gov.ua/sites/default/files/docs/2017/%D1%96%D0%BD%D1%88%D0%B5/%D0%9D%D0%B0%D1%86%D0%B4%D0%BE%D0%BF%D0%BE%D0%B2%D1%96%D0%B4%D1%8C_19.04.2017.pdf);  
<https://nazk.gov.ua/rishennya-30-bereznya> (for reference to see Decision No. 550 on March, 30, 2018)

<sup>3</sup>[https://nazk.gov.ua/sites/default/files/docs/nazk\\_files/%D0%9C%D0%95%D0%A2%D0%9E%D0%94%D0%98%D0%9A%D0%90\\_%D0%9D%D0%90%D0%97%D0%9A\\_21.12.2016.pdf](https://nazk.gov.ua/sites/default/files/docs/nazk_files/%D0%9C%D0%95%D0%A2%D0%9E%D0%94%D0%98%D0%9A%D0%90_%D0%9D%D0%90%D0%97%D0%9A_21.12.2016.pdf)

<sup>4</sup> <https://nazk.gov.ua/rishennya-29-veresnya> (for reference to see Decision No. 836 on September 29, 2017)

<sup>5</sup> [https://nazk.gov.ua/sites/default/files/docs/2018/anikor\\_programs/](https://nazk.gov.ua/sites/default/files/docs/2018/anikor_programs/)

Law of Ukraine "On Corruption Prevention" and are carried out on a permanent basis.

6. The legislation provides the possibility for civil society freely conduct its anti-corruption activities, including by participating in the discussion of Draft Laws of social importance and participation in their preparation, as well as direct participation in the work of the NACP, which is ensured through the functioning of the Public Council under the NACP.<sup>6</sup>

### *Assessment of progress*

Around 60% of the previous Anti-Corruption Strategy was implemented according to the reports prepared by the NACP to analyse and summarise the results of the Strategy implementation.<sup>7</sup> Lack of political will and cooperation of state bodies, and delays in creation of anti-corruption bodies were cited as key reasons for incomplete implementation. NGOs suggest that the NACP did not play the strong role in leading the implementation, and failed to implement measures that were within its powers, e.g. communications and awareness raising. NACP's report identifies corruption risks in executive and local state bodies as main challenges for future anti-corruption work, but falls short of focusing on political corruption and corruption in law-enforcement bodies as priorities for action.

The new Anti-Corruption Strategy was prepared by NACP in September 2017, but so far it was only adopted by the Cabinet of Ministers; Parliament sub-committee on corruption did not propose adoption of the document due to its shortcomings and sent it back to the Government.<sup>8</sup> According to NACP, the draft of the new Strategy was sent to various state bodies for comments, their comments were collected and incorporated into the draft; while this step is good, experience of many ACN countries shows that more efforts are needed to ensure active and genuine involvement of state bodies in anti-corruption policy implementation. NGOs claim that no proper consultations with the civil society took place within the preparatory process. The ACN evaluation team was not provided with a copy of the new Strategy and therefore could not assess it.

Many non-governmental and sociological organisations conduct corruption surveys in Ukraine. Two surveys were conducted for NACP with the assistance of OSCE and CoE, and are cited in policy documents. During the discussions of this progress update NACP also mentioned a UNDP survey that provided the main source of evidence for the new Strategy. NACP developed its own methodology for future surveys, but NGOs claim is of poor quality.

The development of anti-corruption plans by state bodies and local administrations, based on risk assessment methodology developed by NACP, is a positive approach. But the quality of these plans is very poor and requires a major improvement, in terms of the quality of the risk assessment itself, quality of proposed measures, and the mechanism of their monitoring and assessment of their impact.

Monitoring that was conducted so far was highly formalistic – NACP collected action plans from

<sup>6</sup> <https://nazk.gov.ua/gromadska-rada>

<sup>7</sup> <https://nazk.gov.ua/rishennya-202> (for reference to see Decision No. 43 on February, 20, 2017);

<sup>8</sup> Draft of the strategy as approved by the NACP is available here <https://nazk.gov.ua/rishennya-29-veresnya> (for reference to see Decision No. 836 on September 29, 2017) and as submitted to Parliament is available here [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=63942](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63942)

different state bodies, commented and approved them, and placed them on its web site (in pdf format). There is no evaluation that will show the impact or measures that will aim to increase the impact. No civil society engagement is ensured in this process.

NGOs claim that there is no progress regarding the part of the recommendation that calls on the government to ensure the possibility for their free anti-corruption activities, and that on the contrary, the attacks are on the rise.

*No progress*

## **Recommendation 2: Anti-Corruption awareness and education**

- 1. Implement awareness raising activities envisaged by the anti-corruption policy documents and the NACP communication strategy.**
- 2. Allocate sufficient resources for implementation of the awareness raising measures.**
- 3. Measure the results of awareness raising activities to plan the next cycle accordingly.**
- 4. Target awareness raising activities to the sectors most prone to corruption, use diverse methods and carry out activities adapted to each target group.**

### **19th ACN Monitoring Meeting, July 2018**

#### ***Government report***

During January-March, the Communication Strategy of the National Agency on Corruption Prevention for 2018-2020 was developed and adopted in April 2018, which identified a number of awareness-raising campaigns and activities aimed primarily at creating intolerance to corruption among citizens. As part of the strategy for 2018, there will be 7 information campaigns and 18 campaigns by 2020.

The communication strategy is expected to be financed from the budget of the NACP and donor assistance. Currently, information campaigns are being prepared in the framework of cooperation with UNDP Ukraine, namely: "Integrity overcomes corruption", "Declare in a timely and honest manner!", "Stop political corruption!", "Do not be silent!", "Let's leave nepotism in the past!", educational events for university students "Now I know how" and anti-corruption training for journalists-investigators.

The results of the campaigns will be analysed and a report on the effectiveness of the activities will be carried out.

The indicated information campaigns have well-defined target audiences and are carried out in accordance with the main directions of the NACP, namely the target audiences include: government officials and local government officials, university students, journalists, public activists and citizens. So according to the results of the previous analysis, we have developed messages that are expected to work with each group, as well as the whole range of relevant

technical tools:

video and audio advertising, outdoor advertising (boards, sit-lights), printed products with relevant explanations, as well as meetings, lectures, trainings and workshops.

### *Assessment of progress*

The 4<sup>th</sup> round monitoring report noted that awareness raising and education was the most underperformed area of NACP. While the Communication Strategy of NACP was adopted, it was not implemented. The ACN monitoring team was not provided with the copy of the Strategy, which was published on the NACP site (as a reference to one of NACP meetings), but it is difficult to find.<sup>9</sup> It was therefore impossible to examine the quality of this document before this ACN plenary. According to NACP, the strategy does not include the budget, its implementation will be funded partly from the budget and by donors, and implementation of some the measures to implement the Strategy has started.

Recent awareness raising activities supported by the EU anti-corruption project, that were not mentioned in the progress updates by the government of the NGOs, could have filled this gap. It is not known if NACP or NGOs took part in the design or implementation of these activities.<sup>10</sup>

In a sum, measures to implement this recommendation were very limited, but the ACN plenary decided to rate it as area where progress was achieved to encourage further measures.

### *Progress*

## **Recommendation 3: Corruption prevention and coordination institutions**

- 1. Ensure without delay that the vacant positions of the NACP commissioners are filled by experienced and highly professional candidates with good reputation recruited through an open, transparent and objective competition.**
- 2. Ensure unimpeded and full exercise of its mandate by the NACP independently, free from outside interference.**
- 3. Finalize adoption of the secondary legislation and provide necessary resources to the NACP to perform its functions, including at the regional level. Establish and make operational the regional branches of the NACP. Ensure continuous training of the NACP staff to build their skills and capacity.**
- 4. Ensure systematic and efficient functioning of the Public Council of the NACP to provide effective mechanism for civil society participation.**
- 5. Substantially enhance the coordination role of the NACP, its authority and leadership among the public agencies. Clarify and enhance the powers of the NACP in relation to anti-corruption units/officers in public agencies and ensure that the NACP provides guidance to support realization of their functions.**
- 6. Ensure that the NACP has the direct access to all databases and information held by**

<sup>9</sup> <https://nazk.gov.ua/sites/default/files/docs/2018/zasidannya/27.04.2018/27.04%20%28811%29.pdf> (for reference to see the Decision No. 811, dated on April 27, 2018)

<sup>10</sup> <https://euaci.eu/events/park-korupciji-zaproshuje-na-pres>

**public agencies necessary for its full-fledged operation.**

**7. Ensure systematic and efficient functioning of the National Council on Anti-Corruption Policy.**

### **19th ACN Monitoring Meeting, July 2018**

#### ***Government report***

3.1) Since January 2018, NACP consists of five commissioners, with each to coordinate a separate activity direction of NACP. All members have the necessary experience and knowledge, with a good reputation and were selected through an open, transparent and objective contest. Since March 29, 2018, the newly elected Head of NACP and the Deputy Head of the NACP began performing their duties.

During the preparation of NACP budget proposals for the 2018, a draft resolution of the Cabinet of Ministers of Ukraine "On Amendments to Annex 1 to the Resolution of the Cabinet of Ministers of Ukraine, dated on April 5, 2014 No. 85" was developed and submitted to the Ministry of Finance for consideration.

The draft resolution was designed to ensure that NACP properly implements the tasks and functions defined by the Law of Ukraine "On Prevention of Corruption" by increasing the number of employees of NACP staff and creating its territorial units without giving them the status of a legal entity. The project was not supported. The corresponding proposals are also being planned to be submitted within drafting the budget 2019.

In April 2017, the Public Council for NACP started its activity.

The Public Council is a consultative and advisory body formed to ensure the participation of citizens in the formation and implementation of state policy in the field of corruption prevention, its authority includes, among other things, the provision of conclusions based on the results of the examination of draft acts of NACP.

NACP appealed and appeals to the Public Council with proposals to participate in the elaboration of its own draft regulatory acts, as well as draft laws or draft acts of the Government, which are being prepared by NACP.

To strengthen the coordination role of NACP, its authority and leadership position among state institutions, a draft Law of Ukraine "On Amendments to the Law of Ukraine "On Prevention of Corruption" as to the Role of Authorized Departments (Persons) on the Prevention and Detection of Corruption", was submitted to the Government by the decision of NACP, dated on December 22, 2017, No. 1509. On May 18, 2018, the draft was registered by the Verkhovna Rada of Ukraine under No. 8375.

The draft proposes to make supplements to the Law of Ukraine "On Corruption Prevention" with a new article 13-1, according to which in order to organize and implement measures for the prevention and detection of corruption stipulated under the Law in all authorities (except the

National Anti-Corruption Bureau of Ukraine), including local state administrations, local self-government bodies, state-owned enterprises, institutions and organizations (i.e. belonging to the sphere of management of a state bodies or local government) (except those in which according to the law the anti-corruption programs are adopted), etc. (authorized person) authorized units (for prevention and detection of corruption) are formed (determined). At the same time, the head of such unit (authorized person) is accountable and supervised to the head of the relevant state body, or local self-government body. At the same time, the head of an authorized unit (authorized person) of a state body whose jurisdiction extends over the entire territory of Ukraine may be dismissed on the initiative of the head only subject to the consent of NACP.

The draft law on amendments to certain laws of Ukraine on ensuring proper access for NACP to the information necessary for the implementation of its powers was registered by the Verhovna Rada of Ukraine under No. 7276.<sup>11</sup>

### *Assessment of progress*

According to the progress update all NACP commissioners' vacancies were filled through open process by candidates with high reputation and experience. NGOs claim that the selection process was not transparent, that the newly appointed commissioners do not have relevant experience, and have political links that question their independence; TI Ukraine resigned from the selection committee to demonstrate its disagreement with the process.

NACP has failed to exercise some of its functions, such as the verification of asset declarations, which was one of the most demanded actions by the public and international community. A statement by one of the former NACP employees who blew a whistle about political influence on NACP's work related to asset declarations has further confirmed the public perception about the lack of independence of this body. Investigation of this whistle-blower's report is pending in the Security Service of Ukraine.

Regional branches are not functional. No legal basis was approved, no funding was provided.

The budget of NACP according to NGOs is not sufficient (compared by NABU and ARMA), and does not include funding for the activities related to political parties. At the same time, NACP also failed to use the available funds effectively, e.g. budget allocations provided for the update of the e-declarations system were not spent and were returned to the budget.

While the public council of NACP was established, and had 10 meetings already, according to NGOs it does not function properly and does not have much input to the improvement of NACP's functioning.

NACP is making efforts to improve its cooperation with the anti-corruption units that were created in state bodies, e.g. it proposed a legislative amendment to clarify the mandates of these units. According to NGOs, this amendment does not provide for better coordination of these units by NACP, or its leadership role.

NACP has access to 13 registers, though this access is not automatic. To improve its access to the registered, the NACP prepared a draft law, but it has not been adopted yet.

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<sup>11</sup> More statistical information on the results of NACP are available at <https://nazk.gov.ua/sites/default/files/docs/2018/news/> and <https://nazk.gov.ua/2017-5>

No information was provided regarding the activities of the National Council related to anti-corruption policy. At the same time, the EU anti-corruption project supports a High Level Advisory Council to the Parliament on anti-corruption, which, among other things, has recently developed an assessment of NACP that appears very critical.

*No progress*

## **CHAPTER 2: PREVENTION OF CORRUPTION**

### **Recommendation 4: Evidence-based civil service policy**

- 1. Ensure that the civil service reform policy is evidence-based and implementation strategies are supported by relevant data, risk and impact assessment.**
- 2. Proceed with the introduction of the HRMIS as a matter of priority.**
- 3. Ensure that the disaggregated statistical data on civil service is produced and made public.**

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##### ***Government report***

4.1) The monitoring of actual staff in the civil service sector is carried out on a quarterly basis. In accordance with Article 6 of the Law of Ukraine "On Civil Service" and the order of the National Agency on Civil Service (NACS) as of October 21, 2016, No. 223, registered with the Ministry of Justice of Ukraine on November 14, 2016, No. 1477/29607, NACS collects from all state bodies information on the quantitative composition of civil servants in a section categories of positions ("A", "B", "C"), the number of posts by staff, actual number of employees, data on admitted and dismissed civil servants.

The special structural division of the NACS, the Office of Strategic Planning and Policy Analysis, provides the elaboration of the Reports in the form of the quantitative composition of civil servants submitted to the NDS, forms, accompanies the maintenance and updates the data on the quantitative composition of civil servants of state bodies.

4.2) The Resolution of the Cabinet of Ministers of Ukraine as of June 24, 2016, No. 474, approved the Strategy for the Public Administration Reform of Ukraine for 2016-2020, which envisages the creation of an integrated information management system for human resources management in the civil service (HRMIS), which is one of the priorities of the reform of the civil service and public administration in general.

Decree of the Cabinet of Ministers of Ukraine as of December 1, 2017 No. 844 approved the Concept for the implementation of the information system of human resources management in state bodies and a plan of measures for its implementation.

NACS provided the implementation of the specified action plan, namely:



- the technical documentation with the requirements for the information system has been developed;
- Tender documentation on the procurement of the information system has been developed.

Schemes-descriptions of processes HRMIS structured on the following blocks:

- personnel selection;
- career;
- general case management of personnel

In each block there are groups of schemes that describe in detail the processes in the personnel management service.

Today the process of writing a technical specification and its approval by the World Bank is completed. In the near future will be proclaimed the procedure for purchasing software. Full launch of HRMIS in all central executive bodies is scheduled for 2020.

4.3) The information on the official web-site of the NACS is published, in particular:

- open vacancies of the civil service and the results of holding a competition for civil service positions; passing testing;
- activity of the Commission on the Issues of the Senior Civil Service;
- regulatory acts adopted by the NACS for the implementation of the Law of Ukraine of December 10, 2015, No. 889-VIII "On Civil Service";
- explanations on the application of the Law of Ukraine "On Civil Service" and other normative and legal acts in the field of civil service;
- Plans and reports, news and other public and relevant information;

In addition, the report on the work of the National Agency of Ukraine on Civil Service (<http://nads.gov.ua/page/publicznyy-zvit-nads-za-2017-rik>) is published annually on the information resource [nads.gov.ua](http://nads.gov.ua).

#### ***Assessment of progress***

The work on this recommendation has started, however it is only in the very early stages of preparatory work, such as tendering of the HRMIS system, financing for this work is secured, and it is expected to be implemented in 2020. Besides, according to the NACS, Ukraine intends to further improve its PAR Strategy, it will be evidence based and will be based on the results of SIGMA assessment.

While the overall actions to address this recommendation were limited, the ACN plenary agreed that this did constitute ***progress***.



## **Recommendation 5: Institutional framework for civil service reform**

- 1. Assess the capacity of the NACS, its central and regional units, and increase it, if necessary, in view of the ongoing comprehensive civil service reform implementation and oversight needs.**
- 2. Ensure that the competition commissions include persons with necessary skills to assess the candidates for civil service. Take measures for unimpeded and professional functioning of the Commission on Senior Civil Service and competition commissions, free from political interference.**
- 3. Ensure introduction and proper operation of HRM functions in state agencies across the board of the entire civil service, provide coordination and adequate methodological guidance by the NACS.**

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#### ***Government report***

5.1) In order to assess the capacity of the NACS of its territorial bodies, identifying needs for their increase, taking into account the ongoing implementation of the comprehensive civil service reform, on February 5, 2018, a pilot procedure for analyzing positions in the NACS was launched.

All necessary administrative documents for proper analysis of positions are ensured, in particular, by the order of the NACS as of February 1, 2018, No. 34, a Working Group on the preparation of post analysis in the NACS is created. The Plan of measures for the analysis of posts in the NACS is approved (I quarter 2018 – I quarter 2019).

The report on the results of the analysis will be submitted to the Head of the NACS in September 2018.

After making the appropriate decision, proposals for strengthening the institutional capacity of the NACS and its territorial bodies (increasing the number) will be submitted to the Government for consideration.

5.2) The composition of the competition commissions includes representatives of the Personnel Management Service, the Legal Service, certain structural subdivisions and other employees of the state body, which holds a competition, possessing a sufficient level of knowledge and skills necessary for the evaluation of candidates for civil service positions.

In accordance with the resolution of the Cabinet of Ministers of Ukraine as of May 10, 2018 No. 374 to the Procedure for conducting the competition for the employment of civil service has been amended, which enhances the ability of the competition commission to select candidates for the post of reform specialists, as well as the post of civil service of category "A".

One expert on human resources management and two experts in the field of the policy of the relevant government body are required to be involved in the work of the competitive commission for selection of persons for the post of reform specialists.

One foreign language expert is additionally involved in conducting a candidate assessment of a foreign language, which is one of the official languages of the Council of Europe.

In addition, measures are being taken to ensure smooth and professional functioning of the Senior Civil Service Commission and competitive commissions free of political influence, including through online broadcasting of meetings of the Senior Civil Service Commission.

In particular, representatives of state bodies, scientific institutions, educational institutions, mass media, public associations and international organizations are given the opportunity to attend the meetings of the Commission on the issues of the Senior Civil Service, for having submitted applications or petitions concerning such participation.

In addition to the Commission of the Senior Civil Service in accordance with

Article 14 of the Law of Ukraine "On Civil Service" includes 4 representatives of public associations, scientific institutions, educational institutions, experts of the relevant qualification. The total membership of this Commission is 11 persons.

5.3) For employees of the personnel management services of central executive authorities, heads of state administrations, heads and staff of the personnel management services of state administrations, territorial bodies of ministries, other central bodies of executive power, appellate and local courts systematic training on the competitive selection procedure for civil service was conducted.

During September-October 2017, the NACS jointly with the European Union Project to Support the Implementation of the Concept of Reports Specialists (hereinafter referred to as the EU Project) trained the competition commissions of the Secretariat of the Cabinet of Ministers of Ukraine, pilot 10 ministries, as well as the State Agency for Electronic the Government of Ukraine and the National Agency of Ukraine on Civil Service regarding the procedure for holding a competition for the post of reform specialists

On May 24, 2018, a workshop for representatives of the newly created directorates and personnel management services of the ministries on the updated procedure for the holding of the competition for the post of reform specialists was held.

In addition, candidates and employees of state bodies are constantly were provided with explanations on the procedure for conducting the competition through written, telephone and online consultations.

#### ***Assessment of progress***

The work on this recommendation has started. The capacity of the NACS was analysed, and a request for further strengthening is being prepared. Competition commissions and the Commission on Senior Civil Service were also strengthened through appropriate staffing and training. These initial measures should be followed by the introduction and proper operation of HRM functions in state agencies in coordination and with the support of the NACS.

#### ***Progress***

## Recommendation 6: Merit-based civil service

1. Take all necessary measures in cooperation with civil society, to address the existing challenges of the recruitment both in legislation and in practice, including the lack of relevant competences of the competition commission members and the lack of transparency.
2. Continue consistent implementation of open, transparent merit-based recruitment to ensure that the civil service is in fact based on merit, is perceived as such and allows selecting the best candidates, free from political interference guarantying equal opportunities and professionalism.
3. Ensure that the civil service vacancies are adequately and broadly advertised to provide for equal access and attract highly qualified candidates.

