

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to such restrictions as shall only be such as are provided for

CIVIL SOCIETY REPORT

on the implementation of

Chapter II (Prevention) & Chapter V (Asset Recovery) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN UKRAINE

by Institute of Legislative Ideas

Kyiv 2024

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of February 2024.

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The Institute of Legislative Ideas is a legal analytical center that works in the field of good governance to create conditions in which the state is able to formulate and implement policies in a predictable, transparent, accountable, fair and inclusive way. The main areas of activity of the organization are anti-corruption policy, state policy in the field of asset recovery, reconstruction, and compensation for damage caused by the Russian aggression.

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Abbreviations

AC	Accounting Chamber
AMCU	Antimonopoly Committee of Ukraine
ARMA	Asset Recovery and Management Agency
CMU	Cabinet of Ministers of Ukraine
EU	European Union
FATF	Financial Action Task Force
GRECO	Group of States against Corruption
HACC	High Anti-Corruption Court
HCJ	High Council of Justice
HQCJ	High Qualification Commission of Judges
MONEYVAL	Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures
NABU	National Anti-Corruption Bureau of Ukraine
NACP	National Agency on Corruption Prevention
NACS	National Agency of Ukraine on Civil Service
NBU	National Bank of Ukraine
OECD	Organization for Economic Cooperation and Development
PEP	Politically Exposed Persons
PGO	Prosecutor General's Office
SACPO	Special Anti-Corruption Prosecutor's Office
SASU	State Audit Service of Ukraine
SBI	State Bureau of Investigation
SFMS	State Financial Monitoring Service of Ukraine
SPFU	State Property Fund of Ukraine
STSU	State Treasury Service of Ukraine
UBO	Ultimate Beneficial Owner
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
VRU	Verkhovna Rada of Ukraine

List of Persons Consulted

Name	Job title	Affiliation	Date of interview
Oleh Lagodienko	Co-founder and Executive Director	Ethicontrol	November 25/2021
Pavlo Ivanin	Member of the Council	Kharkiv Civic Coalition	September 9/2021
Janna Balabeniuk	Former member of the Public Council	National Agency of Ukraine on Civil Service	October 19/2021
Victoria Derets	Member of the Public Council	National Agency of Ukraine on Civil Service	October 28/2021
Olga Kotsiuruba	Senior Legal Advisor	Civil Network OPORA	September 16/2021
Ihor Feschenko	Leading Political Finance Analyst	CHESNO Movement	August 30/2021
Oleh Tymoshchuk	Lawyer	Center for Democracy and Rule of Law	September 14/2021
Nadia Shuvar	Lawyer	Center for Democracy and Rule of Law	September 14/2021
Oleksandr Kalitenko	Legal Advisor	Transparency International Ukraine	September 21/2021
Kateryna Butko	Activist	NGO Automaidan	September 13/2021
Serhiy Mytkalyk	Head of the Board	Anti-Corruption Headquarters	August 27/2021
Roman Marzhan	Whistleblower Prosecutor	Chortkiv local Prosecutor's Office	September 1/2021
Oleh Polishchuk	Whistleblower, Former Director for Anti-Corruption	(Formerly) State Power Company Energoatom	September 5/2021
Oksana Nesterenko	Executive Director	Anti-Corruption Research and Education Centre	August 27/2021
Andriy Biletskyi	Lawyer	Anti-Corruption Research and Education Centre	August 27/2021
Larysa Holnyk	Whistleblower Judge	Oktyabrsky District Court of Poltava	September 5/2021
Myroslava Bylak	Judge	Supreme Court	September 14/2021
Vasyl Zadvornyi	Former Director General	ProZorro	September 3/2021

Ahiia Zahrebelska	State Commissioner in 2015-2019	Antimonopoly Committee of Ukraine	August 26/2021
Anastasiia Ferentc	Procurement Specialist	Transparency International Ukraine	September 6/2021
Svitlana Musiyaka	Head of Research and Policy Development	The Independent Anti-Corruption Commission (NAKO)	September 28/2021
Zhernakov Mykhailo	Co-founder and Chairman of the Board, Doctor of Law	DEJURE Foundation	September 2/2021
Roman Kuibida	Deputy Chairman of the Board, PhD in Law	Center of Policy and Legal Reform	August 12/2021
Volodymyr Petrakovskyy	Law Lecturer	National University of Kyiv-Mohyla Academy	August 26/2021
Antonina Prudko	Head	UNIC Secretariat	September 26/2021
Yuliia Vrublevska	Project Coordinator	UNIC	September 26/2021
Natalia Chornohub	GR Manager	YouControl	November 23/2021
Yurii Tomyn	Compliance Officer	YouControl	November 23/2021
Anna Horbenko	Head	NGO Ukrainian Compliance Association	September 1/2021
Pavlo Demchuk	Legal Advisor	Transparency International Ukraine	October 18/2023
Anonymous	Former employee	National Agency on Corruption Prevention	August 26/2021
	Former employee	National Agency on Corruption Prevention	August 26/2021
	Former employee	National Agency on Corruption Prevention	August 26/2021
	Compliance Officer	Bank	September 16/2021
	Compliance Officer	Bank	September 16/2021
	Representative staff	State Financial Monitoring Service of Ukraine	September 27/2021
	Representative staff	Asset Recovery and Management Agency	October 13/2023

I. Introduction

Ukraine signed the United Nations Convention against Corruption (UNCAC) on 31 October 2003 and ratified it on 18 October 2006. UNCAC entered into force on 1 January 2010.

This report reviews Ukraine's implementation of selected articles of Chapter II (Preventive measures) and Chapter V (Asset Recovery) of the UNCAC. The report is intended as a civil society contribution to the UNCAC implementation review process currently underway covering those chapters. Ukraine was selected by the UNCAC Implementation Review Group in 2019 by a drawing of lots for review in the fourth year of the second cycle. A draft of this parallel report was provided to the government of Ukraine in November 2021.

Context of this report

On February 24, 2022, Russia launched its full-scale invasion of Ukraine. At the time it began, the full report was being reviewed by the UNCAC Coalition. Most of the information analyzed was accurate as of September 2021, as were the interviews we conducted. It has been over 2 years of war and during this time, progress has been made in the implementation of certain articles of the UNCAC (e.g., Article 5). In some areas, progress has stalled (Articles 7.3, 7.4, 8.1 and 8.5). In this regard, we sought to update the information to the extent possible with information being accurate as of February 2024, taking into account the war in Ukraine.

