ISTANBUL ANTI-CORRUPTION ACTION PLAN

FOURTH ROUND OF MONITORING

UKRAINE

The report was adopted by the OECD/ACN at the Istanbul Action Plan monitoring meeting on 21 March 2019, with the exception of recommendation 19 on public procurement, which was not assessed due to missing information.

For further information, please contact Mrs Olga Savran, ACN Manager at olga.savran@oecd.org.
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.

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/.

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/.
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

4th 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 due to insufficient information provided by the Government; it was postponed to 2018, and was adopted in July 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 NAPC, 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.

The second progress update was provided by the Government on 11 March 2018, very late after the deadline established by the methodology, which could have been considered a failure to submit the report. However, the expert team agreed to review the report taking into account important developments in Ukraine. The expert team was composed of Mrs. Elena Konceviciute (Lithuania/EU), Mrs. Kätlin-Chris Kruusmaa (Estonia), Mrs. Mary Butler (USA), Mrs. Anca Jurma and Mr. Razvan Bostinary (Romania), Mr. Dirk Plutz (EBRD), Mr. Klas Klaas (SIGMA); the team was assisted by Mrs. Olga Savran, OECD/ACN. The Ukrainian delegation was led by Mr. Oleksandr Seryogin, Commissioner of the National Agency for Corruption Prevention (NACP) and was composed of representatives from General Prosecutor's Office (GPO) and Special Anti-Corruption Prosecution Office (SAPO), National Anti-Corruption Bureau (NABU), National Agency for Civil Service (NACS), Agency for Recovery and Management of Assets (ARMA), Ministry of Internal Affairs, Ministry of Economic Development and Trade, High Qualification Commission of Judges, State Investigative Bureau. TI Ukraine and AnTac NGOs provided their own reports and took part in the assessment.

The Plenary on 21 March 2019 discussed the assessment and agreed that 2 recommendation (regarding the establishment of High Anti-Corruption Court and performance appraisal of civil servants) show significant progress, 12 recommendations show progress and 10 show no progress. Recommendation regarding public procurement will be rated through written procedure. In addition, the plenary noted serious negative developments in 3 areas, including the decision of the Constitutional Court that office of illicit enrichment was not constitutional, decision of the Cabinet to discontinue the contracts of the reform-oriented board of Naftogaz and allegations of cover up of corruption in the defence sector by many law-enforcement bodies including NABU. Recommendations related to negative developments are marked with * in the table below, analysis is provided in relevant chapters.
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Assessment of Progress</th>
<th>19th Meeting, July 2018</th>
<th>20th Meeting, March 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 2017</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Anti-Corruption Policy</td>
<td>No progress</td>
<td>No progress</td>
<td></td>
</tr>
<tr>
<td>2. Awareness raising</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>3. Prevention body</td>
<td>No progress</td>
<td>No progress</td>
<td></td>
</tr>
<tr>
<td>4. Evidence-based civil service policy</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>5. Civil service reform</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>6. Merit-based service</td>
<td>Progress</td>
<td>No (further) progress</td>
<td></td>
</tr>
<tr>
<td>7. Performance appraisal</td>
<td>Progress</td>
<td>Significant progress</td>
<td></td>
</tr>
<tr>
<td>8. Dismissals, discipline</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>9. Remuneration</td>
<td>No progress</td>
<td>No progress</td>
<td></td>
</tr>
<tr>
<td>10. Conflict of interest</td>
<td>No progress</td>
<td>No progress</td>
<td></td>
</tr>
<tr>
<td>11. Ethics</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>12. Asset Declarations</td>
<td>No progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>13. Whistleblowing</td>
<td>No progress</td>
<td>No progress</td>
<td></td>
</tr>
<tr>
<td>14. Political Officials</td>
<td>No progress</td>
<td>No progress</td>
<td></td>
</tr>
<tr>
<td>15. Judiciary</td>
<td>No progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>16. Prosecutors</td>
<td>Progress</td>
<td>No progress</td>
<td></td>
</tr>
<tr>
<td>17. Transparency and data</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>18. Access to information</td>
<td>Significant progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>19. Public procurement</td>
<td>Progress</td>
<td>written procedure</td>
<td></td>
</tr>
<tr>
<td>20. Business integrity</td>
<td>Significant progress</td>
<td>Progress, *negative development</td>
<td></td>
</tr>
<tr>
<td>21. Elements of offence</td>
<td>Progress</td>
<td>No progress, *negative development</td>
<td></td>
</tr>
<tr>
<td>22. ARMA</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>23. Immunities</td>
<td>No progress</td>
<td>No progress</td>
<td></td>
</tr>
<tr>
<td>24. Effective investigations</td>
<td>Significant progress</td>
<td>Progress, *negative development</td>
<td></td>
</tr>
<tr>
<td>25. Asset recovery</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>26. Anti-cor. court, NABU, SAPO</td>
<td>Progress</td>
<td>Significant progress</td>
<td></td>
</tr>
</tbody>
</table>

Note:

* Negative development
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.
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


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

---

2 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%0D%B2%0D%B4%0D%8C_19.04.2017.pdf;
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. 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).

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.

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 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.

https://nazk.gov.ua/rishennya-30-bereznya (for reference to see Decision No. 550 on March, 30, 2018)

https://nazk.gov.ua/sites/default/files/docs/nazk_files/%D0%9C%D0%9E%D0%94%D0%98%D0%9A%D0%9D%D0%B9%D0%97%D0%9A_21.12.2016.pdf

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

https://nazk.gov.ua/sites/default/files/docs/2018/anicor_programs/

https://nazk.gov.ua/gromadska-rada
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. 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. 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 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.

---

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

8 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
Government report

1.1. On the 18th of September, 2018, the draft Law of Ukraine “On Anti-Corruption Strategy for 2018-2020” was included to the agenda of the plenary session of the Verkhovna Rada of Ukraine. The draft law is re-elaborated and completed with the inserted input, resulted from discussions with public, and international experts.

Actions under the state anti-corruption policy rooted from the Anti-Corruption Strategy for 2015-2017 are being further implemented.

1.2. The analysis, rooted from the results spelt by the survey of the situation of corruption in 2017 and presented in the «Corruption in Ukraine: Understanding, Perception, Prevalence» Report, is used as the background for drafting Anti-Corruption Strategy for 2018-2020.

1.3. In 2018, due to lack of resources, no corruption surveys were conducted neither by NACP, nor other governmental authorities, in Ukraine.

In 2018, NACP approached EUACI to support it with the annual research study of the corruption situation in Ukraine. EUACI agreed to assist with this activity and is now developing the ToR and will provide the tender shortly.

1.4. Corruption Risk Assessments in Ukraine: Current State (Summary and Recommendations) Report was presented in March, 2018. The recommendations are being implemented by NACP.

In 2018, 129 state authorities, 43 local authorities of executive power and local self-governments conducted internal corruption risks (CRs) assessments and, on the basis of the results gained, developed and adopted anti-corruption programmes (ACPs) for 2018 (with 79 ACPs of state authorities, 33 ACPs of local authorities and self-governments are approved by NACP with NACP’s amendments (i.e., propositions), and the rest of ACPs are either rejected to be approved by NACP, or are left without consideration by NACP under reasonable excuse (e.g., due to poor quality).

For improving quality of ACPs’, NACP has developed and, since the 9th of December, 2018, launched the “Anti-Corruption Programmes for State Authorities” free online 3-weeks’ course. This course is grounded on the NACP’s-made analysis of hands-on implementation of ACPs by state authorities through 2017 and January-November 2018, inter alia analysis of problems and ways of eliminating them. Normative and methodological base for CRs assessment and ACPs development is planned to be further improved by NACP after having made consideration and analysis of the feedback received from the participants of the course.

---

9 Is enclosed in English
10 https://nazk.gov.ua/sites/default/files/docs/2018/anticor_polityka/Level%20of%20Corruption%20Survey%20%28ENG%20TR%29%20D%20%5B2012W%20%28RT%20%20%28%20Checked%20%28%20%28%29%20%281%20%2829.pdf
11 is enclosed in PDF format
12 https://courses.prometheus.org.ua/courses/course-v1:UNDP+GOVANTICOR101+2019_T1/about
8 regional training seminars on integrity and compliance (named “Business Integrity: Join, Apply, and Win”) have been conducted in Kharkiv, L’viv, Odesa, Vinnytsia, Dnipro, Ivano-Frankivsk, Rivne, Chernihiv, with 384 representatives from state-owned enterprises and private companies to have participated. The training is aimed at heightening awareness of integrity of doing business, as well as sharing best practices of implementing ACPs.

1.5. On the 16th of November, 2018, NACP made the decision No. 2597 to approve the completed draft Law of Ukraine “On amendments made to several laws of Ukraine on corruption prevention”\(^{13}\) under which, inter alia, the article 19 of the Corruption Prevention Law of Ukraine is proposed to be added with article 19\(^{2}\) “Report on the results gained from implementation of anticorruption programmes” stipulating that the authorized units (persons) of the state authorities, on a quarterly basis, shall prepare reports on implementation of ACPs. The draft law has been completed with the input resulted from discussion with public.

The draft law has been recently sent to the interested state authorities for their approvement.

**Assessment of Progress**

It is regrettable that despite reported efforts the National Anti-Corruption Strategy was not adopted. Ukraine does not have an anti-corruption strategy since 2018. This failure indicates the lack of political will of the leadership of the country and of the capacity in the responsible institutions to put anti-corruption issues high on the political agenda, especially during the current year of presidential and parliamentarian elections.

According to NGOs, full implementation of the previous strategy was not ensured, as demonstrated by the Alternative Report on the National Anti-Corruption Policy Implementation Effectiveness,\(^{14}\) the impact of anti-corruption policy implementation is not assessed regularly and no adequate monitoring mechanism has been ensured.

No anti-corruption surveys were organised reportedly due to lack of funding, while the cost estimate for a survey is around EUR 50K, which is not a prohibitive amount for Ukraine. However, such surveys are regularly conducted by civil society organizations, the business community and social scientists.\(^{15}\) NACP could make a good use of them in its policy work, both for the monitoring of anti-corruption work and for planning of new activities.

EU project commissioned a report on Corruption Risk Assessments, and NACP reports that it takes measure to implement the recommendations, such as the launch of a free online 3-weeks’ course “Anti-Corruption Programmes for State Authorities” in December 2019. While the launch of this training course is a positive development, it is too early to asset its usefulness, and thus to provide an input for the compliance rating below. NGOs report that there is no public information regarding

---


\(^{15}\) [http://www.pravo.org.ua/img/zstored/files/%D0%90%D0%BB%D1%8C%D1%82%D0%B5%D1%80%D0%BD%D0%B0%D1%82%D0%B8%D0%B2%D0%BD%D0%B8%D0%B9%20%D0%B7%D0%B2%D1%96%D1%82%20%D0%B7%20%D0%B2%D0%BF%D1%80%D0%BE%D0%B2%20%D0%BD%D0%B4%20%D0%B6%D0%BD%D0%BD%1%8F%20%D0%B0%D0%BD%1%82%D0%B8%D0%BA%20%D0%BE%D1%80%20%D1%83%D0%BF%D1%86%D1%96%D0%B9%20%D0%BD%D0%BE%D1%97%20%20%D0%BF%20%D0%BE%D0%BB%D1%96%D1%82%D0%B8%D0%B2%20%2005_02_2019%20(D0%20BF%D1%80%20%20BE%D0%B5%20%20BA%20%20D1%82).pdf](http://www.pravo.org.ua/img/zstored/files/%D0%90%D0%BB%D1%8C%D1%82%D0%B5%D1%80%D0%BD%D0%B0%D1%82%D0%B8%D0%B2%D0%BD%D0%B8%D0%B9%20%D0%B7%D0%B2%D1%96%D1%82%20%D0%B7%20%D0%B2%D0%BF%D1%80%D0%BE%D0%B2%20%D0%BD%D0%B4%20%D0%B6%D0%BD%D0%BD%1%8F%20%D0%B0%D0%BD%1%82%D0%B8%D0%BA%20%D0%BE%D1%80%20%D1%83%D0%BF%D1%86%D1%96%D0%B9%20%D0%BD%D0%BE%D1%97%20%20%D0%BF%20%D0%BE%D0%BB%D1%96%D1%82%D0%B8%D0%B2%20%2005_02_2019%20(D0%20BF%D1%80%20%20BE%D0%B5%20%20BA%20%20D1%82).pdf)
the implementation of the above recommendations; and relevant subsections of the NACP website contain incomplete minutes of meetings held by the Commission on Assessment of Corruption Risks and Anti-Corruption Program Implementation Monitoring.

According to NGOs, physical attacks and intimidation of activists significantly intensified over the past year, especially in the regions. Since July 2018, two activists Kateryna Handziuk and Vitaliy Oleshko were murdered. Activists composed the list of 55 attacks and demand their thorough investigations. Human rights defenders report poor work of the law enforcement bodies that led to failure in bringing the perpetrators to justice. Besides, members of the Public Control under the NABU constantly feel pressure from “corrupt officials’ friends” through unsubstantiated lawsuits, complaints, smear campaigns and even physical assault.16 17 18 19

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.

16 https://www.facebook.com/NAZKgov/photos/a.1070146733045250/2137381292988450
The results of the campaigns will be analysed and a report on the effectiveness of the activities will 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 4th 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.\textsuperscript{20} 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.\textsuperscript{21}

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

20th Plenary Meeting, March 2019

Government report

2.1. In 2018, under the action plan for implementation of the Strategy for Communications in Corruption Prevention and Counteraction\textsuperscript{22} \textsuperscript{23}, the system for monitoring and assessment of effectiveness of anti-corruption communications (ACCs) has been put in practice; ACCs are prioritized in state authorities’ exercise; media-events on anti-corruption have been conducted in state authorities; the public have been involved into elaboration of the mechanism for decision-making in corruption prevention and counteraction; the standards for publicizing/providing information on prevention, detection and counteraction of corruption on official web-sites of central/other state authorities of...

\textsuperscript{20} \url{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)

\textsuperscript{21} \url{https://euaci.eu/events/park-korupcziji-zaproshuje-na-pres}

\textsuperscript{22} \url{https://zakon.rada.gov.ua/laws/show/86-2018-%D1%80}, \url{https://zakon.rada.gov.ua/laws/show/576-2017-%D1%80}

\textsuperscript{23} is enclosed is English
executive power have been approved and set in practice; the participation of representatives of state power authorities in elaboration of training courses (among others, on-line ones) has been assured; trainings on ACCs for 60 representatives of central authorities of state power, state authorities, oblast’ (regional) state administrations have been conducted; communication products, related to corruption prevention and counteraction, aiming, inter alia, at lowering tolerance to corruption in society, have been produced, particularly, 16 spaces in Kyiv, and 2 audio-visualized pieces; for spreading information aimed at anti-corruption awareness raising, there have been produced 383 audio broadcasts through 19 radio stations, 2 880 video boards, and 431 performances on TV; for cultivating and popularizing the system of on-line services in Ukraine, as those that lower CRs, there have been produced 2880 video boards, and 190 performances on 17 TV channels.

In total, 50 state authorities are involved in implementing the Strategy for Communications in Corruption Prevention and Counteraction. NACP commenced and has been implementing Communication Strategy for 2018-2020.24 25 26

2.2. In 2018, for the Strategy for Communications in Corruption Prevention and Counteraction, there has been spent 2 252 843 UAH from the state budget of Ukraine.

2.3. On the basis of the results spelt by implementation of the Strategy for Communications in Corruption Prevention and Counteraction in 2018, there has been conducted the pilot assessment of the effectiveness of ACCs, as well as application of communication channels, in separately-taken state authorities.27

2.4. For judges: in 2018, the National School of Judges of Ukraine under its competence conducted 54 trainings on anti-corruption legislation for 1470 judges of local general courts of all jurisdictions, 2 seminars on anti-corruption for professional development for 71 judges of local general, commercial courts, and courts of appeal, 4 anti-corruption trainings for 84 judges of courts of appeal, as well as 20 classes on anti-corruption legislation for 685 office clerks of local courts and courts of appeal of all jurisdiction.

For prosecutors: in 2018, at the National Academy of Prosecution of Ukraine, 2687 prosecutors and detectives, and 54 public servants of prosecution offices raised their professional competence in anti-corruption. 428 prosecutors and public servants of prosecution offices experienced out-of-office trainings. 261 candidates for the positions of prosecutors of local prosecution offices started special training. The Prosecutor’s General Office of Ukraine conducted scientific and methodological seminar for regional prosecution offices.

Assessment of Progress

Previous progress updated noted that communication was the most underperformed function of NACP. NACP reports about measures it took to start the implementation of its communication strategy which focused on media events and the use of web-sites of various state bodies. NACP also provided trainings about its anti-corruption strategy to 60 representatives of central and regional state bodies. NACP has spent about EUR 75K for this work. NACP also conducted a pilot assessment of the effectiveness of

24 https://nazk.gov.ua/komunikaciyna-strategiya/
25 The Strategy is enclosed in English
26 The Report 2018 is enclosed in English
27 The Report is enclosed in English
28 In compliance with article 105 of the Law of Ukraine “On Judiciary and Status of Judges”
its communication strategy, however it focused mostly on the number of activities, and less on the impact these activities had on the awareness.

However, NGOs claim that no information has been published on the Agency’s implementation of its own Communication Strategy. NGOs also report about various awareness raising activities that were conducted by state agencies and with the support of donors. E.g. ahead of the Anti-Corruption Day 2018, the NABU produced 5 videos Everyone Can Fight Corruption. Ministry of Information Policy prepared and broadcasted a video “Give Up Petty Corruption. Change!” and broadcast it on all available platforms. USAID and TI conducted the awareness campaign It Is You a Corrupt Official Steals From, Anti-Corruption Action Center and CASE Ukraine conducted a campaign to explain that the money corrupt officials steal belong to taxpayers.

NACP, together with UNDP Ukraine and MOOC project Prometheus, has created free online courses Anti-Corruption Programs of Public Authorities, Conflict of Interest: Things You Should Know, and Declare with Integrity. NACP conducted several targeted workshops in 2018, e.g. for military servants and law enforcement officers in the ATO zone; private and public companies; national and regional media; students; heads of local state administrations. On 12 December 2018, NACP held open doors days for secondary school students. Students of the last grades of schools in 9 out of 10 Kyiv districts had an anti-corruption lesson “What the NACP Does and How Children Can Prevent Corruption.” NGOs believe that NACP failed to assess the efficiency of anti-corruption communications.

For the third year now, about 200 schools held anti-corruption lessons using materials developed by the online education studio EdEra and UNDP. In 2018, students and teachers, with the help of anti-
corruption representatives of civil society, prepared publications on the nature, investigation and reporting of corruption, as well as on overcoming corruption in education.  

*The Corruption Park,* created with the support of EUACI in Ukraine attracted 30,000 visitors from 28 countries during the 25 days of its work. The Park’s media coverage reached over 100 million contacts.

In September 2018, the National Anti-Corruption Bureau with support of the EUACI and the UNDP in Ukraine organized open discussions with journalists, anti-corruption experts and civil society activists CSO; over 8500 people joined livestreams.

No progress was noted regarding recommendation 2.4 - target awareness raising in the activates most prone to corruption.

**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 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. 7276.39

**Assessment of progress**

According to the progress update all NACP commissioners’ vacancies were filled though 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.

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

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

---

Government report

3.1. NACP commenced the Unified State Registry of Persons Committed Corruption or Corruption-Related Offences (the Registry of the Corrupt)\(^ {40} \)\(^ {41} \). The Registry of the Corrupt is free, user-oriented, and can be used day and night on the NACP’s official web-site\(^ {42} \).

Among other things, the Registry of the Corrupt makes it possible for a user to get, in on-line manner, either the statement about him\(\)herself, by means of his\(\)her electronic key, or information about any other person without an electronic key applied. Legal entities can on-line, by means of electronic seal, receive a statement certifying absence of criminal penalty, that is obligatory for permission to participate in public procurement\(^ {43} \).

NACP commenced to apply logical and arithmetical control of e-declarations (LAC\(^ {44} \)), using available automated access to 13, out of 16, state registries and databases.

The Rules of Procedure for Monitoring of Life Style of the Persons authorized to perform state or local self-government functions\(^ {45} \) have been developed.

In 2018, there have been implemented the requirements, set under the Law of Ukraine “On Political Parties in Ukraine”\(^ {46} \), for state funding of statutory activity of 6 political parties in sum of 513 671 300 UAH. The funding is provided each quarter in compliance with NACP’s decisions that are publicly open on the NACP’s site.

For fulfillment of the competence of exercising state oversight of compliance with, set under the law, restrictions for state funding for political parties, NACP on regular quarterly basis conducts analysis of use of the state-budgeted funding by political parties (whether money is used in legal manner and on purpose), oversights timely reporting by political parties on property, income, expenditures and financial obligations, as well as reporting by political parties on income and use of election funds for nationwide and local elections, as well as oversights fullness of the reports, compliance with proper reports’ filing under the set requirements, truthfulness of the information submitted to the reports\(^ {47} \).

Number of political parties, which duly comply with requirements of the law to submit to NACP the corresponding reports, have increased. In contrast, in I quarter 2016, 195 political parties, out of 352 political parties registered in Ukraine, submitted their reports to NACP, thus in III quarter 2018, 276 political parties, out of the same 352, submitted their reports. Political parties’ reports, as well as conclusions made on the results of analysis of their reports, are made public on the NACP’s site\(^ {48} \).

The work on challenging implementation of the system of electronic reporting of political parties and candidates of nationwide and local elections is still pending. The technical and economical

\(^ {40} \)https://nazk.gov.ua/sites/default/files/docs/2019/zasidannya/01.02.2019/01.02%20%28367%29.pdf

\(^ {41} \)The document is enclosed

\(^ {42} \)https://corruptinfo.nazk.gov.ua/

\(^ {43} \)Scheme is enclosed

\(^ {44} \)Scheme is enclosed

\(^ {45} \)The draft in English is enclosed

\(^ {46} \)https://zakon.rada.gov.ua/laws/show/2365-14

\(^ {47} \)Two schemes in English are enclosed

substantiation for development of such system has been prepared. The draft Law on its implementation is still being elaborated.