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#### *Government report*

6.1) In order to ensure the transparency of the competitive selection for the employment of civil service, independent representatives (experts, the public) are involved in the work of the competition commission and the Commission on the issues of the senior civil service.

During competitions for vacant positions in the civil service of category "A", video footage is carried out at all stages of the competition, and video-streaming is provided on-line via the YouTube video service (<https://www.youtube.com/channel/UCosDsJelzAIKZhGLEIRhdcw>).

In cooperation with the EU project, methodological assistance was provided to the competition commissions to assess the professional competencies of candidates for occupation of posts in NACS.

6.2) Entry into the civil service is carried out by competitive selection, taking into account the level of professional competence, personal qualities and achievements of candidates for occupation of a vacant position.

In order to regulate some procedures for carrying out the competition for vacancy in the civil service, as well as to determine the peculiarities of conducting the competition for the positions of reform specialists, in accordance with the Resolution of the Cabinet of Ministers of Ukraine of August 18, 2017, No. 648, amendments were made to the Procedure for conducting the competition for the employment of state service

The Cabinet of Ministers of Ukraine has defined a fixed list of requirements for competencies for the evaluation of candidates for positions.

6.3) Announcement of the competition is posted on the Single Portal of vacancies of the State Service of NACS (<http://nads.gov.ua/>), as well as on the portal (<https://career.gov.ua/>) and on official web sites of state bodies, in which the competition is conducted.

Advertisements on social networks, including the Facebook page, are posted to popularize the

vacancies of reform specialists.

The largest channels for finding job in Ukraine, such as HH.ua, work.ua, rabota.ua, as well as mass media and information resources, became the additional channels for informing potential candidates about job vacancies in reform issues.

In order to inform target audiences, in particular young specialists, in contests for new posts of civil service, the NDSA participated in the KyivPost Vacancies Fair, held an Open Doors Day at SADC, and took part in events for graduates of higher education institutions.

### *Assessment of progress*

Measures taken to improve the transparency of the recruitment process, notably involvement of the non-governmental experts and the public in the selection commission and wide publication of vacancies, are positive. At the same time, some necessary measures to ensure transparency, like publication of salary levels in the announcements, and a more unified approach to drafting job descriptions and related vacancy announcements, have not been taken yet. Also, the practice of participation of deputy ministers in the selection commission undermines the principle of professionalism and should be stopped. Finally, YouTube transmission of the exams of senior officials is not a necessary and possibly a harmful measure as according to the experts it may discourage good quality candidates from application; however the Ukrainian delegation stated that this experience was useful from their point of view.

### *Progress*

## **Recommendation 7: Performance appraisal**

- 1. Ensure implementation of performance appraisal in practice.**
- 2. Adopt and put in practice the regulation to link the monthly/annual bonuses and priority promotion to the performance appraisal.**

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#### *Government report*

7.1) The evaluation of the results of the activity of civil servants who hold positions of the civil service of categories A, B and C is based on performance, ethical behaviour and requirements of legislation in the field of corruption prevention, in accordance with the Typical Procedure for conducting an evaluation of the results of civil servants' activity, approved by the decision of the Cabinet of Ministers of Ukraine and as of August 23, 2017, No. 640.

NACS's Order as of November 27, 2017, No. 237 approved the Methodological Recommendations for the determination of key indicators of the effectiveness, efficiency and quality of service

activities of civil servants who hold positions of civil service of category "B" and "C".

According to the decree of the Cabinet of Ministers of Ukraine dated December 20, 2017 No. 1047, defining the tasks and key indicators of civil servants holding positions of civil service of category "A", shall be carried out within fifteen days after the Cabinet of Ministers of Ukraine approves the plan of priority actions of the Government for 2018.<sup>12</sup>

The abovementioned provided the basis for defining the tasks and key indicators of the effectiveness, efficiency and quality of state secretaries of ministries, heads and deputy heads of central executive authorities and other civil servants.

7.2) Part 9 of Article 44 of the Law of Ukraine "On Civil Service" stipulates that the receipt by the public servant of an excellent assessment on the results of the evaluation of the service activity is the basis for his bonus and preferential promotion in the civil service.

The introduction of the practice of awarding civil servants on the basis of the annual evaluation will begin in October-December 2018 after the first evaluation and determination of its results.

#### *Assessment of progress*

The performance appraisal was introduced by the Civil Service Law already two years ago, several regulatory acts were adopted to support its introduction since and the implementation has started. Notably, key performance indicators (KPIs) were already developed for the civil servants of categories B and C in 2017, and for category A in 2018.<sup>13</sup> The implementation of these KPIs will be assessed by the end year. No information was provided yet regarding linking bonuses to the results of the appraisal.

#### *Progress*

### **Recommendation 8: Dismissals and discipline**

- 1. Clarify the grounds for disciplinary proceedings and ensure that they are objective.**
- 2. Ensure that the dismissals are based on the legal grounds and are not politically motivated.**

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#### *Government report*

8.1) Section VIII of the Law of Ukraine "On Civil Service" stipulates that the grounds for bringing a civil servant to disciplinary liability is the commission of a disciplinary offense, that is, an unlawful

<sup>12</sup> The order of Cabinet of Ministers of Ukraine No. 244 dated from 28.03.2018 "On approval of the Government's Priority Action Plan for 2018")

<sup>13</sup> Orders of the Cabinet of Ministers of March 28, 2018, No. 244 "On Approval of the Plan of Priority Actions of the Government for 2018" and of 2017 No 640 <http://zakon5.rada.gov.ua/laws/show/244-2018-%D1%80> and of <http://zakon5.rada.gov.ua/laws/show/640-2017-%D0%BF>

guilty act or inaction or a decision that involves failure or improper performance by a public servant of his official duties and other requirements established by the Law of Ukraine "On Civil Service" and other normative-legal acts for which disciplinary action may be applied.

For disciplinary proceedings in order to determine the degree of guilt, the nature and severity of the committed disciplinary offense, a disciplinary commission for the consideration of disciplinary cases is formed.

The Disciplinary Commission for civil servants holding positions of civil service of category "A" is the Commission on the issues of the higher civil service corps.

The Disciplinary Commission for civil servants holding positions of the civil service of categories "B" and "C" forms the head of civil service in each state authority.

The disciplinary commission includes civil servants of a state authority, representatives of the elective body of the primary trade union organization from among civil servants, and in the absence of a trade union organization, representatives of civil servants elected at general meetings (conferences) of civil servants of a state authority, and may include representatives of public associations with experience in the field of public administration, civil service or legal profession, in order to ensure objectivity and conducting disciplinary proceedings.

8.2) Dismissal from the civil service is an exceptional type of disciplinary sanction and can only be applied in the case of disciplinary offenses stipulated in clauses 2, 2, 6, 9, 13, 14 of the second part of Article 65 of the Law of Ukraine "On Civil Service", as well as committing systematically (repeatedly during a year) a disciplinary offense stipulated by clause 12 of part two of Article 65 of this Law.

Types of disciplinary offenses stipulated by clauses 1, 3, 7, 9-11, 12, 13, 14 of part two of Article 65 of the Law of Ukraine "On Civil Service", for which the dismissal of civil service is envisaged

violation of the oath of a public servant (paragraph 1);

- a manifestation of disrespect for the state, state symbols of Ukraine, the Ukrainian people (paragraph 3);

- abuse of power if it does not contain a crime or an administrative offense (paragraph 3);

- the abuse of powers in the private interest or in the unlawful personal interests of others (paragraph 9);

- submission of inaccurate information on circumstances that impede the realization of the right to public service when entering the civil service, as well as failure to provide necessary information about such circumstances that arose during the service (paragraph 10);

- failure to report to the head of the civil service on the emergence of a direct subordination relationship between a civil servant and his or her relatives within 15 days from the date of their occurrence (paragraph 11);

- unauthorized absence of the civil servant (including absence of service for more than three hours during the working day) without important reason (paragraph 12);

- the appearance of a public servant in a state of drunkenness, in a state of narcotic or toxic intoxication (paragraph 13);

- the adoption by an official of an unreasonable decision that caused the violation of the integrity of the state or communal property, their illegal use or other damage to state or communal property, if such actions do not include a crime or an administrative offense (paragraph 14).

Thus, protection against unlawful dismissal is guaranteed by the norms of the Law of Ukraine "On Civil Service", as well as the formation of disciplinary commissions on a parity basis.

In order to counteract illegal dismissal and other violations of the rights of civil servants, NACS issued 32 claims for state bodies that were mandatory for implementation during 2017.

### *Assessment of progress*

Provisions established by the civil service law (with some small shortcomings, like short deadlines for applying disciplinary sanctions) provides sufficient framework regarding dismissals and disciplinary sanctions. However abuses are still possible in practice. There is anecdotal evidence to this affect, e.g. dismissals for violation of the oath, which is a serious violation, but difficult to substantiate.

According to NGOs, in October 2017, the Civil Service Law was amended regarding the disciplinary proceedings of political officials. In February and September 2017 the NACS prepared clarifications of legislative provisions regarding disciplinary sanctions and dismissals. The expert team was provided with statistical data about actual disciplinary proceedings or dismissals, but according to NACS it produced its annual report which contains data on dismissals.<sup>14</sup> However, there is a perception in some parts of the society that these rules can be abused by political motivations.

### *Progress*

## **Recommendation 9: Remuneration**

- 1. Finalize the adoption of the necessary regulatory framework and ensure in practice fair, transparent and competitive remuneration in civil service.**
- 2. Ensure that there is an upper limit to the bonuses granted based on an annual performance evaluation not exceeding 30% limit provided by CSL.**

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<sup>14</sup> According to the NACS, during 2017 – 5288 disciplinary proceedings were initiated, 2935 disciplinary penalties were applied. One of the penalties (exceptional type) is the dismissal from the civil service, which was applied to 69 civil servants or 2% of the civil servants' total amount.



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### *Government report*

9.1) The normative legal framework for remuneration is prescribed in the Law of Ukraine "On Civil Service" (Section VI "Paying of Labor, Promotion and Social Guarantees") and the Resolution of the Cabinet of Ministers of Ukraine "Question of Remuneration of Employees of State Authorities" of January 18, 2017 No. 15.

In addition, to ensure the implementation of the Concept of optimization of central executive bodies, approved by the Cabinet of Ministers of Ukraine on 27 December 2017, the NACS prepared the draft Resolution of Cabinet of Ministers of Ukraine "On Approval of Plan of Measures of the optimization system of central bodies of executive power".

One of the objectives of the action plan on implementation of this Concept is the Concept of reforming the system of remuneration of civil servants and other employees of the central authorities.

After the approval by the Cabinet of Ministers of Ukraine of the Concept for reforming the remuneration system of civil servants and other employees of central executive authorities, legislative acts will be drafted that will change the approaches to financial motivation, revise the wage structure and create an appropriate balance between a fixed portion of wages and incentive payments in accordance with work results.

9.2) Article 52 of the Law of Ukraine "On Civil Service" stipulates that the state foundation bonus fund is set at the rate of 20 percent of the general salary fund per year and the salary fund.

Article 50 of this Law stipulates that the bonuses to a public servant include:

- 1) a bonus on the results of the annual evaluation of the service activity;
- 2) a monthly or quarterly bonus according to the personal contribution of a civil servant to the general result of the work of a public authority.

The total amount of bonuses provided in paragraph 2, which a civil servant may receive during a year, may not exceed 30 percent of the fund's salary for a year (at the same time this provision enters into force on January 1, 2019).

Thus, the Law provides for the restriction of bonuses by establishing a limited bonus fund (20% of the general salary fund of the state body) and the limit of monthly or quarterly bonuses (no more than 30% per year).

In addition, the Ministry of Social Policy of Ukraine has drafted an order "On Amendments to the Model Regulations on the awarding of public servants of public authorities, other state bodies and other apparatuses (secretariats)", which provides that the fund of bonuses, based on the results of the annual evaluation of service activity, is formed in the amount of up to 1.5% of the annual salary fund.

After approval of the draft order with the Ministry of Finance, NACS, as well as its state registration with the Ministry of Justice of Ukraine, this provision will become part of the national legislation



### *Assessment of progress*

The overall level of salaries for civil servants was increased significantly. Ukraine has decreased the share of the variable part in the total pay and keeping the monthly or quarterly bonuses below 30% complies with the recommendation. However, as there are other additional payments, like incentives foreseen in the transitional provisions of the Civil Service Law and the supplements for additional tasks that are not regulated by limits, the total share of the variable part may still be unreasonably high, while opening the door for politisation of professional civil service. NGOs point out the level of pay to the civil service is still not complete, which is probably true in the capital. The NACS agrees that there are imbalances in the salaries of the central executive bodies and other state bodies with similar legal competence. To resolve this issue, it is necessary to strengthen NACS capacity in the sphere of formation and implementation of state policy in civil servants' remuneration. It will be important to examine how the draft Resolution of Cabinet of Ministers "On Approval of Plan of Measures of the optimization system of central bodies of executive power" together with the order of the Ministry of Social Policy "On Amendments to the Model Regulations on the awarding of public servants" will address the above issues. In conclusion, special incentivizing payments in transitional provisions do not have limits and there is scope for abuse of supplements of additional tasks.

*No progress*

### **Recommendation 10: Conflict of interests**

- 1. Ensure full and unbiased enforcement of conflict of interest rules in practice by the NACP free from political influence.**
- 2. Further raise awareness and continue training to fully introduce the new regulations and ease their practical implementation.**

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#### *Government report*

10.1) Regarding the practical implementation of norms on conflict of interests, we inform that on the basis of information received from individuals and legal entities, as well as from the mass media and other open sources of information from the beginning of 2017 on the facts of violation of the requirements of the Law of Ukraine "On Corruption Prevention" concerning prevention and settlement conflicts of interest and related restrictions The Department for Monitoring the Compliance of Legislation on Conflict of Interest and Other Restrictions on the Corruption Prevention by the end of 2017 generate 159 protocols on administrative violations, including:

By qualification:

- Article 172-7 (violation of the requirements for the prevention and settlement on conflicts of interest) - 147 protocols;
- Article 172-4 (violation of the restrictions on concurrency and combination with other

activities) - 7 protocols;

- Article 188-46 (non-fulfilment of legal requirements (prescriptions) NACP - 4 protocols;
- Article 172-5 (violation of legal restrictions on the receipt of gifts) - 1 protocol.

For subjects for which protocols are drawn up:

- 5 protocols for 5 people's deputies of Ukraine;
- 92 protocols concerning 42 deputies of local councils;
- 22 protocols on 12 heads and their deputies of local self-government bodies;
- 17 protocols for 10 public officials of public law entities;
- 13 protocols on civil servants;
- 3 protocols on judges;
- 1 protocol concerning the former Deputy Minister of Justice of Ukraine;
- 2 protocols on police;
- 1 protocol on the head of the National Anti-Corruption Bureau of Ukraine;
- 1 protocol for another category of persons;
- 2 protocols on the officials and officers of the prosecutor's office

During 2017, the National Agency provided 1624 clarifications of the current anti-corruption legislation, of which 1080 were in conflict of interests.

10.2) According to the results of the analysis of the practical application of legislation on the prevention and settlement on conflict of interests, the decision of the National Agency on Corruption Prevention as of September 29, 2017 No. 839 approved the updated Methodological Recommendations on the Prevention and Conflict of Interest, prepared by expert support of UNDP in Ukraine. The official website of the National Agency has a separate section on "Prevention and Detection of Corruption", filled with information materials on issues of conflict prevention, cooperation with the whistleblowers.

At the same time, the National Agency, with the support of the United Nations Development Program in Ukraine, held its second annual information campaign (from 17.10.2017 to 21.12.2017) to clarify the conflict of interest law "Conflict of Interest: Need to Know!" Which provided:

online testing on knowledge of the provisions of the Law of Ukraine "On Corruption

Prevention";

conduction in each regions of Ukraine, three general training workshops (for civil servants, local government officials, deputies of local councils, village, settlement, city mayors, officials of legal entities of public law) and specialized (for officials authorized to prevent and detect corruption, employees of the system of free primary legal aid, representatives of public organizations working in the field of prevention and counteraction corruption);

- introduction of the free online course "Conflict of Interest: Need to Know!" on the platform of mass open online courses Prometheus.org.ua (prometheus.org.ua), aimed at raising the level of standards of integrity in the prevention and settlement of conflicts of interest, as well as other restrictions and obligations stipulated by the Law of Ukraine "On Corruption Prevention".

### *Assessment of progress*

The NACP reviewed many cases of conflict of interests and the number has increased substantially since September 2017.

However NGOs claim that there was a bias in selecting the cases, e.g. COI cases such as regarding the NABU, a prominent anti-corruption MP and civil society leader, that all failed eventually, may demonstrate that NACP has set wrong priorities in its work on conflict of interests. At the same time, the public perception of wide spread COI among politicians did not receive similar attention.

The NACP strongly disagrees with these claims and believes that the fact that their COI rulings were against MPs from all parties prove the unbiased approach: NACP launched administrative procedures in all cases when it receiving relevant information and passed the cases to courts as required by the law regardless of the status of the involved individuals, institutions or parties they belong to or other conditions. The NACP confirmed that it is strongly committed to performing its mandate regarding the COI in full accordance with the law and will reinforce its efforts to deliver on the expectations of the society at large.

The OECD/ACN welcomes the steps taken by NACP with the support of UNDP to provide workshops and on-line training on COI to the public officials. The NACP website on the page dedicated to COI provides information relevant legal regulations and clarifications, statistics and examples of the most common COI problems. This is a good start that needs to be pursued in order to ensure a sufficient level of understanding of the issues by the civil servants, by the anti-corruption experts and the society, and to improve the image of NACP.

*No progress*

## **Recommendation 11: Ethics**

- 1. Clarify the mandate of agencies responsible for awareness raising and training on ethical standards**
- 2. Carry out systematic awareness raising and training throughout the public service.**
- 3. Analyse the needs and consider adoption of the specific ethics codes for individual agencies/categories.**

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### *Government report*

11.1) The Resolution of the Cabinet of Ministers of Ukraine as of July 14, 1999 No. 1262 (as amended) defines the procedure for the formation of a state order for training and qualification improvement for employees of state authorities and local self-government bodies.

The state customer for training civil servants and officials of local self-government on issues related to the prevention of corruption and the implementation of the Laws of Ukraine "On Civil Service", "On Local State Administrations" and "On the Service in Local Self-Government Bodies" is the NACS, for raising the skills of other employees of state authorities and local self-government bodies (except for the training of civil servants and local self-government officials) on issues related to corruption prevention is the NACP.

Authority of institutions:

1) state bodies and bodies of local self-government formulate proposals in improvement the skills of civil servants and local self-government officials, in particular on the corruption prevention;

2) NACS and NACP in the framework of their powers form and place a state order for the improvement of the qualification of the respective categories of persons on issues of corruption prevention, control over its implementation;

3) training of civil servants and officials of local self-government is carried out in educational institutions and postgraduate education establishments that have licenses for the provision of educational services for the improvement of professional qualifications and are determined by the results of the competitive selection by the executors of the state order.

11.2) In 2017, 26456 civil servants and local self-government officials improved their qualifications through professional programs, short-term thematic seminars programs, training courses on corruption prevention, which included topics / modules on compliance with ethical norms of conduct.

NACS's specialists constantly conduct training on compliance with ethical norms of conduct at the All-Ukrainian Center for the Training of Civil Servants and Local Self-Government Officials for civil servants, including those working for the National Agency for the Prevention of Corruption.

11.3) By Order No. 158 as of August 5, 2016, registered with the Ministry of Justice of Ukraine on August 31, 2016, No. 1203/29333, the General Rules of Ethical Behavior of Civil Servants and Local Self-Government Officials were approved.

Unregulated at the legislative level is the procedure for prosecution and determining the types of responsibility for violating the rules of ethical conduct for persons authorized to perform the

functions of the state (except for civil servants and officials of local self-government).

The above requires the introduction of amendments to the laws of Ukraine "On the Cabinet of Ministers of Ukraine", "On Central Executive Bodies", and others.

#### *Assessment of progress*

The Ukrainian delegation has clarified that NACS is responsible for setting the rules on ethics, and that NACP does not have any role in this regard. On the initiative of the NACS, the Government established the All-Ukrainian Training Center for civil servants and local self-government officials. Actual trainings on ethics are provided by different entities, but there is no assessment of its quality, costs and results in terms of their impact on ethics knowledge and skills of public officials. No new actions were reported regarding the codes of ethics for specific state bodies. However, NGOs report that the NABU has developed its own code, and the GPO has also adopted its code in 2017, but – according to NGOs – this code is often violated, and there are no sanctions that can be applied.