Scope

The UNCAC articles and topics that receive particular attention in this report under Chapter II are those covering preventive anti-corruption policies and practices (Article 5), preventive anti-corruption bodies (Article 6), public sector employment (Article 7.1), political financing (Article 7.3), conflicts of interest and asset declarations (Articles 7.4, 8.1 and 8.5), reporting mechanisms and whistleblower protection (Articles 8.4 and 13.2), public procurement (Article 9.1), judiciary and prosecution service (Article 11), private sector transparency (Article 12), access to information and the participation of society (Articles 10 and 13.1) and measures to prevent money laundering (Art. 14). The report also covers articles and topics under Chapter V on anti-money laundering (Articles 52 and 58), measures for direct recovery of property and confiscation tools (Articles 53, 56 and 54) and international cooperation for the purpose of confiscation (Articles 51, 54, 55, 56 and 59).

Structure

The report begins with an executive summary, including the condensed findings, conclusions and recommendations about the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in Ukraine, as well as access to information issues in more detail. Chapter IV of this report contains an assessment of the status of implementation of the Convention. Each section includes a description of the legislative implementation of the Convention and the practice of law enforcement, and examples of good practices and deficiencies are provided. Lastly, recommendations for priority actions to improve the implementation of the UNCAC are given.

Methodology

The report was prepared by the NGO “Institute of Legislative Ideas” with funding from EU Anti-Corruption Initiative (EUACI). The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials. As part of this dialogue, a draft of the report was made available to them.

The report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for use by Civil Society Organizations (CSOs). These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC) checklist and called for relatively short assessments as compared to the detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practice and areas in need of improvement in articles of UNCAC Chapter II and Chapter V.

To evaluate the implementation of Chapter II and Chapter V of the UNCAC, the Institute of Legislative Ideas conducted about 45 interviews with representatives of NGOs and public officials, as well as a survey among public activists and investigative journalists from 21 regions of Ukraine, in which about 100 respondents participated. The analysis reflects information obtained from open sources, interviews conducted, and responses of state bodies to information requests. In general, the methodology for both chapters was the same. Considering that this report is an assessment by civil society, the problems highlighted by the public were prioritized.

II. Executive Summary

This executive summary of the Institute of Legislative Ideas' report reviews Ukraine's implementation and enforcement of Chapters II (Preventive measures) and Chapter V (Asset recovery) of the UN Convention against Corruption (UNCAC). The report is intended as a contribution to the UNCAC peer review process of Ukraine covering these two chapters.

Much of the groundwork on the report was done in 2021, which was then updated in 2023 and early 2024.

To prepare the report we:

- interviewed more than 40 experts (representatives of CSOs and government agencies, civil society councils of government agencies, academics, analysts) knowledgeable about the implementation of the Convention's articles in Ukrainian legislation;
- conducted the large-scale survey, involving more than 100 respondents across Ukraine;
- analyzed 100 reports, studies, and requests for public information;
- examined 30 pieces of legislation.

Ukraine is in a full-scale war since 24 February, 2022. The war is going on in all of Ukraine's territory, and Russia has occupied more than 20% of our territory. There are more than roughly a million people in the armed forces in and out. There are more than 12 million internally and externally displaced people, out of which more than 6 million are still outside of Ukraine. As of 22 February 2024, the UN Human Rights Monitoring Mission in Ukraine has verified 30,457 civilian casualties since February 2022 (10,582 killed and 19,875 injured).¹

First due to the COVID-19 pandemic, and then due to the war, anti-corruption mechanisms were temporarily suspended:

- the mandatory submission of declarations was suspended;
- the mandatory submission of reports by political parties was suspended;
- liability for failure to submit information about the ultimate beneficial owners did not apply;
- competitive procedures for civil service positions were simplified;
- public procurement did not follow open procedures for about eight months.

At the end of 2023, Ukraine started to restore its pre-war regulatory framework. Self-declaration and access to the registry, reporting by political parties, etc. are gradually being restored. All of this necessitated updating the information in the report. New statistical data became available, and both positive and negative changes in the implementation of the Convention's provisions occurred.

Since the previous evaluation cycle in 2011, Ukraine has adopted several laws, including those aimed at implementing the UNCAC. In particular, the Law on Prevention of Corruption, the Public Procurement Law, the Law on Prevention and Counteraction to Money Laundering were adopted, and the Civil Service Law was updated. The new laws introduced improved existing

¹ <https://news.un.org/en/story/2024/02/1146842> (access date: 05.06.2024).

mechanisms stipulated by the UNCAC, such as the electronic declaration, public procurement, competition for Civil Service positions, financial monitoring system, etc. Also, during this period, a full-fledged anti-corruption infrastructure was built with an appropriate preventive body (NACP), an investigative body (NABU), a prosecutorial body (SACPO), and a specialized court (HACC).

2.1 Description of the Official Review Process

Ukraine's UNCAC review process was scheduled for 2019, the fourth year of the second evaluation cycle. At the time of writing this report, the review has not been completed. The second stage of the monitoring process, peer review, is now underway. It is being conducted by international experts from Latvia and Paraguay.

In 2019, Ukraine provided its self-assessment report for analysis and sent it to the UNODC. It was prepared by the preliminary staff of the NACP together with other government agencies. No representatives of civil society or businesses were involved during its preparation. The self-assessment report was not published, but it was made available to us upon request.

The self-assessment report quickly lost its relevance. Most of the information displayed in it is now outdated or inaccurate. With this in mind, NACP has assured our organization that the self-assessment report would be updated in 2021-2022, in cooperation with government agencies and the public, including civil society organizations. Due to the war, this deadline has to be postponed. We hope to have it ready and available for public access in 2024.

2.2 Availability of information

The information needed to assess Ukraine's implementation of the UNCAC is public, open, and accessible. When writing this report, there was not much difficulty in collecting it. The sources of information were mainly the websites of state bodies, their annual/quarterly reports, and responses to information requests. The body responsible for forming and implementing the anti-corruption policy (NACP) provided informational support in writing the report. However, as this report is an alternative public report, the primary source of information was public research, publications and articles in the media, interviews with experts and organized surveys. In each section, the opinion of the expert public on certain issues has been cited.

2.3 Implementation in Law and in Practice

Preventive anti-corruption policies and practices (Article 5) – Ukrainian legislation on the formation and implementation of anti-corruption policies is fully compliant with the UNCAC. However, the enforcement of legal provisions strongly depends on the political will of the decision makers. This affects the approval of the elements of the state's anti-corruption policy and their further implementation in practice. Because there is little emphasis on integrity and honesty, certain efforts to combat corruption are only superficially embraced by those responsible for carrying them out. The development and adoption of the Anti-Corruption Strategy for 2021-2025 was carried out with significant involvement of the different stakeholders and the public, and was based on real, not declarative, goals. The Program

covers a large number of areas of public administration and is aimed at solving important problems in them. The NACP launched an information system for monitoring the implementation of the state anti-corruption policy in June 2023.² Reporting on the implementation of state anti-corruption policy is regular and of high quality.