On the ground of the results rooted from the analysis of the political parties’ reports on property, income, expenditures and financial obligations, in 2018, NACP composed 401 statements on administrative offence (administrative protocols) spelt by detected non-compliances with requirements for political corruption prevention.

As result of court hearings, courts made decisions and verdicts penalties in sum of 401 276,00 UAH, as well as confiscated illegally made donations in sum of 289 436,00 UAH.

NACP has handed over 6 materials with signs of criminal offence to the Main Detective Directorate of the National Police of Ukraine.

NACP has elaborated the draft law49 that, among other things, foresees improvement of the rules of procedure for bringing to liability and increasing penalty for offences related to donating a political party, or receiving donations by a political party.

There have been developed and approved the Rules of Procedure for Oversight of Income, Accounting and Use of Money of Election Funds of Candidates for the Post of the President of Ukraine.50 51

In view of fulfillment of the NACP’s competence during upcoming election campaigns, NACP has gained access to the “State Registry of Voters” automated information and telecommunication system, and the “Elections” unified information and analytical system.

The forms of financial reports on income and use of money from election funds of candidates for the post of the President of Ukraine have been developed, agreed, and approved.52 53

The Methodology for calculation of the sum of donation for a political party made in form of work, goods, or services has been developed, approved and registered.54 55

3.3. Since the 1st of January, 2019, the maximum limited number of employees of NACP was increased by 97 employees, with 408 employees to be stated.

Under the plan for 2019, NACP is going to establish and commence functioning of 5 territorial NACP’s bodies, as a minimum, on the idea of regional division (Center, North, South, West, and East).

NACP regretfully states that the Government of Ukraine has not foreseen in the State Budget of Ukraine for 2019 additional funding for NACP either for establishment of its territorial bodies, or for increasing its staff.

In 2018, 296 NACP’s employees were trained, particularly:

78 employees were trained in training premises in Ukraine (among them, 5 NACP’s IT specialists run specialized IT training), 189 – run internal NACP’s trainings, including 4 HR trainings for 31 NACP’s employees (with 25 directors among them), 2 trainings for NACP’s authorized persons on financial verification of assets declarations, conducted by the external EUACI experts; 18 employees were trained abroad (to compare, in 2017, there were 16 employees who were trained abroad).

50 [https://nazk.gov.ua/rishennya-14-grudnya (see Decision No. 3100)](https://nazk.gov.ua/rishennya-14-grudnya)
52 [https://nazk.gov.ua/rishennya-29-grudnya (see Decision No. 3221)](https://nazk.gov.ua/rishennya-29-grudnya)
54 [https://nazk.gov.ua/rishennya-16-lystopada (see Decision No. 2596)](https://nazk.gov.ua/rishennya-16-lystopada)
56 [https://zakon.rada.gov.ua/laws/show/1192-2018-%D0%BF](https://zakon.rada.gov.ua/laws/show/1192-2018-%D0%BF)
In general, NACP conducted 98 internal trainings for its employees on 34 thematic directions, with the number of people, varying from 9 to 139, to have participated in the trainings.

In 2020, 6 NACP’s trainers are planned to be trained, with 102 000 UAH to be foreseen under the NACP’s budget for 2020, and further, in 2021 – 8 NACP’s trainers, and in 2022 – 10 trainers.

10 NACP’s IT specialists are planned to be sent for special IT training in 2020, in 2021 – 8 NACP’s trainers, and in 2022 – 10 IT specialists.

3.4. In 2018, the Public Council under NACP (PC) held 4 meeting sessions, as well as provided NACP with 28 conclusions for the drafts of NACP’s decisions. The representative of PC has been included into the working team for development of the Anti-Corruption Strategy 2018-2020 and the state programme for its implementation.

In 2017, PC agreed to take part in 4 public discussions (p+d-s) out of 9 organized by NACP. For comparison, in 2018, NACP initiated and run 11 p+d-s, with no one to be visited by PC.

3.5. NACP has elaborated the draft Law of Ukraine “On Amendments Made to the Corruption Prevention Law of Ukraine” (on heightening role of the authorized units (persons) for corruption prevention and detection)57 58.

3.6. NACP is applying automated exchange of information with 13, out of necessary 16, state registries and databases. Launch of the automated exchange of information with 3 key registries, owned by the Ministry of Justice of Ukraine, is possible after adoption of the corresponding law by the Verkhovna Rada of Ukraine.59

---

**Assessment of Progress**

According to NGOs, there are concerns with regards to quality of NACP HR policy. One of the NACP employees responsible for verification of e-declarations, was sentenced for 5 years with suspension for embezzlement of 3 billion UAH in the tax authorities during Yanukovych times. She continued working in NACP for 9 more months after she was sentenced, which raises issues about the integrity of the NACP staff and the quality of internal controls.60

Regarding implementation of NACP mandate and political independence, conflicts with the Cabinet of Ministers and the Ministry of Justice have complicated the NACP’s situation. Budget allocations for NACP have increased over the past years. The number of NACP positions also increased by 97 and reached the total of 408 in January, 2019. However, no additional funding was provided to finance these new positions, and no funding was secured for the establishment of regional territorial bodies.

The government reports about continued checks of e-declarations and the development of rules for life-style checks, which were not yet applied in practice. At the same time, NGOs raised concerns regarding possible political influence on NACP controls of interests and assets, such as in the cases of the e-declaration of the minister of Infrastructure and an MP (in both cases involved individuals possessed drafts of NACP decisions with positive results of verification of their declarations before these decisions were adopted, raising questions about the integrity of the verification). NGOs further claim that NACP failed to ensure proper verification in some high profile cases, such as the

57 [https://nazk.gov.ua/rishennya-7-bereznya](https://nazk.gov.ua/rishennya-7-bereznya) (see Decision No.361)
payment by presidential candidate Yulia Timoshenko to a US lobbying company of a large amount of money that could not be explained by her declared income.

Regarding control of political finance, in 3rd quarter of 2018 NACP analysed report from 276 political parties (out of 352) with the focus on the use of state funding for their statutory needs; NACP does not have other role in controlling political party finance. NACP also developed rules for financial checks of the presidential elections and received access to the “State Registry of Voters”.

NACP reports that in 2018, the Public Council held 4 meetings. NGOs report that after 14 November 2017, when the Public Council publicly demanded to investigate the whistleblower’s report (mentioned in the previous progress update) information revealed by head of the Financial Control and Lifestyle Monitoring Department, the Agency’s management started ignoring the Public Council. E.g. the 2018 report of NACP was approved without the Council’s opinion as required by the Law.

NACP did not provide any information regarding its relation with anti-corruption units/officers in state bodies. But NGOs reported that in 2018, 24 trainings for anti-corruption units/officers, legal and human resources services of public agencies were held across Ukraine. The subjects were Electronic Declarations and Legal Aspects of Anti-Corruption Work. Anti-corruption units/officers are very critical of the NACP, since they are highly dependent on the Agency, being, in certain contexts, its “subsidiaries.” The anti-corruption units/officers were highly concerned about the fact that the NACP was effectively ignoring their needs and requests. They said that the Agency was not collecting any feedback and was not interested in the situation in various regions and public institutions, that it was impossible to get through to the NACP by the phone, and that they took 30 days to review any written request. This situation significantly limits the ability of anti-corruption units/officers to perform their functions, especially during the declaration submission time.

NGOs report that the National Council on Anti-Corruption Policy has effectively stopped its activity. While the Council has only general coordination function, its role of coordinating numerous stakeholders and ensuring communication at high political level was important, especially during the past two years when anti-corruption policy implementation faced serious challenges.

To summarise, NACP is busy with various tasks and has important resources, but there is no evidence that measures were taken to demonstrate it capacity to act independently and its authority and leadership among the public agencies.

---

61 NACP Results in 2018 / Facebook: https://www.facebook.com/NAZKgov/photos/a.1070146733045250/2061742487218998/?type=3&theater
62 H. Yanchenko. Anti-Corruption Officers Offer Harsh Criticism of the NACP/ Ukrainska Pravda: https://blogs.pravda.com.ua/authors/yanchenko/5be430b7d1150/
63 http://www.pravo.org.ua/img/zstored/files/%D0%90%D0%BB%D1%8C%D1%82%D0%B5%D1%80%D0%BD%D0%B0%D1%82%D0%B8%D0%B2%D0%BD%D0%B8%D0%B9%20%D0%BE%D0%BD%D0%B0%D1%80%BE%D1%83%D0%BF%D1%86%D1%96%D0%BD%D1%96%2005_02_2019%20(%D0%BF%D1%80%D0%BE%D1%82%D1%82).pdf
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.

19th ACN Monitoring Meeting, July 2018

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/publichnyy-zvit-nads-za-2017-rik) is published annually on the information resource 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.
Government report

4.1. In 2018, Ukraine initiated the baseline assessment of the public administration system according to the SIGMA Principles of Public Administration, with the civil service and human resources management of Ukraine to have high scores.

On the basis of the assessment results, there have been developed and adopted the amendments to the Strategy for Reforming Public Administration of Ukraine for 2016-2020.

4.2. In order to implement the Action plan of the public administration reform strategy for 2016-2020 (with amendments on the 18th of December, 2018, No. 1109-p) the procurement procedure of the software for the Human Resource Management Information System (HRMIS) was finished. According to the results of the procurement procedure the winner was determined, in particular on the 5th of February, 2019, the Contract for the supply, installation, operation and technical support of the HRMIS and Payroll System was signed.

Since the beginning of the 3rd quarter 2019, central executive authorities will be connected to the HRMIS. The full start of the HRMIS in all central executive authorities is going to be in 2020.

Under the Strategy, HRMIS is one of the priorities of the civil service reform and public administration in a whole, which was determined in the Section 3 “Strategy priorities” of the Strategy.

4.3. The detailed statistical information regarding the civil service is published on the NACS’s official web-site, which includes, among others, amount of the civil servants per a state authority; salaries; number of competitions, which were carried out for the vacant civil service positions; professional training system, etc. In particular, mentioned information is included into the Annual Reports of the NACS for 2016 and 2017.

Currently, the new Annual Report of NACS for 2018 is under preparation, and is expected to be published on the NACS web-site in March 2019.

Moreover, on the NACS’s web-site the information is published as follows:

- available civil service vacancies and results of competition for the civil service positions and tests;
- activities of the Senior Civil Service Commission;
- rules and regulations of NACS, adopted in order to implement Law of Ukraine “On civil service”;
- explanations on application of the civil service legislation;
- plans and reports, news and other public information.

65 https://zakon.rada.gov.ua/laws/show/1109-2018-%D0%BF
66 https://zakon.rada.gov.ua/laws/show/474-2016-%D1%80/sp.head
68 Under paragraph 5 of the Action plan of the Conception on implementation of the Human Resource Management Information System in the state bodies, approved by the order of the Cabinet of Ministers of Ukraine on the 1st of December 2017, No. 844-p.
70 http://nads.gov.ua/sites/default/files/imce/zvit%20%282%29.pdf
71 https://zakon.rada.gov.ua/laws/show/889-19, the Law is enclosed in English
Assessment of Progress

The work on this recommendation progressed well, including the baseline assessment of the public administration system, amendments adopted to the PAR strategy, and the signature of the contract for the installation of the HRMIS. The NACS publishes statistical data as recommended.

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.

19th ACN Monitoring Meeting, July 2018

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
Government report

5.1. On the 5th of February, 2018, the pilot procedure for analysis of positions in NACS was commenced, in view of evaluating capacity of NACS and its regional bodies, and determining the need in the staff extension, taking into account ongoing civil service reform.

All necessary regulations were adopted to ensure proper job positions analysis, in particular, the Working group on the job positions analysis in the NACS was created and approved72, as well as the Action plan on the job positions analysis in NACS was approved (I quarter 2018 – I quarter 2019)73.

The job positions analysis activities for the 2018 were fully implemented. The analysis included capacity in general, including budget needs, which resulted in the increase of staff positions.

Analysis of civil service in the Ministry of Interior is ongoing, with the support of the EU advisory mission.

In order to implement job positions analysis procedure in other state authorities, the Methodology of the job positions analysis of the civil service positions of category “B” and “C” was developed and approved74.

In October 2018, the interim report on the job positions analysis, including with proposals on the ways of strengthening NACS capacity, as well as oversight of public service legislation compliance, was submitted for consideration to the Head of NACS.

After the consideration having been made, the corresponding proposals regarding the NACS’s and its regional bodies capacity (extending the number of employees) will be submitted for consideration to the Government of Ukraine.

The actions, that are planned for 2019, are being implemented.

5.2. The amendments to the Rules of Procedure for competition for the civil service vacant positions have been made, envisaging strengthening the capacity of competition commissions for selecting candidates for positions of “A” category75.

Thus, the competition commissions for selecting candidates for positions of specialists in reforming may include Directors General of Directorates, Directors of General Departments, Director General of the Governmental Office for Coordination of European and Euro-Atlantic Integration, heads of the expert groups.

The HR expert, as well as two field experts, are required to be included to the competition commission for selection of the staff for reform.

One expert in foreign languages is additionally involved in assessing candidates’ knowledge in one of the official languages of the Council of Europe.76

---

72 by the NACS’s order, dated on the 1st of February, 2018, http://search.ligazakon.ua/l_doc2.nsf/link1/FN041094.html
73 TBC
74 by the NACS’s order, dated on the 17th of August, 2018, No. 199-18, registered in Ministry of Justice of Ukraine, on the 13th of September, 2018, No. 1051/32503 https://zakon.rada.gov.ua/laws/show/z1051-18
75 https://zakon.rada.gov.ua/laws/show/374-2018-%D0%BF
76 Provide details on who is specialist of reform – more details from T. Kovtun’s project
In addition, measures are being taken to ensure due professional functioning of the Senior Civil Service Commission (SCSC) and competition commissions, free of political influence, by means of, among others, streaming the SCSC’s meetings on YouTube channel.

In particular, representatives of state authorities, scientific institutions, educational institutions, mass media, public associations, and international organizations are permitted to attend SCSC’s meetings.

Besides, SCSC includes 4 representatives from the civil society organizations, scientific institutions, educational institutions and field experts.77

The total number of SCSC’s board are 11 members.

Thus, streaming of SCSC’s meetings, as well as the fact that 1/3 of SCSC’s board are not governmental authorities, prevents SCSC’s decision-making from any political influence.

5.3. NACS prepared the report on assessment of the capacity level of the 50 % of HR units of those state authorities, that are playing the key role in the national reforms.

The preliminary results were presented at the meeting of the HR Management Council under the NACS.78 The capacity level of 100% of HR management units, that were assessed, meet the required level.

In order to identify needs for methodological assistance in HR management in public authorities, there has been initiated the survey of employees of the HR management units of state authorities at all levels of jurisdiction. In 2018, 2 polls were conducted (in June, 259 participants were involved, and in November, 400 participants were involved). The analytical report, rooted from the results of the survey, has been prepared.79

The survey results were taken into account in drafting, by the NACS’s General department on HR management in the civil service, tailored for the HR management staff thematic trainings, seminars, meetings, etc.

In particular, 6 methodological recommendations, and 1 methodology, were approved.80

40 workshops and trainings were carried out for the civil servants.

On the 1st of October, 2018, the “HR management in the civil service” online training course was launched on the “Prometheus” web-platform.81 The training covers all the steps: entering civil service, identifying the needs in the personnel, peculiarities of the competition and establishing of probation period, concept of the “official career”, planning of the official career of the civil servant and role of the HRM service, in particular it is envisaged preparation of the HR strategy of the respective state authority.

In of sharing best practices in HR management, the Regulation on the “Best Practices in HR Management” nationwide competition was prepared and approved.82

---

77 In compliance with the Article 14 of the Law of Ukraine “On Civil Service”
78 https://www.kmu.gov.ua/ua/events/20-grudnya-zasidannya-radi-upravlinnya-lyudskimi-resursami
79 TBC
80 TBC
81 https://courses.prometheus.org.ua/courses/course-v1:NADS+GHR101+2018_T3/about
The “Best Practices in HR Management” all-Ukrainian competition was announced\(^{83}\). Methodological and organizational support for the Competition was duly provided by NACS. The winners of the competition were selected\(^{84}\). The best HR management practices were generalized and published on the NACS’s web-site\(^{85}\).

In addition, candidates and representatives of the state authorities are provided with consultations on civil service legislation, provided online, or in writing, as well as by means of telephone.

**Assessment of Progress**

In October 2018, the interim report on the job positions analysis, including proposals on the ways of strengthening NACS capacity, as well as oversight of public service legislation compliance, was submitted for consideration to the Head of NACS.

The NACS is confident that existing procedures for Senior Civil Service Commission (SCSC), such as streaming of SCSC’s meetings on YouTube and 1/3 of non-governmental representatives on the SCSC, protect its decision-making from any political influence.

The NACS took measures to assess and to increase the capacity of HR across state bodies.

**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 guaranteeing 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.

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

**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).

---


\(^{85}\) TBC
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
Government report

6.1. Independent representatives of expert community and civil society are included to the competition commissions and Senior Civil Service Commission to ensure transparency of the competition for the civil service vacant positions.

All stages of competition for civil service of “A” category vacant positions, are streamed on NACS’s YouTube channel[86].

In view of developing professional competences of the members of competition commissions for selection of specialists in reforms, as well as in compliance with the Concept of Commencement of Positions of Specialists in Reforms[87], NACS, in collaboration with EU4PAR EU’s project and “Prometheus” public project, through November-December, 2018, run the “The procedure for a competition for positions of specialists in reforms” thematic training courses for the 23 civil servants, who are members of competition commissions.

NACS carried out training for the Secretariat of the Cabinet of Ministers of Ukraine, ministries, State Agency of E-Governance of Ukraine members of competition commissions for selection of specialists in reforms.

6.2. Entering civil service is carried out through a competition, with professional competence, personal qualities and professional achievements of the candidate taken into account.

The requirements to competences for assessing candidates for specialists in reforms are determined, approved and listed[88].

The amendments have been made to the Typical requirements to the competences for assessing candidates for the “A” category vacant positions[89].

Article 31 of the Law of Ukraine “On civil service” sets imperative norm regarding appointment of winners of competition, on the basis of the minutes of the meeting of the competition commission. This rule is applied to all categories of vacant positions (A, B, and C) and to all subjects of appointment (including the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine).

The provisions assure equal opportunities for entering and exercising civil service.

6.3. Announcements of competitions are published on the NACS’s Unified portal of vacancies[90], as well as on the portal[91], and on official websites of state authorities, which run competitions.

For popularizing vacancies of specialist in reforms, advertisements are published on social networks, including Facebook page.

The leading portals for job seeking in Ukraine, such as work.ua, rabota.ua, HH.ua, as well as mass media and information resources, became the additional channels for informing potential candidates about open vacancies of specialist in reforms.

[86] https://www.youtube.com/channel/UCosDsJelzAIKZgLeIRhdcw
[87] https://zakon.rada.gov.ua/laws/show/905-2016-%D1%80
[88] https://zakon.rada.gov.ua/laws/show/246-2016-%D0%BF
[89] https://zakon.rada.gov.ua/laws/show/835-2018-%D0%BF
[91] https://career.gov.ua/
For informing target audiences, in particular, young specialists, about the competition for open new civil service positions, NACS participated in the Kyiv Post Vacancies Fair, as well as organized the Open Door Day. Moreover, NACS took part in the events for graduates from institutions.

Assessment of Progress

Since the previous progress updates further steps were taken to ensure transparency of appointments to the civil service, e.g. Customs and Tax administration are currently conducting selection of candidates to fill in vacancies through transparent and competitive procedures; salary levels for these vacancy positions were published. The Government’s decision on competitive procedures #15 amended adopted in Feb 2019 provides for the publication of salaries level and specific requirements for the vacancies.

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.

19th ACN Monitoring Meeting, July 2018

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 2018.92

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.

92 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”)
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. The implementation of these KPIs will be assessed by the end of the year. No information was provided yet regarding linking bonuses to the results of the appraisal.

**Progress**

**20th Plenary Meeting, March 2019**

Government report

7.1. Performance appraisal of the public servants of the “A”, “B”, “C” categories is carried out in accordance with the Performance Indicators of effectiveness and quality, determined with account of official duties of a public servant, as well as his/her compliance with rules of ethical conduct and requirements of legislation on corruption prevention, and in compliance with Typical rules of procedure for performance appraisal of public servants.

The typical tasks, key indicators of performance, effectiveness and quality of the exercise of duty, for public servants, who hold positions of directors in central executive authorities, for 2018, have been approved, for public servants who hold positions of state secretaries in ministries, for 2018, as well.

Performance appraisals of the public servants, who hold the category “A” civil service positions, and whose appointments and dismissal are made by the Cabinet of Ministers of Ukraine; and some directors and deputy directors of central authorities of executive power whose appointments and dismissal are made by the Cabinet of Ministers of Ukraine, have been carried out.

The conclusions on performance appraisal, carried out in 2018, of the public servants, who hold the category “A” positions, and appointments and dismissals of which are carried out by the decision of

---


95 [https://zakon.rada.gov.ua/laws/show/238-2018-%D1%80](https://zakon.rada.gov.ua/laws/show/238-2018-%D1%80)

96 [https://zakon.rada.gov.ua/laws/show/239-2018-%D1%80](https://zakon.rada.gov.ua/laws/show/239-2018-%D1%80)

97 [https://zakon.rada.gov.ua/laws/show/761-2018-%D1%80](https://zakon.rada.gov.ua/laws/show/761-2018-%D1%80), the decision was adopted at the meeting of the Government, dated on 24th of October, 2018, No. 761-p

the Cabinet of Ministers of Ukraine, have been adopted\textsuperscript{99} and conclusions on performance appraisal, carried out in 2018, of the public servants who hold the “A” category positions\textsuperscript{100}, have been approved. The typical tasks, key indicators of performance, effectiveness and quality of duty performance of the public servants, who hold the positions of state secretaries in ministries, for 2019\textsuperscript{101}; and of public servants, who hold positions of directors in the central executive authorities, for 2019\textsuperscript{102}, have been approved.