#### *Progress*

### **Recommendation 12: Asset Declarations**

- 1. Ensure integrity, full and unimpeded functioning of the electronic asset declaration system allowing timely submission of asset declarations, disclosure of asset declarations, including in open data format. Ensure that any exceptions for disclosure are directly envisaged by the CPL.**
- 2. Amend verification procedure to address its shortcomings, adopt the lifestyle monitoring regulation, ensure automated verifications of asset declarations by the NACP and implement data exchange between the asset declarations system and state databases to support automated verification.**
- 3. Ensure that the actions are taken proactively on the alleged violations disclosed through the e-declaration system and that cases with the signs of criminal activity are dully referred to the law enforcement for the follow up.**
- 4. Ensure that verification is carried out systematically and without improper outside interference with the focus on high-level officials.**
- 5. Abolish amendments subjecting a broad range of persons that are not public sector employees (i.e. members of NGOs, activists, experts) to asset disclosure requirements.**
- 6. Ensure that the NABU has direct access to the asset declaration database in line with the Article 17 of the Law on NABU and is able to use it for the effective execution of its functions.**

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##### *Government report*

Implementation of the system of logical and arithmetic control of declarations and modernization

of the software and hardware complex of the information and telecommunication system "Unified State Register of Declarations of Persons Authorized to Perform State or Local Government Functions" is carried out in accordance with the Action Plan.<sup>15</sup>

Between 10.04.2018 and 25.04.2018, the interagency working group conducted a technical audit of the ITS Register and on April 25, 2018 approved the Final Report.

As for now, 916 (623 in 2017 and 293 in 2018) full verification of asset declaration have been started; 302 decisions (143 in 2017 and 159 in 2018) were made on the results of the implementation of the full asset declaration verification; 42 substantiated conclusions (on the subjects of declaration) were sent to other specially authorized entities in the field of combating corruption;<sup>16</sup>

As of June 19, 2018, the procedure for monitoring the life-style of the subjects of declaration is being developed and processed by the National Agency.<sup>17</sup>

In order to address the issue of exclusion from the list of persons covered by the Law of Ukraine "On Corruption Prevention " in the part of fulfilling the obligations of financial control by representatives of the public in the field of prevention and counteraction corruption, the Verkhovna Rada of Ukraine introduced a draft Law of Ukraine "On Amendments to the Law of Ukraine" On Corruption Prevention "regarding the release from the responsibility of certain categories of persons (Reg. No. 8209), and an alternative to it, the Draft Law" On Amendments to the Law of Ukraine "On Corruption Prevention of Corruption" regarding the release of certain categories of persons from compliance with the requirements of financial control (Reg. No. 8209-1).<sup>18</sup>

In addition, on January 13, 2017, a Memorandum of Cooperation and Exchange of Information was signed between the National Bureau and the National Agency, according to which on May 10, 2017 the National Bureau received access to the Unified State Register of Declarations of Persons Authorized to Perform State Functions or local self-government.<sup>19</sup>

### ***Assessment of progress***

According to the NGOs, the update of the e-declarations system, that was foreseen and funded in 2017, was not carried out; as a result technical difficulties persist during the submission period. The UNDP provided to the NACP all the necessary modules that should allow automatic verification of declarations, however, the NACP still does not receive access to the relevant registers, as necessary

<sup>15</sup> <https://www.kmu.gov.ua/ua/npas/250411754>

<sup>16</sup> <https://nazk.gov.ua/news/za-10-misyaciv-nacionalne-agentstvo-naprawylo-do-nabu-gpu-ta-nacpoliciyi-44-obgruntovani>

<sup>17</sup> <https://nazk.gov.ua/proekt-poryadok-zdiysnennya-monitoryngu-sposobu-zhyttya-osoby>

<sup>18</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=63754](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63754)

[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=63772](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63772)

<sup>19</sup>

[https://nazk.gov.ua/sites/default/files/docs/nazk\\_files/%D0%A0%D1%96%D1%88%D0%B5%D0%BD%D0%B%D1%8F\\_12.01/12.01%20\(1\).tif](https://nazk.gov.ua/sites/default/files/docs/nazk_files/%D0%A0%D1%96%D1%88%D0%B5%D0%BD%D0%B%D1%8F_12.01/12.01%20(1).tif)

<https://nazk.gov.ua/news/nazk-ta-nabu-napracuyvaly-proekt-memorandumu-pro-spivpracyu-ta-obmin-informaciyeyu>

laws were not adopted. Life style monitoring is not implemented.

NGOs have pointed out at some shortcomings regarding the scope of application of e-declarations: staff members of the Security Service submit their declarations to their internal system which is parallel to the one of NACP, and therefore does not meet the requirements of the law; staff of the Military Prosecution submit their e-declarations, as required by the Law, however these declarations are not made public, which is against the law. While the political struggle about requiring anti-corruption experts and civil society activities to declare continues, e-declarations for NGOs were not abolished as required by the recommendations.

A report by a former NACP employee about political interference in the verification process remained unattended, fuelling distrust of the citizens in this system. While NACP transferred 34 to NABU, NABU itself has investigated more than 100 cases, raising questions about performance of the NACP. The EU anti-corruption project prepared new recommendations and methodology for NACP for verification of e-declarations, NACP has not accepted this methodology yet, but the delegation at the ACN meeting confirmed that they would be willing to do so.

While a Memorandum of Cooperation and Exchange of Information was signed between the NACP and NABU that allows NABU to access e-declarations, automatic access was suspended by NACP following a minor technical mistake by a NABU staff. This demonstrates unhealthy relations that undermine the fight against corruption in the country.

*No progress*

### **Recommendation 13: Reporting and Whistleblowing**

- 1. Ensure clear procedures for submitting, reviewing and following up on whistleblower reports and providing protection. Further train the responsible staff.**
- 2. Raise public awareness on whistleblowing channels and protection mechanism to incentivize reporting.**
- 3. Consider adoption of a stand-alone law on whistleblower protection in line with international standards and good practices.**

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##### ***Government report***

13.1) The issues of cooperation with the whistleblowers and their protection, including the protection of their relatives, from illegal encroachments on their lives, health, housing and property in connection with the reported corruption or corruption-related offense are regulated by the Laws Ukraine "On Prevention of Corruption", "On Ensuring the Security of Persons Involved in Criminal Proceedings", "On Operational Investigation Activities", "On Protection of Personal Data", as well as other laws of Ukraine.

13.2) The National Agency on Corruption Prevention co-operates with persons who report in



good faith on possible facts of corruption or corruption-related offenses, and other violations of the Law of Ukraine "On Prevention of Corruption".

The official website of the National Agency discloses information on corruption reporting channels and government guarantees of disclosure.

In order to ensure the openness and transparency of the activities of the National Agency, as well as to create, disseminate and promote citizens' awareness of information from the National Agency needed for anti-corruption reforms, developed in cooperation with international partners and approved the National Agency's Communication Strategy for 2018-2020 (National Agency decision dated 27.04.2018 number 811).

The communication strategy is aimed at establishing a permanent dialogue with the public, raising citizens' awareness of responsibility for corruption offenses, anti-corruption civic consciousness and intolerance to corruption at all levels.

Among other things, the Communication Strategy involves holding on a regular basis information campaigns targeted at different social groups and aimed at eliminating tolerant attitude to corruption. Including the formulation of clear messages that would force people to change their passive behavior (passive perception of corruption at all levels) and encourage them to be proactive (report corruption cases, become accused).

In particular, the Communication Strategy provides for the implementation of the # No Silent! Information Campaign aimed at raising awareness of cooperation with corruption deniers, channels of information provision, guarantees of state protection of the disclosure, and the activities of authorized departments (persons) on issues of prevention and detection of corruption in public authorities.

13.3) The National Agency has developed a draft Law of Ukraine "On the Protection of the Whistleblowers of Corruption".

The project was provided for processing by the structural units of the National Agency, the members of the Interdepartmental Working Group on the Protection of Whistleblowers, the Public Council under the National Agency, and also posted on the official website of the National Agency for Corruption Prevention. Currently, the submitted proposals are being processed.

The draft Law proposes to determine the organizational and legal conditions and procedures for disclosure of harm or threat to the public interest, rights, guarantees and mechanisms for the protection of the disclosure of such information. To implement this goal, the bill amends the laws of Ukraine "On Prevention of Corruption", "On Prevention of the Influence of Corruption Offenses on the Results of Official Sports Competitions", "On Ensuring the Security of Persons Involved in Criminal Proceedings", "On the Authorized of human rights of Verkhovna Rada of Ukraine", " On access to public information, as well as the Code of Labor Laws of Ukraine, the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine, the Economic Procedural Code of Ukraine, Civil Procedural Code of Ukraine, the Code of Administrative Procedure Ukraine, the Criminal Procedure Code of Ukraine.



### *Assessment of progress*

According to the NGOs, the NACP adopted its own regulation<sup>20</sup> on reviewing reports on corruption. This provision foresees that if such a report concerns a NACP staff member, it first goes to the Head of the NACP, and only then the Head transfers this report to the internal anti-corruption unit. This provision is against good practice and should be removed. On the positive side, the NACP provided training to its staff on this issue. However, there was no public awareness raising campaign yet.

A fairly comprehensive whistle-blower protection draft law was developed in 2016 and submitted to the Parliament. It was commended in the monitoring report in 2017: “The draft is ambitious and fairly comprehensive, generally in line with the relevant international standards and good practices.”

Despite this fact, NACP prepared a new draft law and submitted it for comments. According to the NGOs it does not meet international standards, however, the draft was not assessed by OECD/ACN at this stage, but Ukraine is encouraged to take into account the assessment in the 2017 monitoring report (pp.66-67) on this subject-matter. The whistle-blower's report against NACP has undermined its reputation necessary to develop a meaningful law or practical mechanism to protect whistle-blowers.

### *No progress*

## **Recommendation 14: Integrity of Political Officials**

- 1. Provide training, awareness raising and guidance on applicable integrity rules to the political officials.**
- 2. Proceed with the development and adoption of the parliamentary ethics code. Provide trainings, consultations and guidance for its application in practice, once adopted.**
- 3. Clarify responsibilities and mandates for enforcement of integrity rules by parliamentarians, including in relation to the conflict of interest, ethical conduct and consequences of their violation. Ensure independent and objective monitoring and enforcement.**
- 4. Provide for systematic objective scrutiny of declarations of political officials and the subsequent follow up as provided by law.**

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#### *Government report*

14.1) Since June 2016, the prosecutors' offices of Ukraine have introduced a procedure for secret

<sup>20</sup> According to the NACP, the bill introduces amendments to the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine, the Law of Ukraine "On Prevention of Corruption", and the Law of Ukraine "On Free Legal Aid". See also [https://nazk.gov.ua/sites/default/files/proekt\\_zu\\_vykryvachi.pdf](https://nazk.gov.ua/sites/default/files/proekt_zu_vykryvachi.pdf).

verification of the integrity of prosecutors of the General Prosecutor's Office of Ukraine, regional and local prosecutors' offices, as well as investigative bodies of the prosecutors' offices.

After questionnaires on integrity having been submitted by prosecutors and investigators, they are published in the "Integrity Questionnaire" subsection of the "SECRET INTEGRITY CHECK" section on the official website of the General Prosecutor's Office of Ukraine.

The secret verification of integrity can be initiated on the ground of the information evidencing false statements provided by a prosecutor in the questionnaire on integrity.

In case of availability of such kind of information, any person can disclose it by reporting it to the General Inspectorate by one of the most convenient means: by submitting a letter, a request, as well as informing in writing on a paper, with the "Integrity Check" mark, or by e-mailing on [informer@gp.gov.ua](mailto:informer@gp.gov.ua)

It is desirable (but not obligatory) to give the contact details of the person, who provides the information, in order to find out more additional information regarding the verification of the prosecutors' integrity.

In addition, on February 2, 2018, in Kyiv, the Deputy Head of the General Inspectorate of the General Prosecutor's Office of Ukraine, Mr Miskiv, and the Deputy Director of the Unit for Prevention of Offenses in the Prosecutors' Offices of the Internal Security Department of the General Inspectorate, Mr Primich, participated in a round table, organized by the European Union Advisory Mission (EUAM) Ukraine for the Reform of the Civil Security Sector in Ukraine, and shared the best practices in cooperation and protection of whistle-blowers in the law enforcement authorities' sector.

14.2) According to the information provided by the Committee of the Verkhovna Rada of Ukraine on the Rules of Procedure and Organization of Work of the Verkhovna Rada of Ukraine regarding continuing with the elaboration and adoption of the "Code of Ethics for a Parliamentary", the people's deputy of Ukraine (a parliamentary) is accountable to the people of Ukraine for his/her exercise of his/her official duties, being their authorized representative in the Verkhovna Rada of Ukraine (part three Article 7 of the Law of Ukraine "On the Status of a People's Deputy of Ukraine") and in his/her exercising the powers given by the Constitution and laws of Ukraine must adhere to the generally acceptable norms of morality; must always maintain his/her own dignity, respect the honour and dignity of other people's deputies of Ukraine, public officials, as well as citizens; refrain from actions, statements, and actions that can dirt him/her, people who elected him/her, the Verkhovna Rada of Ukraine, the state of Ukraine (Article 8 of the Law of Ukraine "On the Status of People's Deputy of Ukraine").

14.3) Chapter 9 of the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine" defines the provisions for observance of discipline and norms of ethics by people's deputies of Ukraine at plenary sessions of the Verkhovna Rada of Ukraine. The norms, in particular set by Article 51 of the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine", regulate the observance of discipline and norms of ethics by people's deputies of Ukraine at the parliamentary sessions, however, the behaviour of deputies outside the Verkhovna Rada of Ukraine remains not regulated.

In addition, the extent of violation of the norms of professional ethics, as well as the offenses committed, by the people's deputies of Ukraine require legislative and procedural regulation.

Given the above, in Ukraine there have been repeatedly taken measures, with the Verkhovna Rada of Ukraine leadership, people's deputies of Ukraine, parliamentarians of other countries' legislative bodies, international and national non-governmental organizations' representatives, as well as experts being involved, for considering and further applying the best world practices in parliamentary ethics normative regulation, organization and institution ensuring the procedure for considering the issues on unethical behaviour of parliamentarians, as well as the format of corresponding changes in Ukrainian legislation. In particular, at the International Conference "Parliamentary Reform: retrospective and prospective", there were raised the issues on ethics in the parliament and progress in drafting the Code of Ethics, with conclusion made by the participants that there is a need to reach the consensus in ensuring regulation of the ethical standards for the parliamentarians.

14.4) Full verifications of declarations are carried out by the National Agency on Corruption Prevention in accordance with the priorities set by clause 7 of Section III of the Rules of Procedure for Exercising Control and Full Verification of a Declaration of a Person Authorized to Perform the Functions of the State, or Local Self-Government, duly approved by the decision of the National Agency on Corruption Prevention, dated on the 10th of February, 2017, under No. 56, with a due registration track record made by the Ministry of Justice of Ukraine, dated on the 13th of February, 2017, under No. 201/30069.

Pursuant to the provisions of part three of Article 11 of the Law, in the event of revealing any signs of another corruption or corruption-related offense, the National Agency on Corruption Prevention shall approve a substantiated conclusion and send it to other specially authorized subjects for countering corruption. The conclusion of the National Agency on Corruption Prevention is obligatory for consideration, with the results of such consideration to be reported not later than in five days' notice after the receipt of the notification of the committed offense.

As of the 19th of June, 2018, the National Agency on Corruption Prevention has started 916 full verifications of declarations (623 in 2017, and 293 in 2018 correspondingly); has made 302 decisions (143 in 2017 and 159 in 2018 correspondingly) on the results of full verifications of declarations; has sent 42 substantiated conclusions (on the subjects of declaration, i.e., declarants) to other specially authorized subjects for countering corruption.

#### ***Assessment of progress***

From the progress update provided by the government it transpires that the MPs in Ukraine refuse to develop, adopt and adhere to a code of ethics, despite the fact that political corruption is one of the key challenges in the country. Though NGOs noted that the new communication strategy adopted by the Parliament provides for the development of the Code. The NACP and other anti-corruption bodies in close cooperation with NGOs should make it their utmost priority to raise awareness and to convince the MPs and the citizens that elect them of the importance of this measure.

While NGOs report that some training on ethics was provide to political officials, it must be rather irrelevant in the view of the above.

The NACP reports about steps it takes in verifying declarations of the MPs, but it does not report

about the actual spread of conflict of interest or corruption among the MPs, measure taken to prevent or sanction such behaviour, and the results of these measures. This formalistic approach does not allow identifying the real problems and addressing them with effective tools. As noted above, the reputation of NACP has been marred by a whistle-blower who alleged that political influence was used in the verification process. It is not clear how NACP cooperates with the responsible parliamentary body that is supposed to ensure ethical behaviour among MPs.

Besides, heads of the local state administration were excluded from the Civil Service Law at the end of 2017. Therefore, they are under much less strict regime regarding integrity, despite high risks of corruption at the local level.

*No progress*

### **Recommendation 15: Integrity in the judiciary**

- 1. Ensure that introduced by the judicial reform changes are effectively implemented and that their practical application is analysed with the view to identify deficiencies and address them.**
- 2. Continue to reform with the view to address the remaining deficiencies in the system of judicial self-governance, appointment, disciplinary proceedings, dismissal and recusal of judges to bring them in line with European standards and recommendations of the Venice Commission.**
- 3. Analyse the reasons for the big number of judicial resignations and take necessary measures to ensure that judicial posts are being filled, including resolving the situation with pending ‘re-appointment’ of the judges whose 5 years’ probation term lapsed after the adoption of the judicial reform.**
- 4. Closely monitor the functioning of the automated distribution of cases system to ensure that it is being properly applied. Look into instances of manipulations and take necessary measures to eliminate circumstances that enabled such manipulations.**
- 5. Consider abolishing Article 375 of the Criminal Code of Ukraine or at the least ensure in other ways that only deliberate miscarriages of justice are criminalised to eliminate potential for abuse or exerting of pressure on judges.**
- 6. Take all necessary measures to ensure the safety of judges; these measures should involve protection of the courts and of the judges.**

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##### ***Government report***

On April 3, 2017, the High Qualifications Commission of Judges of Ukraine announced a competition for vacant positions of local court judges taking into account 600 forecasted vacant positions of local court judges.

On June 12, 2018, the sessions of the High Qualifications Commission of Judges of Ukraine resolved the issue of determining the results of a special check within the procedure for selecting

candidates for a position of a judge of a local court. According to the results of the sessions, 383 candidates were recognized as complying with the requirements set by the Law of Ukraine "On the Judiciary and Status of Judges" for candidates for the position of judge, 5 candidates stopped participating in the selection process, 2 issues were postponed for consideration, while 1 was announced for a break.

On October 30, 2017, the High Qualifications Commission of Judges of Ukraine commenced a qualification assessment of 999 active judges.

As of May 14, 2018, 573 judges completed the qualification assessment procedure, namely: 518 judges will be recommended to the High Council of Justice for appointment to respective positions; 55 non-examining judges or interviewed will be recommended for release. In general, during the assessment process of 999 judges, 28 judges wrote an application for dismissal.

The High Qualifications Commission of Judges of Ukraine continues to conduct a qualification assessment of the Ukrainian judiciary. The assessment is conducted by 2969 judges in two groups from 999 and 1970 judges. As of June 7, 2018, the assessment of 868 judges for which an assessment has been made is completed. Of these, 709 judges have been found to be in a position to hold office and continue to hold judicial positions; other 159 judges are to be dismissed or already released, in particular: 68 judges are released on their own during the assessment procedure; 91 judges did not confirm compliance with the position held.

According to Article 160 of the Law of Ukraine "On the Judicial System and Status of Judges", maintenance of public order in court, the cessation of manifestations of disrespect for the court, as well as the premises of the court, bodies and institutions of the justice system, performance of functions related to the state provision of personal safety of judges and members of their families, employees court, ensuring security of participants in the trial is performed by the Judicial Protection Service.

Paragraph 46 of Section XII, "Final and Transitional Provisions" of the Law of Ukraine "On the Judicial System and Status of Judges", was entrusted to the State Judicial Administration of Ukraine to ensure the full implementation by the Judicial Protection Service of the powers provided for by this Law not later than January 1, 2018.

Paragraph 39 of Section XII "Final and Transitional Provisions" of the Law of Ukraine "On the Judiciary and Status of Judges" provides that for the period until the full implementation of the powers of the Judicial Protection Service, the maintenance of public order in court, termination of disrespect to the court, and as well as the protection of court premises, bodies and institutions of the justice system, the fulfillment of functions related to the state security of the personal safety of judges and their family members, court employees, and ensuring the safety of participants in the trial. It is headed by units of the National Police of Ukraine and the National Guard of Ukraine.

In addition, it should be noted that in accordance with paragraph 39, sub-clause 4 of clause 45 of section XII "Final and transitional provisions" of the Law of Ukraine "On the Judiciary and Status of Judges" on December 1, 2017, the Cabinet of Ministers of Ukraine adopted a decree No. 902 "On Approval of Listings of Courts, bodies and institutions of the justice system, which

are guarded by units of the National Police and the National Guard."

Also, regarding the proper functioning of the system of automated distribution of cases, we note that, in accordance with Article 151 of the Law of Ukraine "On the Judiciary and Status of Judges", the Unitary Judicial Information and Telecommunication System operates in courts.

The provisions of Article 155 of the Law of Ukraine "On the Judiciary and Status of Judges" stipulate that the organizational support of the work of the court shall be exercised by its staff, headed by the head of the apparatus.

The head of the court apparatus is personally responsible for the proper organizational support of the court, judges and the court process, as well as the functioning of the Single Judicial Information and Telecommunication System.