Preventive anti-corruption body or bodies (Article 6) – The preventive anti-corruption body (NACP) was "re-launched" in 2019. In particular, its organizational structure and management changed. This allowed for a sufficient level of independence of the body. The transparency of the NACP and the control over its activities can also be assessed positively. Information on the activities of the body is open to the public and always remains relevant, and the public can ensure a sufficient level of control over the activities of the NACP. Despite positive developments in the sphere of the NACP's independence, there are still some shortcomings. In the relevant section, we will analyze them in more detail. But, in brief, among the biggest problems are the shortage of staff in the NACP, the need to establish territorial offices, and the threat posed by the Parliament and the courts to the independence of the NACP.

Public sector (Article 7.1) – National legislation of Ukraine is consistent with the civil service standards enshrined by part one of Article 7 of the UNCAC. However, as in other cases, law enforcement remains low. The absence of competitions during the COVID-19 pandemic and the full-scale invasion of Russia had a negative impact on the civil service. Separate competitions for higher positions were held in violation of the law. A negative aspect of the public service is also the low efficiency of the mechanism for the professional development of civil servants.

Political Financing (Article 7.3) – National legislation of Ukraine is consistent with the political financing standards enshrined by part 3 of Article 7 of the UN Convention against Corruption. Well-grounded limitations on financing political parties and election campaigns, as well as state funding of political parties and their reporting, are defined by law.

However, legal requirements are not always fulfilled in a compliant manner. On the one hand, the transparency, openness, and accessibility of party reports can be highly appreciated, which allows the public to exercise effective control over party finances. On the other hand, political parties had the right not to submit their reports from 2019 to 2022, first because of COVID-19 and then because of the full-scale invasion. This has deprived the public and the state of control over the financing of political parties and the use of state budget funds. However, since 2023, this obligation has been restored.

Funding requirements for political parties and election campaigns can be easily circumvented through a number of schemes. Sanctions for violations of political financing law requirements are not effectively enforced and do not have a deterrent effect.

² National Agency on Corruption Prevention, Implementers of the State Anti-Corruption Program for 2023-2025 started reporting on the first results through a new information system, <https://nazk.gov.ua/uk/novyny/vykonavtsi-derzhavnoyi-antykorpustsijnovi-programy-na-2023-2025-roky-pochaly-zvituvaty-pro-pershi-rezultaty-cherez-novu-informatsijnu-systemu/>, (access date: 22.03.2024).

Conflicts of interest and declarations of assets and interests (Article 7.4, 8.1, 8.5) – Ukrainian legislation on asset and interest declarations of public officials and provisions regulating conflicts of interest are of high quality and meet the requirements of Articles 7 and 8 of the UNCAC. The law establishes a wide range of declarants and assets to be declared, as well as sufficient ways to carry out effective control of declarations. The legislation sets forth sufficient safeguards to prevent conflicts of interest and envisages a variety of measures to eliminate them.

The full scope of declarants, the all-embracing range of assets to be declared, and the public availability and openness of declarations give grounds to the claim that the declaration system functions properly. However, due to insufficient resources and problems with certain tools, the verification of declarations is not fully effective. The authority responsible for verifying declarations (NACP) conducts verification of declarations well enough, but only with respect to the declarations of high-level officials. Despite the constant improvement of the legislation, there are still ways of hiding assets in declarations. The abolition of the obligation to file electronic declarations following the onset of the full-scale Russian invasion has had a negative impact on state and public control over assets and conflicts of interests of public officials. In October 2023, the declaration obligation was reinstated. The activities of the NACP in identifying and resolving conflicts of interest, and in providing methodological assistance on these issues, should be commended.

Reporting Mechanisms and Whistleblower Protection (Article 8.4 and 13.2) – Ukraine has generally implemented the UNCAC requirements on reporting corruption and whistleblower protection mechanisms in national legislation. However, there is a certain lack of legal regulation regarding specifications for reporting channels, the ways of reporting specific information, and certain guarantees for the protection of whistleblowers.

The legislation is not always successfully enforced. Despite the fact that in practice there are a sufficient number of channels for reporting corruption, insufficient guarantees of anonymity, confidentiality and the possibility to report specific information do not facilitate their active use. Despite the tangible lack of human resources, the work of the body designed to protect whistleblowers (NACP) can be assessed positively. However, the tools available in the NACP to protect whistleblowers are not fully effective, and in particular, due to numerous opportunities to avoid liability, the prescriptions of the body are not executed. This practice, together with numerous violations of protection guarantees and occasional legal problems, are significant challenges to the effective protection of whistleblowers of corruption.

Public Procurement (Article 9.1) – National legislation of Ukraine is consistent with part one of Article 9 of the UNCAC. Enforcement of the law is also at a high level. Public procurement processes are open and transparent, and information about their conduct is known in advance and is available to all customers. Active application of the Prozorro system, continuous improvement of public procurement procedures, and the effective appeal system to a specialized body (AMCU) allow us to conclude that public procurement is effective in practice.

That is why there are permanent attempts to withdraw certain goods/works/services from the public procurement procedures to reduce the transparency of the use of budgetary funds.

Unfortunately, from time to time, such attempts are successful. At present, the capacity of the supervisory body (SASU) should be improved, because the main control is currently exercised by the public. Another challenge was the non-use of Prozorro procurement at the beginning of the Russian full-scale invasion of Ukraine. In 2023, there was a gradual return to pre-war procurement procedures. A new challenge is the reconstruction of destroyed cities. As of February 2024, the damage and destruction of Ukraine's infrastructure amounted to \$152 billion. To ensure the transparency of the reconstruction process, the Dream platform was created, which contains information on financing, management, and control of housing, buildings, and road reconstruction projects.

Access to information and participation of society (Article 10 and 13.1) – Ukrainian laws regarding transparency in the public sector, and on participation of individuals and groups outside the public sector in public sector decision-making processes are fully compliant with Article 10 and part one of Article 13 of the UN Convention against Corruption. Necessary legal instruments and mechanisms for the access to public information, with certain restrictions being set forth by law, and the contribution of the public to decision-making processes, are in place. An overriding public interest is the guarantee of access to information. There are mechanisms for appeals in place. Despite the solid legal framework and recognized advanced information technology tools, there are cases of unjustified non-disclosure or restriction of access to information, and decision-making processes, by the state, especially at the regional level, due to a lack of understanding and commitment to the spirit of the law. Since the beginning of the Russian full-scale invasion, government agencies have restricted access to information and state registries, which has negatively affected transparency and accessibility of information. The amount of information published by the state in the form of open data is meager for the scale of the public sector in Ukraine.

Despite attacks, threats, and restrictions on anti-corruption activists and journalists, as well as their inadequate protection by law enforcement agencies, civic activism is high. There is a need to strengthen the institutional capacity of the Ombudsman.