The methodologic recommendations were developed:

on determining results of duty performance of the public servants of category “B” and “C”;\textsuperscript{103}

on determining tasks and key indicators of performance, effectiveness and quality of duty performance of public servants of category “A”;\textsuperscript{104}

on development of the individual programme of the advancing professional competence level;

on determining tasks and key indicators of performance, effectiveness and quality of the duty performance of public servants of categories “B” and “C”;\textsuperscript{105}

on determining the results of duty performance of the public servants of category “A”;\textsuperscript{106}

There have been conducted trainings on organizing and running internal trainings on performance appraisal of public servants in state authority: the workshop on the performance appraisal in Prosecutor’s General Office of Ukraine; the short-term workshop on performance appraisal of public servants of the “A” category.

7.2. Part 9 of the Article 44 of the Law of Ukraine “On civil service” envisages granting bonuses and career promotion for a public servant who receives the excellent mark as the results of his/her performance appraisal.

According to the point 13-1 of the Typical rules of procedure for conducting performance appraisal of public servants\textsuperscript{107}, the head of state authority makes the order to award bonuses for those public servants of the “A”, “B”, and “C” categories, who received excellent marks, on the results of performance appraisal, and on the ground of the conclusions on the performance appraisal, at the equal percentage to position salary\textsuperscript{108}.

NACS generalized the statistical information on the results of performance appraisal of public servants made in 2018. According to calculations, 35602 public servants received excellent mark (that is 26% of the total amount of public servants, who were appraised (137925 people).

\section*{Assessment of Progress}

\textsuperscript{99} https://zakon.rada.gov.ua/laws/show/998-2018-%D1%80, the decision was adopted at the meeting of the Government, dated on the 12\textsuperscript{th} of December, 2018, No. 998-p;

\textsuperscript{100} https://zakon.rada.gov.ua/laws/show/1032-2018-%D1%80, the decision was adopted during the meeting of the Government dated on the 18\textsuperscript{th} of December, 2018


\textsuperscript{102} https://zakon.rada.gov.ua/laws/show/1039-2018-%D1%80

\textsuperscript{103} https://nads.gov.ua/wp-content/uploads/2019/04/3_1.pdf

\textsuperscript{104} https://nads.gov.ua/wp-content/uploads/2019/04/3_2.pdf


\textsuperscript{107} https://zakon.rada.gov.ua/laws/show/640-2017-%D0%BF

\textsuperscript{108} https://zakon.rada.gov.ua/laws/show/20903-16, para two, point 3, Chapter II
Trainings on performance appraisal were provided, and performance appraisals of public servants, including for senior public servants, was conducted in Ukraine for the first time ever in 2018. 26% of all public servants received excellent marks. The law provides that those who received excellent mark should receive annual bonus. The size of this annual bonus is not determined; the head of each agency has a discretion. Despite remaining shortcomings, the success of the first performance appraisal qualifies for **significant 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.**

---

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

**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 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. However, there is a perception in some parts of the society that these rules can be abused by political motivations.

**Progress**

<table>
<thead>
<tr>
<th>20th Plenary Meeting, March 2019</th>
</tr>
</thead>
</table>

**Government report**

8.1. The Article 65 of the Law of Ukraine “On civil service” determines the reasons for bringing a public servant to disciplinary responsibility. The reason for disciplinary responsibility is failure to perform, or improper performance by a public servant of his/her duties, as well as other requirements established by law. The article identifies 14 types of disciplinary offences.

The Article 68 of the Law envisages that disciplinary proceedings are initiated by the appointing entity. The objectivity of disciplinary proceedings is ensured by the disciplinary commissions in each state authority, which includes representatives of the trade union, as well as not less than one person who has education in law and relevant professional background.

8.2. In order to combat unlawful dismissal and other violations of the rights of public servants, in 2018, NACS and its territorial bodies issued 213 requirements, that are obligatory to be met by the state authorities.

Moreover, over 2018, NACS and its regional bodies monitored the executed disciplinary proceedings. The monitoring showed that central executive authorities initiated 5802 disciplinary proceedings and applied 2715 disciplinary penalties. Thus, more than 46% initiated proceedings did not result in penalties. Within disciplinary penalties in 55 cases, public servants were dismissed, being only 2% of the total number of disciplinary penalties.

Under article 78 of the Law, a public servant has the right to appeal a disciplinary penalty to NACS, or to court.

**Assessment of Progress**

In 2018, NACS issued mandatory requirements to state bodies regarding the prevention of unlawful dismissal and other violations of the rights of public servants. It also monitored the disciplinary proceedings in 2018, and identified that 2% if disciplinary penalties resulted in dismissals. It will be important to continue this monitoring work during and after the presidential and parliamentary elections in 2019 to make sure that they will not have a detrimental effect on the professional civil service.

**Progress**

---

109 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.
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.

19th ACN Monitoring Meeting, July 2018

Government report

9.1) The normative legal framework for remuneration is prescribed in the Law of Ukraine "On Civil Service" (Section VI "Paying of Labour, 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 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 competitive, 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
Government report

9.1. The regulatory base for remuneration consists of the Law of Ukraine “On civil service” (Section VI “Remuneration, incentives and social security”)\(^ {110}\), Resolution of the Cabinet of Ministers of Ukraine “Issues on the remuneration of the employees of the state authorities”\(^ {111}\), and the Order of the Ministry of Social Policy\(^ {112}\).

The Law establishes the unified system of the remuneration, which envisages differentiation of the official salary per group salary and jurisdiction of the state authority. In addition, the differentiation of remuneration of different positions for all public servants should be based on a single principle in order to eliminate salary imbalances for state employees of the same level of jurisdiction and responsibility.

Since the 1\(^{st}\) of January, 2019, the Final and transitional provisions of the Law, which establish the target model of remuneration in the civil service, entered into force. The size of the civil servant salary is decisive, and all other statutory payments (bonus for length of service, civil service rank bonus, payments for additional workload due to performance of duties of a temporarily absent civil servant) have a limited share and clear criteria for remuneration. Besides, monthly or quarter bonuses are limited to 30\% of the official salary of the civil servant for a year, as well as amount of bonus fund in state authority is established at 20\%.

At the same time, Point 5 of the Final provisions of the Law “On State budget of Ukraine for 2019”\(^ {113}\) establishes, that provisions of the paragraph 8 Item 14 of the Section XI “Final and transitional provisions” of the Law, which allow the heads of the state authorities to establish additional incentives to the civil servants (instead of that incentives, that are envisaged by the Law), will be applied until 31 December 2019.

According to the resolution of the Prime Minister of Ukraine, in December 2018, NACS generalized information on the remuneration level at the state authorities, and submitted the Scheme of the official salary for 2019 to the Cabinet of Ministers of Ukraine for consideration and approval.

9.2. The Article 52 of the Law of Ukraine “On civil service” determines, that the bonus fund of the state authority is established in the amount of 20\% of the general fund of official salaries per year and the savings of the remuneration fund.

The Article 50 of this Law envisages that bonuses for civil servants shall include:

1) bonuses, based on annual performance appraisal;

2) monthly or quarterly bonus, based on a civil servant’s individual contribution to the government agency’s overall performance.

However, the overall amount of the bonuses, envisaged by Item 2 and which could be granted to a civil servant for the year, may not exceed 30 percent of his/her official salary for a year (this provision came into force on January 1, 2019).


\(^{112}\) [https://zakon.rada.gov.ua/laws/show/z0903-16](https://zakon.rada.gov.ua/laws/show/z0903-16)

Thus, the Law envisages the restriction of bonuses by establishing a limited bonus fund (20% of the general remuneration fund of a state authority) and the limit threshold of monthly or quarterly bonuses (no more than 30% per year).

Moreover, NACS applied to the Ministry of Social Policy of Ukraine in order to envisage bonus threshold based on the results of the annual performance appraisal, the determination of which is stipulated by the order of this Ministry, dated on the 13th of June, 2016, No. 646, “On Approval of the Typical provision on the bonuses awarding for civil servants of authorities of state power, and other state authorities, their apparatuses (secretariats)”\(^{114}\), particularly, not more than position salary.

### Assessment of Progress

According to the Ukrainian PAR Strategy the current share of the fixed part of wages within the general payroll of concerned bodies (salaries and other mandatory payments) is only 45%, but the target of the Government is to reach 70% in 2021. The provision of the Civil Service law to limit the share of bonuses to 30% entered into force in January 2019.

Contrary to the above, the provision of Law “On State budget of Ukraine for 2019” allowed the heads of the state authorities to establish additional incentives to the civil servants (instead of that incentives, that are envisaged by the Law on Civil Service). This provision goes in the opposite direction from the recommendation and widens the scope for politisation, which is particularly worrying during the election year. This provision will be abolished at the end of 2019.

Overall, there are several institutions currently that participate in the decisions related to remuneration, including the NACS, Ministry of Finance and Ministry of Social Policy, which complicates the situation further; the NACS should have the leading role in this area.

Working Group headed by NACS with other state bodies finalised 5 new articles for Civil Service Law regarding remuneration, according to PAR Strategy they should be approved by the Government and sent to Parliament during second quarter of 2019. This is a very positive development, buy it cannot affect ratings yet.

**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.

---

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

**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

\(^{114}\) [https://zakon.rada.gov.ua/laws/show/z0903-16](https://zakon.rada.gov.ua/laws/show/z0903-16)
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
Government report

10.1. In 2018, NACP received and processed 1280 reports on prevention and solving of conflicts of interests (CI), as well as on related restrictions.

516 monitoring and oversights (on compliance with legislation on ethical conduct, prevention and settling CI) procedures were exercised, with 131 among them to be initiated by NACP’s own, and 385 – on the basis of the reports received.

492 inspections on CI were conducted while conducting full verifications of e-declarations.

On facts of non-compliance with legislation of prevention and settling CI, as well as related restrictions, in 2018, NACP composed and handed over to court 497 administrative protocols (that is in three times more than in 2017), with the majority of which (459) to have been composed on non-compliance with CI prevention and settling, 9 protocols – for non-compliance with restrictions on incompatibility, 3 – on gifts, and 26 – for non-exercise of NACP’s orders (that are obligatory for fulfillment).

In 2018, 97 NACP’s orders (that is in 3 times more than in 2017) on non-compliance with legislation on CI prevention and settling were directed to the directors of state-owned enterprises and state authorities, with non-compliance with transfer of management of a company or corporate rights to another person to be among them, with 39 orders to have been exercised, and 38 – are being exercised.

In 2017-2018, NACP composed statements on administrative corruption-related offence (articles 172^4, 172^7 of Code of Ukraine on Administrative Offences) against 11 parliamentarians, 4 judges, 4 prosecutors, and more than 80 deputies of local councils.

NACP handed over 5 claims to the district administrative court in Kyiv on stating the decisions of local self-governments illegally made due to non-compliance with requirements of anti-corruption legislation.

In 2018, NACP got from EUACI the report “Managing Conflict of Interest in Ukraine and the National Agency on Corruption Prevention”\textsuperscript{115} analysing the business processes on managing conflict of interest by the NACP, as well as giving the recommendations for improvement.

NACP is implementing the action plan on the implementation of these recommendations. For example, it is planned to develop and launch an application for electronic case management system in the CoI Department within NACP.

10.2. In 2018 the NACP continued to carry out its information and awareness campaigns. There were conducted 10 series of training sessions for employees of the educational institutions, the judiciary, civil society organizations, workers of the Ministry of Energy and Coal Industry of Ukraine and the state-owned enterprises subordinated to its jurisdiction, the personnel of the State Executive Service of Ukraine and the professors of the National Centre for Advanced Legal Training within the Ministry of Justice, the heads of local state administrations.

The NACP provided 949 clarifications on the existence/absence of the conflict of interest and the procedures on its settlement.

\textsuperscript{115} Is enclosed in PDF format in English
The NACP has developed and prepared for publishing in both printed and web versions of the newspaper "Yurydychna Gazeta" 6 articles of consultative and advisory nature in respect of liability, prevention, detection, conflict of interest.

Since the establishment of the free online training course "Conflict of Interest: obligation to know!" on the platform "Prometheus", about 40,000 listeners have already completed it.

An in-depth, comprehensive online course "Conflict of Interest: Must Know!" from theory to practice has commenced on January 21, 2019.

Assessment of Progress

The number of CoI cases reviewed by NACP in 2018 increased. During 2017-2018, NACP issued administrative protocols against 11 parliamentarians, 4 judges, 4 prosecutors, and more than 80 deputies of local councils. NACP’s plan to develop an electronic case management system for CoI is welcome. The training course and the awareness raising campaign demonstrated limited, but positive development.

The NACP division responsible for the review of CoI does not have an internal procedure for determining which cases should be accepted, how they should be investigated, and what follow-up measures need to be taken. Adoption of this procedure is urgently needed.

NGOs claim that NACP does not show sufficient rigor in COI control. They note that while the number of NACP’s protocols regarding the COI grew in 2018 reaching the number of 497, the National Police at the same time issued 1292 protocols on the same issue. According to NGOs, the NACP tends to interpret evident conflict of interest in politically charged cases in unexpected ways and sometimes blatantly ignores it. Besides, many cases were returned to the NACP by courts due to wrong protocol format and other issues.

No progress

---

118 https://www.pressreader.com/
121 https://edx.prometheus.org.ua/courses/course-v1:NAZK+COI101+2017_T3/about
122 https://courses.prometheus.org.ua/courses/course-v1:NAZK+COI102+2019_T1/about
123 https://drive.google.com/open?id=12jH5cRNMeirJfdl-n5c0wYBj7aVVuYp
**Recommendation 11: Ethics**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Clarify the mandate of agencies responsible for awareness raising and training on ethical standards</td>
</tr>
<tr>
<td>2.</td>
<td>Carry out systematic awareness raising and training throughout the public service.</td>
</tr>
<tr>
<td>3.</td>
<td>Analyse the needs and consider adoption of the specific ethics codes for individual agencies/categories.</td>
</tr>
</tbody>
</table>

---

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

**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**

20th Plenary Meeting, March 2019

**Government report**

11.1. According to the Procedure on the formation of the state order for professional training and retraining of the employees of state authorities, local–self-government authorities and military authorities of the Armed forces, public contracting authority for the training of the civil servants, heads of local state administrations, their first deputy and deputy, officials of local self-government on issues related to corruption prevention and execution the Laws of Ukraine “On civil service”, “On Local state administrations” and “On the Service in local self-government bodies” is NACS. In addition, the National Agency on Corruption Prevention (NACP) is the public contracting authority for professional training on corruption prevention of employees of state authorities, local self-government bodies (instead of civil servants, heads of local state administrations, their first deputies and deputies, local self-government officials).

Mandate:

1) state authorities and local self-government bodies formulate proposals on the need for improvement of qualifications of civil servants, heads of local state administrations, their first deputies and deputies, officials of local self-government officials, in particular on the corruption prevention;

2) NACS and NACP within the scope of responsibilities develop and publish state order for training of the respective categories of employees, who responsible for supervision of the corruption prevention issues.

125 [https://zakon.rada.gov.ua/laws/show/1262-99-%D0%BF](https://zakon.rada.gov.ua/laws/show/1262-99-%D0%BF)
3) training of the respective categories of employees is carried out in the institutions of postgraduate education, as well as higher educational institutions, which are determined by the results of the competitive selection by contracting authorities.

In 2018, institutions of higher education (National Academy of Public Administration under the President of Ukraine and its regional institutes in Dnipropetrovsk, Lviv, Odessa, Kharkiv, regional centres of retraining and professional development of employees of state authorities, local self-government bodies, state enterprises, institutions and organizations), which won a competition for the state order, conducted professional training programmes, short-term workshops and trainings on ethics. The mentioned trainings attended:

- 11,950 civil servants and local self-government officials (within the state budget)
- 26,984 civil servants and local self-government officials (within the local budget).

Pursuant to the para four point 12 of the Rules of Procedure for forming state order for training of specialists, scientific, pedagogical and manual workers, for professional development training and for re-training, in July 2018, NACP for the first time applied for the state budget funding for professional development trainings for servants of state authorities, as well as local self-governments (except training for civil servants, heads of state regional administrations, their first deputies and deputies, public officials of local self-governments) on corruption-related issues, for 2019-2021.

But, the funding for NACP for carrying out anti-corruption training for these servants under the Law of Ukraine on State Budget 2019 has not been foreseen.

In 2019, NACP is going to apply again to get the state budget funding for professional development trainings on anti-corruption for these servants of state authorities for 2020-2022.

11.2. During 2018 in the All-Ukrainian training centre for civil servants and local government officials were held the professional training programmes, short-term workshops and trainings, in which were included integrity and ethics component. Mentioned training events have attended:

- 185 employees of the state authorities responsible for corruption prevention;
- 458 civil servants of the central executive authorities and other state authorities (6-9 salary group);
- 312 reform staff.

In order to strengthen capacity of the state authorities on good governance, integrity, accountability and prevention corruption NACS jointly with MATRA project “Good governance and public sector integrity in Ukraine”, which is implemented under the support of the Ministry of Foreign Affairs of Netherlands, have launched training for trainers on the good governance and integrity in the public sector. The ToT participants are: representatives of NACS, NACP and 10 pilot ministries, which are implemented Conception on the optimization of the system of the central executive authorities.

11.3. For instance, in the National Guard of Ukraine (NGU), which is subordinated to the Ministry of Internal Affairs of Ukraine, there has been developed and approved the Code of Ethical Conduct of military officials and other persons, authorized to perform the functions of state in the National Guard of Ukraine. The Code serves as a guideline for the standards of professional conduct, the defined categories of military personnel and servants of the General Directorate of the NGU, territorial departments, higher military educational institutions, bases, health facilities and institutions, units, military units, military establishments (hubs) of the NGU.

126 https://zakon.rada.gov.ua/laws/show/306-2013-%D0%BF
Assessment of Progress

The mandate for ethics training was clarified: NACS is responsible for ethics training of civil servants and NACP is responsible for ethics training of elected officials.

NACS created a center for civil service training and provided various trainings. While general training is provided to civil servants, and it includes sections on ethics, no information is available on the quality and impact of these trainings. It will be important to provide specific training on professional ethics to broader groups of civil servants, e.g. by using on-line training.

NACP continues raising funds for their activities.

Systemic ethics training was launched in 2019 in the Ministry of Internal Affairs.

While above activities justify progress as the overall rating for this recommendation, it is important to stress that no agency took the leading role in developing a systematic awareness raising and training on ethics throughout the public service or in analysing the needs for specific ethics codes for individual agencies/categories.

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.
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.129

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;130

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.131

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). 132

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.133

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.

---

129 https://www.kmu.gov.ua/npas/250411754
133 https://nazk.gov.ua/sites/default/files/docs/nazk_files/%D0%A0%D1%96%D1%88%D0%B5%D0%BD%D0%BD%D1%8F_1 201/12.01%20(1).tif https://nazk.gov.ua/news/nazk-ta-nabu-napracyuvaly-proekt-memorandumu-pro-spivpracy-ta-obmin-informaciyyu
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**

<table>
<thead>
<tr>
<th><strong>20th Plenary Meeting, March 2019</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Government report</strong></td>
</tr>
</tbody>
</table>
| **12.1.** Since the development of the Information and Telecommunication System "Uniform State Register of Declarations of Persons Authorized to Perform State or Local Self-Government"[^134] (hereinafter referred to as the ITS Register) (since 1.09.2016), three filing periods to submit e-declarations have already happened (submission of annual declarations since the 1st of January by the 1st of April).

By the end of 2018, more than 1 million 256 thousand users have already registered in the ITS Register and more than 2 million 885 thousand electronic documents (declarations, corrected declarations, reports on significant changes in property status) have been submitted and are in the free access, including: more than 2 million 457 thousand electronic declarations (annual, before and after dismissal, candidates for post), about 313 thousand corrected electronic declarations and almost 115 thousand notifications about significant changes in property status.

The overall number of electronic documents in the ITS Registry, which has been comprised almost 136 thousand at the end of 2016, increased in 21 times.

In order to ensure effective functioning of the ITS Register, especially in the surge periods of next stages of declarations’ submission, NACP:

[^134]: [https://public.nazk.gov.ua/](https://public.nazk.gov.ua/)
- concluded the necessary agreements on the equipment rental on which the ITS Register has been deployed, the placement of this equipment, as well as the administration, software and technical support of ITS Register;

- according to the recommendations, that have been provided by the administrator (SE "USS"), upgraded the equipment on which the ITS Register has been deployed;

- ensured ongoing monitoring of the ITS Register, and in case of detecting shortcomings, measures are taken to promptly eliminate them;

- build up recommendations on work with the ITS Register, answers to frequently asked questions, as well as recommendations for filling declarations, created training videotapes that are placed on NACP website as well as on the information resources of other governmental agencies, and distributed in social media;

- on an ongoing basis, organized the operation of a helpline telephone service, as well as technical assistance via e-mail;

- organized regular work of the Operational Headquarters to assist subjects of declarations during the declaring periods.

In 2019, it is expected to implement the audit results of the ITS Register and extend the functionality of the its software. To ensure additional technical and advisory support during the declaration period in 2018, the Operational Headquarter was launched and NACP consultants were daily on duty until the end of the declaration period. For instance, within the first 10 working days in March 2018, 17 thousand declarants called for the Operational Headquarter.

12.2. On 20.08.2018, NACP received from the UNDP in Ukraine the software of the System of logical and arithmetic control of declarations (LAC System), built up a comprehensive information security system (hereinafter referred to as “the CISS”) of LAC system, developed a set of documentation, finalized the software thereto, carried out exploratory operation and previous studies. In addition, under the results of the expertise of the CIS of the LAC Systems. On 24.09.2018, NACP received the Certificate of conformity with the requirements of normative documents on technical protection of information.

Since September 26, 2018, NACP commenced permanent (industrial) exploitation of the LAC System135.

The functioning of the module for automatic verification of declarations involves the automated exchange of information with 16 state-owned registries and information databases of Ukraine.

The work on the introduction of automated information exchange has already been developed (together with the approved procedures and agreed protocols for automated information exchange with holders of 14 state registers and databases). The Verkhovna Rada still has not adopted the draft Law № 7276, which ensures the automated access of the NACP to the registries of the Ministry of Justice. In spite of this, the NACP has launched and utilizes for the verification of declarations the automated exchange of information with registries and databases to which it already has an access.