The Law of Ukraine "On Amendments to the Constitution of Ukraine (in relation to justice)" and the Law of Ukraine "On the Judiciary and Status of Judges" stipulate that a judge shall hold office indefinitely. The decision of the High Qualifications Commission of Judges of Ukraine dated 02.11.2016 № 141 / zp-16 approved the Regulations on holding a competition for the vacancy of a judge. The judge is appointed by the President of Ukraine on submission of the High Council of Justice, made on the basis of the results of consideration of the recommendation of the High Qualifications Commission of Judges of Ukraine. At the same time, the Head of State performs only a ceremonial role, since he does not have the authority to disagree with the submission of the High Council of Justice, in addition, for the publication of the relevant decree, a one-month period is set.

The High Council of Justice also makes a final decision to dismiss a judge from office.

Thus, the new legislation made it impossible for the political authorities to influence the formation of the judiciary.

The Laws of Ukraine "On the Judicial System and the Status of Judges" and "On the High Council of Justice" the High Council of Justice are authorized to conduct disciplinary proceedings against judges and to guarantee their independence. Today, only the Disciplinary chambers of the High Council of Justice carry out disciplinary proceedings against judges of all state courts. The norms of the new Law of Ukraine "On the Judiciary and Status of Judges" provide an expanded list of disciplinary sanctions and a specified list of disciplinary offenses.

The powers of the High Council of Justice also include measures to ensure the credibility of the judiciary and the independence of judges. The issue of taking preventive measures against a judge in the form of detention or arrest is considered by the court only after the High Council of Justice has given the consent.

The High Council of Justice maintains a Register of judges' reports on interference with the activities of a judge in the administration of justice, which is posted on the official website of the High Council of Justice and is in its current state of affairs.

The decision to transfer judges is another power of the High Council of Justice, which according to the transitional provisions of the Law of Ukraine "On Amendments to the Constitution of



Ukraine (on Justice)" will be implemented after 30.09.2018.

In addition, the High Council of Justice has been empowered to approve the draft law on the State Budget of Ukraine to submit proposals to the Cabinet of Ministers of Ukraine on the issues related to ensuring the functioning of the courts and the activities of judges, bodies and institutions of the justice system, the information about which inclusion is mandatory at the time of submission of the draft law to the parliament

According to the norms of the new procedural codes, set forth in the editions of the Law of Ukraine "On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine and other legislative acts", the issue of the refusal of a judge is decided by the court examining the case. However, if the court comes to the conclusion that the alleged withdrawal is unjustified, it decides on the suspension of the proceedings. In this case, the decision on the issue is taken by a judge who is not a member of the court hearing the case and is determined in accordance with the procedure established for the determination of a judge for consideration of a particular case.

The new law provides that the compliance of the position of a judge appointed to a post for a term of five years or elected by a judge indefinitely until the Law of Ukraine "On Amendments to the Constitution of Ukraine (on Justice)" is to be assessed in the manner prescribed by law. Detection based on the results of such an assessment of a judge's mismatch with a post on the basis of criteria of competence, professional ethics or integrity, or the refusal of a judge from such an assessment, is the reason for the dismissal of a judge from office. There are several judge assessment procedures that are generally formed according to the recommendations of the Consultative Council of European Judges (CCJE). In particular, regular and qualification assessment. Regular evaluation is carried out in formal (by teachers of the National School of Judges of Ukraine on the results of training for the maintenance of qualifications) and informal procedures (other judges of the relevant court or the judge themselves by filling in the self-assessment questionnaire). For qualification evaluation, only a formal procedure is foreseen. In addition, the law provides for the possibility for public associations to independently evaluate the work of a judge in court sessions. The corresponding evaluation is carried out by filling out a questionnaire containing information on the length of the case, the adherence of the judge to the rules of justice and the rights of participants in the process, the culture of communication, the level of impartiality of the judge, the level of satisfaction with the behaviour of the judge by the participants in the process, comments on the conduct of proceedings, other information. Such a questionnaire may be included in the judgement's brief

The decision of the High Qualifications Commission of Judges of Ukraine dated 03.11.2016 № 143 / 3п-16 approved the Regulations on the procedure and methodology of qualification assessment, indicators of compliance with the criteria of qualification assessment and the means of their establishment, agreed by the Council of Judges of Ukraine on 11.12.2015. 04/03/2017 the High Qualifications Commission of Judges of Ukraine announced the selection of candidates for the position of a judge of a local court, taking into account 600 predicted vacant positions of local court judges. The estimated term for selection of candidates for a job as a judge assistant is at least three years - quarter 4 2018.

It is also worth noting that the Committee on Legislative Support of Law Enforcement Activity is being processed by the Member of Parliament of Ukraine, Sobolev S.V. Draft Law on Amendments to Certain Legislative Acts of Ukraine on Optimizing the Criminal Liability of

Judges for the Annulment of a Knowingly Unfair Judgment (Reg. No. 6193 dated March 15, 2017), which proposes to amend Art. 375 of the Criminal Code of Ukraine concerning the commission of a judge (judges) to make a deliberately unjust judicial decision on mercenary motives, in other personal interests or interests of third persons or against a minor, incapacitated person, an elderly person or a group of persons under a prior conspiracy or combined with the conviction of an innocent in the commission of a serious or especially grave crime or in order to prevent the legitimate professional activities of a journalist, the realization of the right of citizens to peaceful gatherings.

In addition, to supplement the Criminal Code of Ukraine with a new article 375-1 "Judgment (judges) of the Constitutional Court of Ukraine by a deliberately unlawful judicial decision".

The Draft Law will be considered at a meeting of the Committee after obtaining a conclusion of the Main Scientific and Expert Department of the Apparatus of the Verkhovna Rada of Ukraine.

03/01/2018 the High Qualifications Commission of Judges of Ukraine adopted decision No. 707/0 / 15-18 "On appeal to subjects of legislative initiative with proposals for ensuring the independence of judges and the authority of justice", which was proposed at the legislative level to identify the initiator of prosecution of a judge, a special subject of introduction to the Uniform Register of Pre-trial Investigations of the information on the commission of crimes provided for in Article 375 of the Criminal Code of Ukraine, only the Prosecutor General (his deputy), for which to amend Article 214 of the Criminal Procedure Code of Ukraine. The said will provide an opportunity to restore the appropriate level of guarantees of immunity and independence of judges, reduce cases of unlawful pressure on a judge by entering in the said register of allegations of committing a crime envisaged by Article 375 of the Criminal Code of Ukraine, as well as ensuring a quick and effective investigation of criminal proceedings against judges.

The Decree of the Cabinet of Ministers of Ukraine dated January 1, 2017 No. 902 approved the List of courts, other bodies and institutions of the justice system, whose protection is carried out by the units of the National Police, a list of courts, other bodies and institutions of the justice system, guarded by the units of the National Guard, and a list of courts, others bodies and institutions of the system of justice, whose protection is carried out by means of technical means of protection of the police of the National Police. Decision of the High Qualifications Commission of Judges of Ukraine dated 21.12.2017

No. 4237/0 / 15-17 in accordance with the requirements of Article 160 of the Law of Ukraine "On the Judiciary and Status of Judges" and paragraph 13 of the first part of Article 3 of the Law of Ukraine "On the High Council of Justice", the Regulations on the Judicial Protection Service were approved.

### ***Assessment of progress***

Competition for 600 positions of judges and assessment of 2969 sitting judges for has started: 383 new judges were selected, and 709 out of 999 sitting judges were confirmed; more than 70 judges resigned or withdrew from completion during this process. No analysis was provided of the deficiencies that were identified in this process, or reasons for resignations. At the same time, NGOs were highly critical of this process.<sup>21</sup> According to NGOs, among judges who were green-

<sup>21</sup> <https://grd.gov.ua/news/150/zaiava-pro-prypynennia-uchasti-hromadskoi-rady-dobrochesnosti-u-protsesi-kvalifi>



lighted in the first wave of qualifications are those whose decisions were overruled by the European Court of Human Rights, who cannot explain origins of their assets and those who persecuted Maidan activists. As a result one NGO resigned from the Public Board of Integrity, civil society called for more transparency and objectivity, as well as higher standards for the assessment. Progress update quotes the legal provisions regarding protection of judges, which is entrusted to special units of National Police and National Guards, but does not provide any information on actual protection measures that were provided, or any assessment if these measures are sufficient. At the same time, there are media reports on the continuous problems with the protection of judges.<sup>22</sup>

In the same way, the progress update notes that the head of the court secretariat is personally responsible for the proper organizational support of the court, including the functioning of the Single Judicial Information and Telecommunication System. But it does not provide any data on the actual implementation of this provision or analysis of any difficulties or manipulations of the system.

Regarding the independence of judges from undue pressure, the progress update provides reference to various legal provisions, but does not provide analysis of their implementation. E.g. It mentions that the High Council of Justice maintains a Register of judges' reports on interference with the activities of a judge in the administration of justice, which is posted on the official website of the High Council of Justice, but does not provide further information on the data received in the Register or its analysis. The progress update also refers to the Draft Law on Amendments to Certain Legislative Acts of Ukraine on Optimizing the Criminal Liability of Judges for the Annulment of a Knowingly Unfair Judgment and other initiatives to further strengthen the independence of judges.

In a sum, measures have been taken to improve the integrity and independence of judges, but no analysis of progress has been carried out as suggested by this recommendation, and no suggestions were proposed to address the difficulties in the implementation of the reforms.

*No progress*

## **Recommendation 16: Integrity of prosecutors**

- 1. Ensure implementation of the reform and continue with the view to address the remaining deficiencies to bring them fully in line with European standards. In particular:**
  - a. review the procedures for the appointment and dismissal of the PG in order to make this process more insulated from undue political influence and more oriented towards objective criteria on the merits of the candidate;**
  - b. reform further the system of prosecutorial self-governance, including the statutory composition of the QDC, and ensure that the self-governance bodies function independently and proactively, represent the interests of all of the prosecutors, and do so in the opinion of these prosecutors and the public;**
  - c. improve disciplining proceedings by (i) clearly defining grounds for disciplinary liability, (ii) extending the statute of limitation, and (iii) ensuring robust enforcement with**

<sup>22</sup> <http://rsu.gov.ua/ua/news/golova-radi-suddiv-ukraini-zvernuvsa-z-vidkritim-listom-do-kerivnikiv-organiz-suddivskogo-vraduvanna-3>

**complaints diligently investigated and the violators held responsible. Consider whether the right to legal representation is allowed at some stages in selected cases. Relatedly, conduct a review of the operation of the general inspector office to determine if it is properly addressing the most serious allegations of prosecutorial misconduct and/or is making appropriate referrals to the NABU and other appropriate bodies;**

**d. regulate in more detail career advancement, including by (i) establishing uniform and transparent procedures, and (ii) introducing regular performance evaluations.**

**2. Ensure sufficient and transparent funding of the prosecution service and remuneration of prosecutors that is commensurate to their role and reduces corruption risks.**

**3. Further strengthen procedural independence of the prosecutors. In particular, introduce random allocation of cases to individual prosecutors based on strict and objective criteria with safeguards against possible manipulations.**

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##### ***Government report***

a. It is a Regulation on the procedure of the Prosecutor's Qualifications and Disciplinary Commission (PQDC), under which the procedure for dismissal of the Prosecutor General of the administrative office or termination of authority to administrative position (p. p. 140-145) according to the amendments to the Law of Ukraine " On the Prosecutor's Office ", according to which the grounds for dismissal and termination of powers of the Prosecutor General (Article 42).

26/01/2018 established a joint working group with the assistance of international experts (EUAM and Council of Europe) for production of system changes to the laws of Ukraine to ensure the independence of prosecutors, including the improvement of the procedure for appointing the Prosecutor General.

b. The effective functioning of the prosecutor's self-government bodies and the PQDC has been ensured.

The Regulation of the Prosecutor's Council of Ukraine and Ukrainian conference of prosecutors that determine the order of the activities of prosecutorial authorities were approved.

The decision of the Prosecutor's Council of Ukraine dated December 12, 2017 No. 53 approved the Rules of Procedure of the Prosecutor's Council of Ukraine. To properly represent the interests of all prosecutors, considering the opinion of prosecutors and public prosecutors the site of Prosecutor's Council of Ukraine, a page in the social network and forum for the participation of each prosecutor in matters of prosecutorial authorities created.

The Regulations on the procedure of the PQDC have been adopted.

During worktime of the PQDC to the disciplinary charges were brought against 130 prosecutors, of which 60 imposed a penalty in the form of reprimands, 40 - in the form of a ban for up to one year to transfer to the prosecution of higher level or appointment to the highest office in the

prosecution, in which prosecutor holds office, and 30 - in the form of dismissal from office in the prosecutor's office.

c. The list of grounds for the disciplinary liability of prosecutors is exhaustively defined in the first part of Article 43 of the Law of Ukraine "On Prosecutor's Office". These include:

- 1) failure to perform or improper performance of official duties;
- 2) unreasonable delay with consideration of the appeal;
- 3) disclosure of a secret protected by law, which became known to the prosecutor during the exercise of his authority;
- 4) violation of the procedure for submission of a declaration of property, incomes, expenses and financial obligations, established by law;
- 5) committing actions that denigrate the title of the prosecutor and may cause doubts in his objectivity, impartiality and independence, in the integrity and integrity of the prosecutor's office;
- 6) systematic (two or more times during one year) or one-time gross violation of the rules of the prosecutor's ethics;
- 7) violation of the rules of internal service regulations;
- 8) interference or any other influence of the prosecutor in cases or order not stipulated by law, in the official activities of another prosecutor, officers, officials or judges, including by public expressions of their decisions, actions or inactivity, in the absence thereof signs of an administrative or criminal offense;
- 9) a public statement, which is a violation of the presumption of innocence.

Part 4 of Article 48 of the Law of Ukraine "On Prosecutor's Office" provides that the decision to impose disciplinary punishment on a prosecutor or the decision on the impossibility of further staying a person as a prosecutor may be taken not later than one year from the day of committing the offense without regard to the time of temporary incapacity or stay of the prosecutor on vacation.

The procedure for implementing the disciplinary procedure is established by the Law of Ukraine "On the Prosecutor's Office" and the Regulations on the Procedure of the Work of the PQDC adopted on April 27, 2017 by the All-Ukrainian Conference of Prosecutors in pursuance of clause 5 of part two of article 67 and part three of article 73 of the said Law.

Thus, Articles 44-50 of the Law of Ukraine "On Prosecutor's Office" specify the body that conducts disciplinary proceedings (the Commission), the procedure for processing and reviewing a disciplinary complaint, the powers of the members of the Commission during the inspection of a complaint, the rights of the prosecutor in respect of which a disciplinary complaint has been received, and consideration of the Commission's opinion on the presence or absence of a

disciplinary offense by the prosecutor, the appeal of a decision made on the basis of a disciplinary offense.

In particular, the General Inspectorate, on the basis of the results of the honesty checks, filed disciplinary complaints against 131 employees of the prosecutor's offices, of which, from 30.08.2017 to 11.06.2018, 66 cases were considered, and the PQDC adopted a decision to bring to 29 employees the disciplinary liability.

As to cases of representation in disciplinary proceedings, part five and six of Article 47 of the Law of Ukraine "On Prosecutor's Office" provide for the possibility of participation of a prosecutor's representative in disciplinary proceedings and determine his rights, in particular, to give explanations or refuse to provide them, raise questions to the participants of the proceedings, to object, to file a petition.

In addition, paragraph 36, 38 of Section III of the Regulations on the procedure of the PQDC provides for the possibility of participating in disciplinary proceedings of representatives of the person whose disciplinary complaint is open to disciplinary proceedings.

As a whole, the General Inspectorate of the General Prosecutor's Office of Ukraine, since its inception in 2017, were investigating 235 criminal proceedings, of which 30 were sent to NABU

d. In accordance with Article 38 of the Law of Ukraine "On Prosecutor's Office", the prosecutor may be transferred, with his consent, to another prosecutor's office, including a higher level, for a vacant or temporarily vacant post. The transfer to a higher-level prosecutor's office is carried out according to the results of the competition, the procedure of which is determined by the Commission. The competition should include an assessment of the professional level, experience, moral and business qualities of the prosecutor and verification of his readiness to exercise authority in another prosecutor's office, including a higher level.

The condition of the participation of the prosecutor in the competition is the filing of his application for transfer, as well as the availability of the relevant length of service as a prosecutor, provided for by the second and third paragraphs of Article 27 of the Law of Ukraine "On Prosecutor's Office". The relevant competition is held by the PQDC.

In pursuance of the requirements of Article 38 of the said Law, the PQDC approved the Procedure for conducting a competition for the vacancy or temporary vacancy of the prosecutor in order of transfer to a higher level prosecutor's office.

In order to improve the procedure for conducting the competition, the decision of the Commission dated March 27, 2018 No. 34pp-18 amended the Procedure for conducting a competition for the vacancy or temporary vacancy of the prosecutor in order of transfer to a higher-level prosecutor's office.

In particular, the amendments abolished the possibility for candidates to use the results of previous tests, including competitions, to local prosecutors, as the level of complexity of test tasks for a prosecutor who plans to take a post at the higher prosecutor's office (Regional Prosecutor's Office or the Prosecutor General's Office of Ukraine) must be different, than for

posts of prosecutors at local prosecutor's offices.

Also, Decision No. 36 of October 31, 2017 approved the "Criteria for assessing prosecutors in solving the issues of recommending appointment to a vacant administrative position" and "Criteria for solving by the Council of Prosecutors of Ukraine the issues of making a recommendation to dismiss prosecutors from administrative positions on the basis of paragraph 3. 1 item 41 of the Law of Ukraine "On Prosecutor's Office".

In addition, on March 5, 2018, the Prosecutor General's Office of Ukraine created a working group with the participation of experts from the EUAM and Council of Europe, representatives of the National Academy of Public Prosecutor of Ukraine and the Ministry of Justice of Ukraine, public organizations, which ensures the development of criteria for assessing the efficiency of the prosecutor.

16.2) The procedure for remuneration of prosecutors is determined by the Law of Ukraine "On Prosecutor's Office".

At the same time, the Law of Ukraine dated December 28, 2014 "On Amendments to the Budget Code of Ukraine on the Reform of the Intergovernmental Fiscal Relations" established that the norms and provisions of Article 81 of the Law of Ukraine "On Prosecutor's Office" shall be applied in the order and in the amounts established by the Cabinet of Ministers of Ukraine on the basis of available financial resources of state and local budgets and budgets of funds of compulsory state social insurance.

To date, there is a tendency for non-compliance of the statutory and real wages of prosecutors.

The size of the wage, which is set by the Government's decision, is much lower than the statutory regulations.

The Prosecutor General's Office of Ukraine repeatedly sent letters to the President of Ukraine and the Prime Minister of Ukraine on compliance with the requirements of Article 81 of the Law of Ukraine "On Prosecutor's Office" regarding the remuneration of prosecutors and, accordingly, to regulate the issue of raising the level of wages of prosecutors in a manner determined by law.

On the initiative of the Prosecutor's Council of Ukraine, on June 7, 2018, from the authorized representative (50 people's deputies), the Constitutional Court of Ukraine sent a constitutional petition for the recognition of the provisions of paragraph 26 of the Final and Transitional Provisions of the Budget Code of Ukraine, which did not comply with the accrual, which does not comply with the Constitution of Ukraine. wage prosecutors in accordance with the Law of Ukraine "On Prosecutor's Office".

16.3) The issue of the introduction of random distribution of cases is included in the anti-corruption program of the department. The General Prosecutor's Office of Ukraine and the regional prosecutor's offices analysed the possibility of introducing a system of random distribution of cases between prosecutors. Discussions are currently under way on the results of this study, the preliminary findings of which include the need for amendments to the Ukrainian legislation and the allocation of significant financial resources for the introduction of such a system

### *Assessment of progress*

The process for dismissal of the Prosecutor General does not appear to have been changed, although a working group was set up to prepare a proposal.

The PGO appears to have commenced a process to address some significant issues within the PGO's self-governance which could tackle important corruption risks. First, the PGO worked with EU and EUAM representatives to create a roadmap of specific areas to address. The PGO then established internal working groups to analyze and make recommendations or implement specific recommendations. While the process is still ongoing, there has been some progress: new regulations of the Prosecutor's Council, conference of prosecutors and procedure of the PQDC were adopted, including providing for more access to information about its activities for prosecutors.

The government represented that the disciplinary commission has brought disciplinary charges against 130 prosecutors, including 60 reprimands, 40 freezes of promotion, and 30 dismissals. Besides, the General Inspectorate, on the basis of the results of the honesty checks, filed disciplinary complaints against 131 employees of the prosecutor's offices, of which 66 cases were considered, and the PQDC brought 29 employees the disciplinary liability. As a whole, the General Inspectorate, since its inception in 2017, investigated 235 criminal proceedings, of which 30 were sent to NABU. Importantly, the government also represents that all of the cases pending with the General Inspectorate have been reviewed and, after transfers of certain cases to the NABU, it is clear now that the only cases pending before the General Inspectorate are cases which are within their jurisdiction under the applicable law.