Judiciary (Article 11.1) – While Ukrainian legislation on judicial independence and anti-corruption in respect of the judiciary is mostly in compliance with Article 11 of the UNCAC, certain legislative provisions need to be improved, as they grant excessive discretion to the judiciary. Compliance with legal requirements is low and the judiciary is constantly at the center of political and corruption scandals. The independence of judges is often violated. The main threats to the independence of judges are the judges themselves as well as representatives of the judiciary, who are well integrated into informal relations with various political forces. The main reason for the improper implementation of the law is the dishonesty of individual judges and representatives of the judiciary. While judges, unlike other officials, are obliged to submit three types of declarations instead of just one – asset declaration, a declaration of family ties and a declaration of integrity – these are not checked and there are no administrative or other sanctions for false declarations. The selection of judges to the High Anti-Corruption Court followed a transparent and open procedure and involved international experts.

Prosecution services (Article 11.2) – Ukrainian legislation on ensuring the independence of prosecutors and combating corruption in the prosecutor’s office is partially compliant with Article 11 of the UNCAC. The organizational structure of the prosecutor’s office, established by law, does not ensure the independence of prosecutors. The reform of the prosecutor’s office in 2019 has not demonstrated effective results. After having been dismissed, many prosecutors have resumed their positions. There remains a definite hierarchy in the prosecution services; hence the higher-level prosecutors have many ways of influencing the lower-level prosecutors. The position of Prosecutor General is overly politicized and controlled due to insufficient safeguards in his or her selection and dismissal.

Private Sector Transparency (Article 12) – National legislation of Ukraine is consistent with Article 12 of the UNCAC. However, its enforcement is not always at an adequate level. In particular, due to the lack of anti-corruption culture, compliance systems develop slowly and have not yet become an effective and popular mechanism of combating corruption in the activities of legal entities. The introduction of the mandatory requirement to disclose information about the ultimate beneficial owners also deserves recognition. Despite the introduction of an open Unified State Register containing information about all legal entities in Ukraine, the information contained therein is not always relevant and reliable. We positively assess the work of the Business Ombudsman Council as one of the preventive measures against the improper influence of the state on business.

Measures to Prevent Money-Laundering (Article 14) – National legislation of Ukraine is consistent with Article 14 on the prevention of money laundering of the UNCAC. The financial intelligence unit (SFMS) is functional and the necessary tools have been created for prompt responses to detected violations in terms of money laundering. The legislation was updated, which was positively assessed by MONEYVAL.

The activities of the financial intelligence unit in Ukraine (SFMS) and its cooperation with internal and external stakeholders can be highly appreciated. At the same time, the inadequate ability of law enforcement agencies to investigate possible violations identified by SFMS is not conducive to systematic investigation and prosecution of the identified violations.

Anti-Money Laundering (Article 52 and 58) – Ukrainian legislation comprehensively regulates the issue of combating money laundering in accordance with Articles 52 and 58 of the UNCAC. Specialized terminology, procedures and regulations have been implemented, and a national FIU has been established.

Financial institutions carry out customer identification and verification in accordance with the law. Problems remain with updating data on ultimate beneficial owners in the national register. There is a ban on dealing with shell banks, and the process of bringing the definition of politically exposed persons (PEPs) in line with international standards is ongoing. This should take into account the existing practice in Ukraine. The information exchange between the State Financial Monitoring Service and foreign FIUs is sufficiently established.

Measures for Direct Recovery of Property (Article 53 and 56), Confiscation Tools (Article 54) – Ukraine has provided for the possibility of confiscation of property and assets derived

from crime in accordance with the UNCAC. The special confiscation and non-conviction-based forfeiture (NCBF) have been introduced. The approach of recognizing and enforcing a foreign judgment and a foreign request for international legal assistance on confiscation issues is being applied.

There is no settled practice of applying special and civil confiscation mechanisms. As of September 2023, the Specialized Anti-Corruption Prosecutor's Office (SACPO) has filed 10 lawsuits with the HACC to declare assets that were unjustified and recover them for the state. We expect an increase in the number of such lawsuits after the resumption of electronic declarations. Foreign court decisions are enforced, but there are not many cases. Ukraine also does not seek the enforcement of its decisions abroad. The practice of returning assets confiscated in Ukraine abroad has been absent over the past decade.

International Cooperation for the Purpose of Confiscation (Article 51, 54, 55, 56 and 59)

– National legislation on international cooperation is consistent with the requirements of UNCAC. International cooperation in the field of asset recovery is based on reciprocity. It provides for the possibility of sending and executing requests for international legal assistance, concluding multilateral and bilateral international agreements in this area.

International cooperation is carried out through the exchange of international requests for legal assistance through authorized bodies. The Asset Recovery and Management Agency (ARMA) actively cooperates with foreign countries in asset tracing and participates in international investigations. In such cases of international cooperation, the parties are mainly guided by bilateral agreements.

Table 1: Implementation and enforcement summary

UNCAC articles	Status of implementation in law	Status of implementation and enforcement in practice
Art. 5 – Preventive anti-corruption policies and practices	Fully implemented	Moderate
Art. 6 – Preventive anti-corruption body or bodies	Fully implemented	Moderate
Art. 7.1 – Public sector employment	Fully implemented	Moderate
Art. 7.3 – Political financing	Fully implemented	Moderate
Art. 7, 8 and 12 – Conflicts of interest and asset declarations	Fully implemented	Moderate
Art. 8.4 and 13.2 – Reporting mechanism and whistleblower protection	Fully implemented	Moderate

Art. 9.1 – Public procurement	Fully implemented	Good
Art. 10 and 13.1 – Access to information and the participation of society	Fully implemented	Moderate
Art. 11.1 – Judiciary	Fully implemented	Poor
Art. 11.2 – Prosecution services	Partially implemented	Moderate
Art. 12 – Private sector transparency	Fully implemented	Moderate
Art. 14 – Measures to prevent money-laundering	Fully implemented	Good
Art. 52 and 58 – Anti-Money Laundering	Fully implemented	Moderate
Art. 53, 56 and 54 – Measures for direct recovery of property and confiscation tools	Fully implemented	Moderate
Art. 51, 54, 55, 56 and 59 – International cooperation for the purpose of confiscation	Fully implemented	Moderate

Table 2: Performance of selected key institutions

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance
National Agency on Corruption Prevention	Good	After its restructuring, the NACP has established clear roles and responsibilities, leading to increased efficiency and productivity.
State Financial Monitoring Service of Ukraine	Good	The institutions' credibility and capacity is growing every year.
National Agency of Ukraine on Civil Service	Moderate	The body does not have adequate resources to drive change.
Antimonopoly Committee of Ukraine	Good	Has a strong expertise in its field of expertise.
Asset Recovery and Management Agency	Moderate	Due to pending internal organizational processes (in

		particular, the appointment of a new head), the institution has not yet been fully launched.
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2.4 Recommendations for Priority Actions

These recommendations have been submitted to the Verkhovna Rada of Ukraine, the NACP and other relevant authorities, which we mention in the appropriate sections of the report. These changes will help to improve the implementation of UNCAC.