135 https://nzk.gov.ua/rishennya-25-veresnya#overlay-context
The technical possibilities of application and testing of the Rules of logical and arithmetic control of declarations have been studied. Under the results, the necessary amendments have been prepared and carried out to the Procedure of control and comprehensive verification of e-declarations.

The made amendments, in particular, meet the recommendations provided by international experts according to the evaluation results of the business process of verifying e-asset declarations at NACP.

The necessary amendments to the Rules of Logical and Arithmetic Control of Declarations have been elaborated and accordingly inserted.

The LAC System ranked 2.8 million declarations according to corruption risks assessment.

12.3. It should be reminded, that NACP does not have investigative law-enforcement functions, the right to be the subject of a trial and is not a punitive agency. NACP verifies the declarations on the data consistency contained therein, the accuracy of the assessment of the declared assets, the existence of a conflict of interest and elements of illicit enrichment. According to the results of the comprehensive verifications of declarations, it was established that officials in their declarations indicated inconsistent information amounting more than 8.6 billion UAH.

By the end of December 31, 2018, verifications of 1 252 e-declarations were being carried out (622 of the verifications were initiated in 2017, and 628 verifications were started in 2018) concerning 750 subjects of declarations. The number of made decisions, approving the results of the full verifications of e-declarations, more than tripled reaching 472 decisions in comparison with 2017.

As on December 31, 2018, there have been already conducted full verifications of e-declarations of 100 prosecutors, 99 judges, 129 parliamentarians of the Verkhovna Rada of Ukraine, members of the Government, 4 heads of state-owned enterprises, and 20 civil servants of the "A" category.

In 2018, 249 substantial conclusions have been forwarded to law enforcement authorities (90 - on grounds of detected signs of a criminal offense under article 3661 (declaration of inconsistent information amounting more than 250 subsistence level for able-bodied persons) and article 3682 (illicit enrichment) under the Criminal Code of Ukraine (for comparison: in 2017, 10 substantiated conclusions have been forwarded), 5 - concerning illegal enrichment, 159 - for deliberate failure to submit declarations, 19 - for declaration of inconsistent information for the amount of 100 to 250 subsistence minimum for able-bodied persons, 164 - for late submission of the declaration, 145 - for failure to notify or untimely notification of significant changes in property status), which in total is 12 times more than in 2017.

According to the results of 2018, 41 substantial conclusions were forwarded to NABU, 178 – to the National Police of Ukraine, and 34 – to the SAPO (to compare, in 2017 – 2 conclusions).

The number of the drawn protocols on administrative violations on the facts of committing administrative offenses provided for in Article 172 of the Code of Administrative Offenses, which were forwarded to the court has increased almost 7 times - up to 310: 21 – declarations with inconsistent information, 154 - late submission of the declaration, 136 - violation of order regarding notification of substantial changes in the property status.

136 https://nazk.gov.ua/nishennya-24-zhovtnya (see Decision No. 1019)
137 https://zakon.rada.gov.ua/laws/show/z0034-19
138 The document is enclosed in English
139 http://tilman-hoppe.de/Report_business_process_for_verifying_declarations_ENG.pdf
140 https://zakon.rada.gov.ua/laws/show/z0035-19
141 The document is enclosed in English
In January 2019, NACP detected 291 violations of anti-corruption legislation. Subsequently, NACP drew up 255 administrative protocols and 26 substantial conclusions about the revealed elements of criminal offenses and forwarded to court: to the National Police - 11, the Prosecutors’ offices - 11, and to NABU - 4. These results exceed the results, gained in January 2018, in 2.5 times.

The number of processed requests for verification of information about persons applying for a posts, which provide for taking a responsible or particularly responsible position, or posts with an increased risk of corruption - has increased by 35% up to 11 133 requests. Over 2018, about 17 000 notifications of non-submission or late submission of e-declarations were processed by NACP. The number of processed notifications regarding inconsistent data in e-declarations has increased in 2.5 times reaching 2 719 messages in comparison with 2017.

It is already designated to carry out verifications of e-declarations of 24 heads of state-owned enterprises.

By the end of December 31, 2018, the number of drawn up administrative protocols on the breaches of the anti-corruption legislation (Article 172а of the Code of Ukraine on Administrative Offenses (hereinafter referred to as – “the CUoAO”), which were forwarded to court has increased almost in 7 times reaching 310 protocols, in particular:

154 – on the facts of non-submission by the subjects of their declarations (part one of Article 172а of the Code of Administrative Offenses);

136 – regarding failure to notify or late notification of significant changes in the property status (part two of Article 172а of the CUoAO);

20 – on the facts of declaring inconsistent information (part four of Article 172а of the Code of Administrative Offenses).

Since January 1, 2018, NAPC has processed approximately 17 000 notifications on non-submission or late submission of declarations. The number of processed notification about the possibility of inconsistent information in the declarations, increased in 2.5 times - up to 2 719 notifications.

12.4. Since January 15, 2019, NACP began to apply logical and arithmetic control of declarations (so-called LAC) by using available automated access to 13, out of 16, state-owned registries and databases.

Thus, the LAC automatically identified those e-declarations whose scores exceed the threshold of 2000 points and above (up to 6000) according to the criteria. NACP commenced full verifications of the first 500 such e-declarations, including e-declarations of 139 parliamentarians, 163 judges; and 3 prosecutors.

By April, it is planned to verify 1 000 e-declarations of top-level officials, which have been designated by the LAC.

12.5. Since the introduction of amendments to Article 3 of the Law of Ukraine "On Prevention of Corruption", no full verifications of the e-declaration of representatives of public organizations were carried out by NACP.

142 https://nazk.gov.ua/rishennya-15-sichnya
https://nazk.gov.ua/rishennya-21-sichnya, (see Decision No. 112)
144 https://nazk.gov.ua/sites/default/files/docs/2019/zasidannya/30.01.2019/30.01%20%28288%29.pdf, or
https://nazk.gov.ua/rishennya-30-sichnya (see Decision No. 289)
145 https://nazk.gov.ua/rishennya-11-lytogo, or
https://nazk.gov.ua/sites/default/files/docs/2019/zasidannya/11.02.2019/11.02%20%28446%29.pdf (see Decision No. 446)
12.6. Due to the incident that took place on September 25, 2017, namely the interference with the work of the ITS Registry and changing the status of the document, the remote access of the staff of NABU to the ITS Registry for the period during which the investigation of the incident has been suspended. Direct access will be restored after the completion of criminal proceeding, details of which were filed on 09.12.2017 in the Uniform Register of Pre-trial Investigations under No. 1201710000001286 under part 1 of article. 362 of the Criminal Code of Ukraine.

Nevertheless, NACP provided for 125 authorized employees of NABU protected remote access to all, submitted by the declaring entities, documents that are in the ITS Register in a specially-equipped NACP’s room meeting the requirements for information security.

Thus, in 2018, NACP provided access, in a specially equipped room, to e-documents, submitted to the ITS Register, for 20 NABU detectives 35 times. During January 2019, 5 NABU detectives used such access 9 times at the NACP’s specially-equipped premises. NACP did not refuse the access to the ITS Register to any NABU detective.

**Assessment of Progress**

Positive developments include the technical upgrade of the e-declaration system and strengthening of the NACP’s capacity to provide advice for the users of the system. However, NGOs claim that a number of technical deficiencies persist. In addition, NACP states that there are only 20 staff members authorized to verify declarations, and they will not be able to verify all declarations even if they work round the clock.\(^\text{146}\)

The total numbers of verified declarations is growing: by the end of 2018, NACP verified 1 252 e-declarations, including full verifications of e-declarations of 100 prosecutors, 99 judges, 129 MPs, members of the Government, 4 heads of state-owned enterprises, and 20 senior civil servants. In 2018, 249 cases were forwarded to law enforcement authorities, including Police, Prosecution and NABU.

However, NGOs raise concerns about the quality of the verification. For examples, in December 2018 the NACP issued a statement that the e-declaration of one of the prosecutors did not have signs of illicit enrichment, while two years earlier NABU sent the indictment against this person to the court upon illicit enrichment charges. Besides, the e-declarations still do not cover civil servants at the Security Service and Military Prosecution, and NACP did not develop any procedure for them, as required by law.

Automatic verification of declarations requires exchange of information with 16 state-owned registries and information databases, so far access to 13 databases is ensured, as the Ministry of Justice refuses providing such assess without Parliament’s adoption of a respective Law. However, NACP conducted a partial automatic verification using the available databases, and started full verifications of the first 500 e-declarations that were identified as problematic, including e-declarations of 139 parliamentarians, 163 judges; and 3 prosecutors.

However, NGOs claim that the rules for automatic verification include pitfalls that open space for manipulations, and limit the possibility for NGOs to conduct public control. It should be stressed that declarations of the public officials of the highest level and highest corruption risk should

---

\(^\text{146}\) [https://www.facebook.com/NAZK.gov/photos/a.107014673045250/2137381292988450/?type=3&theater](https://www.facebook.com/NAZK.gov/photos/a.107014673045250/2137381292988450/?type=3&theater)
undergo mandatory full verification regardless of the risk rating as per Law on Corruption Prevention (Article 50.1). Regulations should include clear rules on the prioritization of the full verification that leave no discretion to NACP. The NACP board’s discretion in starting the full verification should be limited and, in mid-term perspective, transferred to staff members authorized to carry out the verification.

Automatic access of NABU to the e-declarations system was not restored yet.

It is a positive development, that since the introduction of amendments to the Law "On Prevention of Corruption", no full verifications of the e-declaration of representatives of public organizations were carried out by NACP. However, civil society activists are still required to submit electronic asset declarations, and this provision was not abolished as it was recommended. At the end of July 2018, 65 MPs filed a motion to the Constitutional Court supporting the civil society request to abolish this provision. The civil society awaits a fair decision of the Constitutional Court by 1 April 2019 – which is the submission deadline of 2018 declarations for activists.147

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.

19th ACN Monitoring Meeting, July 2018

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

147 https://www.pravda.com.ua/columns/2019/02/20/7207133/
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\textsuperscript{148} 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

\textsuperscript{148} 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.
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
Government report

13.1. Notification of violation of the requirements of the Law of Ukraine "On Corruption Prevention" and the Law of Ukraine "On Political Parties in Ukraine" can be filed to the NACP through an official website protected by an electronic mailbox, a special telephone line and postal communication in accordance with the "Procedure for processing messages on corruption and reports of violation of the requirements of the Law of Ukraine "On Political Parties in Ukraine"."149

In accordance with paragraph 1 of Section IV of the Procedure, all communications are registered with the Office of Record-keeping Service using the automated information system of the National Agency's document circulation on the day of receipt or not later than the next working day if the message was received on weekends, festive and non-working days (outside working hours).

In accordance with paragraph 3 of the same section, after identification and registration of the message, they are transmitted to the Processing Division at the time of their receipt at 10:00 and 16:00 each day, but not later than the next working day, on the day they are received, for further preliminary consideration and Identification of the structural unit(s) responsible for their consideration of the notice (hereinafter referred to as the reporting unit). The notification of violations of the requirements of the Law of Ukraine "On Corruption Prevention" by the officials of the NACP of Processing Division transferred to the head of the NACP or the person performing his duties. The Head of the NACP decides to verify the information specified in the notification by imposing the relevant resolution. After the imposition of the resolution, the message is transferred to the Sector for the Prevention and Detection of Corruption in the NACP.

Anonymous reports of corruption or other corruption reports for employees of the National Agency at 10:00 am and 4:00 pm each day, but not later than the next working day after the day of receipt, are transferred by Processing Division to the Head of the National Agency or the person performing his duties. The Head of the National Agency takes a decision on verifying the information specified in the notification by imposing the relevant resolution. Following the imposition of the resolution, the message is transmitted to the Sector for the Prevention and Detection of Corruption at the National Agency.

From 15.08.2016 to 21.01.2019, the NACP received 2,632 notices regarding possible facts of committing corruption or corruption-related offenses. Thus, for the first year of the NACP (from 15.08.2016 to 31.12.2016), 398 corruption reports were registered in the NACP, almost twice as many (749 messages) in 2017, and 1392 messages (almost two times more than during the previous 2017), and only in January 2019 - 84 messages.

13.2. Implementation by the authorities, including local, special telephone lines, electronic communications, official websites in order to ensure the possibility of reporting corruption, provides for tasks and measures for implementation of the State Program on the implementation of the principles of state anti-corruption policy in Ukraine (Anti-corruption strategy) for 2015-2017 (sub-item 3 of clause 12 of section II).
According paragraph 13 part one of Article 11 of the Law of Ukraine "On Corruption Prevention", the NACP has the right to cooperate with persons who report in good faith on possible facts of corruption or corruption-related offenses, other violations of this Law (whistle-blower), taking measures their legal and other protection, and the prosecution of those guilty of violating their rights in connection with such information.

According subparagraph two part three of Article 53 of the Law of Ukraine "On Corruption Prevention" information about the whistle-blower may be disclosed only with his agree, except cases established by law.

13.3. NACP has developed a draft Law of Ukraine "On the Protection of Corruptive Whistle-blowers". Draft Law after elaboration by the Interdepartmental Working Group on the Protection of Whistleblowers at NACP; discussion with the public and elaboration by the Public Council at the NACP; revision in accordance with the conclusion of the European Union Consultative Mission on the Reform of the Civil Security Sector of Ukraine; approved, agreed with the interested bodies; re-discussed (02.11.2018 with the participation of, in particular, scientists, international experts, the public); the decision, taking into account the proposals of the interested bodies, was approved and sent to the legal expert examination to the Ministry of Justice of Ukraine.

In addition, on July 20, 2016, an alternative draft law on the protection of whistle-blower and disclosure of harm or threat to the public interest, which is included in the agenda 2543-VIII of 18.09.2018, has been registered with the Verkhovna Rada of Ukraine.

---

**Assessment of Progress**

Statistic provided by the NACP shows that number of reports about corruption it receives from public is growing, from 749 in 2017, to 1392 in 2018, and 84 in January 2019. According to the NGOs, NACP reported another figure for 2018 - 2207 whistleblower reports. It is unclear what the reports in question actually are, and if the Agency takes into consideration only corruption reports submitted by whistleblowers or the figure also include reports on the violation of their rights. No information was provided on the review and follow-up of these reports, or measures provided for the protection of whistleblowers.

According to NGOs, NACP held a series of seminars for students of national universities and high school students “Now I Know How” where they taught students, among other things, how to use the whistleblower tools, spoke about the rights of corruption whistleblowers and the guarantees of their protection.

There is no progress regarding the role of the Head of NACP in reviewing reports about corruption among NACP staff.

There are still two competing draft laws on whistleblower protection in Ukraine. According to NGOs, the NACP invested minimal effort into development of its own draft law, which does not guarantee reliably the protection of whistleblowers’ rights. On 22 November 2018, the NACP

---

150 [https://nazk.gov.ua/rishennya-12-zhovitnya](https://nazk.gov.ua/rishennya-12-zhovitnya) (see Decision No. 2285)

151 [https://nazk.gov.ua/rishennya-1-lutogo](https://nazk.gov.ua/rishennya-1-lutogo) (see Decision No. 291)


announced that the draft law needed improvement and stated that it was ready to discuss the
proposals of the EUAM before the draft law would be submitted to the Cabinet of Ministers of
Ukraine.\(^{156}\) However, the NACP did submit the draft law to the Cabinet of Ministers with no regard
to the EUAM recommendations, as illustrated by the updated full text of the draft law, approved
by the NACP on 1 February 2019.\(^{157}\)

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.

19th ACN Monitoring Meeting, July 2018

Government report

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


\(^{157}\) https://nazk.gov.ua/sites/default/files/docs/2019/zasidannya/01.02.2019/01.02%20%28291%29.pdf
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").


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
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 upmost 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

20th Plenary Meeting, March 2019

Government report

14.1. The elaboration and adoption of a code of ethics for people's deputies of Ukraine are in the plans of the legislative work of the Verkhovna Rada of Ukraine Committee on the Prevention and
Counteraction of Corruption. The committee has the experience of previous years, recommendations of international experts, as well as people's deputies of Ukraine - members of the Committee. There is a need for attracting international expert assistance in developing the criteria of ethics for the parliamentarians.

14.3. One of the main functions of the NACP is to monitor and control the implementation of legislation on ethical conduct, prevent and resolve conflicts of interest in activities, in particular, persons authorized to perform functions of the state or local self-government, which include the people's deputies of Ukraine (according to paragraph b, point 1) of the first part of Article 3 of the Law of Ukraine "On Corruption Prevention")\textsuperscript{158}, as well as control over the compliance of these persons with restrictions on the combination with other activities those (liability stipulated by Article 172\textsuperscript{4} of the Code of Administrative Offenses), restrictions on the receipt of gifts (172\textsuperscript{5} Code of Administrative Offenses)\textsuperscript{159}.

NACP conducts such inspections based on information received from individuals and legal entities, from the media and other open sources.

Over 2017-2018, NACP draw up protocols on administrative offenses related to corruption (Articles 172\textsuperscript{4}, 172\textsuperscript{5} of the Code of Administrative Offenses) in relation to 11 parliamentarians.

14.4. At the end of 2018, 259 e-declarations submitted by 164 parliamentarians of Ukraine were ordered to be checked; 66 e-declarations submitted by 44 parliamentarians of Ukraine, were checked; 19 substantiated conclusions about identified corruption and corruption-related offenses were sent to NABU.

Since January 15, 2019, NACP commenced to use\textsuperscript{160} logical and arithmetic control of declaration verification (so-called LAC) using available automated access to 13, out of 16, state-owed registries and databases.

Thus, the LAC automatically identified those declarations whose scores exceed the threshold of 2000 points and above (up to 6000) according to the criteria. Accordingly, NACP has begun full verifications of the first 500\textsuperscript{161} such e-declarations, including the e-declarations of 139 parliamentarians.

Assessment of Progress

No information was provided regarding integrity training for political officials, or the enforcement of integrity rules for them. There is no progress regarding the code of ethics for MPs. NACP continues verification of e-declarations of MPs, however, it is not clear what sanctions were applied and if they were effective in dissuading political officials form violating integrity rules.

No progress

\textsuperscript{158} Corruption Prevention Law of Ukraine in English is enclosed
\textsuperscript{159} https://nazk.gov.ua/vidpovidalnist-1
\textsuperscript{160} https://nazk.gov.ua/rishennya-15-sichnya
\textsuperscript{162} https://nazk.gov.ua/sites/default/files/docs/2019/zasidannya/30.01.2019/30.01%20%28287%29.pdf, or https://nazk.gov.ua/rishennya-30-sichnya (see Decision No. 289)
\textsuperscript{163} https://nazk.gov.ua/rishennya-11-lyutogo, or https://nazk.gov.ua/sites/default/files/docs/2019/zasidannya/11.02.2019/11.02%20%28446%29.pdf (see Decision No. 446)
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.

19th ACN Monitoring Meeting, July 2018

Government report

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 till 65 years. 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.

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 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.

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 suspended in hearing.

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 resigned, in particular: 68 judges are resigned 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 has to be performed by the Court Security 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 Court Security 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 List of Courts, bodies and institutions of the justice system, which are guarded by units of the National Police and 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 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 Court Security Service were approved.

Also, regarding the proper functioning of the system of automated case assignment is in place country wide, we note that, in accordance with Article 151 of the Law of Ukraine "On the Judiciary and Status of Judges", the Unified Court Information and Telecommunication System shall operate in courts from January 2019 to enable case filing etc.

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 Unified Court Information and Telecommunication System.

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 is authorized to guarantee their independence and to conduct disciplinary proceedings against judges. Today, three Disciplinary chambers of the High Council of Justice carry out disciplinary proceedings against judges of all courts. Their decision is subject for the HCJ plenary session review or might be challenged before the court. The norms of the new Law of Ukraine "On the Judiciary and Status of Judges" provide an expanded list specified list of disciplinary offenses as well as disciplinary sanctions.

The powers of the High Council of Justice include measures to ensure the credibility of the judiciary and to deal with the judicial immunity matters. 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. HCJ also considers prosecutors submission to remove the judge from the bench during criminal investigation against him/her.

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 up to date.
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 budget proposals for entire judiciary approved by 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. This is mandatory step to be undertaken by 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 recusal of a judge from deciding the case is resolved by the judges panel examining the case. However, if the panel 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 before the Law of Ukraine "On Amendments to the Constitution of Ukraine (on Justice)" was adopted is to be assessed in the manner prescribed by law 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 conducted in line with 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 hearings. 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 parties to the case satisfaction with the behaviour of the judge in the process, comments on the conduct of proceedings, other information. Such a questionnaire may be included in the judge’s dossier.

The decision of the High Qualifications Commission of Judges of Ukraine dated 03.11.2016 No 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 to consider candidates for judgeship with a special selection procedure from the pool of candidates with 3 years experience on a judge assistant position - 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 with an Annulment of a Knowingly Illegal Decision as a crime (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, incompetent 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 or 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 an opinion 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 introduce the special subject of introduction to the Uniform Register of Pre-trial Investigations of the information on the allege telly crime committed by judge as foreseen 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. Such approach 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 the groundless allegations against judges, as well as ensuring a quick and effective investigation of criminal proceedings against judges.

Assessment of progress

Competition for 600 vacant positions of judges and assessment of 2969 sitting judges 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. According to NGOs, among judges who were green-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 Integrity Council, 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 the SJA/HCJ efforts to set up such service and to open the competition to fulfil vacancies there. No information what 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.\textsuperscript{165}

In the same way, the progress update notes that the chief of staff in each court is personally responsible for the proper organizational support of the court, including the functioning of the Unified Court 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 Illegal Decision 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.

\textit{No progress}

\begin{center}
\textbf{20\textsuperscript{th} Plenary Meeting, March 2019}
\end{center}

\textbf{Government report}

\textbf{15.1.} The Rules of Procedure for Monitoring of implementation and analysis of effectiveness of adopted legal acts regulating bankruptcy, fulfillment of court decisions, as well as decisions made by other organs (position persons), court and expert activity, judiciary, advocacy, free consulting in legal matters is adopted\textsuperscript{166}. The action plan for monitoring, systematically react on detected gaps in legislation, conflict and obsolete norms.