The government also represents that a law has now been proposed to extend the period within which disciplinary actions can be brought against prosecutors to two years to take into account the degree of difficulty of identifying these matters and to ensure greater accountability. Currently Part 4 of Article 48 of the Law of Ukraine "On Prosecutor's Office" provides that the decision to impose disciplinary punishment on a prosecutor or the decision on the impossibility of further staying a person as a prosecutor may be taken not later than one year from the day of committing the offense without regard to the time of temporary incapacity or stay of the prosecutor on vacation. Regarding the criteria for appointment and promotion of prosecutors to address the prior recommendations, the government represents that regulations have been adopted which establish the criteria, though the monitors have not had an opportunity to evaluate these changes.

Regarding criteria for the assessment of prosecutors' performance, the government represents that on March 5, 2018, the Prosecutor General's Office created a working group to develop criteria for assessing the efficiency of the prosecutor. The government represents that are currently three pilot programs ongoing in prosecutors' offices in Kharkiv, Odessa and Lviv testing the implementation of proposed evaluation criteria. Relatedly, the issue of the introduction of random distribution of cases was analysed, the results of this analysis suggest that that this measure will require a legislative amendment and significant financial resources. There is a clear recognition that assignments must be weighted to consider the degree of difficulty and complexity of the matters. The program includes a revised assignment system within the SAPO.

Regarding remuneration, the level of the pay established by the Government is much lower than the statutory regulations. The Prosecutor General's Office repeatedly sent letters to the President and

the Prime Minister of regarding this issue. On June 7, 2018, on the initiative of the Prosecutor's Council of Ukraine, on June 7, 2018, from the authorized representative (50 people's deputies), the Constitutional Court of Ukraine sent a constitutional petition for the recognition of the provisions of paragraph 26 of the Final and Transitional Provisions of the Budget Code of Ukraine, which did not comply with the accrual and does not comply with the Constitution of Ukraine.

Overall, the measures taken so far to improve integrity and independence of prosecutors demonstrate more progress than in prior years, but the details of some recently completed reforms have not yet been studied and many of the reform efforts are still underway. The monitors reiterate that the disciplinary commission cannot be relied on to resolve all the fundamental issues that must be addressed on a higher systemic level in light of the major corruption risks within this institution.

*Progress*

**Recommendation 17: Transparency of public administration**

1. **Develop and adopt Code of Administrative Procedures without delay, based on best international practice.**
2. **Take further steps in ensuring transparency and discretion in public administration, for example, by encouraging participation of the public and implementing screening of legislation also in the course of drafting legislation in the parliament.**
3. **Step up efforts to improve transparency and discretion in risk areas, including tax and customs, and other sectors.**
4. **Set up or designate an independent authority to supervise enforcement of the access to public information regulations by receiving appeals, conducting administrative investigations and issuing binding decisions, monitoring the enforcement and collecting relevant statistics and reports. Provide such authority with necessary powers and resources for effective functioning.**
5. **Reach compliance with the EITI Standards and cover in the EITI reports all material oil, gas and mining industries. Adopt legislation on transparency of extractive industries.**
6. **Implement the law on openness of public funds, including provisions on on-line access to information on Treasury transactions.**
7. **Ensure in practice unhindered public access to urban planning documentation.**
8. **Adopt the law on publication of information in machine-readable open formats (open data) and ensure publication in such format of information of public interest (in particular, on public procurement, budgetary expenditures, asset declarations of public officials, state company register, normative legal acts).**

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*Government report*

The Ministry of Justice continues its work on improving the provisions of the draft law on the administrative procedure, taking into account the proposals and comments of the members of the working group, and prepares for holding the regular meeting of the mentioned working group.



As an instrument of transparency in public administration, the System of Electronic Interaction of the Executive Bodies is introduced to automate the processes of creating, sending, transmitting, receiving, processing, using, storing, destroying electronic documents and copies of paper documents electronically using electronic digital signature which does not contain information with restricted access, and control over the execution of acts, protocol decisions of the Cabinet of Ministers of Ukraine and other documents .

By the Resolution of the Cabinet of Ministers of Ukraine dated November 8, 2017, No. 797-p "On Approval of the Concept for the Development of Electronic Democracy in Ukraine and Action Plan for its Implementation". In particular, the implementation of the Concept will enable increasing the level of participation, initiative and involvement of citizens, civil society institutions, economic entities at the national, regional and local levels in the process of making managerial decisions, increasing the transparency of process of making managerial decisions, as well as accountability of democratic institutions.

In order to ensure a systematic approach to the implementation of projects and tasks of digital development and implementation of state policy in the field of informatisation, e-governance, e-democracy, information society development and digital development, in particular the introduction of the principle of digital by default, the draft Resolution "Some issues of digital development" was drafted. It provides for the introduction of obligatory digital expertise of draft legal acts of public bodies and local self-government bodies.

The Law of Ukraine "On the openness of the use of public funds" was adopted. This Law defines the conditions and procedure for ensuring access to information on the use of public funds by managers and recipients of state and local budgets, state and municipal property enterprises, and compulsory state social insurance funds.

Resolution of the Cabinet of Ministers of Ukraine dated October 21, 2015 No. 835 "On Approval of the Provisions of Data to be Disclosed in the Form of Open Data", in particular, approved a list of data sets to be made public by the Treasury in the form of open data. Data sets to be made public in the form of open data are located on the Unified State Public Data Portal (DATA.GOV.UA).

Resolution of the Cabinet of Ministers of Ukraine dated October 21, 2015 No. 835 "On Approval of the Provision of Data to be Disclosed in the Form of Open Data". The provision defines the requirements for the format and structure of the data sets to be made public in the form of open data, the frequency of updates, and the procedure for their disclosure, as well as the list of such data sets.

### ***Assessment of progress***

The Law on Administrative Procedures is not finalised or adopted. Recommendation regarding the establishment of the body responsible for access to information has not been implemented. No information was provided about access to information about urban planning.

The adoption of the Resolution of the Cabinet of Ministers "On Approval of the Concept for the Development of Electronic Democracy in Ukraine and Action Plan for its Implementation" and development of the draft Resolution "Some issues of digital development" are positive developments, and may enable greater transparency of public administration and public participation in screening of draft legislation, but they are not implemented yet. However, so far



no significant progress has been achieved in public consultations or public participation in the screening of laws. NGOs suggest that NACP could play a more proactive role in this area.

Adoption of the law "On the openness of the use of public funds" in 2015 was a positive step in the past, and the recommendation called upon Ukraine to implement this law; however no information was provided to this effect.

In March 2018, the law on Transparency of Extractive Industries was adopted in the first reading, it provides for implementation of the IETI standards.

There is also some positive steps regarding taxation and customs, e.g. electronic register for VAT reimbursement, but also some backsliding, e.g. in January the Cabinet of Ministers abolished several laws that provided for the reform of the State Fiscal Services.

***Progress***

**Recommendation 18: Access to information and open data**

- 1. Carry out awareness raising and training of relevant public servants on access to public information laws and their application in practice.**
- 2. Gradually increase the datasets and diversify areas on the open data portal.**

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***Government report***

As at 21.06.2018, 3,147 information managers who published 43,882 sets of open data were registered at the Unified State Public Data Portal. A new version of the Unified State Web-portal of open data data.gov.ua is being introduced, the purpose of which is:

- provision convenient navigation and search across the portal content information for working with open data for both administrators and users.
- ensuring timely placement by the authorities of the information to be made public, as well as any other data that corresponds to the definition of public information in the form of open data;
- introduction of analytical modules on work with open data taking into account international experience;
- provision for all users of a single information space of common standards for the placement of information materials;
- providing efficient bilateral communication and feedback channels;

***Assessment of progress***

There is significant progress regarding open data and active provision of public information.

Adoption of the Resolution of the Cabinet of Ministers "On Approval of the Provisions of Data to be Disclosed in the Form of Open Data" is a positive development. According to the NGOs, in 2017 the Government amended its regulation regarding proactive disclosure of data and disclosed about 300 data sets on public procurement, budget, asset declarations, company register, normative acts, etc. However not all data sets are fully disclosed, e.g. register on beneficiary ownership is public, but not in open data format. According to the Global Open Data Index, Ukraine went from 54 to 31 rank between 2015 and 2017. However, the Government did not report about the new resolution that extended the list of datasets that are published in open data.

*Significant progress*

### **Recommendation 19: Public procurement**

- 1. Continue reforming the public procurement system, based on regular assessments of the application of the new Law on Public Procurement, in particular with a view to maximise the coverage of the Public Procurement Law and to minimise the application of non-competitive procedures.**
- 2. Ensure that state owned enterprises (SOEs) use competitive and transparent procurement rules as required by law.**
- 3. Extend electronic procurement systems to cover all public procurement at all levels and stages.**
- 4. Provide sufficient resources to properly implement procurement legislation by procuring entities, including adequate training for members of tender evaluation committees.**
- 5. Ensure that internal anti-corruption programmes are effectively introduced within entities that conduct public procurement processes.**
- 6. Ensure that the debarment system is fully operational, in particular that legal entities or their officials who have been held liable for corruption offences or bid rigging are barred from participation in public procurement.**
- 7. Arrange regular training for private sector participants and procuring entities on integrity in public procurement at central and local level. Provide training for law enforcement and state controlled organisations on public procurement procedures and prevention of corruption.**

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##### *Government report*

19.1) The scope of the Law of Ukraine "On Public Procurement" extends to all procurement procedures, except as provided for in part three and four of the Article. 2 of the Law. At the same time, the law provides the possibility of applying an uncompetitive procedure as an exception, as indicated in Art. 35 of the Law.

In order to improve certain provisions of the law on public procurement, in particular regarding the legislative regulation of procurement procedures, the cost of which is less than the cost

specified in Article 2 of the Law, as well as the continuation of the reform of the public procurement sector, the President of Ukraine submitted to the Verkhovna Rada of Ukraine as an urgent Draft Law of Ukraine "On Amendments to the Law of Ukraine" On Public Procurement "and some other legislative acts" (Reg. No. 8265 dated April 13, 2018).

19.2) Competitive and transparent rules for the procurement of goods and services established by the Law are provided by state enterprises. Throughout the entire period, the ProZorro system showed good results: 31.29 thousand purchasers spent 1.65 million purchases with a total budget of UAH 905.52 billion and saved UAH 44.93 billion from the amount of the budget (according to monitoring results through the module analytics bi.prozorro.org.)

19.3) The electronic procurement system displays information on all stages of the procurement process, starting with the annual procurement plan and ending with the report on the implementation of the procurement contract.

The Ministry of Economic Development and Trade, in conjunction with the State Treasury Service, is working to integrate the electronic procurement system and the "Treasury" system in order to display information on the payment of procurement contracts in the electronic procurement system.

19.4) The Ministry of Economic Development and Trade created a special Information Resource of the Authorized Body in the field of Public Procurement (<http://bit.ly/2v3DluH>). The work of the resource is aimed at disseminating information on the application of the law on public procurement, as well as the effective implementation of the state procurement policy by the Authorized Agency in the framework of reforming and electronizing public procurement.

At <http://infobox.prozorro.org>, a special resource has been created that publishes methodological materials, explanatory articles, online self-training courses, a library of exemplary specifications and a forum for discussing public procurement issues among customers, participants, representatives of the state Enterprise "Prozorro and the Ministry of Economic Development and Trade.

The Ministry of Economic Development and Trade has developed 2 free online courses designed for customer specialists, business representatives and the public.

With the participation of the Ministry together with the Kyiv School of Economics (KSE), the curriculum "Professionalization Program in Public Procurement" was created, which combines modern international approaches to the organization of the procurement process, KSE teaching standards and the current requirements in Ukraine regarding the training of purchasers. In addition, the Ministry on the basis of KSE developed and created an in-depth program "Training for Trainers for Public Procurement".

Cooperation has been established between the Ministry of Economic Development and Trade with 14 higher educational institutions to introduce the training of specialists in public procurement management through the introduction of curricula and modules (compulsory or selective) for the preparation of bachelors and masters.

19.5) According to Article 62 of the Law of Ukraine "On Corruption Prevention", legal entities

that are participants in procurement procedures, the expected value of which equals or exceeds UAH 20 million, must be obliged to approve the anti-corruption program.

At the same time, in accordance with Article 17 of the Law, the customer is obliged to take a decision to refuse the participant in participation in the procurement procedure and to reject his bid, including, in case if the legal entity that is a party does not have an anti-corruption program or an anti-corruption commissioner programs, if the cost of purchasing goods (goods), services (services) or works is equal to or exceeds UAH 20 million.

19.6) According to Article 17 of the Law, the customer is obliged to make a decision to refuse a bidder to participate in the procurement procedure and to reject his bid if he has undisputed evidence that a tenderer offers, gives or agrees to give directly or indirectly to any official to the person of the customer, other public body, remuneration in any form (job offer, valuable thing, service, etc.) in order to influence the decision on determining the winner of the procedure for the purchase or use by the customer of a certain the procurement procedure, as well as if the information about the legal entity that is a participant is entered into the Uniform State Register of persons who committed corruption or corruption-related offenses, as well as if the official (official) of the participant authorized by the party to represent his interests under time of the procurement procedure, the individual who is a participant has been brought in accordance with the law to account for the commission in the field of procurement of corruption offense.

Also, in accordance with Article 17 of the Law, the customer is obliged to make a decision to refuse a participant in participation in the procurement procedure and to reject his bid in case if during the last three years the entity (participant) has been held liable for the violation provided for in clause 4 part two of Article 6, paragraph 1 of Article 50 of the Law of Ukraine "On the Protection of Economic Competition", in the form of committing anticompetitive concerted actions (conspiracies) concerning the distortion of the results of auctions (tenders);

19.7) The State Enterprise "PROZORRO", with the support of the Ministry of Economic Development and Trade, regularly conducts trainings for customers and businesses aimed at raising awareness of procurement rules. The Ministry hosted field training seminars for NACP and National Police staff on the detection of violations of public procurement legislation, including the prevention and detection of corruption.

### ***Assessment of progress***

Operation of ProZorro system is the main achievement in the area of public procurement.

The use of this system has expanded, however no legal provisions were made to maximise the coverage of the Public Procurement Law and to minimise the application of non-competitive procedures allowed as exceptions. The President has submitted amendments to the Law on Public Procurement in April 2018 in order to establish simplified procurement procedures to improve procurement under the threshold. However, the draft was not adopted yet.

While SOEs, and other companies who want to take part in the public procurement, are now required to introduce anti-corruption programmes following the model developed by NACP, the quality of these programmes is poor, as assessed in the recently adopted OECD/ACN report on integrity of SOEs in Ukraine. Separate chapter of the monitoring report that will be discussed in July 2018 will address this issue. While all SOEs that are subject to the Law on Public Procurement

are obliged to use competitive and transparent procurement rules, no information was provided on the extent to which SOEs use competitive and transparent procurement rules in practice. According to the NGOs, different categories of SOEs have to follow different procurement procedures, according to the law.

MEDT took measures to provide training related to ProZorro and to the public procurement in general. Its cooperation with universities is a good example for other bodies responsible for anti-corruption education.

While the debarment system is formally established, no information was provided about the results of its operation. According to NGOs this system does not function well due to narrow focus and various loopholes. Besides, one MP had proposed a draft law that will allow companies investigated – but not yet convicted – for collusion to continue their participation in the bidding process.

The Law on Monitoring of Public Procurement adopted in November 2017 gives the State Audit Service the right to monitor procurement procedures.

It is worth noting that ProZorro itself is a SOE, and it would be important to ensure proper anti-corruption rules in this organisation as well, an authorized anti-corruption person should play an important role in this area.

### *Progress*

## **Recommendation 20: Business integrity**

- 1. Ensure further implementation of the following provisions from the 2014 Anti-Corruption Strategy on the prevention of corruption in the private sector:**
  - a. Simplification of business regulations and promoting free market competition;**
  - b. Debarment of companies involved in corruption offences from the use of public resource such as public procurement, state loans, subsidies, and tax benefits;**
  - c. Establishing obligations for external and internal auditors to report corruption offenses;**
  - d. Raising awareness of companies about the law on liability of legal entities for corruption offences and enforcing this law in practice;**
  - e. Consider introducing regulations for lobbying, in particular clear regulations for business participation in the development and adoption of laws and regulatory acts.**
- 2. Develop business integrity section of the new National Anticorruption Strategy on the basis of a risk analysis and in consultation with companies and business associations, ensure active participation of business in the monitoring of the Strategy.**
- 3. Promote integrity of state owned enterprises through their systemic reform and by introducing effective compliance or anti-corruption programmes, increasing their transparency and disclosure.**
- 4. Strengthen the Business Ombudsman Council by creating a legal basis for this institution in the law and by providing it with necessary powers for effective work.**
- 5. Support the Ukrainian Network of Integrity and Compliance.**

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### *Government report*

National report on the implementation of the principles of anticorruption policy is a system document in which the materials of the ministries and departments, law enforcement and anti-corruption bodies should be used and the concrete results of the activity of the specially authorized persons in the field of prevention corruption are presented, the results of anticorruption examination of the normative legal acts and draft legal acts, results of the information implementation by the state authorities of measures to prevent corruption, including in the framework of international cooperation, and provided for deployment An analysis of the corruption situation.

In this context, we note that the Committee, at its meeting on May 16, 2018 (Protocol No. 119), considered the draft Law of Ukraine "On Anticorruption Strategy for 2018-2020" (Reg. No. 8324) submitted by the Cabinet of Ministers of Ukraine.

According to the accompanying documents, the draft law prepared in order to determine a set of measures aimed at reducing the level of corruption in Ukraine and further promote anti-corruption initiatives in the state, and so on.

After considering at its meeting, the Committee decided that the draft Law of Ukraine Law of Ukraine "On Anti-Corruption Strategy for 2018 - 2020 years" complies with anti-corruption legislation and recommended Verkhovna Rada of Ukraine on the consideration of the draft law back to the subject of legislative initiative for refinement.

The main scientific and expert management of the Verkhovna Rada of Ukraine in its opinion of 11 May 2018 under number 16 / 3-306 / 8324 (99392) notes that does not support the bill in the first reading.

Consider introducing rules for lobbying, including explicit provisions for the participation of business representatives in the development and adoption of relevant laws and regulations.

Please be informed that before the Verkhovna Rada of Ukraine were bills aimed legally regulate these issues: "On lobbyism" (Reg. № 5144) and "On Lobbying" (Reg. № 5144-1).

Committee in accordance with Article 55 of the Law of Ukraine "On prevention of corruption," Article 93 of the Law of Ukraine "On the Verkhovna Rada of Ukraine" and the results of the implementation of anti-corruption expertise of draft legal acts adopted decisions on their compliance with anti-corruption legislation.

At the same time, on October 3, 2017, the said bills were withdrawn by people's deputies of Ukraine, the subjects of the right of legislative initiative.

To date, the Verkhovna Rada of Ukraine registered a draft Law of Ukraine "On Public Advocacy" (Reg. No. 5661 dated January 19, 2017, introduced by People's Deputies of Ukraine Chumak O.V., Gerashchenko A.Y. and others), which regulates the procedure for the

implementation of activities related to providing public support for the adoption, modification or abolition of laws, other normative legal acts, the formation of their projects, bodies of state power of Ukraine, local self-government bodies of Ukraine, other subjects of power of Ukraine, and deputies of all levels.

Resolution of the Verkhovna Rada of Ukraine dated March 20, 2018

No. 2351-VIII the said bill is included in the agenda of the eighth session of the Verkhovna Rada of Ukraine of the eighth convocation.

In 2017, the National Agency, together with UNDP experts in Ukraine has developed Methodological recommendations for the preparation and implementation of anti-corruption programs of legal entities (taking into account the comments and suggestions of the American Chamber of Commerce in Ukraine, as well as the issues raised by legal entities in the preparation of anti-corruption programs).

The indicated Guidelines are approved by the decision of the National Agency of September 22, 2017, No. 734. Their purpose is to provide practical advice on persons based on the Law and the Model Anti-Corruption Program of a legal entity to persons responsible for the implementation of anti-corruption programs, which bear the responsibilities for the development and control of effective implementation of such programs.

These Guidelines also include the best practices and examples developed by leading international organizations in recent years in this area.

On October 9, 2017, the All-Ukrainian Network of Integrity and Compliance (UNIC) officially began its work in Ukraine with 42 Ukrainian and international companies.

The same day, an Executive Committee was elected at the General Meeting of UNIC participants. Since then, the Committee has held five meetings and achieved the following results: appointed Chief of the Network Secretariat, approved the composition of the UNIC Integrity Committee, approved all necessary constituent documents (Membership Contribution Policy, Integrity Policy Use Policy, Network Ethical Standards for Participants, Certification Procedure and the selection of independent experts), to ensure the activities of UNIC approved the Network's Action Plan, approved the Criteria and terms of the Network's partnership to formalize cooperation with like-minded people, approved the assignment for expert groups and experts involved.

On May 30, 2018, the First Annual Meeting of the Members of the All-Ukrainian Integrity and Compliance Network took place. At the specified event, the general meeting approved a new version of the Memorandum of Partnership and Ethical Standards of the Network, as well as the Annual Activity Report and the annual budget of the Network for 2018 and 2019.