1. Implement the provisions of the State Anti-Corruption Programme in the relevant regulatory legal acts (laws and by-laws) of Ukraine.
2. Enhance the role of anti-corruption programmes in the activities of state authorities.
3. Provide necessary conditions for the formation of territorial offices of the NACP.
4. Restore the procedure of full-fledged competitions for civil service positions.
5. Adopt the law on the introduction of an administrative procedure for appealing the procedure or results of competitions for civil service positions.
6. Eliminate legislative shortcomings that allow bypassing the requirements for the financing of political parties, and increase the effectiveness of administrative and criminal liability for such violations.
7. Increase the capacity of the NACP to conduct verifications of asset declarations. Apply the provisions of the legislation on the monitoring for red flags in public officials' lifestyle.
8. Expand the capacities of the whistleblower portal and involve all government agencies in its work to improve the protection of persons who report corruption.
9. Abstain from the practice of excluding certain goods/works/services from the scope of the Law of Ukraine "On Public Procurement" – and thus from competitive procurement procedures.
10. Enhance the capacity of regulatory authorities to inspect procurement processes.
11. Enhance the protection of the rights of journalists and civil society activists.
12. Perform a qualification assessment of judges, fill vacant judicial positions in the judicial system of Ukraine and address the practice of informal influence on judges.
13. Ensure the political independence of the Prosecutor General through open competition and enhance the independence of the General Inspectorate of the Prosecutor General's Office.
14. Implement provisions on verification of information on ultimate beneficial owners ("UBO") of legal entities and ensure liability for failure to update or enter data on UBOs into the Unified State Register.
15. Intensify the work of the competent Ukrainian authorities on the recovery of assets from abroad.
16. Recommend to the Ministry of Justice to file lawsuits with Ukrainian courts claiming recovery of foreign assets as well.
17. Revise bilateral agreements on mutual legal assistance to include new asset recovery challenges.

III. Assessment of the Review Process for Ukraine

This chapter provides a report of the status of the UNCAC review process in Ukraine and evaluates access to information regarding the review process.

3.1. Report on the Review Process

Ukraine's UNCAC review process was scheduled for 2019, the fourth year of the second evaluation cycle. At the time of writing this report, the review process has not been completed. The second stage of the monitoring process, peer review, is now underway. It is being conducted by international experts from the peer-reviewing countries Latvia and Paraguay.

Table 3: Transparency of the government and CSO participation in the UNCAC review process

Did the government disclose information about the country focal point?	No	NACP did not publish information about the country's focal point on its website. However, the Government provided data on government experts in Ukraine, published on the official UNODC page in 2018. ³ This data was updated in August 2021.
Was the review schedule known?	No	There is no information published in this regard.
Was civil society consulted in the preparation of the self-assessment?	No	The government did not consult with members of the public in preparing the 2019 self-assessment report.
Was the self-assessment published online or provided to civil society?	Yes	The government uploaded a self-assessment report to the OMNIBUS platform in July 2019. It has not been published, but was made available upon our request.
Did the government agree to a country visit?	Yes	–
Was a country visit undertaken?	No	The visit of experts from Paraguay and Latvia was planned for 2020, but due to the spread of COVID-19 disease, it did

³ United Nations Office on Drugs and Crimes, Ukraine Country Profile, <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fukr.html>, (access date: 26.08.2023).

		not take place. The visit was postponed indefinitely.
Was civil society invited to provide input to the official reviewers?	No	As of this writing, the peer review process is underway. So far, neither civil society nor the private sector have been invited to present their positions to the international experts, though the NACP has assured that it will provide official reviewers with this report.
Was the private sector invited to provide input to the official reviewers?	No	
Has the government committed to publishing the full country report?	Yes	The NACP assured that it will publish the full report on its official website.

3.2 Access to Information

In preparing this report, the main sources of information were:

- Annual/quarterly reports of state agencies and official websites of state agencies;
- Public analytical studies, publications, and articles in the media;
- Interviews with experts and surveys we organized;
- Requests for public information.

Since this report is an alternative public report, in each section the opinion of the expert public on certain issues was cited. A great deal of information in the report is based on the research of independent analytical centers and public organizations.

Information on Ukraine's implementation of the UNCAC is overwhelmingly public and open. State bodies publish it on their official websites or in their annual reports. However, some information is concealed.

There have been no significant problems with the collection of statistical information. For the most part, it is published in the reports of government agencies or on official websites. An important source of information on the implementation of Articles 5, 6, 7.2, 7.4, 8.1, 8.5, 8.6, and 12.2 of the UNCAC was the National Report on the Implementation of Fundamentals of Anti-Corruption Policy in 2020.⁴ For specific information, we sent requests to the 10 state bodies. The answers of all ten institutions were complete and timely, as can be seen in more detail in the annex.

⁴ NACP, National Report on the Implementation of the Principles of Anti-Corruption Policy in 2020, https://nazk.gov.ua/wp-content/uploads/2021/06/NAZK_Nats.dopovid_15_06.pdf, (access date: 22.02.2024).

IV. Assessment of Implementation of Chapter II and Chapter V Provisions

This chapter analyses the implementation of the provisions of UNCAC Chapter II on preventive measures and Chapter V on asset recovery in Ukraine through the application of laws, regulations and practices and covers both good practices and aspects that need to be improved.

4.1 Chapter II

4.1.1 Article 5 – Preventive Anti-Corruption Policies and Practices

Legal framework

The main legal act aimed at combating corruption is the Law of Ukraine On Prevention of Corruption⁵ of October 14, 2014. Among others, it regulates:

- Activity of the main preventive anti-corruption body — the National Agency on Corruption Prevention (“NACP”);
- Setting and implementation of the national anti-corruption policy;
- Resolving of conflicts of interest;
- Submission of asset declarations by state officials;
- Reports of corruption and protection of whistleblowers, etc.

Section III of the Law On Prevention of Corruption is fully devoted to the setting and implementation of the national anti-corruption policy. Analyzing this part, we can single out three primary documents defining the anti-corruption policy (national and institutional/sectoral):

1) The Anti-Corruption Strategy

The Law On Prevention of Corruption requires the adoption of the Anti-Corruption Strategy by the parliament - Verkhovna Rada of Ukraine (“VRU”). It is approved in the form of a law, in compliance with all legislative procedures to increase the instrument's impact. The way in which the Anti-Corruption Strategy (“Strategy”) is adopted is an outlier, as other similar policies are adopted at the level of by-laws.

2) The State Program for Implementation of the Anti-Corruption Strategy

The goals set by the Strategy are achieved through the adoption of the State Program. It provides specific measures, deadlines, responsible authorities, as well as sources of funding. The State Program is developed by the NACP and approved by the government - the Cabinet of Ministers of Ukraine (“CMU”). It is subject to annual review, taking into account the implementation of certain measures, conclusions and recommendations.