With Council of Europe support, in February 2018, the first HCJ Annual Report for the year 2017 on ensuring judicial independence in Ukraine\textsuperscript{167} was published. The Report provides analysis of new legislative initiatives and their practical implementations.

Pursuant to the recent amendments made to the Law of Ukraine “On High Council of Justice”\textsuperscript{168} since the 11th of January, 2019, the High Council of Justice shall exercise powers of main user of the funding from the state budget of Ukraine foreseen for financing its activity, as well as shall take part

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{165} \url{http://rsu.gov.ua/ua/news/golova-radi-suddiv-ukrainsi-zvernuvsya-z-vidkritim-listom-do-kerivnikiv-organiv-suddivskogo-vraduvannia-3}
\item \textsuperscript{166} The Order of the Ministry of Justice, dated of the 23\textsuperscript{rd} of January, 2018, No. 199/5
\item \textsuperscript{167} Approved by the Resolution No. 463/0/15-18 of the High Council of Justice of 13 February 2018, the Report is enclosed (in English from page 29)
\item \textsuperscript{168} \url{https://zakon.rada.gov.ua/laws/show/2646-19}
\item \textsuperscript{169} \url{https://zakon.rada.gov.ua/laws/show/1798-19}, amendment to point 16 part one article 3 of the Law “On High Council of Justice"
\end{enumerate}
\end{footnotesize}
in foreseeing the share of the state budget of Ukraine that will cover courts’ needs, and needs of organs and institutions of judiciary system, in compliance with the Budget Code of Ukraine.

As it was said in the previous progress update, the High Qualification Commission of Judges of Ukraine (HQCJU), since the 30th of October, 2017, commenced assessment of qualifications of 5 157 judges. As of October, 2018, 1 780 judges of local courts and courts of appeal were assessed, with 1 502 judges to have been assessed as those who meet the requirements for the position of a judge, 147 judges were concluded as those who do not meet the requirements for the position of a judge, and assessments of 131 judges were stopped, inter alia, due to their dismissal.

As of February 12, 2019, according to the results of the qualification evaluation for the compliance with the position of a judge, 1 627 judges have been recognized being compliant to the positions of a judge; 70 judges have been recognized as those who do not comply with the positions of a judge (after having been interviewed by HQCJU); 114 judges did not pass the exam (did not get a minimum score threshold); HQCJU suspended the evaluation in respect to 174 judges.

HQCJU plans to complete the qualification evaluation with respect to other judges in 2019.

15.2. Local general courts are reorganised into circuit, local commercial courts are liquidated and, instead, circuit (okruh) commercial courts are established; then, courts of appeal are liquidated and courts of appeal in okruh (region) are established; commercial courts of appeal, as well as administrative courts of appeal, are liquidated and, instead, commercial courts of appeal in okruh (region), as well as administrative courts of appeal in okruh (region), are created.

On the 2nd of February, 2017, the High Council of Justice made the decision to create three disciplinary chambers in its structure.

The High Qualification Commission of Judges of Ukraine (HQCJU) handed over to the High Council of Justice (HCJ) 12 283 allegations for disciplinary procedure against judges of local courts and courts of appeal.

There have been conducted 279 meetings held by HCJ during which 4 450 materials have been reviewed. As the result, 119 decisions have been made against 119 judges to be under disciplinary penalty in form of dismissal; 98 decisions have been made against 100 judges to be under disciplinary penalty in form of a warning; 39 decisions have been made against 39 judges to be under disciplinary penalty in form of severe reprimand with deprivation of the right to receive supplements to salary within a month; 30 decisions have been made against 30 judges to be under disciplinary penalty in form of severe reprimand with deprivation of the right to receive supplements to salary within three months’ period; 21 decisions have been made against 21 judges to be under disciplinary penalty in form of being temporary suspended from their duties as judges (from one to six months).

15.3. The chapter III of the Annual Report for the year 2017 on ensuring judicial independence in Ukraine deals with, inter alia, the rules of procedure for appointment of a judge to a position of a judge, chapter IV covers the issues of waving of appointment of a judge over the five years’ period.

---


171 [http://www.vru.gov.ua/content/file/%D0%A9%D0%BE%D1%80%D1%96%D1%87%D0%BD%D0%B0-%D0%B4%D0%BE%D0%BF%D0%BE%D0%B2%D1%96%D0%B4%D1%8C-%D0%B7%D0%B0-2017-%D1%80%D1%96%D0%B4%BE%D0%BE%D0%B2%1017-1017_B.pdf](http://www.vru.gov.ua/content/file/%D0%A9%D0%BE%D1%80%D1%96%D1%87%D0%BD%D0%B0-%D0%B4%D0%BE%D0%BF%D0%BE%D0%B2%D1%96%D0%B4%D1%8C-%D0%B7%D0%B0-2017-%D1%80%D1%96%D0%B4%BE%D0%BE%D0%B2%1017-1017_B.pdf), is also enclosed in English
dismissal of judges and termination of their duties as judges, assuring consistency in panel of judges while the courts are being liquidated, etc.

**Selection of judges of local courts**

As it was already mentioned in the previous Progress Update, on the 3rd of April, 2017, HQCJU has announced the selection of candidates for the position of a local court judge, taking into account 600 forecasted vacant positions of local court judges.

5338 persons applied for participation in this competitive selection.

On October 31, 2017, testing for the knowledge of the law, as well as testing for checking the level of possession of the state language during the selection exam for 4525 candidates was provided. According to the results of the mentioned tests, 700 persons have been admitted to testing of personal moral and psychological qualities.

Also, 692 candidates continued to participate in the selection as those who have successfully passed the selection examination; 285 candidates for a position of a judge who has worked as an assistant judge for at least three years have successfully completed special training at the National School of Judges of Ukraine; 373 candidates continue to undergo special training for 9 months at the National School of Judges of Ukraine.

In result of special inspection, 386 candidates for a position of a judge, who have no three-years’ experience on apposition of an assistant of a judge, are directed for special training to the National School of Judges of Ukraine\(^\text{172}\).

Over 29.10.2018-31.10.2018, for selection of judges of local courts, there were conducted the examination of qualifications of 876 candidates:

- 285 candidates who have three-years’ experience as an assistant for a judge and succeeded in trainings at the National School of Judges of Ukraine;
- 591 candidates who were in reserve and included to the ranking list, as well as those who were recommended by HQCJU but were not appointed on the day when the Law of Ukraine on Judiciary and Status of Judge entered into force\(^\text{173}\).

Currently, the tests, done by the candidates, are being checked.

**Selection of judges of the High Court on Intellectual Property**

The judiciary system of Ukraine consists of high specialized courts as the courts of the first instance (trial) courts and courts of appeal for hearings specific categories of cases.

High specialized courts are defined to the High Court on Intellectual Property and the High Anti-Corruption Court\(^\text{174}\). The Generalized rules of procedure for conducting competitions for positions of judges of a high specialized court are duly specified\(^\text{175 176 177}\).

\(^{172}\) The decision of HQCJU on 01.08.2018

\(^{173}\) Point 29 chapter XII of the Law of Ukraine on Judiciary and Status of Judge


\(^{175}\) Articles 79, 81, 83-86 the Law of Ukraine on Judiciary and Status of Judge https://zakon.rada.gov.ua/laws/show/1402-19

\(^{176}\) The Regulations for conducting competition for a vacant position of a judge https://www.vkksu.gov.ua/userfiles/doc/provedennia_konkursu.pdf

By its decision dated September 30, 2017, HQCJU announced a competition for 21 vacant positions of judges of the High Court on Intellectual Property and defined the following stages of the examination: Stage I – Anonymous Written Test; Stage II – Case Study (10/03/2018).

148 persons have conducted anonymous written test. Based on the results of this stage of the exam, 86 participants were admitted to the case study\(^{178}\). According to the results of the case study, as well as testing of personal moral and psychological qualities and general abilities, 63 candidates for the positions of judges of the High Court on Intellectual Property were successfully permitted to pass to the second stage of the qualification evaluation “Dossier investigation and interview”\(^{179}\).

HQCJU plans to complete the competition for 21 vacant positions of a judge of the High Court on Intellectual Property in particular identify its winners and submit recommendations on the appointment of candidates as judges to the High Council of Justice in the first half of 2019.

Renewal of the panel of judges of the Supreme Court

In the result of competition selection in 2017, 118 judges of new Supreme Court have been appointed.

HQCJU by its decision of August 02, 2018, announced a competition for 78 more vacant positions of judges of cassation courts within the Supreme Court\(^{180}\) and approved the Conditions of conducting a competition for vacant positions of judges of cassation courts within the Supreme Court.

For the passing of an anonymous written test 525 participants appeared to the competition. Based on the results of this stage of the exam, 317 participants were admitted to the case study\(^{181}\).

In the framework of the qualification evaluation as a means of the competition for vacant positions of judges of cassation courts within the Supreme Court on November 30, 2018, HQCJU appointed testing of personal moral and psychological qualities and general abilities, which was held during 12–17 December 2018.

235 candidates were admitted to the second stage of the qualification evaluation “Dossier investigation and interview”, of which: 69 candidates – for vacant positions of judges of Cassation Civil Court within the Supreme Court; 48 candidates – for vacant positions of judges of Cassation Commercial Court within the Supreme Court; 78 candidates – for vacant positions of judges of Cassation Administrative Court within the Supreme Court; 40 candidates – for vacant positions of judges of Cassation Criminal Court within the Supreme Court\(^{182}\).

Under the defined schedule (from January 23, 2019, to February 15, 2019), the interviews based on the results of the dossier investigation of candidates for vacant positions of Cassation judges within the Supreme Court were conducted.

In March 2019, the competition for vacant positions of judges of the cassation courts within the Supreme Court was completed and 78 candidates files were submitted for HCJ review and further nomination for the appointment.

15.4. The Regulations on the Unified Court Information and Telecommunication System have been approved (UCITS)\(^{183}\).

---

\(^{178}\) The decision of HQCJU on 04.10.2018
\(^{179}\) The decision of HQCJU on 01.11.2018
\(^{180}\) The decision of HQCJU on 13.11.2018
\(^{181}\) by HQCJU’s decision, dated on November 13, 2018
\(^{183}\) The Regulations are approved by the decision of the Council of Judges of Ukraine, on 26.11.2010 No 30 (with amendments made approved by the decision on 02.03.2018 No. 17)
The owner of UCITS is the state, represented by the State Judicial Administration of Ukraine (SJA). The state-owned enterprise "Information court systems", being assigned by SJA, is the administrator of the Unified Court Information System and is authorized to take measures related to the technical, organizational and technological support of the functioning of the automated system of case flow of the court and other subsystems, including as a system integrator.

Experimental exploitation of UCITS is expected to be launched on the 01st OF March, 2019, with the structure of 8 subsystems (modules): the Unified Contact Center of the Judicial Power of Ukraine; the Unified subsystem of financial and economic processes management; the Official electronic address (Electronic cabinet); Official web-portal "Judiciary of Ukraine"; the Unified state register of court decisions; Subsystem "Electronic Court"; the "Automated Distribution" Module; and the "Judicial statistics" Module.

Since January 1, 2019, UCITS subsystem has been operating in a test mode\textsuperscript{184}.

The Standing Committee of the High Council of Justice on the UCITS-related issues has been established\textsuperscript{185}.

As part of the Standing Committee, working groups have been set up to develop appropriate modules in the following areas: judge-investigator; judicial cooperation with other state bodies; process management in the judiciary; chambers; and workflow.

The first meeting of the Standing Committee was held on July 2, 2018.

A draft technical specification of UCITS has been prepared in terms of functional requirements.

On November 6, 2018, a test presentation of one of the key UCITS modules, namely, "Electronic Court", was held within the framework of the working group on "Management of processes in the judiciary". During the presentation, the possibility of submitting an electronic application and complaint to the High Council of Justice was demonstrated. Pressing issues of introduction and functional filling of the "Electronic Court" module with the developers were discussed, namely: the possibility of the application processing; indication of specific information about the signs of a disciplinary offense by a judge; reference to factual circumstances; proofs; registration of applications; processes of registration, auto-redistribution, identification of a person, litigation.

A working group was set up for the development of normative documents that would establish a procedure for monitoring the state of office-work in courts and detecting the facts of interference with the automated system of document circulation of the court\textsuperscript{186}.

15.5. On the 7\textsuperscript{th} of February, 2019, the Draft Law on amendments to some legislative acts of Ukraine on optimization of criminal liability of judges for the decision of a knowingly illegal judicial decision registered on March 15, 2017, No. 6193\textsuperscript{187}, was included in the agenda of the session of the Verkhovna Rada of Ukraine.

The chapter VIII of the Annual Report for the year 2017 on ensuring judicial independence in Ukraine\textsuperscript{188}, among other issues, presents the analysis of the facts of interference in exercise of justice,

\textsuperscript{184} https://court.gov.ua/press/general/611254/
\textsuperscript{185} The decision of HQCIU, dated on 10.05.2018 No. 1370-1/0/15-18
\textsuperscript{186} The Order of the State Judiciary Administration of Ukraine, dated on 29.09.2017, No. 923, for fulfillment of the decision of the Council of Judges of Ukraine, dated of 10.02.2017, No.10
\textsuperscript{187} http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=6193&skl=9
\textsuperscript{188} http://www.vru.gov.ua/content/file/%D0%A9%D0%BE%D1%80%D1%96%D1%87%D0%BD%D0%B0_%D0%B4%D0%BE%D0%BF%D0%BE%D0%B2%D1%96%D0%B4%D1%8C_%D0%B7%D0%B0_2017_%D1%80%D1%96%D0%BA_.pdf, also is enclosed in English(from page 29 of the plot of the text)
particularly, the practice experienced by the High Council of Justice on the protection of the independence of judges, the prosecution of a criminal case under Article 375 of the Criminal Code of Ukraine as a means of pressure on a judge, the use of other provisions of the Criminal Code of Ukraine for pressure on judges, pressure on judges made by the parliamentarians, disrespect to the judiciary by other branches of power, interference in the exercise of justice by judges by citizens and their associations, improper response of law enforcement agencies to cases of interference in the exercise of justice by a judge, full disclosure STI judiciary as a means to reduce the incidence of unlawful interference in judges on the administration of justice.

15.6. Since July 12, 2018, the amendments were made to the Law of Ukraine "On the Judiciary and Status of Judges" in connection with the adoption of the Law of Ukraine "On the Highest Anti-Corruption Court". Thus, the said Law has changed the status of the Court Security Service stipulating it as the law enforcement body with the rights and duties of officers similar to the rights and duties of police officers. In this way, the issues of ensuring the protection and maintenance of public order in the courts, the status, powers of the Judicial Protection Service, service in the Court Security Service, special ranks and social protection of the employees of the Court Security Service, etc., have been regulated in detail.

The State Judiciary Administration of Ukraine shall ensure full implementation by the Court Security Service of the powers provided for by the Law of Ukraine "On the Judiciary and Status of Judges" no later than by January 1, 2019.

Applicants for the staff of the Court Security Service shall be subjected to the requirements provided for by the Law of Ukraine "On National Police" for candidates for service in the police.

It is envisaged that appointment to the posts of the staff of the Court Security Service (except for appointment to equivalent or lower positions) is carried out exclusively on the basis of the results of the competition conducted by SJA of Ukraine in accordance with the procedure established by the High Council of Justice.

The procedure for conducting the competition for appointment to the posts of employees of the Court Security Service has been approved.

On 06.11.2018-12.12.2018 the competition for the vacant post of the Head of the Court Security Service, his deputies, took place in SJA of Ukraine. The winners of the competition have been selected.

As of February 12, 2019, the winner of an open competition for the post of the Head of the Court Security Service was not selected due to the fact that the special examination procedure is still being carried out, in accordance with the results of which, in case of the absence of negative conclusions, the Head of the Court Security Service will be appointed by the High Council of Justice.

In order to regulate the conditions of payment and the size of the financial support of the staff of the Court Security Service, a draft resolution of the Cabinet of Ministers of Ukraine "On the financial security of employees of the Court Security Service" was developed.

---

189 https://zakon.rada.gov.ua/laws/show/2509-19#n5, is enclosed in English
190 Pursuant to the sub-point 2point 46 chapter XII of the Law of Ukraine on Judiciary and Status of Judge
191 Pursuant to part one of article 163 of the Law of Ukraine on Judiciary and Status of Judge
192 Pursuant to part two of article 163 of the Law of Ukraine on Judiciary and Status of Judge
193 The decision of the High Council of Justice, dated on October 30, 2018, No. 3308/0/15-18
194 For the exercise of the minutes of the meeting of the Cabinet of Ministers of Ukraine, dated on 22.08.2018, No.31
It should be noted separately that, at the end of 2018, NACP was verifying 408 e-declarations submitted by 213 judges; and 101 e-declarations submitted by 63 judges are checked; in result, 5 substantiated conclusions, based on detected corruption and corruption-related offenses were sent to NABU and Specialized Anti-Corruption Prosecution’s Office.

**Assessment of Progress**

Information provided by the government demonstrates some development on legislative level and continued – albeit slow - efforts to implement the reform of the judiciary. At the same time, institutions responsible for the reform of the judicial system like HQCJ or SJA are too busy with practical implementation issues were not able yet to analyse the problems in the reform process or to address them.

NGOs confirmed that the changes introduced by the judicial reform are for the most part implemented: 2479 judges of the first instance and appellate courts are undergoing the qualification assessment.\(^{195}\) NGOs further note that the majority of judges remained in their positions after the assessments. However, the Public Integrity Council suspended its participation in the qualification assessment of judges and the process of mediation with the High Qualification Commission of Judges did not lead to any results.\(^{196}\)

NGOs further noted that the competition for vacant positions of local court judges is still continuing, and the situation with ‘re-appointment’ of the judges whose 5 years’ probation term lapsed is moving slowly.\(^{197}\) In 2018, the High Council of Justice submitted to the President 390 judges, whose 5 years’ probation term lapsed, most of whom passed a qualification assessment. Of these, 132 judges have not yet been appointed indefinitely, i.e., statements on them are still pending before the President for 2-3 years.\(^{198}\)

While appointment, disciplinary proceedings, dismissal and recusal of judges are in line with European standards and recommendations of the Venice Commission, the system of judicial self-governance has to be reconsidered to provide all judges with a real power to participate in formation of judicial governance institutions (elect members to HQCJ, HCJ, CoJ) instead of electing delegates, who very often abuse their trust by following instructions from the top.

No information was provided regarding the analysis of reasons behind massive resignation of judges. While the HQCJ delegates shared their personal views as to the reasons for resignations, which indeed can be positive, no formal analysis was conducted that could be used to ensure the quality of further reforms.

All courts in Ukraine are equipped with automated case assignment systems, but no independent monitoring of its functioning was conducted to ensure that it is being properly applied. The delegation of Ukraine argued that no manipulations are possible in these systems, therefore on monitoring was necessary.

No actions were taken to remove Article 375 from the Criminal Code of Ukraine to ensure that no judge has to be punished for the decision made, unless it was a crime or disciplinary misconduct, as provided by 2016 Constitutional changes (Art.126 para 3) that introduced the notion of functional immunity for judges in Ukraine.

---


\(^{196}\) http://yur-gazeta.com/golovna/grd--vkks-zavershennyia-mediaciyi.html


78
Very first steps were taken to develop the Court Security Service with the selection and appointment of its head; however, institutional development of this service is a long-term project, as it requires the support of the executive branch and the recruitment of thousands of officers to safeguard necessary measures to ensure the safety of judges.

It can be concluded that the overall reform of the judiciary in Ukraine is continuing albeit slowly. The OECD/ACN recommendations regarding the integrity of the judiciary were addressed only in a very limited manner. To encourage Ukraine to step up the implementation of reforms, the OECD/ACN agreed to rate the assessment of this recommendation as progress, calling upon Ukraine to step up specific actions regarding the integrity of judges.

### 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 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.

---

**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.

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 studies 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

---

**20th Plenary Meeting, March 2019**

**Government report**

16.1.

c) In 2018, 26 employees of the prosecutor's office submitted declarations in a timely manner, 30 administrative protocols were drawn up for violating the requirements of financial control, 3 were fined by the court. Not submitted declarations of 100 employees of the prosecutor's office (including after release). As a result of examining and verifying the declarations, 86 declarations of were sent to the NACP with a view to their full verification.

---

199 Pursuant to part one of article 1726 Code of Ukraine on Administrative Offences
In addition, the Qualification-Disciplinary Commission of Prosecutors in 2018 considered 11 disciplinary complaints of facts of conflict of interest with prosecutors. As a result, 2 prosecutors have been brought to disciplinary action. According to the facts of the conflict of interests, the procurators compiled 6 protocols, transferred to court, but all cases closed by the court.

In violation of the Law of Ukraine "On Corruption Prevention" in 2018, 10 prosecutors were brought to disciplinary responsibility, details of which were entered into the Unified State Register of Persons who committed corruption offenses.

16.2.

16.3. It should be noted separately that at the end of 2018 the NACP completed full verification of 146 declarations submitted by 96 prosecutors; 105 declarations submitted by 74 prosecutors were verified, NABU sent 4 substantiated conclusions about identified corruption and corruption-related offenses; to the General Inspectorate of the General Prosecutor's Office of Ukraine - 5 substantiated conclusions on the revealed corruption and corruption-related offenses.

Assessment of Progress

The procedures for the appointment and dismissal of the Prosecutor General were not changed, the merit-based approach to the procedure of his/her appointment was not introduced and the existing strong risks of political influence were not eliminated. No tangible progress in reform of prosecutorial self-governance, improvement of disciplinary proceedings, promotion and assessment of prosecutors was achieved. Despite clear recommendation, the statute of limitation within which the disciplinary sanction can be imposed on a prosecutor (one year from the date of the alleged offence under existing legal provisions) was not extended.

No further steps to ensure sufficient and transparent funding of the Prosecution Service and remuneration of prosecutors were taken. The provisions of law on the level of the remuneration for prosecutors were abolished by the governmental decisions and not followed in practice. Percentage of bonuses in a general structure of remuneration remains high, and depends on the discretion of superior prosecutors and continues to undermine the prosecutor’s independence.