### ***Assessment of progress***

Ukraine is implementing a variety of measures to simplify business regulations; as a result Ukraine went up 4 positions in the Doing Business survey but has reached only the 76<sup>th</sup> place. More importantly, promoting free market competition and freeing up economy from the tight control by oligarchs remains probably the main challenge for Ukraine on the way to liberal and democratic



society. According to the World Bank, crony capitalism in Ukraine continues to be strong.

The enforcement of corporate liability for corruption is still very weak, and does not provide sufficient incentives for companies to comply. Poor functioning of the procurement debarment system is another factor.

The progress update by the government does not provide any information about measures taken to introduce debarment of companies involved in corruption offences from the use of public resource such as public procurement, state loans, subsidies, and tax benefits; establishing obligations for external and internal auditors to report corruption offenses; or raising awareness of companies about the law on liability of legal entities for corruption offences and enforcing this law in practice.

The update informs about the efforts to introduce regulations for lobbying, however they did not lead to any achievements.

The report of the NACP assessing the implementation of the previous anti-corruption strategy provides a very narrow understanding of this state body about the role that state can play in promoting compliance by companies. The expert team is not aware if the new Anticorruption Strategy provides any such measures. However, according to the NGOs who have studied this document, it does not focus on business integrity.

It is positive that the NACP developed model compliance programme for state owned enterprises. It also reported that a number of SOEs have introduced such programmes. Separate chapter on SOEs will examine the effectiveness of these programmes; however the preliminary assessment suggests that they are highly formalistic. Besides, according to the NGOs, the new Law on Privatisation provides for important improvements of governance and transparency rules in the preparation for privatisation that may be used in relation to several important SOEs such as CentreEnerg, Odessa Port Plan and DPZKU. However, according to the NGOs, obligation of SOE board members to submit e-declarations prevented some high quality individuals to work on these boards, which is a concern.

The NACP did not provide any information about its efforts to strengthen the Business Ombudsman Council by creating a legal basis for this institution. The Law was adopted in 2016 in first reading, but stalled since. This body provides an effective protection to the private sector companies which face corruption and other problems from the side of the government. The work of the Business Ombudsman not only allowed many companies to recover very large amounts of money in disputes with various state bodies, and to improve regulatory frameworks in the areas that were particularly prone to corruption. It also was one of the main factors that allowed the private sector in Ukraine to realise that it became possible for companies to do business without corruption, and to establish UNIC as a collective action of companies that aim to promote clean business in Ukraine.

While the NACP reported about the progress of UNIC – which is impressive – it actually did not provide any support to this initiative so far.

Ukrainian Network for Integrity and Compliance (UNIC) brings together 56 companies committed to do business without corruption and to promote business integrity in Ukraine. The idea of UNIC emerged in January 2017 during the consultations with the private sector that took place back-to-



back with the regional Business Integrity Seminar organized by the OECD/ACN, UNDP and EBRD. UNIC was launched in May 2017 and officially established September 2017. During the past year UNIC members adopted their statute and governing structure, including the Executive and the Ethics Committees, and the work programme, including methodology for external evaluation and certification inspired by the ISO 3700. UNIC became possible due to an important change of business environment: active work of National Anti-Corruption Bureau, e-declarations by public officials, and effective protection by Business Ombudsman have given companies confidence that it became possible to do business without corruption.

*Significant progress*

## CHAPTER 3: ENFORCEMENT OF CRIMINAL LIABILITY FOR CORRUPTION

### Recommendation 21: New corruption offences and elements of offences

1. Expand the statute of limitations for all corruption offences to at least 5 years and provide for suspension of the statute of limitations during the period an official enjoyed immunity from criminal prosecution.
2. Provide adequate training and resources to prosecutors and investigators to ensure the effective enforcement of new criminal law provisions, in particular with regard to such offences as illicit enrichment, trafficking in influence, offer and promise of unlawful benefit, definition of unlawful benefit including intangible and non-pecuniary benefits, criminal measures to legal persons, new definition of money laundering. Training programmes of the specialised anti-corruption agencies should contain modules or focus in other ways on these issues in their regular training curriculum.
3. Analyse practice of application of the new provisions on corporate liability for corruption and, based on results of such analysis, introduce amendments to address deficiencies detected. Ensure autonomous nature of the corporate liability.
4. Take measures at the policy level (for example, set as priorities by the management of the anti-corruption specialised bodies) to encourage investigation and prosecution of corruption committed by legal persons.

#### 19th ACN Monitoring Meeting, July 2018

##### *Government report*

21.1) The draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine to Increase the Effectiveness of Combating Corruption by Establishing a Uniform Long-Term Limitation Period for Corruption Offenses" (Reg. No. 8218 dated April 3, 2018) is being drafted, which is proposed: to amend Articles 49 and Article 80 of the Criminal Code of Ukraine, where the 15-year limitation period for exemption from criminal liability, punishment and his serving in the event of committing any crime of corruption and in the case of conviction for any type of punishment for a corruption offense respectively.

Today, this project is under consideration in the committees of the Verkhovna Rada of Ukraine.

21.2) Employees of the Prosecutor's Office of Ukraine and, in particular, the Specialized Anti-Corruption Prosecutor's Office (SAPO) actively participate in trainings and other educational activities to ensure the effective application of the new provisions of criminal law, in particular regarding such crimes as illegal enrichment, abuse of influence, proposal and promise of unlawful benefit, determination of unlawful benefits, which includes benefits in intangible and non-monetary form, criminal measures against legal entities.

Thus, during 2018, employees of the SAPO participated in 9 such events, of which 3 - at the international level. In general, the employees of the prosecutor's office took part in 16

international events of the relevant subject abroad.

### 21.3) Increase in criminal liability for corruption offenses

According to the Verkhovna Rada Committee on Legislative Support of Law Enforcement, the Criminal Code of Ukraine provides for a limitation period, the expiry of which indicates the cessation of criminal law relations. They belong to important legal remedies of criminal law and reflect the influence of the time factor on these relationships. The expiration of the limitation period is the basis for the release of a person from criminal responsibility (Article 49 of the Criminal Code of Ukraine), release from punishment (Part 5 of Article 74 of the Criminal Code of Ukraine) and his detention (Article 80 of the Criminal Code of Ukraine), as well as the dismissal of a legal entity from the application measures of a criminal nature (Article 96-5 of the Criminal Code of Ukraine).

Following the ratification by Ukraine of anti-corruption conventions (the UN Convention against Corruption and the Council of Europe's Criminal Law Convention on the fight against corruption), the issue was raised regarding the alignment of national legislation with these international instruments. Thus, in Art. 29 of the UN Convention against Corruption states: "... each State Party, in appropriate cases, establishes, in accordance with its domestic law, a long period of limitation for bringing an action against any of the offenses set forth in this Convention and establishes a longer period of limitation, or the possibility of suspending the limitation period in cases where a person suspected of committing a crime deviates from justice ". The Criminal Code of Ukraine does not take into account this provision and does not define the peculiarities of the length of the limitation period for the commission of criminal corruption offenses.

At present, Article 49 of the Criminal Code of Ukraine establishes limitation periods, after which the person is released from criminal liability, at the level of 2 to 15 years, depending on the severity of the crime and the severity of the punishment provided for the commission of the crime. Presence does not apply in the case of crimes against the bases of national security of Ukraine provided for in Articles 109-114-1 against the peace and security of mankind provided for in Articles 437-439 and the first paragraph of Article 442 of the Criminal Code of Ukraine (such exceptions are conditioned, first of all, by the presence relevant norms in international law).

According to Art. 80 of the Criminal Code of Ukraine the limitation period for the execution of a conviction - from 2 to 15 years depending on the severity of the crime and the severity of the punishment. However, the limitation is not applicable in the case of conviction for crimes against the peace and security of mankind provided for in Articles 437-439 and part one of Article 442 of this Code (which is stipulated by international norms).

The Criminal Law does not contain a definition of the concept of a corrupt crime and reveals its content by transferring from Article. 45 all acts that can be attributed to corruption. So, the note to Art. 45 of the Criminal Code of Ukraine on corruption crimes means crimes stipulated by Articles 191, 262, 308, 312, 313, 320, 357, 410 in case of their commission by abuse of office, as well as crimes provided for in Articles 210, 354, 364, 364- 1, 365-2, 368-369-2 of this Code.

The Committee of the Verkhovna Rada of Ukraine on Legislative Support of Law Enforcement

activities is preparing for consideration in the first reading the draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Improving the Effectiveness of Combating Corruption by Establishing a Uniform Long-Term Limitation Period for Corruption Offenses" (Reg. No. 8218).

The purpose of the draft Law is to increase the effectiveness of the fight against corruption in Ukraine. His task is to increase the effectiveness of the principle of the inevitability of punishment in the event of committing a crime of corruption by establishing long-term limitation periods.

The draft law provides for amendments to Articles 49 and 80 of the Criminal Code of Ukraine in order to establish uniform long-term limitation periods of 15 years for the commission of a corrupt crime. It concerns both the limitation periods, after which the person is released from criminal liability, and the time limits for execution of the conviction.

It is also envisaged to increase this period for the period of evasion of a person from pre-trial investigation and court (even if, in the end, the period will exceed 15 years).

The consideration of the said draft Law by the Committee will take place after receipt of the conclusion of the Main Scientific and Expert Department of the Apparatus of the Verkhovna Rada of Ukraine regarding him. Regarding liability of legal entities for corruption acts, we inform that the Criminal Code of Ukraine was supplemented by Section XIV1 "Measures of criminal-legal character with regard to legal entities" in accordance with the Law No. 314-VII of 23.05.2013, taking into account the changes made by the Law No. 1207- VII of April 15, 2014

In particular, in the part number XIV1 of the Criminal Code of Ukraine, the legislator has defined:

- 1) grounds for the application of criminal-legal measures to legal persons (Article 963 of the Criminal Code of Ukraine);
- 2) a list of legal entities to which criminal-law measures are applied (Article 964 of the Criminal Code of Ukraine);
- 3) grounds for the dismissal of a legal entity from the application of criminal-law measures (Article 965 of the Criminal Code of Ukraine);
- 4) types of criminal-law measures applicable to legal entities (Article 966 of the Criminal Code of Ukraine), in particular, such as:
  - a fine in the amount of from 5 to 75 thousand non-taxable minimum incomes of citizens (85000 - 1275000 UAH.) (Article 967 of the Criminal Code of Ukraine);
  - confiscation of property of a legal entity (Article 968 of the Criminal Code of Ukraine);
  - liquidation of a legal entity that is applied by a court in case of commission by an authorized person of any of the crimes stipulated in art. art. 109, 110, 113, 146, 147, 160, 260, 262, 258 - 2585, 436, 4361, 437, 438, 442, 444, 447 of the Criminal Code of Ukraine (Article 969 of the

Criminal Code of Ukraine);

5) general rules for the application of criminal-law measures to legal persons (Article 9610 of the Criminal Code of Ukraine);

6) application to legal persons of criminal-law measures in the totality of crimes (Article 9611 of the Criminal Code of Ukraine).

The above-mentioned changes were adopted by the Verkhovna Rada of Ukraine regarding liability of legal entities in order to implement the Action Plan for the liberalization of the European Union visa regime for Ukraine.

21.4) During 2015-2018, 6 criminal investigations by legal entities were investigated by NABU detectives. As a result of the investigation, 3 criminal proceedings were sent to the court. As of June 11, 2018, in the conduct of NABU there are 3 criminal proceedings of this category.

#### *Assessment of progress*

The draft law aiming to extend the statute was submitted to Parliament, but was not adopted yet. . No legal changes were made to ensure autonomous nature of the corporate liability.

Some training is provided to the prosecutors (and probably NABU) on some of the new criminal law provisions, but it is not known if specialised anti-corruption law-enforcement bodies have modules in their regular training curriculum that focus on these issues. No information is available about resources that are needed to ensure the effective enforcement of new provisions. However, it appears that there is some progress towards enforcing corporate liability.

No information was provided regarding the analysis of practice of application of the new provisions or amendments that may be needed to address deficiencies detected.

There is no evidence that measures were taken at the policy level (to encourage investigation and prosecution of corruption committed by legal persons.

#### *Progress*

### **Recommendation 22: ARMA**

- 1. Ensure that ARMA has adequate resources to meet its legislative objectives, including collecting and maintaining statistical evidence about confiscation actions. Ensure that its role and available resources are communicated to the law enforcement and prosecutorial bodies.**
- 2. Step up efforts to confiscate corruption proceeds to family members, friends or nominees.**
- 3. Continue to make progress in the effective use of the newly enacted confiscation authorities.**

## 19th ACN Monitoring Meeting, July 2018

### *Government report*

On November 10, 2015 the Law «On the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes» (hereinafter – Special Law) was adopted, and came into force in June 2016.

On February 24, 2016 the Cabinet of Ministers of Ukraine adopted Resolution No. 104 «On the Establishment of the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes».

ARMA`s main subordinated legislation:

- Resolution of the Cabinet of Ministers of Ukraine "On Determining the Procedure for Selection on a Competitive basis of Legal Entities that carries out sales of seized Assets" adopted on August, 9 2017 № 558.
- Resolution of the Cabinet of Ministers of Ukraine "On an approximate list of property, including in the form of items or large quantities of goods, storage of which because of its unwieldiness or for other reasons is impossible without extra difficulties, or the costs of providing special storage conditions for which or management commensurate with its value, or that is rapidly losing its value, as well as property in the form of goods or products that are subject to rapid spoilage, to be sold" adopted on September, 13 2017 № 685-2017-П .
- Resolution of the Cabinet of Ministers of Ukraine "On Determining the Procedure for the Sale of Seized Assets in Electronic bidding" adopted on September, 27 2017 № 719.
- Resolution of the Cabinet of Ministers of Ukraine "On the Interagency Commission for the sales of seized Assets" adopted on October, 11 2017 № 768-2017-П.

Cabinet of Ministers of Ukraine established ARMA`s staffing list at the maximum level of 130 employees on December, 14. As for 14th of June 2018, the ARMA employs 91 people (70%). Professionals that already joined ARMA have expertise in asset tracing & finding, financial investigation, corporate and financial law, with English as a second working language. The competition on selection of the staff of the Agency goes on.

Certain funds (UAH 253 213 400 total) for functioning the National Agency are allocated in State budget 2018.

- Unified State Register of Assets Seized in Criminal Proceedings.

In accordance with Article 25 of the Special Law the National Agency shall form and keep the Unified State Register of Assets Seized in Criminal Proceedings.

Special Law defines the list of information to be included in the Register, in particular:

- o assets, which have been seized in criminal proceedings; amount of funds, description, specifications and assessed value of the property, proprietary and other assets;
- o authority, the investigator of which investigates (investigated) a relevant crime, initials and surname of the investigator (investigators); court (name of the court, initials and surname of judges), which or an investigative judge of which made a ruling on seizure and/or cancellation of seizure of the relevant property or rights; prosecutor's office, the prosecutor of which cancelled seizure of the property, initials and surname of the prosecutor; court which considers (considered) a relevant criminal proceeding; number of criminal proceedings in the Unified Register of Pre-Trial Investigations; information regarding an identity of the suspected or accused person;
- o measures taken in criminal proceedings, which are related to seizure and management of assets, including costs received from sale of assets as well as from management of them (dividends, interests, etc.);
- o court ruling on confiscation, special confiscation of assets or forfeiture of assets to the state in criminal proceedings, the status of enforcement of the ruling and management of confiscated assets, including on the funds received from sale of assets;
- o decisions of foreign competent authorities on seizure and confiscation of assets in Ukraine, and the status of fulfilment thereof;
- o decisions of Ukrainian competent authorities on seizure and confiscation of assets in foreign countries, and the status of fulfilment thereof;
- o international agreements on distribution and return of assets to Ukraine.

In order to fill the Register, ARMA developed schemes and algorithms with the list of information coming from the automated systems of state authorities, as well as data generated by ARMA.

At present, a procedure for the purchase of software development services for the Unified State Register of Assets, which are subject to seizure in criminal proceedings, has been launched.

Thus, in particular, a Joint Order was signed with the State Judicial Administration of Ukraine "On Approval of the Procedure for Providing Electronic Copies of Court Decisions of All Instances and Coordinated Information on Criminal Proceedings from the Central Database of the Automated System of Court Document Flow".

In accordance with the Procedure for maintaining the Unified State Register of Court Decisions (approved by the Decision of the High Council of Justice of April 19, 2018, №1200/0/15-18), authorized persons of ARMA granted permission for full access to information resources of the Unified State Register of Court Decisions.

The Register is planned for launch in 2018.

### *Assessment of progress*

ARMA has been established, it has sufficient budget (in 2017 total budget was UAH 42 mln, in 2018 total annual budget of ARMA is UAH 253,2 mln) and staff (under the bylaw could be 130 persons, but actual number is 81 officials as of May 2018). Other law enforcement agencies are aware about ARMA mandate, which could be proven by the fact that e.g. several assets have been already transmitted by Military Prosecution Office and NABU. But there is still little awareness about ARMA's role in the police and at the regional level. It is highly problematic that the transmission of the assets to ARMA can be blocked by the court decision, e.g. the District Administrative Court of Kyiv recognized as illegal the asset management by ARMA without appropriate legal grounds for such a decision. Besides, ARMA does not have sufficient resources to ensure the management of resources, and it has already led to cases when arrested assets were damaged. ARMA did not take action to address this issue through change of legislation yet.

Another important problem is the collecting and disclosure of information about confiscated assets. The creation of the Unified State Register of Assets seized in criminal proceedings should address it, but there were delays. The expert team welcome the information provided in the progress update that this Register will be launched in 2018 which is key to ensure transparency and trust in ARMA.

The Criminal Code provides the possibility to confiscate assets from "third persons" if they obtained assets from accused or suspected person, but it is not clear if these include family members or nominal owners. There is no sufficient data on practical implementation of special confiscation, so it is difficult to assess whether this provision should be amended and in which way. No statistical data was provided on this point.

### *Progress*

## **Recommendation 23: Immunities**

- 1. Review legislation to ensure that the procedures for lifting immunities of MPs are transparent, efficient, based on objective criteria and not subject to misuse.**
- 2. Limit immunity of parliamentarians to a certain extent, e.g. by introducing functional immunity and allowing arrest in cases of in flagrante delicto.**
- 3. Analyse practical application of the judicial reform to take appropriate legal measures to ensure that the procedures for lifting immunities of judges are transparent, efficient, based on objective criteria and not subject to misuse and that the functional immunity contributes to effective law enforcement.**
- 4. Revoke additional restrictions on the investigative measures with regard to MPs, which are not provided for in the Constitution of Ukraine.**

## **19<sup>th</sup> ACN Monitoring Meeting, July 2018**

### *Government report*

Article 80 of the Constitution of Ukraine stipulates that parliamentary immunity is guaranteed to



people's deputies (MPs) of Ukraine. The MPs of Ukraine do not bear any legal responsibility for the results of the vote or the statements announced in the parliament and its bodies, except for the responsibility for the offense or slander committed. MPs of Ukraine cannot be brought to criminal responsibility, detained or arrested without the consent given by the Verkhovna Rada of Ukraine.

Pursuant to Article 126 of the Constitution of Ukraine and Article 49 of the Law of Ukraine "On the Judiciary and Status of Judges", the independence and immunity of judges are guaranteed by the Constitution and laws of Ukraine. Any kind of influence on a judge is prohibited.

Without the consent given by the High Council of Justice, a judge cannot be detained or arrested before a conviction being made by a court, except for the detention of a judge during or immediately after his/her committing a grave or especially grave crime. The state ensures the personal safety of a judge and safety of his/her family members.

A judge cannot be brought to liability for a court decision made by his/her, except for the commission of a crime or a disciplinary offense.

A judge may be given a statement on the suspicion of his/her having committed a criminal offense only by the Prosecutor General or his/her deputy.

The provisions of Article 48 of the Law of Ukraine "On the Judiciary and the Status of Judges" stipulate that a judge is not obliged to give any explanations regarding the substance of the cases he/she considers in court, with exceptions set under law.

It should also be noted that according to Article 482 of the Criminal Procedure Code of Ukraine, the detention of a judge, or his/her arrest, is carried out with the consent given by the High Council of Justice.

Without the consent given by the High Council of Justice, a judge cannot be detained or arrested before a conviction being made by a court, except for the detention of a judge during or immediately after his/her committing a grave or especially grave crime.

A judge, detained on suspicion of committing an act for which criminal liability is established, must be immediately released after the determination, except if the High Council of Justice has given the consent to the detention of a judge in connection with such an act; the detention of a judge during or immediately after the commission of a grave or grave crime, if such detention is necessary to prevent the commission of a crime, to prevent the consequences of a crime, or to ensure the preservation of evidence of the crime. A judge must be released immediately if the purpose of such detention (preventing the commission of a crime, preventing the consequences of a crime, or ensuring the preservation of evidence of this crime) is achieved.