3) Anti-corruption programs in public authorities / local governments and legal entities (“anti-corruption programs”)

⁵ Verkhovna Rada of Ukraine, (2023), Law of Ukraine on Prevention of Corruption, <https://zakon.rada.gov.ua/laws/show/1700-18?lang=en#Text>, (access date 05.09.2023).

The Law On Prevention of Corruption provides for the mandatory implementation of anti-corruption programs in public authorities whose jurisdiction extends over the entire territory of Ukraine and a number of other state bodies. This requirement also applies to local governments. Anti-corruption programs are created following the analysis of corruption risks in the activities of the relevant body, institution or organization and are aimed at eliminating these risks, as well as preventing and combating corruption within the organization.

The NACP should coordinate the implementation of the Anti-Corruption Strategy. Additionally, the NACP shall analyze the status of prevention and counteraction to corruption, conduct research on corruption, and implement measures aimed at forming a negative attitude towards corruption in the minds of citizens.

The Law On Prevention of Corruption defines annual NACP reporting on the implementation of the anti-corruption policy. This is done through preparing and publishing the National Report on the Implementation of Fundamentals of Anti-Corruption Policy (“National Report”). This comprehensive document contains information on almost all areas of the country’s anti-corruption policy. Among other things, it contains:

- Statistical data on the activity of anti-corruption bodies;
- Information on anti-corruption measures taken by authorities;
- General analysis of corruption, etc.

Implementation

The Anti-Corruption Strategy and The National Program for Implementation of the Anti-Corruption Strategy (“National Program”)

The first strategic national anti-corruption policies appeared in Ukraine in 1997. Until 2013, they were approved by decrees of the President of Ukraine. In the period from 1997 to 2013, four of these documents were approved.⁶ Since 2014, along with the adoption of the Law On Prevention of Corruption, the mechanism of their development, adoption, and implementation has changed.

In 2014, the Parliament adopted the Strategy for 2014-2017. It became the first document of this type to be adopted at the legal level.⁷ Its adoption can be considered a significant step for the formation of Ukraine’s anti-corruption policy, as it had a positive impact on the formation of the state’s anti-corruption infrastructure for the next three years. This Strategy was almost entirely developed by the public,⁸ as the NACP had not yet been established at that time. After

⁶ Verkhovna Rada of Ukraine, National Anti-Corruption Programme, <https://zakon.rada.gov.ua/laws/show/319/97#Text>, (access date: 05.09.2023); <https://zakon.rada.gov.ua/laws/show/367/98#Text>, (access date: 05.09.2023); <https://zakon.rada.gov.ua/laws/show/742/2006#Text>, (access date: 05.09.2023); <https://zakon.rada.gov.ua/laws/show/1001/2011#Text>, (access date: 05.09.2023).

⁷ <https://zakon.rada.gov.ua/laws/show/1699-18#Text>, (access date: 05.09.2023).

⁸ Transparency International Ukraine, Anti-corruption strategy from Transparency International Ukraine for 2014-2017, <https://web.archive.org/web/20150319195112/http://ti-ukraine.org/news/oficial/4433.html>, (access date: 05.09.2023).

open discussions,⁹ the revised draft strategy was submitted by civil society organizations (CSOs) to the Government, which finalized it and registered it in Parliament.¹⁰ The National Programme was adopted in 2015 and was published immediately after its approval. The public was also actively involved in the development of the National Programme. Both documents received positive reviews from Ukrainian and international experts.¹¹

After the expiry of the Strategy, the NACP and a number of non-governmental organizations (NGOs) presented their reports on its implementation. The data in these studies points to partial implementation of the State Program. While the NACP indicates that 64% of the envisaged measures have been implemented,¹² civil society indicates that between 40%¹³ to 60%¹⁴ have been implemented. Reasons for this range from lack of political will to lack of resources of state agencies to implement it.¹⁵

The process of developing the Strategy for 2020-2024 was highly discussed.¹⁶ As a result, the draft Strategy was significantly revised with the active participation of the public¹⁷ and the Parliament.¹⁸ The document received positive feedback from experts.¹⁹ Despite the relatively innovative approaches to the development of the Strategy for 2020-2024, the lack of political

⁹ Transparency International Ukraine, Expert Discussion of the draft of the law, <https://web.archive.org/web/20150425060514/http://ti-ukraine.org/news/4650.html>, (access date: 05.09.2023) and <https://rpr.org.ua/news/eksperty-proponuyut-antykoryuptsiynu-stratehiyu-ukrajiny-do-2017-roku/>, (access date: 05.09.2023).

¹⁰ Verkhovna Rada of Ukraine, Draft Law on the Principles of State Anti-Corruption Policy in Ukraine, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=4284%D0%B0&skl=8, (access date: 05.09.2023).

¹¹ International Foundation «Vidrodzhennya», (July, 2015), The alternative report on the assessment of the effectiveness of the state anti-corruption policy, https://issuu.com/irf_ua/docs/dp-2015-16, (access date: 15.09.2023).

¹² National Agency on Corruption Prevention, (August, 2017), Analytical Report on the Implementation of the Anti-Corruption Strategy for 2014-2017 and the State Programme for the Implementation of the Principles of the Anti-Corruption Strategy, <https://nazk.gov.ua/wp-content/uploads/2021/02/2.1.-Assessment-Implem-UKR-1-2014-2017.pdf>, (access date: 06.09.2023).

¹³ Anti-Corruption Research and Education Center “ACREC”, (2017), Analytical study “Evaluation of the implementation of the anti-corruption strategy: achievements and challenges”, <https://acrec.org.ua/wp-content/uploads/2017/11/unnamed-file-1.pdf>, (access date: 06.09.2023).

¹⁴ Center for Political and Law Reforms, (2019), Alternative report on the evaluation of the effectiveness of the implementation of the state anti-corruption policy, https://pravo.org.ua/wp-content/uploads/2020/10/1553535186shadow-report-on-evaluating-the-effectiveness-of-state-anticorruption-policy-implementation_short.pdf, (access date: 06.09.2023).

¹⁵ See Anti-Corruption Research and Education Center “ACREC”, (2017), Analytical study “Evaluation of the implementation of the anti-corruption strategy: achievements and challenges”, p.59.

¹⁶ National Agency on Corruption Prevention, Call for Discussion of the Draft of Anti-Corruption Strategy (23.06.2020), <https://nazk.gov.ua/uk/novyny/strategy/>, (access date: 06.09.2023).

¹⁷ National Agency on Corruption Prevention, (2020), Comparative table to the draft Anti-Corruption Strategy for 2020-2024, <https://nazk.gov.ua/wp-content/uploads/2020/09/NAZK-Porivnyalna-tablytsya-do-proektu-Antykoryuptsiynoyi-strategiyi-na-2020-2024-roky.pdf>, (access date: 06.09.2023) ; National Agency on Corruption Prevention, Page on Anti-corruption strategy on the webportal, <https://nazk.gov.ua/uk/antykoryuptsiyna-strategiya/>, (access date: 06.09.2023).