No changes in legislation or administrative practice in order to strengthen procedural independence of prosecutors took place in 2018. Random allocation of cases to individual prosecutors was not introduced. In practice the allocation of cases remains the discretion of superior prosecutors, no strict and objective criteria with safeguards against possible manipulations are provided by statutory regulations.

No 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).

19th ACN Monitoring Meeting, July 2018

*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**
17.1. Within the framework of the implementation of the Strategy for the Reform of the Public Administration of Ukraine, a draft Law of Ukraine "On the Administrative Procedure" was prepared for the period up to 2021. On December 18, 2018 at a meeting of the Government of Ukraine the draft law was approved, 28.12.2018 submitted to the Verkhovna Rada of Ukraine and 07.02.2019 was included in the agenda of the Verkhovna Rada of Ukraine. During 2019, the Ministry of Justice of Ukraine will ensure the support of the draft law in the Verkhovna Rada of Ukraine.

17.8. The draft law proposes to comprehensively improve the national legislation in the field of financial monitoring, in particular, in the part of the procedure for determining beneficiary owners of companies and legislative aspects that influence the quality of investigation of crimes related to legalization (laundering) of proceeds from crime; to establish the obligation for legal entities to submit information about the structure of ownership, including information on the nature and extent (level, extent, proportion) of the beneficiary's possession (benefits, interest, influence) in the USR, as well as the obligation of the legal entity to maintain this information in the actual condition; to strengthen the administrative responsibility for not communicating information about the ultimate beneficiary's owner (controller) to the legal entity, and also to provide that the legal entity also submits the information also in the absence of the beneficiary.

An on-line database of beneficial owners of companies has been created. Publication of information about the founders and ultimate beneficiary owners (controllers) in the form of open data from the USR is provided.

The legal entity is obliged to constantly update the information about the final beneficiary's owner when submitting applications for registration actions in the USR.

Information about the founders and ultimate beneficial owners (controllers) of a legal entity is available online at several state resources (updated every 5 business days): the only state web-portal of open data: http://data.gov.ua/; Website of the Ministry of Justice of Ukraine: https://minjust.gov.ua/information-from-register; site of the State Enterprise "NAIS": http://nais.gov.ua/text/248. You can also get the information via a free or paid request through the online service to receive information from the USR at the link https://usr.minjust.gov.ua.

In February 2019, it is planned to complete the revision of the Unified State Registry software in order to differentiate information about the founder and beneficial owner of the legal entity.

---

200 https://zakon.rada.gov.ua/laws/show/474-2016-%D1%80
201 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65307
204 The Order of the Ministry of Justice of Ukraine, on 29.08.2018, No. 2824/5
The distribution of all relevant information about the final beneficiary owners (controllers) made to the USR in an arbitrary form is made on separate words. The above information is stored in a separate table of the USR database, which is updated in real time.

A new USR software has been developed, which improves the quality of data about end-beneficiary owners (controllers) by clearly structuring them when introduced into the USR.

Software testing of the USR was performed.

It is planned to ensure the search for interconnections between legal entities and their founders (participants), the final beneficiary owners (controllers), including the ultimate beneficiary owners (controllers) of the founder, the heads of legal entities, the visualization of all direct and indirect links.

In accordance with the Action Plan for the implementation of the Initiative "Open Government Partnership" in 2018-2020 it is envisaged to improve the software of the Register in order to differentiate information about the founder and final beneficiary owner (controller) of the legal entity (the term is March 2019); preparation of proposals on the mechanism for checking the reliability of the information on beneficiary owners contained in the Register (the term is December 2019).

Expected results: the transfer of reliable information from the Register to the Global Register of Beneficiary Owners; introduction of verification of information about ultimate beneficiary owners.

Assessment of Progress

The draft Law on the Administrative Procedure was approved by the government and submitted to the parliament, which is a positive development.

Regarding access to information, the new draft of the AML law provides stronger provisions for disclosure of information about beneficial ownership, technical solutions for this disclosure are being improved as well.

No progress was reported on other elements of the recommendations.

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.

### Government report

18.1. The on-line counseling of representatives of state authorities and local self-government - information managers is constantly being carried out.

18.2. The USAID Transparency and Accountability in Public Administration and Services (TAPAS) International Technical Assistance Project has modernized the single state open source web portal. The introduction of the Portal into operational exploitation and its transfer to the state enterprise "State Center of Information Resources of Ukraine" is provided.

### Assessment of progress

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

### 20th Plenary Meeting, March 2019

### Government report

18.1. The on-line counseling of representatives of state authorities and local self-government - information managers is constantly being carried out.

18.2. The USAID Transparency and Accountability in Public Administration and Services (TAPAS) International Technical Assistance Project has modernized the single state open source web portal. The introduction of the Portal into operational exploitation and its transfer to the state enterprise "State Center of Information Resources of Ukraine" is provided.
Publication of priority sets of data of executive authorities and local governments in the form of open data is being made public\textsuperscript{206}.

In order to improve the quality of the data published on the Unified State Web-portal of open data, the pre-modification of datasets is constantly carried out.

Over 5000 datasets have been made publicly available at the modernized Single State Web-portal of open data (data.gov.ua) and more than 3500 information managers have been registered\textsuperscript{207}.

The plan of actions for realization of principles of the International Open Data Charter is approved\textsuperscript{208}.

<table>
<thead>
<tr>
<th>Assessment of Progress</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall there is progress under this recommendation as presented by the government.</td>
</tr>
<tr>
<td>However, NGOs draw attention to a setback that took place in December 2018. The Cabinet of Ministers adopted changes to the Decree (<a href="https://zakon.rada.gov.ua/laws/show/1127-2015-%D0%BF">https://zakon.rada.gov.ua/laws/show/1127-2015-%D0%BF</a>) according to which the access the real estate registry becomes difficult. In order to receive information about all real estate owned by a legal entity or an individual, there is a need to request information for each individual property unit. Additionally, the access is possible only with the e-digital signature. Earlier, the access to the historical data was also closed after journalists’ investigation about how one MP bought all flats from the Prosecutor General.</td>
</tr>
</tbody>
</table>

**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.

\textsuperscript{206} Pursuant to the Decree of the Cabinet of Ministers of Ukraine, on 21.10.2015, No. 835 (with recent amendments made on 04.07.2018, No. 524) https://zakon.rada.gov.ua/laws/show/835-2015-%D0%BF

\textsuperscript{207} Pursuant to information, given by the State agency on electronic governance of Ukraine, dated on 27.02.2019, No. 1/04-1-379

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.

---

19th ACN Monitoring Meeting, July 2018

**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
Government report

19.1. Over recent years, the public procurement sector in Ukraine has undergone significant reform and continues to be successfully scaled in line with the commitments undertaken by Ukraine under the Association Agreement with the European Union, in which public procurement is defined in a separate chapter. In this regard, Ukraine has a commitment to bring national public procurement legislation in line with EU directives through gradual harmonization. Within this process Ukraine is constantly harmonizing legislation with EU standards, as well as continues development of Ukrainian electronic public procurement system – ProZorro which was already acknowledged by various international organizations and awards.

Recent activities

One of the recent achievements in further development of the electronic Public Procurement system ProZorro is launching an Automatic risk indication management system for monitoring purposes. The risk indicators system analyzes the data from the central data base and reveals suspicious tenders. It helps to make assessment of each tender: information quality, probability of participation based on statistics, the logic of participants’ actions and is aimed at improving the overall quality of the procedure and reducing risks of unfounded disqualification, to increase accessibility of tenders for market players, to reduce the number of unintentional faults in the documents in order to make more visible those players who violate the rules intentionally.

Moreover, we also developed a cabinet for the State Audit Service of Ukraine in ProZorro, so now they are conducting the monitoring on the basis of the Risk Indication System and all the information on the monitoring is published on the Portal of the system in the relevant tender page. The methodology of risk indicators is based on the Open Data Standard and makes use of experience of other countries. According to developers, the system is unique. It is completely automatic and eliminates the human factor.

The civil society is also widely using the public version of this Risk Indication System, developed by Transparency International Ukraine209.

Another newly developed improvement in ProZorro is the module of framework procedure that has been deployed to production environment in ProZorro e-procurement system. Framework agreements were foreseen by the current Public Procurement Law all the time, still, it was impossible to use them, outside the electronic procurement system according to the Law, that’s why this improvement was crucial for the System development.

This is a specific two-staged type of purchase that saves budget spending by aggregating demand from the market, specific contracting authorities and cutting administrative costs on announcement new tender each time. Maximum agreement duration is 4 years. The procedure consists of (1) tendering module (1st stage) – a tender is announced for suppliers to join and sign the agreement, meaning only qualified short-listed suppliers will supply the defined goods, (2) agreement module - confirmation of actual agreement signed by the Procuring Authority and short-listed suppliers on predefined terms and products, (3) selection (2nd stage) – a tender is announced on specific goods (from predefined list in the agreement) for the specific Procuring Authority with specific suppliers and (4) contract – the confirmation of the actual contract signed between the Procuring Authority and the supplier.

209 http://risk.dozorro.org
Also, the project for the Electronic Tender Documentation was launched. The purpose of this project is to publish all the data in the system in a machine-readable format. We have already introduced two new fields – “condition of payment” and “main procurement category” (goods/services/works).210

Ukraine has been reforming the public procurement system by assessing on a regular basis results given from application of the Law of Ukraine “On Public Procurement” (hereinafter – the Law).211

In order to implement the second and third stages of the road map of the Action Plan under the Association Agreement, a new Law of Ukraine “On Public Procurement” was drafted in order to implement key concepts and key elements of the Directives 2014/24/EC and 2014/25/EC in the legislation of Ukraine.

The main concepts introduced are standard procurement procedures, techniques, tools and other elements of the procurement regulation provided for by the aforementioned EU Directives and the legislation of Ukraine.

The draft law envisages:

- the regulation of the implementation of "sub-threshold procurement" by introducing a new type of procurement, a simplified procurement, the procedure for which applies to the procurement of goods, works and services, the value of which is equal to or exceeds UAH 50 thousand and is less than UAH 200 thousand, and the holding of which through the electronic procurement system becomes mandatory;

- expanding the list of competitive procurement procedures, in particular restricted procedures. These procedures apply if goods, work or services due to their complex or specialized nature may be offered by a limited number of participants requiring a prior qualification examination and their value is equal to or exceeding EUR 133,000 for goods and services, for works - EUR 5150 thousand;

- establishing responsibility for the heads of the procuring entities for failure to comply with the requirements of the Law, etc.

- permission to correct mistakes in the information provided by bidder;

- changes of approaches to organization of purchasing activity – commencement of the authorized persons;

- commencement of a new instrument – Abnormally Low Tenders.212 213 This tool allows you to automatically detect (by default) by the electronic system an abnormally low bid price and pay attention to the existence of the appropriate risk. The procuring entity in this case should receive a justification from the participant of the procurement procedure regarding the abnormally low price of his tender offer, and in the absence of such a justification (or insufficient reasoning) to reject the tender offer of such participant;

- “life-cycle costing”214 215;

210 https://infobox.prozorro.org/updates/zamovniki-mayut-zapovnyuvati-pole-umovi-oplati
http://eupublicprocurement.org.ua/home/%D0%BD%D0%B0%D1%81%D1%82%D0%B0%D0%BD%D0%BE%D0%B2%D0%B8?lang=en
- broadening the list of competitive procedures of public procurement, particularly by adding the procedure for tender with limited number of tender participants;

- the right for Contracting Authority to conduct preliminary market consultations aiming at analysis of the market;

- permission for a Contracting Authority to conclude one sales contract with the winner of the tender of a number of (all) bids within one single purchase procedure;

- certain transformation of the procurement negotiations procedure by specifying the order of running negotiations and reviewing grounds for its application;

- permission for the Contracting Authority to cancel tender bid given by a tender participant that failed to fulfil commitments under previous sales contract;

- detailed rules for application of technical specifications;

- broadening the list of qualification criteria;

- reviewing the list of certain spheres of economic activity and introduction of the notion of the Contracting Authority by categories;

The core aim of the public procurement reform is to create up-to-date and practicable public procurement system, focusing on effective expenditures from the state budget, as well as assuring covering of the needs of the state and local self-governments, creation of competitive environment, further development of fair competition in public procurement.

The Law covers all the public procurement procedures, except of cases foreseen under parts three and four of the article 2 of the Law, with application of non-competitive procedure, being envisaged by the article 35 of the Law, as an exception.

Pursuant to the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (CHAPTER 8)216, Ukraine has been fulfilling its commitment, inter alia, to bring its public procurement system in line with EU standards217.

Besides amendments made to the provisions of the Law, within the framework of harmonization and implementation envisaged by the Road Map218, a number of amendments have been made which directly facilitate improvement of purchasing process, as well as creation of the background for development of competitive environment in public procurement. The draft law entails to regulate a number of pressing issues that have been faced while practical implementation of provisions of the Law by the subjects for public procurement, as well as application these provisions in electronic procurement system.

The draft law is currently being processed by structural divisions of the Ministry for Economic Development and Trade.

19.2. The Law of Ukraine on Public Procurement already ensures that SOEs shall apply competitive and transparent rules for public procurement of goods and services, stipulated by Law. This mechanism is already in line with the EU practice.

Pursuant to point 9 part one Article 1 of the Law, “Contracting authorities” refer to public authorities, local self-governing authorities and social insurance and welfare bodies established under the law, as well as legal entities (enterprises, institutions, organizations) and their associations that provide for

---

217 http://eupublicprocurement.org.ua/?lang=en
satisfying the needs of the State or a local community, if such activities are carried out otherwise than on an industrial or commercial basis, and if they have any of the following characteristics:

- the legal entity is an administrator, recipient of budget funds;
- public authorities or local self-governing authorities, or other contracting authorities have the majority of votes in the supreme governing body of the legal entity;
- more than 50 percent of shares (interests, participatory interests) in the legal entity’s authorized capital belong to the State or a local community.

Contracting Authorities are also stated to be legal entities and/or subjects of economic activity which carry out the activity in certain spheres of economic activity and correspond to, at least, one of the characteristics, as follows:

Contracting authorities shall also include legal entities and/or economic operators operating in certain areas of economic activity and meeting at least one of the following criteria:

- public authorities, authorities of the Autonomous Republic of Crimea, local self-governing authorities own a share of more than 50 per cent in the authorized capital of the economic operator, or such authorities have the majority of votes in the supreme governing body of the economic operator or the right to appoint more than a half of the members of the economic operator’s executive or supervisory board;
- enjoying special or exclusive rights;

Thus, SOEs, which correspond to the definition of the Contracting Authorities as it is defined by the law, are obliged to conduct procurements in compliance with the Law by means of ProZorro system.

Over the whole period of ProZorro system functioning, good results have been proved to be evident: as of March 18, 2019, in general, 34 700 Contracting Authorities have conducted 2,52 million procurements with expected cost of UAH 1,46 trillion, with 307 600 procurements to have fallen under the action of the Law of Ukraine on Public Procurement, valued of UAH 1,06 trillion of expected cost. The total saving resulted from competitive procurements is estimated in sum of UAH 70,8 billion (with UAH 50,2 billion saved from procurement procedures which are regulated by the Law of Ukraine on Public Procurement219

19.3. Procurement system reflects information concerning all stages of purchasing progress, starting from the annual planning to reporting on fulfilment of the contract.

The Law of Ukraine on Public Procurement is applicable to:

Contracting Authorities, in case if the cost of the purchasing item goods (items of goods), service (services) equals, or exceeds UAH 200 000, and work – UAH 1,5 million. All covered by the Law Procurement above this threshold are being conducted through the electronic procurement system ProZorro.

Contracting Authorities which carry out economic activity in certain spheres of economic activity, under the condition the cost of the purchasing item goods (items of goods), service (services) equals, or exceeds UAH 1 million, and work – UAH 5 million.

While purchasing goods, work and services, the cost of which is lower than the cost fixed by para two and three of this part, Contracting Authorities shall comply with principles for carrying out public procurement set under this Law, and the electronic procurement system shall be applied by them for

219 As a result of monitoring using the analytical module bi.prozorro.org
choosing a provider of goods (items of goods), service(s) provider, as well as provider of work, for concluding contract.

New Public Procurement Draft Law regulates carrying out “procurement below the thresholds” by means of commencement of a new type of procurement, namely, facilitated procurement, the rules of procedure for which are applicable to procurement of goods, work and services the cost of which equals, or exceeds, UAH 50 000 and is lower than UAH 200 000, and carrying out of which, therefore, becomes obligatory to be performed by means of the electronic procurement system.

The Ministry for Economic Development and Trade of Ukraine, in collaboration with the State Treasury Service, are carrying out activities focused on integration of the electronic procurement system with treasury system for the purpose of reflecting information on financial transactions under the procurement contracts in the electronic procurement system as well.

19.4. The Ministry created a special Information Resource of the Authorized Body in the field of public procurement\(^{220}\). 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 Body in the framework of the reformation and electronization of public procurements.

A special resource has been created, which publishes methodological materials, explanatory articles, online self-training courses, a library of exemplary specifications and a forum for discussing public procurement issues between procuring authorities, participants, representatives of the state enterprise "Prostorzo" and the Ministry of Economic Development and Trade\(^{221}\).

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

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

The Ministry in 2018 established cooperation with higher education institutions of private ownership regarding the necessity and feasibility of introducing a discipline for the study of public procurement. According to the results of the work, 7 institutions of higher education have expressed a desire to cooperate in the training of public procurement management specialists through the introduction of educational programs, curricula, courses for the preparation of applicants for higher education of the first and second levels for the 2018-2019 academic years in the following specialties: 051 "Economics", 072 "Finance, Banking and Insurance", 073 "Management", 075 "Marketing", 076 "Entrepreneurship, Trade and Stock Exchanges", 281 "Public Administration and Administration"\(^{222}\).


\(^{221}\) [http://infobox.prozorro.org](http://infobox.prozorro.org)

\(^{222}\) Detailed information is available on goo.gl/akmuCq (Section “Professional preparation of specialists"), [http://fsp.kpi.ua/nova-spetsializatsiya-upravlinnya-publichinnimi-zakupivlyami-spetsialnist-281-publichne-upravlinnya-ta-administruvannya](http://fsp.kpi.ua/nova-spetsializatsiya-upravlinnya-publichinnimi-zakupivlyami-spetsialnist-281-publichne-upravlinnya-ta-administruvannya) & [http://econ2016.krasalex.com/%D0%BC%D0%B0%D0%B3%D0%B8%D1%81%D1%82%D1%80-051/](http://econ2016.krasalex.com/%D0%BC%D0%B0%D0%B3%D0%B8%D1%81%D1%82%D1%80-051/)

[http://tnu.edu.ua](http://tnu.edu.ua)

[https://www.znu.edu.ua](https://www.znu.edu.ua)
Moreover, in 2018, 21 lectures in the form of "business breakfasts" were held - events for suppliers and Contracting Authorities on generalized procurement practices to inform policy and public procurement rules.

**19.5.** According to Article 62 of the Law of Ukraine "On Prevention of Corruption", 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.

According to Article 17 of the Law, the procuring entity is obliged to make a decision to refuse the participant in participation in the procurement procedure and to reject its tender offer, including, in case if the legal entity that is a participant does not have an anti-corruption program or an authorized anti-corruption program, if the cost of the purchase of goods (goods), services (services) or works is equal to or exceeds UAH 20 million.

**19.6.** Article 17 of the Public Procurement Law sets a right for contracting authorities to reject a tenderer and to reject any tender under circumstances stipulated in this Article.

In particular with relation to this recommendation paragraph 1 of Part 1 of Article 17 of the Law, states that the procuring authority is obliged to make a decision to refuse a bidder to participate in the procurement procedure and to reject his bid if it has indisputable evidence that the tenderer offers, gives or agreed to give a reward, directly or indirectly, to any officer of the contracting authority, of another public authority in any form (proposal of employment, valuables, a service, etc.) with the view to influence the decision on selecting the successful tenderer or on choosing a certain procurement procedure by the contracting authority of a certain procedure of purchase, as well as if the information about the legal entity that is a participant is entered in 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 or her interests under the time of the procurement procedure, the individual who is a participant, was brought under the law to account for the commission in the field of procurement of corruption offenses.

Also, paragraph 4 of Part 1 of the Article 17 states that a contracting authority shall decide on rejecting a tenderer and shall reject any tender if an economic operator (tenderer), during the last three years, has been hold liable for an infringement provided for in Article 6, paragraph 2, sub-paragraph 4, Article 50, point 1 of the Law of Ukraine “On Protection of Economic Competition” in the form of anticompetitive concerted actions related to bid rigging. Antimonopoly Committee of Ukraine is a State Body responsible for adopting decisions on acknowledgment of violations by the legal entities of the legislation on protection of economic competition in form of anti-competitive coordinated actions with purpose of distortion of results of tenders. Antimonopoly Committee of Ukraine is also maintaining register of this decisions.

**19.7.** The State-Owned Enterprise "ProZorro", with the support of the Ministry of Economic Development and Trade, regularly conducts trainings for procuring entities and business aimed at raising awareness of procurement rules.

At the same time, in order to create a network of professional procurement coaches in 2018, a second in-depth comprehensive training for public procurement coaches (training-of-trainers, TOT) was held. During the 2018, a total of 562 lectures were conducted by the graduates of the second wave of TOT in public procurement. Also, in order to raise the level of knowledge of the subjects of public procurement, a number of activities were carried out, in particular, the Center of Excellence in

---

223 [https://www.facebook.com/prozorro.gov.ua/](https://www.facebook.com/prozorro.gov.ua/)
Procurement conducted 6 free open lectures and 8 workshops, which were attended by over 231 participants.\textsuperscript{225}

In addition, the State-Owned Enterprise "ProZorro" held an open meeting with the organizers of procurement and 3 training sessions for representatives of mass media and the public on the opportunities of analytical services for monitoring of purchases\textsuperscript{226}.

The part of the recommendation relevant to trainings for law enforcement and state controlled organisations was implemented in previous periods and Ukraine already reported on that.

<table>
<thead>
<tr>
<th>Evaluation of progress</th>
</tr>
</thead>
<tbody>
<tr>
<td>To be done in written procedure</td>
</tr>
</tbody>
</table>

### 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.

---

225 https://kse.ua/kse-impact/centre-of-excellence
226 https://dozorro.org/tools/public-bi
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., Geraschenko 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 76th 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 CentreEnergo, 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 fact corruption and other problems form 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
Government report

20.1.