According the information, given by the Committee of the Verkhovna Rada of Ukraine on the Rules of Procedure and Organization of Work of the Verkhovna Rada of Ukraine, regarding the limitation of the immunity of MPs of Ukraine, it is stated that the draft of the law of Ukraine "On Amendments to the Constitution of Ukraine (in the part of the abolition of MP's immunity) (Ref. No. 6773, dated on the 19<sup>th</sup> of July, 2017), initiated by MPs of Ukraine, as well as the draft of the Law of Ukraine "On Amendments to Article 80 of the Constitution of Ukraine (regarding the immunity of MPs of Ukraine)" (Ref. No. 7203, dated on the 17<sup>th</sup> of October, 2017), initiated by the

President of Ukraine, on the 19<sup>th</sup> of October, 2017, in accordance with the resolutions of the Verkhovna Rada of Ukraine No. 2171-VIII, included into the agenda of the seventh session of the Verkhovna Rada of Ukraine of the 8<sup>th</sup> convocation and submitted to the Constitutional Court of Ukraine for a conclusion on the compliance of these drafts with the requirements set under Articles 157 and 158 of the Constitution of Ukraine

During the period of 2017-2018, 12 applications were submitted to the Verkhovna Rada requesting the consent to prosecute the MPs of Ukraine, with 6 of which have been satisfied.

### ***Assessment of progress***

According to NGOs, the procedure of lifting MPs' immunity lifting is inefficient and MP could escape during the consideration of the request for lifting immunity. To address this problem the President drafted constitutional amendments for limiting/cancelling immunity; in October 2017 the Parliament sent them to the Constitutional Court for review. In June 2018 the Constitutional Court approved the draft law that is limiting MP's immunity. However, the law was not approved yet. In case of adoption MPs would not have immunity from criminal liability, only the indemnity would stay in place. NGOs mention some cautions of Ukrainian experts that the full immunity cancellation potentially could lead to the strengthening of the President's positions and his pressure on the Parliament, which could lead to the deformation of checks and balances.

Additional restrictions on the investigative measures with regard to MPs were not revoked. According to NGOs, the Parliament is not considering any relevant draft law. In practice this provision is a strong obstacle for effective investigation of corruption offences allegedly committed by MPs.

No analysis of lifting immunities of judges was provided by the government, but according to the NGOs these procedures have some deficiencies due to the political influence on the High Council of Justice. NGOs explain that the provision of Constitution on the immunity of judges was initially enforced in a wrong way (the understanding of the provision by the High Council of Justice (January 2017) that contradicts the initial vision of amendments by authors, which was mentioned, e.g. in an explanatory note to the draft law). This determined the questionable enforcement by the High Council of Justice (HCJ) which has the right to lift immunities of judges who are charged in bribe-taking. NGOs quote one questionable case where a judge submitted a complaint to the HCJ, in relation to NABU criminal proceeding on his possible illicit enrichment and undue influence from NABU detectives, where HCJ supported claims of judge without substantial evidences.

During 2017-2018, 12 applications were submitted to the Parliament requesting the consent to prosecute the MPs, with 6 of which have been satisfied. This data together with poor performance regarding integrity of political officials and judges analysed earlier, indicates that this very important problem remains unaddressed.

### ***Progress***

## Recommendation 24: Swift investigations

- 1. Ensure that proactive efforts are continued with rigour by NABU, and other law enforcement bodies, to facilitate maximum detection and swift investigation of corruption in Ukraine. These efforts should include:**
  - a. Use of all possible sources of information and tools, including the asset declarations.**
  - b. Cooperation between law enforcement and other non-law enforcement bodies, such as FIU, ARMA, tax, customs, etc. to ensure detection and swift investigation of corruption in Ukraine.**
  - c. Use of information obtained through international cooperation, as well as data collected from the open sources outside of Ukraine.**
  - d. Joint trainings for law enforcement with representatives of the non-law enforcement bodies, especially FIU and ARMA.**
- 2. Establish a centralised register of bank accounts of legal and natural persons, including information about beneficial owners of accounts, making it accessible for authorised bodies, including NABU, NACP and ARMA, without court order to swiftly identify bank accounts in the course of financial investigations and verification.**

### 19th ACN Monitoring Meeting, July 2018

#### *Government report*

Investigation of financial transactions related to suspicion of corruption

For the year 2017 – 1st quarter of the year 2018 span of time, State Service for Financial Monitoring of Ukraine submitted 254 materials (cases) (including 76 generalized cases and 178 additional generalized cases) concerning financial operations connected with corrupt acts committed by former President of Ukraine Viktor Yanukovich, his close people, as well as Government officials, authorities, local self-governments, to the law-enforcement agencies as follows:

- Prosecutor's General - 23 generalized cases and 91 additional generalized cases;
- State Fiscal Service - 1 additional generalized case;
- National Police of Ukraine - 1 additional generalized case;
- Security Service of Ukraine - 4 generalized cases and 7 additional generalized cases;
- National Anti-Corruption Bureau - 49 generalized cases and 78 additional generalized cases.

Within these cases, the financial transactions that may be related:

- to the money laundering are amounted to UAH 8.4 billion in monetary equivalent;

- another criminal offence, amounted to UAH 23.1 billion in monetary equivalent.

The participants of suspicious financial transactions within these 254 cases are:

- the ex-president is suspected to be involved within 7 cases;
- ex-prime minister - 2 cases;
- Government members - 37 cases;
- MPs - 55 cases;
- former head of the National Bank of Ukraine - 2 cases;
- civil servants - 58 cases;
- prosecutors - 3 cases;
- judges - 11 cases;
- heads of state enterprises - 79 cases.

Statements and whistle blown reports made by individuals, legal entities, as well as reports announced in the media, materials of inspections, including statements entered into e-declarations, are the ground for information to be recorded into the Unified Registry of Pre-Trial Investigations and a pre-trial investigation of criminal proceedings, which are to be under competence of the National Anti-Corruption Bureau of Ukraine, to be commenced.

The main interaction is carried out by detectives of the National Anti-Corruption Bureau of Ukraine (NABU).

This is achieved, inter alia, due to the current legislation. According to clause 3 of Part 1 of Article 17 of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine", NABU has direct access to the automated information and reference systems, registers and data banks, the holders (administrators) of which are state authorities or local self-governments, uses state communication channels, including governmental ones, special communication networks, as well as other technical means. Specialized anti-corruption prosecutor's office has no legally granted right to receive such kind of access, therefore, in case of necessity, a prosecutor gives corresponding instructions to NABU detectives.

The interaction of the Specialized Anti-Corruption Prosecutor's Office and NABU allows to carry out a pre-trial investigation of all criminal proceedings in a prompt and effective manner.

At the same time, the CPC of Ukraine gives the prosecutor the authority to make procedural decisions, conduct investigative (search) and procedural actions independently etc., which are actively used by prosecutors of the Specialized Anti-Corruption Prosecutor's Office.

To date, a constructive interaction between NABU and the State Service for Financial Monitoring of Ukraine, the State Audit Office of Ukraine and other authorities has been established.

For example, thanks to the efficient interaction between the Specialized Anti-Corruption Prosecutor's Office, National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes (ARMA) and NABU for the execution of the decision of the investigating judge, dated on the 13th of March, 2018, on the arrest of property within the criminal proceeding, ARMA received the funds in sum of 185 million UAH, that was subsequently placed on a deposit account at PJSC "Derzhavnyi Oshchadnyi Bank Ukrainy" ("State Bank of Ukraine for Savings") at the interest of 17% per annum.

During the time of the work of NABU, 364 requests for international legal assistance were sent to the competent foreign bodies of 61 countries. As of the 11th of June, 2018, 172 requests were processed and used as part of criminal proceedings.

The assistance of international organizations, such as OECD and the World Bank Group, proves to be an effective means of enhancing the qualifications of the prosecutors of the Specialized Anti-Corruption Prosecutor's Office by running effective trainings and fruitful meetings.

NABU makes every effort to implement the anti-corruption tasks assigned to it, actively takes measures aimed at spreading its sphere of activity and identifying corruption in all sectors of the economy and public life of Ukraine, as well as trying as quickly as possible (given the complexity of corruption schemes and a significant amount of procedural actions that are necessary for their disclosure) to investigate corruption crimes.

To this end, the detectives of NABU actively use the right of direct access to automated information and reference systems, registers and data banks provided by Article 17 of the Law of Ukraine "On National Anti-Corruption Bureau of Ukraine", with the holder (administrator) of which there are state bodies or bodies of local self-government, as well as widely used in their work other available sources of information: open registers of foreign states, information from the media, Internet resources, as well as declarations of persons authorized to perform state functions or local government.

In particular, for organizing the access of the detectives of the National Bureau to the above-mentioned registers and databases, as well as for interacting with other state bodies of Ukraine, the National Bureau has already established contacts and signed bilateral agreements with the overwhelming majority of state bodies of Ukraine, the interaction with which is necessary to ensure the full functioning of the Bureau. In particular, the National Bureau signed agreements on cooperation with the Security Service of Ukraine, the Ministry of Internal Affairs of Ukraine, the Ministry of Justice of Ukraine, the State Fiscal Service of Ukraine, the State Border Guard Service of Ukraine, the State Migration Service of Ukraine, the State Financial Monitoring Service of Ukraine, the State Treasury of Ukraine, On Prevention of Corruption, the National Bank of Ukraine, etc.

During the reporting period, the National Bureau also signed a Memorandum of Cooperation and Exchange of Information between the National Anti-Corruption Bureau of Ukraine and the

National Police of Ukraine.

In addition, in order to strengthen interagency cooperation, on March 12, 2018, the National Agency for the Prevention of Corruption and the National Anti-Corruption Bureau of Ukraine held a joint seminar devoted to the peculiarities of the procedure for submitting declarations of persons authorized to perform functions of the state or local self-government, and reports on significant changes in property condition

In order to obtain the evidence base of the detectives of the National Bureau, the instruments of international cooperation are also constantly used. Thus, for the period from 01.09.2017 to 08.06.2018, the National Bureau sent 130 requests for international legal assistance to more than 40 countries of the world. As of 06/08/2018, the National Bureau received materials for the execution of 18 requests sent during the specified period.

Interaction of Ukraine as a third country with the European Judicial Network for ensuring effective operational cooperation is ensured, and the contact person for cooperation with this organization has been identified in the General Prosecutor's Office of Ukraine.

The Decree of the President of Ukraine dated May 17, 2018, No 128/2018 defined the status and functions of the Prosecutor for Communications for the European Organization for Justice which will further facilitate the cooperation of Ukrainian competent authorities with Eurojust on issues of international legal cooperation.

In order to improve the skills of employees for the period from September 2017, the PGO ensured the participation of prosecutors in 8 foreign events on international legal cooperation and 16 training visits on anti-corruption and asset recovery issues.

Further development of the prosecutor's office's capabilities in the field of international cooperation and asset recovery is provided in Section 4 of the Roadmap for the reform of the prosecutor's offices, developed jointly with EUDEL, EUAM and the Council of Europe. At the same time, the National Bureau has been executed between 01.09.2017 and 08.06.2018 4 requests of foreign competent authorities on international legal assistance from 8 sent.

At the same time, it should be noted that to date the issue of informing the depositary of international treaties regulating issues of international legal assistance remains unresolved, relevant changes in the national legislation of Ukraine and extension of the circle of central bodies on international cooperation, namely: granting the National Bureau of the status the central body of Ukraine authorized to appeal during a pre-trial investigation with requests for international legal assistance in criminal proceedings referred to the jurisdiction of the National Bureau and request the relevant foreign competent authorities.

All law enforcement agencies of Ukraine are partners of ARMA in asset finding and tracing activities within the framework of interagency memoranda: National Police, NABU, General Prosecutor's Office, State Fiscal Service, State Security Service and others.

A number of agreements (memoranda) on cooperation and exchange of information were signed with such State authorities as:

- National Securities and Stock Market Commission;
- State Financial Monitoring Service of Ukraine;
- National Commission, which carries out state regulation in the field of financial services markets;
- the State fiscal service of Ukraine;
- National Agency on Corruption Prevention;
- State Treasury of Ukraine.

October 20, 2017 the joint order "On Approval of the Procedure for Interaction in Considering the Appeals of Pre-Trial Investigation Bodies, Prosecutors and Executing requests of Foreign States for finding and tracing of Assets" has been signed. The Joint order has been signed with General Prosecutor's Office, the Security Service, the National Police, the Ministry of Internal Affairs, the Ministry of Finance, the National Anti-Corruption Bureau and the State Fiscal Service of Ukraine and published in the Official Bulletin of Ukraine No. 89 (came into force on 14.11.17).

In 2017 and 2018, arrangements were made for organizing and conducting professional training sessions for newly appointed National Agency staff to familiarize themselves with best practices for asset tracing and asset management, namely, on asset recovery, on familiarization with analytical methods of information processing, on prosecution for a crime of illicit enrichment, on freezing and seizing assets, on tracing and finding criminal resources, on financial investigations, on finding, seizure and management of proceeds from criminal activity.

In the mentioned events, besides ARMA also participated representatives of: The State Financial Monitoring Service of Ukraine, the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor's Office.

This format of the event not only increased the level of practical knowledge of the staff of the institution, but also gave impetus for establishing closer inter-institutional cooperation.

#### ***Assessment of progress***

The progress report provided by the government demonstrates that NABU, SAPO and FIU continue proactive rigorous actions to facilitate detection and swift investigation of corruption. NABU uses all available sources for detection and investigation, e.g. in 2018 NABU started an investigation after the article in a magazine about possible embezzlement during the procurement of military equipment. NABU also uses e-declarations, but limited access to their full data is a serious obstacle. NABU is actively using data received from international or foreign agencies for their investigations, e.g. it sent 53 MLA requests and used obtained information to substantially strengthen the case against ex-MP Mykola Martynenko.

NABU and other law-enforcement bodies cooperate with non-law enforcement bodies such as ARMA, FIU, Central bank; they also participate in many joint trainings.



The EU anti-corruption project EUACI is planning to develop an "eCase" system for NABU, which can significantly improve the effectiveness of criminal proceedings' investigation as well as proper data exchange between different agencies.

Centralised register of bank accounts of legal and natural persons, including information about beneficial owners of accounts, was not established. This presents an obstacle for authorised bodies, including NABU, NACP and ARMA, who cannot swiftly identify bank accounts in the course of financial investigations and verification without court order. No information about the plans of its establishment is available.

Another important shortcoming is that cooperation with tax and customs are not mentioned among the current efforts. Besides, NGOs point out at multiple conflicts and misunderstandings between the NABU, SAP, National Police, SSU, NACP and other bodies.

***Progress***

**Recommendation 25: Asset recovery**

- 1. Show concrete and measurable results in terms of asset recovery. In particular:**
  - a. Proactively take all available measures to obtaining mutual legal assistance in corruption cases;**
  - b. Continue to raise capacity of the General Prosecutor's Office, NABU and ARMA in international cooperation and asset recovery.**
  - c. Ensure that procedures on assets recovery allow swift repatriation of stolen assets;**
  - d. Ensure effective functioning of ARMA in its tasks on asset tracing, recovery and management of stolen assets.**
- 2. Ensure that NABU can independently transmit and respond to MLA requests.**

**19th ACN Monitoring Meeting, July 2018**

***Government report***

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ARMA is authorized by the Camden Assets Recovery Inter-Agency Network (CARIN) and the Interpol Global Focal Point Network for Asset Recovery as a contact point from Ukraine, and has access to INTERPOL Secure Communications for Asset Recovery (I-SECOM). ARMA is a partner of the EU asset recovery offices' platform and sub-groups on asset recovery within the Platform. Today, the National Agency is a partner of the Stolen Asset Recovery (StAR) Initiative and actively cooperates with the network in the exchange of information and experience, joint activities, including training. ARMA established cooperation with such regional networks: ARIN-AP; ARINSA; ARIN-EA; ARIN-WA; ARIN-CARIB.

ARMA, within the framework of the cross-border information exchange, has sent 26 appeals on finding and tracing of assets within criminal proceedings at the request of law enforcement authorities, in particular to: Germany - 3, UK - 3, British Virgin Islands - 2, Cyprus - 2, Switzerland - 2, Liechtenstein - 1, Czech Republic - 1, Hungary - 1, Slovakia - 1, Romania - 1, Poland - 1, Italy - 1, France - 1, Austria - 1, OAE - 1, Latvia - 1, Canada - 1, Israel - 1, Turkey - 1.

Also, the National Agency has received 3 requests from foreign authorities for finding and tracing of assets, in particular: Denmark, Czech Republic, Israel and Italy.

#### Finding and tracing of assets

ARMA has the direct access to the number of national registers and data bases to carry out the current mandate of the agency in asset recovery:

- a) State Register of Encumbrances over movable property;
- b) State Register of Powers of Attorney;
- c) State civil register;
- d) Register of ownership rights to immovable property;
- e) Unified State Register of legal entities and natural persons – entrepreneurs and public formations;
- f) registers on objects of intellectual property rights;
- g) Unified State Demographic Register has been approved;
- h) Register of Civil Aircraft of Ukraine;

- i) Register of declarations of persons authorized to perform functions of the state or local self-government.
- j) Connection to the "Arkan" - an integrated interagency information and telecommunications system for monitoring persons, vehicles and goods crossing the state border
- k) Access to the system "Current Dislocation of Ships" – provide the possibility to track the movement of small and large fleets on Ukrainian inland waterways and obtain information about the owners of ships or persons connected with them.
- l) Access to the registers on objects of intellectual property rights of the SE "Ukrpatent".

Therefore, we have access to the information concerning:

- a) ownership rights to immovable property;
- b) acts of civil status;
- c) objects of intellectual property rights;
- d) persons, vehicles and goods crossing the state border;
- e) current dislocation of ships;
- f) Securities and Stock Market, financial services;
- g) tax information
- h) full declarations of civil servants;
- i) bank information.

ARMA received 300 requests to find and trace assets within the criminal proceedings from law enforcement agencies, in particular from: prosecution authorities - 194, National Police of Ukraine - 47, Security Service of Ukraine - 22, State Fiscal Service of Ukraine - 18, National Anti-Corruption Bureau of Ukraine - 17, Court - 1.

During the processing of requests, the National Agency has received 300 responses on 2,983 individuals, including 14 non-residents, and 2,014 legal entities, including 243 non-residents.

Assets, that have been found and traced (potential objects of seizure):

- 1 159 367 566, 86 UAH of investments into securities;
- 1 846 945 order bills;

- 1636 land plots;
- 852 non-residential premises;
- 755 cars and trucks;
- 640 car service stations;
- 541 apartments;
- 240 buildings;
- 196 houses and households;
- 180 railway vehicles;
- 139 commercial real estate objects;
- 137 recreation centres and sanatorium complexes;
- 124 garages and parking spaces;
- 111 property complexes;
- 37 vessels;
- 34 objects of intellectual property;
- 14 objects of incomplete construction;
- 9 bank safes and accounts;
- 8 country and garden houses;
- 4 rooms;
- 1 aircraft.

- Asset management

ARMA manages both movable and immovable property.

Based on the court ruling ARMA has two options to deal with assets (with value exceeding USD 25 000) seized in criminal proceedings:

- to sell assets (and to place money on Agency's accounts with state-owned banks) or

- to transfer assets under external management.

The first 15 companies that can manage assets, which are official representatives of international groups in Ukraine with many years of experience in providing services in real estate management are selected.

Through the conduct of joint investigations and mutual assistance of ARMA with law enforcement agencies, to ARMA for management transferred the following assets:

- money in non-cash form, which is placed on a bank account in the amount of 185 000 000 UAH;
- non-residential buildings and structures with a total area of 31,269.8 sq. m;
- an object of unfinished construction with the total area of 26 304 sq. m;
- Passenger Terminal Complex with a total area of 8,998.8 sq. m;
- production and restoration complex - recreation centre "Polit";
- corporate rights of Odessa Airport Development LLC and LLC "International airport "Odessa", which is in the possession and disposal of 75% of the authorized capital of LLC "International airport "Odessa";
- 67 apartments;
- 26 car places;
- 23 cars;
- Corporate rights of 15 companies;
- 6 plots of land;
- 3 office real estate;
- 2 non-residential premises;
- 1 unfinished construction object;
- 1 suburban infrastructure;
- integral property complex including movable and immovable property;
- corporate rights of a legal entity in the amount of 5 135 600 UAH, which is 100% of the authorized capital.

Revenues receipts, as a result of ARMA asset management activities, have totalled 10 609 551,40 UAH, of which 2492637,86 UAH – from the disposal of assets, 2015149,11 UAH – from asset management and 6101764,33 UAH – accrual of interest from management of funds, located on ARMA's deposit account in JSC "Oschadbank".

In order to obtain the evidence base the detectives of the National Bureau constantly use the instruments of international cooperation. Thus, for the period from 01.09.2017 to 08.06.2018, the National Bureau sent 130 requests for international legal assistance to more than 40 countries of the world, 49 of such requests were transferred via PGO.

#### ***Assessment of progress***

Assets have been recovered, however there were concerns regarding the legality of some of the cases. ARMA's capacity improved, and its international cooperation is growing. However, so far ARMA did not provide enough transparency regarding asset recovery actions and their results, especially domestically to the civil society and citizens. NGOs point out several problems of ARMA work, including lack of capacity to protect confiscated assets, e.g. from physical attacks from previous owners, ineffective regulations, lack of transparency and competition regarding the sale of stolen assets. ARMA's competencies were also challenged in court as described above, and it can establish a precedent.