¹⁸ Verkhovna Rada of Ukraine, Draft Strategy after consideration by the Committee on Anti-Corruption Policy, <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=70007&pf35401=547522>, (access date: 06.09.2023).

¹⁹ Center for Political and Law Reforms, (2021), Alternative report on the evaluation of the effectiveness of the implementation of the state anti-corruption policy, https://pravo.org.ua/wp-content/uploads/2021/11/Alternative_Report_2021.pdf, (access date: 06.09.2023).

will prevented its prompt adoption and implementation. The formal reason for the delay, according to the public, was the lack of a unified position among political forces that were protecting their sectors from its influence.²⁰ Sufficient motivation for the final adoption of the Anti-Corruption Strategy appeared only after the start of Russia's full-scale invasion of Ukraine on February 24, 2022, and the changes that followed. The recommendation to join the European Union ("EU") put the issue of anti-corruption reform in Ukraine at the top of the agenda, and the need for proper control over the large-scale funding that will be injected into the Ukrainian economy for its post-war reconstruction, made the adoption of the Strategy a priority.

On June 20, 2022, the relevant draft law was adopted, and on July 10, 2022, the Law of Ukraine On the Principles of State Anti-Corruption Policy for 2021-2025²¹ entered into force. The expert community notes that the adoption of the Strategy is definitely a positive step, but at the same time points out that the new version contains some relaxations of anti-corruption measures, in particular in the law enforcement sector.²² The Strategy has undergone some amendments due to the ongoing war in Ukraine. In particular, the implementation of anti-corruption measures in the defense sector has been postponed until 30 days after the end of martial law, since reforming this sector during the war seems impossible.

To implement the Strategy, the NACP has developed the relevant State Anti-Corruption Program for 2023-2025. It will be synchronized with the plans for the restoration of Ukraine after the war, the requirements for accession to the EU and the Organization for Economic Cooperation and Development (OECD), as well as the provisions of other strategic documents. The high rate of public involvement in the development of the State Program is encouraging. Nevertheless, the adoption of the State Program was delayed, resulting in public outcry.²³ The State Program for 2023-2025 was finally approved on March 4, 2023.²⁴ The NACP launched an information system for monitoring the implementation of the state anti-corruption policy in June 2023.²⁵ The information system contains data on the progress of the implementation of

²⁰ Public Analytical Centre "Institute of Legislative Ideas", Civic Analytical Centre "Institute of Legislative Ideas", (June, 2022), "Anti-Corruption Strategy adopted: what was missing from it before the vote?", <https://www.pravda.com.ua/columns/2022/06/21/7353744/>, (access date: 06.09.2023).

²¹ Verkhovna Rada of Ukraine, Law of Ukraine On the Principles of State Anti-Corruption Policy for 2021-2025, <https://zakon.rada.gov.ua/laws/show/2322-20?lang=en#Text>, (access date: 06.09.2023).

²² Borys Malyshev, (July, 2022), The Law on the New Anti-Corruption Strategy: Changes in the Activities of the Prosecutor's Office and Law Enforcement Agencies, https://lb.ua/blog/boris_malyshev/522357_zakon_pro_novu_antikorupsiynu.html, (access date: 07.09.2023).

²³ Center for Political and Law Reforms, (January, 2023)Appeal of civil society organisations to the Cabinet of Ministers on urgent approval of the State Anti-Corruption Programme for 2023-2025, <https://pravo.org.ua/zvernennya-gromadskiyh-organizatsij-do-kabminu-shhodo-nevidkladnogo-zatverdzhennya-derzhavnoyi-antikorupsiynoyi-programy-na-2023-2025-roky/>, (access date: 07.09.2023) ; Nataliia Vasyunets, (January, 2023), The public calls on the government to immediately adopt an anti-corruption programme, <https://expres.online/spetstema-2/gromadskist-zaklikae-uryad-negayno-ukhvaliti-antikorupsiynu-programu-chomu-vona-vazhliva> (access date: 07.09.2023).

²⁴ Verkhovna Rada of Ukraine, CMU Resolution "On Approval of the State Anti-Corruption Program for 2023-2025", <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text> (access date: 07.09.2023).

²⁵ National Agency on Corruption Prevention, Implementers of the State Anti-Corruption Program for 2023-2025 started reporting on the first results through a new information system, <https://nazk.gov.ua/uk/novyny/vykonavtsi-derzhavnoyi-antikorupsiynoyi-programy-na-2023-2025-roky-pochaly-zvituvaty-pro-pershi-rezultaty-cherez-novu-informatsiynu-systemu/>, (access date: 22.03.2024).

the state anti-corruption program and consists of two parts: publicly available (to assess the effectiveness of the implementation of measures by each government agency) and for internal use by the executors of the State Agency for Prevention of Corruption and the NACP. An English version of the system is also available.²⁶

Anti-corruption programs in public authorities, local governments and legal entities

Anti-corruption programs in public authorities and local governments cannot be considered sufficiently effective. Experts note that most of the programs do not work properly and do not perform their functions.²⁷ There are several reasons for this, which include:

- *A formal approach to the development and implementation of anti-corruption programs.* Civil society believes that the assessment of corruption risks is superficial and does not take into account all the specifics of the work of the relevant body, institution or organization.²⁸ In addition, some experts also point out that the NACP verifies anti-corruption programs in a rather superficial manner, only checking them for compliance with formal legislative requirements before approval.²⁹ The NACP only approved its own anti-corruption program for 2021-2022 on December 30, 2020. Throughout 2020, the NACP was operating without an anti-corruption program.
- *Insufficient level of qualification of employees responsible for the implementation of anti-corruption programs.* The expert community points out that those responsible for the implementation of anti-corruption programs assess corruption risks superficially and irregularly due to a lack of understanding of the objectives and principles of such assessment.³⁰ Often, employees perceive anti-corruption programs as an additional burden, nor realizing the importance of this tool.³¹
- *Dependence of the implementation of anti-corruption programs on political will.* Experts note that the actual effectiveness of the implementation of anti-corruption programs depends on the willingness of political leadership to implement certain measures and motivate those responsible for the implementation of the program.³²

The effectiveness of anti-corruption programs in private legal entities is difficult to assess. The public has no opportunity to monitor their implementation, and the NACP can do it only during

²⁶ National Agency on Corruption Prevention, Information system for monitoring the implementation of the State Anti-Corruption Policy, <https://dap.nazk.gov.ua/en/>, (access date: 22.03.2024).

²⁷ Center for Political and Law Reforms, (October, 2019), Research «Functioning of corruption risk assessment and anti-corruption programs in state bodies: the current state and activities of the National Agency for the Prevention of Corruption in this direction», <https://www.slideshare.net/CentrePravo/ss-180347126>, (access date: 07.09.2023).