**d.** 8 regional workshops on integrity and compliance "Business integrity: engage, implement and win" organized by NAC in cooperation with UNDP in Ukraine, the All-Ukrainian Network of Integrity and Compliance, and the Council of the Business Ombudsman. The purpose of these workshops is to raise awareness, in particular, representatives of private enterprises about business integrity, to present best practices in implementing anti-corruption programs in successful companies in Ukraine.

09.12.2018 launched a free 3-week online course "Anticorruption Programs of the Authorities" based on the NACP analysis of the practical implementation of anti-corruption programs by the authorities during 2017 and January-November 2018, in particular, the issues in the assessment of corruption risks and development of measures to eliminate them.

The purpose of the course is to provide informational and methodological support to officials of authorities, experts and representatives of the public, employees of authorized departments (persons) on issues of prevention and detection of corruption, whose direct responsibilities include the development of anti-corruption programs of authorities, public representatives and experts who are going to participate in the process of assessing corruption risks in the activities of the authorities.

It is supposed that after passing the course the NACP will receive comments and suggestions from interested parties on improving the normative and methodological basis on the issues of organization of corruption risk assessment and preparation of anti-corruption programs. Course link: [https://courses.prometheus.org.ua/courses/course-v1:UNDP+GOVANTICOR101+2019_T1/about](https://courses.prometheus.org.ua/courses/course-v1:UNDP+GOVANTICOR101+2019_T1/about)

20.4. On the 7th of February, 2019, the draft law on the Establishment of business-ombudsman was included into the agenda of the session of the Verkhovna Rada of Ukraine[^227].

20.5.

The annual, as well as quarterly, reports of the Council of business-ombudsman (in English) are published on web-site[^228], so are the UNIC’s reports[^229].

---

[^227]: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58980](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58980)

[^228]: [https://boi.org.ua/en/reports/](https://boi.org.ua/en/reports/)

### Assessment of Progress

The Government took several measures to improve business integrity, e.g. a website was launched by the cabinet of minister that publishes information about all business inspections, the list of corrupt individuals was launched by the NACP to support the debarment system for public procurement; Ukrainian SOE UkrRail starting using Prozzorro for its sales of services.

The Business Ombudsman Council (BOC) continued its excellent work protecting legitimate interests of companies from various administrative resources. However, the bill on BOC was stalled in parliament, thus undermining the development of its capacity further. Besides, BOC reported about the failure of the Tax admin to implement court decisions, which further undermines business integrity.

UNIC, Ukrainian Network for Integrity and Compliance, made a significant contribution to the business integrity awareness raising. This included the regional seminars and other BI promotional activities. State bodies did not provide any support to UNIC.

The above actions constitute progress in implementation of this recommendation.

However, the recent Cabinet decision not to continue the contracts of the Naftogaz board raises serious concerns about the sustainability of the reforms in this important SOE that was leading reforms following the OECD guidelines for SOEs. This steps seriously undermines the overall BI environment in the country and signals a negative development.

### CHAPTER 3: ENFORCEMENT OF CRIMINAL LIABILITY FOR CORRUPTION

Recommendation 21: New corruption offences and elements of offences

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>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.</td>
</tr>
<tr>
<td>2.</td>
<td>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.</td>
</tr>
<tr>
<td>3.</td>
<td>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.</td>
</tr>
<tr>
<td>4.</td>
<td>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.</td>
</tr>
</tbody>
</table>
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**

### 20th Plenary Meeting, March 2019

**Government report**

**21.3.** In December 2018, the Ministry of Justice of Ukraine submitted to the Cabinet of Ministers of Ukraine agreed proposals, in which it is proposed, in particular, to increase the amount of fines that can be applied to legal entities for serious and especially grave crimes, it is also proposed to make appropriate amendments to the Criminal Code and to provide for the possibility of applying measures of a criminal nature to the successors of a legal entity, in case of its reorganization.

**Assessment of Progress**

No new developments have been reported by the Government on the status in Parliament of 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"; nor on the specialized training programmes addressed to the anticorruption prosecutors and investigations and how these training activities are part of a regular curricula. There is no information on management measures to encourage the investigation and prosecution of corruption offenses committed by legal persons.

As far as the analysis of the practical application of the new provisions on liability of legal persons with the view of improving them, there is little information. However, as a positive development, the Government appears to be concerned that the fines applicable to the legal persons are too small and that there is the risk of the legal persons to evade justice by way of reorganization. As a consequence, legal amendments are envisaged, but for the time being, only at the level of the Government, which is not enough to be considered as a progress.

Information provided by the government does not indicate progress.

Besides, according to media reports that were available to the experts, the Constitutional Court of Ukraine ruled that the office of illicit enrichment was not constitutional. This decision is serious step back in the anti-corruption reforms in Ukraine. It will undermine the effectiveness of e-declarations of assets and interests by public officials; a large number – 65 - of cases on illicit enrichment that were investigated by NABU and other law-enforcement bodies will be dropped; the work of NACP on verification of asset declarations will be hampered. Illicit enrichment that presents a serious problem in Ukraine will not be punished or dissuaded. This is a serious negative development.
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 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.


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:

- assets, which have been seized in criminal proceedings; amount of funds, description, specifications and assessed value of the property, proprietary and other assets;

- 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;

- 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.);

- 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;

- decisions of foreign competent authorities on seizure and confiscation of assets in Ukraine, and the status of fulfilment thereof;

- decisions of Ukrainian competent authorities on seizure and confiscation of assets in foreign countries, and the status of fulfilment thereof;

- 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**

---

**20th Plenary Meeting, March 2019**

**Government report**

22.1. By the Resolution of the Cabinet of Ministers of Ukraine dated October 03, 2018, № 816 "Some issues of ensuring the activities of the National Agency for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes"230, the decision was adopted on the establishment of interregional territorial offices of ARMA, which would allow the agency more complete and fully perform the basic functions and powers specified by the Special Law, and also it is established that the limiting number of ARMA central office will be 195 employees. And regional offices - 240 employees231.

---

231 [https://zakon.rada.gov.ua/laws/show/816-2018-%D0%BF](https://zakon.rada.gov.ua/laws/show/816-2018-%D0%BF)
According to the document, it is planned to establish six interregional territorial offices of ARMA, whose powers will be extended to several administrative-territorial units, namely:

- The Western Interregional Territorial Office with its location in Lviv, which will unite Volyn, Zakarpattia, Ivano-Frankivsk, Lviv, Rivne and Ternopil regions;

- The Southern Interregional Territorial Office with its location in Odesa, which will unite Kirovograd, Odesa, Mykolaiv, Kherson regions and the Autonomous Republic of Crimea and the city of Sevastopol;

- The South-Eastern Interregional Territorial Office with its location in Dnipro, which will unite Dnipropetrovsk, Donetsk and Zaporizhia regions;

- The North-Eastern Interregional Territorial Office with its location in Kharkiv, which will unite Luhansk, Sumy, Kharkiv and Poltava regions;

- The Central Interregional Territorial Office with its location in Kyiv, which will unite Zhytomyr, Cherkasy, Chernihiv regions, as well as the Kyiv region and the city of Kyiv;

- The Central-West Interregional Territorial Office with its location in Vinnytsia, which will unite Vinnytsia, Khmelnytskyi and Chernivtsi regions.

In order to increase the efficiency of finding and tracing assets, during the reporting period ARMA took measures aimed at obtaining access to the international database of corporate information “ORBIS”.

On October 31, 2018, ARMA and LLC "Strabis VEB" signed a Sublicense Contract No. SV 46-10/2018, according to which ARMA granted the right to use in its activity the computer program "STRABIS WEB" and "STRABIS WEB, version "PEP - Monitoring" Informational and telecommunication systems intended for accumulation and systematization in a united database of structured and textual information, solving of information retrieval and analytical tasks, as well as finding and identification of national political figures of Ukraine.

With the aim of ARMA’s proper functioning the following subsidiary law legal acts were adopted:

Resolutions of the Cabinet of Ministers of Ukraine “On Approval of the Regulation on the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes”.

Background information: The Regulation establishes the status of the body, defines its main tasks, functions, systemizes the authority of the ARMA and the Head of the ARMA. Also, the Regulation introduces the abbreviated title of the National Agency - ARMA.

“On Amendments to certain Resolutions of the Cabinet of Ministers of Ukraine” from August 22, 2018, No. 637

Background information: The Resolution amends the Procedure for state registration (re-registration), registration of cars, buses, as well as self-propelled cars, cars on chassis, motorcycles of all types, brands and models, trailers, semitrailers, motor-carriages, other equated to them transport vehicles and mopeds, as well as specifies certain provisions of the Approximate List of property, including in

---

232 No. SV 46-10/2018
233 Contract No.PM10-10/2018, dated October 31, 2018
235 https://zakon.rada.gov.ua/laws/show/637-2018-%D0%BF
the form of items or large batches 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.

“On amendments to the Procedure for sale of seized assets in electronic trading” from September 19, 2018, No. 754236.

Background information: The Resolution clarified the grounds for termination of electronic trading and the withdrawal of assets from sale, as well as regulated the mechanism for the further transfer of such assets for sale at the first electronic bidding. In addition, in order to update the asset price and for harmonization with tax legislation, the validity period of the asset assessment report is determined. The abovementioned changes ensure the non-ambiguous interpretation of the Procedure by the participants and organizers of the trading, as well as the effective disposal of assets at current prices.

In addition to recovery and management functions ARMA is supposed to maintain the Unified state register of assets seized in criminal proceedings.

During the reporting period, ARMA has taken measures to ensure that information is received to fill the Register, namely:

1) The joint order of the State Judicial Administration of Ukraine and ARMA “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 the Documentation of the Court” was signed237.

2) Drafts:

- of the joint protocol “On the Provision of Information of Electronic Copies of Court Decisions of All Instances and Coordinated Information on Criminal Proceedings from the Central Database of the Automated System of the Documentation of the Court”

- of the order of the ARMA and General Prosecutor's Office of Ukraine “On Approval of the Procedure for Sending of Information about the Seizure (Cancellation of Seizure) of Property (Assets), Suspects and Accused Persons, as well as Other Information on Criminal Proceedings”;

- of the order of ARMA and the Ministry of Justice of Ukraine “On Approval of the Procedure for Provision by state executors of information to be included in the Unified State Register of Assets Seized in Criminal Proceedings”;

3) A working protocol was agreed with the representatives of the General Prosecutor’s Office of Ukraine and the software development company of the Unified Registry of Pre-Trial Investigations, which includes the following issues:

- the formation of pre-trial investigation data to fill Unified Registry of Pre-Trial Investigations and it’s further provision to ARMA;

- providing access to the Register to the heads of prosecutor’s offices and pre-trial investigation authorities, prosecutors, investigators, detectives and other authorized persons of the pre-trial investigation authorities.

---

236 [https://zakon.rada.gov.ua/laws/show/754-2018-%D0%BF](https://zakon.rada.gov.ua/laws/show/754-2018-%D0%BF)

Currently, the General Prosecutor’s Office of Ukraine and the software development company are coordinating the list of issues and budget for the integration of Unified Registry of Pre-Trial Investigations and the Unified State Register of Assets Seized in Criminal Proceedings for filling the last one with information.

It should also be noted that in order to receive funding for ARMA, an agreement was reached with the EU Anti-Corruption Initiative in Ukraine (EUACI) about payment for work on making changes to the software of Unified State Register of Assets Seized in Criminal Proceedings.

On the initiative of EUACI, on August 30, 2018, a meeting was held with the participants of the Working Group to discuss the issue of fundraising for works. As a result of the discussion, the participants agreed on the possibility of fundraising and agreed on the need to prepare a plan for integration of registers.

In 2018, ARMA announced and conducted procurement procedures for software development services for the Register for twice times. But, due to the lack of the minimum number of participants required for an electronic auction, they were canceled. Thus, the repeated procurement procedure is scheduled for 2019.

ARMA has developed a draft order “On the Approval of the Regulations on the Unified State Register of Assets Seized in Criminal Proceeding, the Procedure for its Formation and Maintenance”.

During 2018, regular interaction with representatives of pre-trial investigation bodies including representatives of NABU, GPU, SAP, have been conducted, in order to highlight the institutional capacity of ARMA, provide explanations, methodological and advisory assistance to investigators, detectives and prosecutors on issues related to finding and tracing assets.

In order to provide methodological and technical assistance to law enforcement agencies, ARMA sent more than a hundred letters of clarification.

In addition to written clarification, ARMA on a regular basis working on establishing an informational interaction between ARMA and regional law enforcement agencies in the field of finding and tracing of assets: working meetings, negotiations (including video conferencing) are held in order to highlight the powers, functions and ARMA's capabilities in finding and tracing assets.

---

**Assessment of Progress**

Since July 2018, the Ukrainian authorities have taken numerous measures aimed at continuing the development of ARMA and its capacity to identify, trace and manage seized assets. The measures taken have been both legislative and operational, as well as in the field strengthening the cooperation of ARMA with the judicial and investigative bodies. Besides, ARMA received sufficient funding and resources for performing its role in tracing and managing of assets.

The Government decided to create 6 interregional territorial offices of ARMA and respectively to significantly increase number of the Agency’s staff. This decision may be premature taking into account that ARMA is a relatively new body and still needs development of its capacities on the central level. The Agency has also enhanced its technical capability to perform a better data search. A number of by-laws regulating ARMA’s work have been adopted or amended.

Further institutional development of ARMA is under consideration, the European Union Anti-Corruption Initiative (EUACI) recently conducted technical assessment of the Agency which provided a number of recommendations in this respect.
The Agency communicates its role and available resources to law enforcement agencies, this work, however, needs to continue even more proactively that would result in more active and efficient cooperation between ARMA and LEAs.

ARMA is currently working to launch the Unified Registry of Confiscated assets. In the meanwhile, ARMA has published a list of seized assets transferred under its management238.

Therefore, there is progress in implementation of the first part of the recommendation. As regard to the other two parts of the recommendation no information has been provided about their implementation, which does not allow to indicate any progress.

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.

19th 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 19th 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 17th of October, 2017), initiated by the President of Ukraine, on the 19th 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 8th 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 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

20th Plenary Meeting, March 2019

Government report

23.3. 02.07.2019 the draft Law of Ukraine was included into the agenda of the Verhovna Rada session on amendments to Article 80 of the Constitution of Ukraine (concerning the immunity of people’s deputies of Ukraine) 239. The conclusion of the Constitutional Court of Ukraine is recognized in the draft law 240 that meets the requirements of Articles 157 and 158 of the Constitution of Ukraine.

239 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62727
240 Conclusion of the Constitutional Court of Ukraine, dated June 19, 2018 No. 2-in the case on the constitutional petition of the Verkhovna Rada of Ukraine on the conclusion of the compliance with the draft law on amendments to Article 80 of the Constitution of Ukraine (regarding the immunity of people’s deputies of Ukraine)
**Assessment of Progress**

No legislative amendments on limiting the immunity of MPs and providing of transparent and objective procedures for lifting such immunity have been adopted by the Parliament, however a draft law has been submitted recently to the Rada. No information on any analysis of the practical application of the judicial reform aiming at providing of a transparent and objective procedure for lifting the immunity of judges has been given.

**No 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 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, 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**

20th Plenary Meeting, March 2019

**Government report**

24.1.

a) 125 authorized NABU detectives are provided by NACP with the secured remote access to all, submitted by the declaring entities, e-documents that are in the ITS Register in a specially-equipped
NACP’s room, compliant with the requirements for information security. Thus, in 2018, 20 NABU detectives 35 times accessed e-documents, submitted to the ITS Register, at the specially equipped room at NACP’s premises. During January 2019, 5 NABU detectives used such access 9 times. Over two first months of 2019, 8 NABU detectives accessed the e-documents 14 times.

Moreover, 13 ARMA employees are granted with the secured remote access to all, submitted by the declaring entities, e-documents that are in the ITS Register in a specially-equipped NACP’s premises, compliant with the requirements for information security. Thus, in 2018, 13 ARMA employees accessed the ITS Register and worked with the e-documents 93 times. In January-February, 2019, 4 ARMA employees accessed the e-documents 7 times.

NACP did not refuse the access to the ITS Register to any NABU, or ARMA, detective.

b) State Judicial Administration of Ukraine: On May 30, 2018, ARMA and the State Judicial Administration of Ukraine signed a joint the order, that is put into effect from the date of introduction into the experimental operation of the Unified State Register of Assets, Seized in Criminal Proceedings.

October 10, 2018, In accordance with the Procedure for maintaining the Unified State Register of Court Decisions authorized persons of ARMA granted permission for full access to information resources of the Unified State Register of Court Decisions.

State fiscal service of Ukraine: On October 16, 2018, the Ministry of Justice of Ukraine registered an order of the National Agency and the Ministry of Finance of Ukraine No. 293/769 dated September 20, 2018 "On Approval of the Procedure for providing the State Fiscal Service of Ukraine with information from the State Register of Individuals - Payers of Personal Income Taxes on Inquiries of the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes".

According to the Protocol, ARMA access to the Information and Telecommunication System "Tax Block" of the State Fiscal Service was obtained.

Currently ARMA is carrying out internal procedures for obtaining access to a number of information resources of the State Fiscal Service of Ukraine.

Ministry of Internal Affairs of Ukraine: An agreement on joining the Unified State Register of the Ministry of Internal Affairs on owners and users of vehicles has been signed (access to the specified register is available to date).

On October 17, 2018 by number 1168/32620 the Ministry of Justice of Ukraine registered the order of the National Agency and the Ministry of Internal Affairs of Ukraine №292/770 dated 19.09.2018 “On

---

241 The order on Approval of the Order 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 the Documentation of the Court

242 https://zakon.rada.gov.ua/laws/show/z1162-18/sp:max25

243 https://zakon.rada.gov.ua/laws/show/z1168-18
Approval of the Procedure for Granting the access of National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes to information on personal-reference accounting of a united information system of the Ministry of Internal Affairs of Ukraine244.

On October 17, 2018 by number 1167/32619 the Ministry of Justice of Ukraine registered the order of the National Agency and the Ministry of Internal Affairs of Ukraine №291/771 dated 19.09.2018 “On Some issues for Granting the access of National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes to information resources of the united information system of the Ministry of Internal Affairs of Ukraine”245.

Ministry of Finance: On October 18, 2018, by number 1180/32632 the Ministry of Justice of Ukraine registered the order of the National Agency and the Ministry of Finance of Ukraine No. 294/770 of September 20, 2018 "On Approval of the Procedure for Receipt by the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes, information about accounts of taxpayers, which are taken into account in supervisory bodies».

ARMA has access to the system “Current Dislocation of Ships” of the Ministry of Infrastructure of Ukraine – with the aim 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.

Negotiations for accession to the registers of the State Service of Ukraine on Geodesy, Cartography and Cadaster commenced.

On September 20, 2018 ARMA and Energy and Utilities the National Regulatory Commission (Ukraine) (hereinafter - NERCU) signed the Memorandum on cooperation and exchange of information.

The Memorandum establishes the procedure of cooperation and exchange of information on finding, tracing and management of assets, that can be seized in criminal proceedings, determines the organization of access and measures to ensure the protection of information processing and enables ARMA to receive information on the relevant assets of economic entities in the energy and utilities sectors, state regulation, monitoring and control of which is carried out by NERCU.

State-owned enterprises

On October 2, 2018, The National Agency and the State Forest Resources Agency of Ukraine signed a Memorandum on Cooperation and Exchange of Information.

According to the Memorandum, ARMA gets the opportunity to receive information from the Unified State System of Electronic Accounting of Wood.

ARMA has access to the registers on objects of intellectual property rights of the SE “Ukrpatent”.

244 https://zakon.rada.gov.ua/laws/show/z1167-18?lang=en
A joint working meeting with SE “Ukrainian special systems” was held on ensuring connection to the national system of confidential communication.

ARMA launched cooperation with the River Information Services of the state enterprise "Administration of Sea Ports of Ukraine" on the inland waterways of Ukraine.

Within the framework of the implementation of the function of finding and tracing assets during July 2018 - January 2019:

• ARMA received 817 requests from law enforcement agencies within the framework of criminal proceedings.

• In order to fulfill the requests of law enforcement authorities and obtain relevant information on assets ARMA sent:
  - 1412 requests to state and self-government bodies;
  - 313 requests to banking institutions.

In 2018 the ARMA received 1064 requests to find and trace assets within the criminal proceedings from law enforcement agencies, in particular from: prosecution authorities - 493, National Police of Ukraine - 275, Security Service of Ukraine - 85, State Fiscal Service of Ukraine - 72, National Anti-Corruption Bureau of Ukraine - 134, Court - 5.

ARMA sent 1952 requests state and self-government bodies for obtaining relevant information about assets and 251 requests to banking institutions.

As a result of the consideration of requests, 1390 responses were submitted to law enforcement authorities.

Thanks to the cooperation with NABU ARMA, 553.3 million UAH, 1.4 million UAH, 136 thousand USD, 3 integral property complexes, 228 units of equipment, 11 shares of corporate rights from economic entities and other objects were transferred to the management.

d)

During the reporting period, ARMA employees, together with representatives of law enforcement agencies, the State Financial Monitoring Service of Ukraine, participated in a number of training seminars and specialized trainings organized by international partners aimed at raising the level of professional skills of specialists in the field of finding and tracing of assets, financial investigations, combating organized crime, money laundering and terrorist financing.

Also with the support of EUACI, ARMA staff participated in a series of study visits to foreign asset recovery agencies (in particular, Spain, the Netherlands, Ireland, Romania) and participated in international conferences (Slovakia) to get acquainted with the best European practices in the field of finding, tracing and management of assets, as well as for developing ARMA international cooperation.
c) In 2018, NABU directed 489 requests for international legal assistance, of which 234 requests were made by the competent authorities of other states.

In the framework of the inspections of e-declarations in 2018, NACP sent 7 requests to the competent foreign authorities for providing information, in January-February 2019 - 7 requests, while in 2017 - 40 (in response to which information is provided in several cases).