Regarding NABU right to independently transmit and respond to MLA requests, no progress is reported in this area. As in the past NABU has the right to send and respond to MLA requests but only through the GPO as the responsible authority in the MLA field. MFA created obstacles in notification of responsible agencies in other countries about the NABU mandate in the area of international cooperation. In some criminal proceedings this situation led to major delays in investigation. According to the latest NABU bi-annual report, only half of NABU MLA request had been executed. This issue is highly important and should be resolved as soon as possible, because cases under jurisdiction of NABU require strong international cooperation.

#### **Progress**

### **Recommendation 26: Specialised anti-corruption enforcement bodies**

- 1. Establish without delay specialized anti-corruption courts insulated from corrupt and political influences which can fairly and effectively hear and resolve high level corruption charges. Select the judges through transparent, independent and highly trusted selection process which will guarantee integrity and professionalism.**
- 2. Ensure strict compliance with exclusive jurisdiction of NABU and SAPO.**
- 3. Provide NABU with capacity (legally and technically) to conduct wire-tapping autonomously.**
- 4. Step up the level of investigations and prosecutions of corruption throughout all responsible government bodies.**
- 5. Ensure that independence of the National Anti-Corruption Bureau is maintained without undue interference into its activities, including by providing for independent and un-biased audit of its activities and safeguard against abuse of criminal process.**
- 6. Consider introducing amendments in the Constitution of Ukraine to strengthen the legal basis for functioning of independent anti-corruption agencies (law enforcement and preventive).**

**7. Ensure that operational and institutional autonomy of the Specialized Anti-Corruption Prosecutor's Office is maintained and further expanded by, among other things, granting it its own administrative support services and the "Reception office", as well as its own capacity for maintaining of classified information.**

**8. Enact regulations and procedures that in fact reduce the risk that the criminal justice system is used to silence uncomfortable speech from critics of the government.**

### **19th ACN Monitoring Meeting, July 2018**

#### ***Government report***

We inform that Law of Ukraine "On the High Anti-Corruption Court" was adopted by the Verkhovna Rada of Ukraine on June 7, 2018.

This Law defines the principles of High Anti-Corruption Court organization and activity, special requirements for judges of this court and guarantees of their activities.

Based on the declared objectives, a specialized anti-corruption court should consider criminal proceedings related to committing offenses that contain corruption.

The Committee approved decision on its meeting on February 7, 2018, (protocol No.117) that mentioned draft law of Ukraine "On the High Anti-Corruption Court" (Reg. No. 7440, dated 22.12.2017), submitted by the President of Ukraine Poroshenko P.O., consistent with anti-corruption legislation requirements. And recommended that the Verkhovna Rada of Ukraine adopt it as basis taking note of the Committee remarks and the conclusions of the European Commission for Democracy through Law (Venice Commission) according to results of consideration in the first reading.

According to Article 31 of the Law of Ukraine "On the Judiciary and Status of Judges" High Anti-Corruption Court that shall administer justice as the court of the first and appellate instance in cases determined by the procedural law can be formed in judicial system.

According to part Two Article 33 of the Law of Ukraine "On the Judiciary and Status of Judges", a judge of a High Anti-Corruption Court can be a person meets the requirements to judicial candidates, and who has confirmed his/her ability to render justice in the High Anti-Corruption Court based on the results of a qualifications examination and meets the other requirements established by law.

In compliance with point 16 Chapter XII "Final and Transitional Provisions" of the Law of Ukraine "On the Judiciary and Status of Judges", High Anti-Corruption Court shall be established and a competition for positions of judges in this court must be announced within twelve months after coming into force of the Law which determines special requirements to judges of this court.

On December 22, 2017, the President of Ukraine submitted to the Verkhovna Rada of Ukraine a

draft Law of Ukraine "On the High Anti-Corruption Court" (Reg. No. 7440).

On June 7, 2018, the Verkhovna Rada of Ukraine adopted the Law of Ukraine No. 2447-VIII "On the High Anti-Corruption Court" (hereinafter - Law No. 2447-VIII), which was signed by the President of Ukraine on June 11, 2018.

On June 13, 2018, Law No. 2447-VIII was officially published in the newspaper "Holos Ukrainy" ("Voice of Ukraine") No. 107 and entered into force on June 14, 2018, except certain clauses that come into effect with the commencement of the work of the court. In addition to sub-point 3 of point 2 of Chapter VI "Final and Transitional Provisions" of Law No. 2447-VIII, which enters into force from the day when the High Anti-Corruption Court began its work.

The provisions of the Law No. 2447-VIII define the principles of the organization and activities of the High Anti-Corruption Court, the requirements for the judges of this court and the peculiarities of the selection of such judges, as well as the peculiarities of the formation and functioning of the court apparatus.

In addition, the Law No. 2447-VIII provides that, in order to assist the High Qualifications Commission of Judges of Ukraine in establishing the qualification criteria for candidates for the positions of judges of the High Anti-Corruption Court for the purposes of the qualification criteria for integrity (morality, honesty, probity), namely, the legality of the sources of property, compliance with the living standards of the candidate or members of his family with declared income, the suitability of the candidate's lifestyle, the availability of knowledge and practical skills for the consideration of cases under the jurisdiction of the High Anti-Corruption Court formed Public Council of International experts.

According to Law No. 2447-VIII, the Public Council of International Experts consists of six members designated by the High Qualifications Commission of Judges of Ukraine on the basis of proposals from international organizations with which Ukraine cooperates in the field of prevention anticorruption policy in accordance with international agreements of Ukraine.

Members of the Public Council of International Experts may be designated citizens of Ukraine or foreigners who have a flawless business reputation, high professional and moral qualities, and public authority, have experience in other countries for at least five years from the implementation of procedural management, the maintenance of state prosecution in court or enforcement proceedings in cases of corruption.

The authority of the Public Council of International Experts include: collection, verification and analysis of information on candidates for the positions of judges of the High Anti-Corruption Court; Providing information to the High Qualifications Commission of Judges of Ukraine regarding candidates for positions of judges of the High Anti-Corruption Court; participation in a special joint meeting in cases stipulated by the Law; taking measures to protect personal data and restricted information that became known to the Public Council of International Experts and its members in connection with the exercise of their authority.

According to point 3 of Chapter VI "Final and Transitional Provisions" of the Law of Ukraine "On the High Anti-Corruption Court" within twelve months from the date of entry into force of this Law, the competition is announced and take place in accordance with the Law of Ukraine



"On the Judiciary and Status of Judges" and this Law for the post of judges of the Appeals Chamber of the High Anti-Corruption Court and the positions of other judges of the High Anti-Corruption Court, according to the results of the competition, judges of the High Anti-Corruption Court are designated.

The High Anti-Corruption Court starts work on the condition of designation of at least thirty-five judges according to the results of the competition conducted in accordance with the Law of Ukraine "On the Judiciary and Status of Judges" and this law, including at least ten of which should be the judges of the Appeals Chamber of the Supreme Anticorruption Court (Point 5 of Chapter VI "Final and Transitional Provisions" of the Law of Ukraine "On the High Anti-Corruption Court").

In view of the above, the Commission will ensure competition for the positions of judges of the High Anti-Corruption Court in the order and within the time stipulated by the laws of Ukraine "On Judicial System and Status of Judges" and "On the High Anti-Corruption Court".

There were widespread cases of substitution of authority by the bodies of the Security Service of Ukraine and the Chief Military Prosecutor's Office, at the beginning of work in 2015 of the National Anti-Corruption Bureau of Ukraine and the Specialized Anti-Corruption Prosecutor's Office. In 2018, such facts are not recorded.

The Committee on its meeting on February 7, 2018 (protocol No.77) considered the draft Law "On Amendments to Some Legislative Acts of Ukraine" (concerning to National Anti-Corruption Bureau of Ukraine) (Reg. No. 4812).

The draft Law introduces amendments to the laws of Ukraine "On the National Anti-Corruption Bureau of Ukraine", "On the Radio Frequency Resource of Ukraine" and the Criminal Procedure Code of Ukraine in order to resolve the issues of the possibility of removing information from transport telecommunication networks by authorized departments of the National Anti-Corruption Bureau of Ukraine in criminal proceedings under investigation by the National bureau.

The draft law provides to amend the Criminal Procedural Code of Ukraine in the part of settling the issue of granting the right to the National Bureau to remove information from transport telecommunication networks, as well as amending the Law of Ukraine "On Radio Frequency Resource of Ukraine" concerning of making the National Bureau special user of the radio frequency resource of Ukraine.

Besides, amendments are introduced to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine", and provides that a person can't be appointed to the position of the National Bureau if during the five years prior to the entry into force of this Law worked (served), regardless of the duration, in specially authorized units for fighting corruption in the public prosecutor's offices, the Ministry of Internal Affairs of Ukraine, the Tax Police, the Security Service of Ukraine, the Military Service of Law and order in the Armed Forces of Ukraine and the customs authorities.

The Committee approved decision that the draft Law (Reg. No. 4812) appropriate under anti-corruption legislation and recommended that the Verkhovna Rada of Ukraine adopt it as a basis

and in general.

According to the conclusion of the Main scientific and expert unit of the Verkhovna Rada of Ukraine, the draft law may be adopted as a basis.

At this time, the mentioned draft law is waiting consideration by the Verkhovna Rada of Ukraine.

The potential of the National Bureau is strengthening step by step, as evidenced by the increasing number of pre-trial investigations conducted by the detectives of the National Bureau. Thus, from the analysis of the statistical data of the activities of the National Bureau during the reporting period, it is estimated that in September the total number of proceedings in which detectives of the National Bureau carried out pre-trial investigations amounted to 410. On June 11, 2018, its amount increase to 602.

Despite significant achievements in the work of the National Bureau, one of the most important obstacles to its work remains the unresolved issue of the possibility of removing information from transport telecommunication networks by authorized departments of the National Anti-Corruption Bureau of Ukraine in criminal proceedings under investigation by the National Bureau and assigning the National Bureau to special users of the radio frequency resource of Ukraine. This significantly impedes the work of the National Bureau and reduces its effectiveness.

In 2018 4748 (2017 - 9425) cases of bribery and other corruption crimes were registered with the prosecutor's office.

1481 criminal proceedings were sent the court in 2018 (2017-3139), and 337 (2017 - 1692) were condemned in 2017.

During 2018, NABU / SAPO registered 507 (2017 - 909) criminal proceedings. As a result of the pre-trial investigation, the procedural management of which was carried out by the SAPO, 35 (2017 -61) criminal proceedings were sent to the court during 2017.

Among the prosecuted that was sent to court in 2017, 5 criminal proceedings against civil servants of category "A", 5 (2018 - 8) - judges, and 8 - employees of the prosecutor's office.

According part 1 of Article 1 of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine", the National Anti-Corruption Bureau of Ukraine is a state law enforcement agency, which is responsible for preventing, detecting, terminating, investigating and disclosing corruption offenses attributed to its jurisdiction, as well as prevention committing new ones.

The task of the National Anti-Corruption Bureau of Ukraine is to prevent criminal corruption offenses committed by senior officials authorized to perform state or local government functions and endangering national security.

According to part one of Article 26 of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine", the control over the activities of the National Bureau is carried out by a committee of the Verkhovna Rada of Ukraine, the subject of which is the fight against corruption

and organized crime, in accordance with the procedure established by the Constitution of Ukraine, the Law of Ukraine "On democratic civilian control over the Military Organization and law-enforcement bodies of the state ", this and other laws of Ukraine.

According to the sixth part of this article, an independent assessment (audit) of the effectiveness of the National Anti-Corruption Bureau of Ukraine, its operational and institutional independence, including through a random audit of criminal proceedings, was conducted annually, the pre-trial investigation was carried out by the National Bureau and was completed.

The said evaluation (audit) is carried out by an external control commission composed of three members. The President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine annually determine one member of the commission from among persons who have significant experience in the bodies of pre-trial investigation, prosecutors, courts abroad or international organizations, possess the necessary knowledge and skills for such an evaluation (audit), and also have an impeccable business reputation. The persons specified in paragraphs 1-3 of part one of Article 13 of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine", and persons authorized to perform functions of the state or local self-government in accordance with the Law of Ukraine "On Corruption Prevention" can't be members of the external control commission. Members of external control commissions act independently and should not perform any orders, instructions provided by any person.

In compliance with the requirement of Article 26 of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine", the Committee conducted a qualification selection of a candidate from the Verkhovna Rada of Ukraine as a member of the commission for independent external evaluation (audit) of the activities of the National Anti-Corruption Bureau of Ukraine.

The Committee on the Prevention and Counteraction of Corruption, at its meeting on June 6, 2018 (Protocol No. 120), considered the issue of determining the candidacy of the Verkhovna Rada of Ukraine in the commission of external control over the independent evaluation (audit) of the effectiveness of the activities of the National Anti-Corruption Bureau of Ukraine and recommended to the Verkhovna Rada of Ukraine to appoint a representative from the Verkhovna Rada of Ukraine to the composition of the external control commission for the evaluation (audit) of the effectiveness of the National Anti-corruption Bureau Ukraine from the relevant candidates.

The Verkhovna Rada of Ukraine adopted Resolution No. 2448-VIII on 07 June 2018 "On the Determination of the Representative of the Verkhovna Rada of Ukraine to the External Audit Commission for the Independent Evaluation (Audit) of the Effectiveness of the National Anti-Corruption Bureau of Ukraine." According to which the commission included Vasylenko Volodymyr Andreevich - Ukrainian lawyer-internationalist, Honoured Lawyer of Ukraine, Ambassador Extraordinary and Plenipotentiary of Ukraine, Doctor of Law, Professor.

In addition, according to the order of international partners (US Embassy in Ukraine and EU Anti-Corruption Initiative in Ukraine), in March 2018 an independent expert analysis of the effectiveness, efficiency and independence of the NABU was presented at the request of NABU.

As to the conduct of the independent evaluation (audit) of the effectiveness of the National Bureau's operations, its operational and institutional independence, as provided for by the Law of

Ukraine "On the National Anti-Corruption Bureau of Ukraine", such audit was not conducted since the establishment of the Bureau. At the same time it should be noted that during the Subcommittee of the Verkhovna Rada of Ukraine on issues of legal support and control of special bodies in the field of prevention and counteraction of corruption, the Working Group on the development of a methodology for carrying out an independent evaluation (audit) of the effectiveness of the National Anti-Corruption Bureau of Ukraine, whose activities, as seen from its The name is intended to provide methodological support for the procedure for conducting a future evaluation of the activities of the National Bureau.

The specialized anti-corruption prosecutor's office is formed and functions in the structure of the General Prosecutor's Office of Ukraine as an independent structural unit, the peculiarities of which organization and activities are determined by a separate article of the Law of Ukraine "On Prosecutor's Office".

In the structure of the SAPO, a documentary unit was formed which directly deals with the registration, accounting and movement of the correspondence of the SAP.

Secret office work are provided by employees of the competent structural subdivision of the unit, which are located directly in the separate administrative building of the SAPO.

The procedure for reviewing appeals, inquiries and organization of personal reception of citizens in the prosecutor's offices is determined by the departmental order of the General Prosecutor's Office of Ukraine, which in turn provides for the autonomy of the SAPO regarding consideration of a certain category of documents, in particular, appeals and inquiries by people's deputies of Ukraine, etc.

The current Criminal Procedure Code of Ukraine contains guarantees that guarantee any person from illicit criminal prosecution.

The guarantees of the adoption of legal and impartial procedural decisions include the duty of the investigator and the prosecutor to investigate and provide a legal assessment of the circumstances that expose and justify the suspect, which mitigate or aggravate his punishment, provide them with an appropriate legal assessment and provide (part 2 of Article 9).

The application of a precautionary measure to a person (even the softest one) allows the Code only in case of a reasonable suspicion that a person committed a crime (Part 2 of Article 177).

In addition, when sanctioning investigative actions at the pre-trial stage (for example, search or secret investigative actions), the court investigates the existence of sufficient grounds for believing that the crime was committed.

### ***Assessment of progress***

Adoption of the Law on High Anti-Corruption Court (HACC) in June 2018 was a major breakthrough under pressure from IMF. The jurisdiction of the court coincides with NABU and SAPO jurisdiction. However, the Law contains a provision that significantly narrows does its jurisdiction: it provides that cases that have already been investigated by NABU and transferred

to ordinary courts can be appealed in ordinary courts as well, and not in the HACC.

Adoption of one additional law is necessary for the establishment of the HACC, including the amendments to Law on Judiciary and Status of Judges.

The main next challenge is to ensure integrity of the selection of HACC Judges and protect this process from political interference. According to the NGOs, many of the current members of High Qualification Commission of Judges (HQCJ), that will be conducting this selection; have discredited themselves during the selection of Supreme Court judges and the current procedure of qualification assessment of all the judges. The Law on HACC provides for a key role of international experts in the selection process that should be nominated by international organisations. Political speculations and controversy as to how these experts should be nominated and by which international organisations has already started. Similar experience of NABU shows that effective participation of respected international experts will indeed be very important.

While jurisdiction of NABU and SAPO are clearly set in the law, in practice there are cases that fall under their jurisdiction, but were investigated by other agencies, e.g. in April 2018 the court acquitted the SSU officer who was charged with abuse of influence, because that case had fallen under the jurisdiction of NABU, but had been investigated by the Military Prosecution Office.

The capacity of the NABU has strengthened as demonstrated by the increasing number of pre-trial investigations conducted by its detectives. One of the most important obstacles to NABU's work is that it cannot do autonomous wiretapping; this often leads to numerous leaks of information about NABU investigation to the Security Service, e.g. in November 2017 information about undercover operation on bribe-taking in State Migration Service was leaked thus undermining the investigation. Amendments to the laws "On the National Anti-Corruption Bureau of Ukraine", "On the Radio Frequency Resource of Ukraine" and the Criminal Procedure Code were prepared in order to provide autonomous wiretapping to NABU, and are waiting consideration by the Parliament. But according to the NGOs, the Parliament does not intend to consider these amendments any time soon.

According to the Law, NABU has to be audited annually. This audit has to be conducted by a group of 3 independent auditors with experience of work in law enforcement or judicial institutions abroad, or in international organizations. So far, the audit has not taken place as the President and the Parliament failed to choose candidatures to the Audit Committee in the past. In June 2018 the Parliament has made its choice and appointed Mr Volodymyr Vasylenko as its candidate. According to the NGOs, Mr Vasylenko while a prominent lawyer has no experience related to anti-corruption. The President has also identified its candidate Mr Pavlo Zhebrivskyi, a Ukrainian lawyer and politician whose experience of work in international organisations is questionable; according to NGOs he lacks necessary qualifications and is not independent. Three prominent NGOs filed a suit against his appointment.[2] The President has also identified its candidate Mr Pavlo Zhebrivskyi, a Ukrainian lawyer and politician whose experience of work in international organisations is questionable; according to NGOs he lacks necessary qualifications and is not independent.<sup>23</sup> The third auditor appointed by the Government is Mr Mykhailo

<sup>23</sup> <https://antac.org.ua/en/publications/zhebrivskyi-was-appointed-as-nabu-auditor-in-violation-of-the-law/>

Buromenskii, a Ukrainian Professor of International Law, incumbent Head of the Ukrainian Delegation to GRECO. NGOs also point out that the methodology of the audit does not exist yet, and it is very important to develop a strong methodology and to include safeguards to protect the audit from possible manipulations and falsification.

While waiting for the official audit, international partners including the US Embassy in EU Anti-Corruption project in March 2018 conducted an independent technical assessment of the effectiveness, efficiency and independence of the NABU at the request of NABU. The general assessment of NABU activities is positive, but some possibilities for further improvement have been identified.

Attacks on anti-corruption agencies, and especially NABU, continued throughout the period since the adoption of the monitoring report, e.g. in November-December 2017 the GPO and SSU accused several NABU detectives who acted undercover agents in provocation of bribe. These detectives were notices of suspicion of criminal offence, however no follow up was given to these suspicions. In November 2017 GPO started the investigation of possible disclosure of classified information by NABU, however no investigation followed, however these cases put pressure on the NABU. A draft law was submitted to the Parliament giving the Parliament the right to dismiss the head of the NABU, the law is still pending.

No consideration was given to possible amendments to the Constitution in order to strengthen legal basis of ACA. No progress has been made in regard to institutional autonomy of SAPO. Besides, there are allegations of misconduct by the Head of SAPO. There is a difference of opinion about whether or not the Disciplinary Commission can consider evidence gathered in an undercover investigation in this process although civil society has stated that such evidence has been considered by the Commission in past cases. There appears to be Supreme Court authority for such use that is relevant to a current proceeding concerning the SAPO. This case also raises issues about the legal criteria for dismissal of the SAPO.

No measures were taken to protect civil society and anti-corruption activities from unjustified pressure from law-enforcement bodies, e.g. falsified pending investigations against prominent anti-corruption NGOs shows the lack of progress. The trend of attacks on NGOs seems to be on increase, which is alarming.

## **Progress**

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<https://ti-ukraine.org/en/news/anti-corruption-organizations-appeal-against-the-decision-to-appoint-pavlo-zhebriivskyi-as-the-nabu-auditor/>