In 2018, the Prosecutor’s General Office of Ukraine (PGOU) received 16 requests from competent authorities of foreign states on the provision of international legal assistance within the framework of criminal cases on corruption crimes (Belarus - 4, Armenia - 2, Kazakhstan - 2, Australia, Georgia, Israel, Italy, Moldova, USA, Hungary, Uzbekistan - 1), with 8 of them are executed.

PGOU sent 3 requests from foreign authorities to the foreign authorities for the extradition of offenders to prosecute corruption offenses (Austria - 2, FRG - 1).
PGOU sent 164 requests initiated by Ukrainian authorities to provide legal assistance in the framework of criminal offenses on the facts of committing corruptive crimes (Estonia - 9, Latvia 35, Austria and the United States - 8, Cyprus, Poland, Turkey, Switzerland - 6, UK, Lithuania - 5, British Virgin Islands, Federal Republic of Germany, United Arab Emirates - 4, Belize, Georgia, Belarus, Spain, China - 3, Kazakhstan, Luxembourg, Moldova, the Netherlands, Hungary - 2, Azerbaijan, Belgium, Hong Kong, Israel, India, Kyrgyzstan, Kuwait, Liechtenstein, Monaco, Norway, Panama, Romania, Seychelles, Singapore, Slovenia, Czech Republic, Switzerland - 1, Russian Federation - 15), with 74 were completed (in full or in part).246

24.2.

ARMA on its own initiative has begun a process of consultation with other government authorities in order to inform about the need for establishing Register.


In pursuance of the order of the Cabinet of Ministers of Ukraine, the state authorities informed that they did not object to the establishment of the Register.

Taking into account that prior to the establishment of such a Register should precede the settlement of a number of issues at the legislative level, in particular, resolving issue of access to information that is banking secrecy, the holder of the Register, administration mechanisms and access to the Register, work on the development of necessary changes to the current legislation has started to address the issue of creating and functioning of the Register.

---

246 As of 01.01.2019, according to the information, given by PGO
An on-line database of beneficial owners of companies has been created. Publication of information about the founders and end-beneficiaries (controllers) in the form of open data from the Unified State Register is provided. The legal entity is obliged to constantly update the information about the final beneficiary's owner when submitting applications for registration actions in the USR247. Information about the founders and ultimate beneficial owners (controllers) of a legal entity is available online at several government resources (updated every 5 business days).

In February 2019, it is planned to complete the refinement of the USR software in terms of demarcation of information about the founder and beneficial owner of the legal entity.

In addition, at present, the National Bank of Ukraine is taking steps to establish and maintain the Credit Register248.

### Assessment of Progress

Government’s report demonstrates improvements of access to databases, especially for AMRA, active MLAs work by many agencies.

Efforts to establish the Centralised register of bank accounts of legal and natural persons, including information about beneficial owners of accounts is underway, but it was not established yet.

NGOs highlight that NABU is still deprived by NACP of automatic access to the e-declarations registry. The new Memorandum between the IMF and Ukraine of December 2018 defines that: “the National Agency for the Prevention of Corruption (NAPC) will ensure that NABU has direct and secure electronic access to the full asset declarations of all persons under NABU investigative jurisdictions”.

NGOs also highlight that NABU has a successful track record of cooperation with the ARMA. One of the headline cases was transfer of two thermal power plants in Lviv region to the ARMA for management. According to a NABU/SAPO investigation, the corruption scheme caused more than $50 million losses. NABU is actively using instruments of international cooperation to obtain evidence in criminal proceeding.

At the same time, NGOs raise concerns that conflict between NABU and SAPO is still in progress249, the heads of these institutions often oppose each other publicly. Such situation may effect the work of these institutions and general perception of how successful the fight against corruption is.

Therefore, progress can be reflected with regard to the development of proactive efforts to fight corruption by NABU and other law enforcement agencies, as well as with regard to the inter-institutional cooperation mechanisms.

This overall progress was marred by the recent media investigation into corruption in the defence sector that alleged that many law-enforcement bodies were involved in covering up this corrupt scheme in exchange for bribes. This allegation is very serious and involves Security Service, Office of the Prosecutor General and Military Prosecution Service, as well as NABU. Emergency measures are necessary on the part of these bodies to conduct thorough internal investigations, to prosecute and sanction any crimes that will be identified and to introduce effective measures to

---

247 The order of the Ministry of Justice of Ukraine, dated on 29.08.2018, No. 2824/5

prevent any such cases in the future. This is important not only to deliver justice in this case, but to ensure integrity of law-enforcement in Ukraine as expected by the citizens.

Negative development

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

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 GPU 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.25.1)

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
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

20th Plenary Meeting, March 2019

Government report

25.1.

a) During the July 2018-January 2019, ARMA, within the framework of the cross-border information exchange, has sent 60 requests on finding and tracing of assets within criminal proceedings at the request of law enforcement authorities, in particular to: Germany, the United Kingdom, Poland, Estonia, Latvia, the Republic of Panama, the United States of America, the British Virgin Islands, Slovakia, the United Arab Emirates, Greece, Spain, Montenegro, Switzerland, Cyprus, Liberia, Malta, Canada, Hungary, Czech Republic, Turkey, Belgium

b) According to the results of consultations held with international partners, during the reporting period, ARMA established cooperation with:
- Caribbean States through the Asset Recovery Inter-Agency Network-East Africa - ARIN-CARIB;
- Balkan Asset Management Inter-Agency Network (BAMIN).

In the framework of implementation of the function on finding and tracing of assets that may be seized in criminal proceedings, ARMA will cooperate with the European Police Office (Europol). Upon completion of internal procedures and consultations with Europol, ARMA was included in the list of competent authorities of Ukraine that cooperate with the European Police Office.

c) Over the reporting period, ARMA has received 10 requests from foreign authorities for finding and tracing of assets.

d) In general, while processing requests from law enforcement agencies within the framework of criminal proceedings, the National Agency found and traced assets both in Ukraine and in foreign
jurisdictions, in particular: corporate rights/shares in authorised capital of companies worth 21 160 mln UAH, securities worth 557 mln UAH, 7093 immovable property objects, 4457 of land plots, 3758 vehicles, 2522 units of other property (goods), 950 units of agricultural machinery, 848 facts of ownership of the rights to inventions, trademarks, funds - 357.7 mln UAH, 97.8 mln USD, 1.9 mln Euros.

According to the article 21 of the Special Law movable and immovable property, securities, proprietary and other rights shall be managed by the National Agency by means of sale of the relevant assets or transfer them into management.

The mentioned assets, which are accepted by the National Agency into management, shall be subject to evaluation performed by the relevant evaluation entities to be determined on the basis of results of a competition, and transfer to legal entities or private entrepreneurs under management on the basis of results of a competition under the procedure provided for by the law on state (public) procurement.

In order to ensure the possibility of carrying out activities related to evaluation and management of assets, the National Agency:

- made purchases in accordance with the Law of Ukraine "On Public Procurement" of banking, services of assets evaluation, services of electronic platforms, which carry out the sale of assets;
- defined selection criteria and already selected 40 persons who are potentially able to provide services for the management of seized assets.

On February 6, 2019, the Cabinet of Ministers of Ukraine adopted a decision according to which the State-owned Enterprise “SETAM” Open Market of the Ministry of Justice passed in the sphere of management of ARMA.

“SETAM” has a developed warehouse and logistics infrastructure in all regions of Ukraine and more than 200 employees who can carry out the work needed by ARMA to perform their tasks.

Accordingly, the procedure for preparing assets for trading will be much easier and will be held in the shortest possible time.

As part of the implementation of the ARMA function on managing seized property, since the beginning of 2019, through the electronic trading system of the state-owned enterprise “SETAM”, ARMA has already sold assets for an amount of about UAH 25 000 000.

On 11.02.2019, the deposit portfolio of the National Agency is: UAH 138 854 002.95, USD 218 122.49, EUR 1 278 270.70.

For 2018, the funds placed by the National Agency on deposit accounts in the state-owned banks accrued interest in the following amounts: UAH 16 940 924.89, USD 2 922.49, EUR 13 020.70.

From the beginning of 2019, the funds placed by the National Agency on deposit accounts in the state-owned banks accrued interest in the following amounts: UAH 57 063.30, USD 14.30, EUR 47.98.

The total amount of revenues to the State budget, generated by the National Agency by means of management of seized assets in 2018 is UAH 9 020 064.25.

25.2.
In 2018, NABU directed 489 requests for international legal assistance, of which 234 requests were made by the competent authorities of other states.

**Assessment of Progress**

ARMA is quite proactive in its cooperation with international organisations and foreign jurisdictions in the area of assets tracing and finding. Recently it officially joined the group of Ukraine’s competent authorities cooperating with EUROPOL. Within the reporting period it sent 60 requests of finding and tracing assets to other countries. The provided information includes many assets already identified or found by ARMA both in Ukraine and foreign jurisdictions on request of law enforcement agencies, but this data does not allow to see how effective international cooperation is.

It should be noted, that information received with ARMA’s assistance most probably can be used as intelligence rather than evidence, which means that a following formal MLA request will be required in most cases. However, no information about MLAs with the purpose of asset recovery, as well as results of their execution, have been provided. No information about raising capacities of the Prosecutor General’s Office and NABU to ensure effective asset recovery, as well as about procedures for swift repatriation of stolen assets, have been provided either.

In 2018, ARMA was actively engaged in accepting management functions over seized assets. Some of the assets were quite comprehensive either politically like former presidential residence Mezhyhirya or due to their social and infrastructural importance like power plants.

The amendments to the Criminal Code and the Criminal Procedure Codes allowing seizure and confiscation of illicit assets nominally owned by family members, business associated, or nominees of perpetrators was enacted in 2016. However, the court practice is not unanimous and contradictory. There are various cases where courts cancel the seizure orders because of change of owners, testimonies of nominees or lack of consent of the owners to transfer management to ARMA. Such court rulings prevent and discourage investigators from seizure of this type of assets.

One of the developments in terms of management of stolen assets was a move of the SOE “SETAM” dealing with the sale of confiscated assets from jurisdiction of the Ministry of Justice to ARMA. This step raises concerns in respect of competitiveness of the selection of trading entities as required by law.

NABU continues to operate actively as one of central authorities for MLA purposes. However, several jurisdictions received contradictory information from Ukraine about this NABU’s role, which may entail the risk of delays or even refusals of NABU’s requests. Therefore, it is extremely important that Ukrainian authorities take all necessary steps needed to ensure NABU is recognised by all foreign jurisdictions as one of central bodies for MLA, including sending respective notifications to the depositories of multilateral international treaties on MLA and amending bilateral treaties if needed. Furthermore, the other central authorities, including the Prosecutor General’s Office, should promote this NABU’s role.

*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 be 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.


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 (HQCI), 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 it 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. 252 The third auditor appointed by the Government is Mr Mykhailo 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

Government report

26.1.

The number of judges in the High Anti-Corruption Court of Ukraine (HACC) has been agreed upon - 39 staff units, of which 12 are the number of staffed judges of the Appeals Chamber of the High Anti-Corruption Court. The High Qualification Commission of Judges of Ukraine (HQCJU) by its decision dated August 02, 2018, announced a competition for 39 vacant positions of judges of the High Anti-Corruption Court, 12 of which are to Appeal Chamber of the High Anti-Corruption Court and approved the Conditions of conducting a competition for the positions of judges of the High Anti-Corruption Court. The following stages of the exam: Stage I – Anonymous Written Test – November 12, 2018, Stage II – Case Study – November 14, 2018.

243 participants conducted anonymous written test. Based on the results of this stage of the exam by the Commission’s decision dated November 13, 2018, 156 participants were admitted to the case study.

On November 30, 2018, HQCJU appointed testing of personal moral and psychological qualities and general abilities during the qualification evaluation within the frameworks of competition, which was held during 11–23 December, 2018.

113 participants were admitted to the second stage of qualification evaluation “Dossier investigation and interview” by the Commission’s decisions dated December 27, 2018: 81 – for vacant positions of judges of the High Anti-Corruption Court and 32 – for vacant positions of judges of the Appeal Chamber of the High Anti-Corruption Court.

As it was mentioned in the previous Progress Update, with the purpose of assisting HQCJU in establishing the criteria for integrity (morality, integrity, integrity) for the purpose of qualifying the evaluation of candidates for positions of judges of the High Anti-Corruption Court of Ukraine, a Public Council of International Experts (PCIE) has been established. 06.11.2019, 6 members of PCIE were selected.

The State Judicial Administration of Ukraine (SJA) has carried out the organizational and technical support of the activity of PCIE. Financing for PCIE may be carried out with the assistance of

---

254 Decision of HQCJU, on 02.08.2018
255 Decision of HQCJU, on 13.11.2018
256 Decision of HQCJU, on 30.11.2018
257 Decision of HQCJU, on 27.12.2018
258 Pursuant to article 8 of the Law of Ukraine “High Anti-Corruption Court of Ukraine”
260 According to part twelve of Article 9 of the Law of Ukraine “High Anti-Corruption Court of Ukraine”
international technical assistance. SJA, in conjunction with HQCJU and the donors, organized the conditions for the activities of PCIE and its secretariat.

The Procedure for payment of remuneration to the members of PCIE for the time, when they performed their powers, and the Procedure for compensation of expenses for moving and residing in Ukraine to the members of PCIE at the time of their participation in the selection procedures for candidates for the position of judges of the High Anti-Corruption Court, have been approved\textsuperscript{261}.

13.12.2018, HQCJU handed over to PCIE copies of the dossiers of 153 candidates for the vacant positions of the judges of the High Anti-Corruption Court.

From January 18, 2019, to January 28, 2019, six Special Joint Meetings of HQCJU with the Public Council of International Experts were held. The consideration of the issue of the compliance of the candidates for the position of a judge of the High Anti-Corruption Court and the Appeal Chamber of the High Anti-Corruption Court with the criteria envisaged by part four of Article 8 of the Law of Ukraine “On the High Anti-Corruption Court” was assigned for 49 judicial candidates\textsuperscript{262}.

As a result of the meetings, 39 candidates for the position of a judge of the High Anti-Corruption Court and the Appeal Chamber of the High Anti-Corruption Court suspended participating in the competition, 7 candidates for the position of a judge of the High Anti-Corruption Court and the Appeal Chamber of the High Anti-Corruption Court were recognized as those who meet the criteria envisaged by part four of Article 8 of the Law of Ukraine “On the High Anti-Corruption Court” and admitted to the next stage of qualification evaluation – “Dossier investigation and interviewing”; 3 candidates for the position of a judge of the High Anti-Corruption Court submitted applications to the Commission concerning the termination of their participation in the competition before the beginning of the Special Joint Meetings. Based on the results of the consideration of those applications the Commission adopted a decision to terminate the participation of those candidates in the competition.

71 candidates were admitted to the next stage of the qualification evaluation “Dossier investigation and interview” within the frameworks of the competition for vacant positions of judges of the High Anti-Corruption Court, 19 of whom were admitted to the Appeal Chamber of the High Anti-Corruption Court.

HQCJU determined the schedule (from January 30 to February 13, 2019) for conducting interviews based on the results of the dossier investigation of candidates for vacant positions of judges of the High Anti-Corruption Court, in particular, the Appeal Chamber of the High Anti-Corruption Court within the competition.

The Commission plans to complete the competition for vacant positions of judges of the High Anti-Corruption Court, in particular determine its winners and submit recommendations to the High Council of Justice on the appointment of candidates as judges in the beginning of March 2019.

In pursuance of Article 147, paragraph five of the Law of Ukraine “On the Judiciary and the Status of Judges”, the State Judicial Administration of Ukraine adopted a decision on the appointment of the acting Chief of Staff of the High Anti-Corruption Court prior to the appointment of the head of the


\textsuperscript{262} The envisaged part of the fourth article of Article 8 of the Law of Ukraine "On the High Anticorruption Court".
staff of this court in accordance with the procedures specified by civil service legislation (taking into account the peculiarities defined by the Law of Ukraine "On the Judiciary and the Status of Judges")\textsuperscript{263}. On February 22, in accordance with Article 147 of the Law of Ukraine “On the Judiciary and the Status of Judges”, a newly formed legal entity - the High Anti-Corruption Court, was registered\textsuperscript{264}. Identification code of a legal entity in the Unified State Register of Legal Entities, Individuals - Entrepreneurs and Public Associations - 42836259.

The location of a legal entity is defined by: Kyiv, street Lypska, building 18/5.

The Government of Ukraine has made a decision to transfer the building of Laboratory Building # 1, which is located on the street. Preobrazhenska, 5/2, and the building of the Laboratory Building # 1 and the Administrative-Laboratory Building # 2, which is on the street. Maxima Kryvonosa, 2-a, for the placement of the Chamber of Appeal of the High Anti-Corruption Court and the Chambers of the High Anti-Corruption Court in order to administer justice in the first instance\textsuperscript{265}. The formed commission of the commission on acceptance-transfer of the said objects of real estate. The work of the commission is ongoing.\textsuperscript{266} \textsuperscript{267}

26.2. In 2018, the National Anti-Corruption Bureau (NABU) has directed to the state authorities 20 appeals on the elimination of the causes and conditions conducive to the commission of criminal offenses, that are under NABU competence\textsuperscript{268}.

In 2018, protocols on corruption-related administrative offenses were sent to the court, in relation to 11 deputies of Ukraine, 6 deputy ministers, 180 judges, and 54 prosecutors.

In 2018, 3,531 criminal proceedings were conducted on the grounds of corruption, including 583 investigating prosecutors, in the implementation of investigative enforcement agencies.

According to the results of the trial of corruption criminal cases, 766 people were convicted (127 were found by the prosecutor's bodies, 6 of them by SACPO).

According to the results of the procedural guidance in 2018, SACPO prosecutors sent 53 accusatory acts to the court in connection with the corruption offense, in particular in relation to 2 deputys and 1 ex-deputys of the Verkhovna Rada, 3 deputies of local councils, 2 civil servants of category «A», 22 judges, 3 prosecutors. According to the results of the review of the indictment, the courts issued 2 convictions against two prosecutors for committing corruption offenses. SACPO has announced 29 prosecutors and investigators of the prosecutor's office in the framework of criminal proceedings for corruption.

26.3. Draft Law No. 4812, which regulates, in particular, the possibility of withdrawal by the authorized departments of NABU in criminal proceedings under investigation of NABU, information on transport telecommunication networks without involving to the execution of appropriate secret investigation actions of employees of units of the bodies of the National

\textsuperscript{263} Order of the State Judicial Administration of Ukraine dated February 19, 2019 No. 56 / k

\textsuperscript{264} https://legalhub.online/publichne-pravo/vyshhyj-antykoruptsijniy-sud-zareyestrovano-yak-yurydychnu-osobu/

\textsuperscript{265} https://dsa.court.gov.ua/dsa/pres-centr/news/608689/ Meeting of the Cabinet of Ministers of Ukraine dated November 28

\textsuperscript{266} In accordance with the Regulations on the Procedure for the Transfer of Objects of State Ownership Law, approved by the Resolution of the Cabinet of Ministers of Ukraine of September 21, 1998 No. 1482

\textsuperscript{267} In accordance with Article 17 of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine"
Police or security agencies, which was informed in the previous Progress Update 07.02.2019 is included in the agenda of the Verkhovna Rada of Ukraine.269

26.4.

26.5. Independent international experts in the field of assessing the effectiveness of the work of law enforcement agencies of the international level conducted an audit of the effectiveness of NABU performance criteria, effectiveness and independence, the results of which are set out in the report.270

26.6.

26.7.

26.8.

### Assessment of Progress

The main achievement under this recommendation is the completion of the selection process to the Anti-Corruption Court of Ukraine. NGOs confirm that the positive preliminary results, especially the role of the Public Council of International Experts in scrutinized all 113 candidates, and blacklisting 42 of them. From now on, the High Qualification Commission of Judges will have the discretion to rank the candidates from the pool of remaining 71 competitors. They will offer the Council of Justice the shortlist, which will then be sent for the President’s signature. Next priority is the creation of court apparatus. The State Judicial Administration and the Council of Justice are tasked with the selection of staff. Ensuring integrity of in the process will be of utmost importance.

No information was given on any organisational or legal measures taken in order to prevent other prosecutorial or law enforcement bodies to assume investigation or prosecution of the cases that fall, according to the law, under the jurisdiction of NABU and SAP. Cases of evading this exclusive jurisdiction occurred in practice, also in the reporting time.

While independent audit of NABU by international experts was conducted, NGOs report that the official audit has not started yet. The new Memorandum between the IMF and Ukraine of December 2018 defines that: “An external audit of the NABU will be conducted by a panel of respected experts with international experience selected in accordance with the requirements set out in the NABU Law (#1698-VII). …an audit report will be finalized by end-July 2019 and appended to the subsequent NABU report”.

NGOs report that the situation with autonomous wiretapping for NABU has not changed since the last report. 271 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 for several years now but there is no indication that they be adopted any time soon.

No consideration was given to possible amendments to the Constitution in order to strengthen legal basis of ACA. Moreover, new amendments have been made to the Criminal Procedure Code and some

---


other laws which greatly affected work of NABU and SAPO\textsuperscript{272}. For example, terms of pre-trial investigation were significantly shortened, the right to conduct expertise in criminal cases were monopolised by the governmental institutions and the role of investigative judge was heavily deformed. These amendments put under threat the work of NABU, SAPO and newly created HACC.\textsuperscript{273}

No progress was made regarding operational and institutional autonomy of the Specialized Anti-Corruption Prosecutor’s Office. Allegations of misconduct by the Head of SAPO were considered by the Disciplinary Commission last year, the Head was reprimanded while civil society insisted\textsuperscript{274} that the Head should resign due to gravity of the case. This experience demonstrated that the procedures for removing and replacing the SAPO head are not well–established in the law, and thus are not in compliance with international standards.

Regarding the recommendation to reduce the risk that the criminal justice system is used to silence uncomfortable speech from critics of the government, the ongoing investigation into the murder of the activist Kateryna Handziuk that faces significant challenges will be an important indicator in the future. There are also numerous other incidents of harassment involving tax investigations and theft of assets and provocations for minor bodily injury seemingly carried out by government officials at various levels which must be addressed without further delay.

\begin{center}
\textbf{Progress}
\end{center}

\textsuperscript{273} http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63960