²⁸ See O. Kalitenko, O. Lemenov, B. Malyshev, A. Marchuk, K. Serdiuk, R. Sivers, M. Khavroniuk, V. Chumak, (2021); Edited by M. Khavroniuk, Alternative Report on the Assessment of the Effectiveness of the Implementation of the State Anti-Corruption Policy, p.116-118.

²⁹ See Center for Political and Law Reforms, (October, 2019), Functioning of the assessment of corruption risks and anti-corruption programmes in public institutions the National Agency on Corruption Prevention in this area, p.27.

³⁰ See O. Kalitenko, O. Lemenov, B. Malyshev, A. Marchuk, K. Serdiuk, R. Sivers, M. Khavroniuk, V. Chumak, (2021); Edited by M. Khavroniuk, Alternative Report on the Assessment of the Effectiveness of the Implementation of the State Anti-Corruption Policy, p.119.

³¹ See Center for Political and Law Reforms, (October, 2019), Functioning of the assessment of corruption risks and anti-corruption programmes in public institutions the National Agency on Corruption Prevention in this area, p.60.

³² Ibid.

inspections. However, as practice shows, the NACP does not conduct such inspections. For example, in 2020, the planned inspections concerned only state bodies and state-owned enterprises.³³ The experts we interviewed note that the effectiveness of anti-corruption programs in private legal entities so far depends on the motivation of the management to implement and enforce it. Large companies, especially in the technology (IT) and agricultural sectors, mostly have both effective anti-corruption programs and effective compliance departments due to being export-oriented.³⁴

At the same time, the methodological support for developing anti-corruption programs, which the NACP provides, deserves a positive assessment. The NACP has adopted several documents³⁵ that help the state bodies and private legal entities develop a good-quality and effective Anti-Corruption Program. The NACP also created an online course on “Anti-Corruption Programs of Authorities” for officials, members of the public and experts. The course has been completed by around 7,000 people to date.³⁶

Reporting on the implementation of the national anti-corruption policy

National reports are a convenient tool for accountability and transparency. They are a source of basic information about government activities in the anti-corruption sector. All draft National Reports for the period from 2016 to 2020 are published on the official NACP website.³⁷ Each of the published documents generally meets the legal requirements for mandatory information. There is also a tendency for improvement of the quality of National Reports. At the same time, the volume of National Reports is extremely large (from 150 to 400 pages) which makes them difficult to access and read. One negative aspect is that not all draft National Reports are approved by the Cabinet, nor are all of them published on the website of the VRU. No parliamentary hearings have been held to discuss the implementation of the anti-corruption policy since 2018. The Parliament is not interested in this. This negatively affects the resolution of policy-related issues.

Ukraine’s interaction with international and regional organizations

³³ National Agency on Corruption Prevention, (July 1, 2020), Plan of inspections of the organisation of work on prevention and detection of corruption for 2020, <https://nazk.gov.ua/wp-content/uploads/2020/10/Plan-provedennya-Natsionalnym-agentstvom-perevirok-organizatsiyi-roboty-iz-zapobigannya-i-vyavlennya-koruptsiyi-na-2020-rik.pdf>, (access date: 07.09.2023).

³⁴ O. Lagodienko, Co-founder and Executive Director of Ethicontrol. Interview with T. Khutor and Y. Shvab, November 25, 2021.

³⁵ <https://zakon.rada.gov.ua/laws/show/z1702-21#Text>, (access date: 07.09.2023) ; National Agency on Corruption Prevention, Examples of corruption risks that are common to all public authorities and measures to eliminate (minimise) them, <https://nazk.gov.ua/wp-content/uploads/2019/04/Pryklady-koruptsiinyh-ryzykiv-yakyye-harakternymy-dlya-usih-organiv-vlady-a-takozh-zahodiv-shhodo-yih-usunennya-minimizatsiyi-zatverdzhennishennyam-vid-28-grudnya-2017-roku-153.pdf>, (access date: 07.09.2023).

³⁶ Main Department of the StateGeoCadastre in the Zhytomyr region, (December, 2018), Announcing the launch of registration for anti-corruption courses, <https://zhytomyrska.land.gov.ua/rozpochato-reiestratsiiu-na-onlain-kursy-shhodo-zapovnennia-e-deklaratsii-konfliktu-interesiv-ta-rozrobky-antykoruptsiinykh-prohram/>, (access date: 07.09.2023).

³⁷ The main page of National Agency on Corruption Prevention webportal, <https://nazk.gov.ua/uk/pro-nazk/>, (access date: 07.09.2023).

Ukraine has been a member of the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) since 1997.³⁸ The mutual evaluation report (MER) of Ukraine was adopted in December 2017. Then, the organization conducted the first Enhanced Follow-up Report of Ukraine 2019 and the last Progress Report was conducted in September, 2020.³⁹ It highlights the negative practice of blocking the work of the main agency responsible for anti-corruption policy – the NACP, as well as the lack of sustainability, consistency, and a strong institutional memory in terms of international anti-corruption monitoring mechanisms. International commitments undertaken as part of international anti-corruption treaties have to be taken into account in the anti-corruption strategy for a certain period, and the latter should be in line with the assessment cycle within a given conventional mechanism.

On January 21, 2004, Ukraine adopted the Istanbul Anti-Corruption Action Plan⁴⁰ as part of the Anti-Corruption Network (ACN) for Eastern Europe and Central Asia program initiated by the OECD Working Group on Bribery.⁴¹ According to the latest ACN report published in 2020,⁴² the average score for Ukraine's implementation of recommendations provided within the fourth assessment round constitutes 75%.⁴³ The fifth round of monitoring started for Ukraine in 2021 and has been ongoing for two years. An updated Agreement between the Government of Ukraine and OECD was signed in 2022 and ratified by the VRU in February 2023.⁴⁴ During the International Conference on Ukraine's Recovery in July 2022 in Lugano, Ukraine submitted an application for membership in the OECD. At the end of September 2022, the OECD Council decided to recognize Ukraine's status as a prospective member of the OECD and to start a dialogue on accession. As part of the initial transition, a separate OECD Programme for Ukraine was developed and agreed,⁴⁵ which contains clearly structured multi-year work programmes.

³⁸ Council of Europe, MONEYVAL publishes new follow-up report on Ukraine, https://www.coe.int/en/web/portal/news-2020/-/asset_publisher/JgmLwXY88pXi/content/moneyval-publishes-new-follow-up-report-on-ukraine?_101_INSTANCE_JgmLwXY88pXi_languageId=en_GB, (access date: 07.09.2023).

³⁹ MONEYVAL, 2nd Enhanced Follow-up Report & Technical Compliance Re-Rating (June 2020), <https://rm.coe.int/moneyval-2020-9-sr-2nd-enhanced-fur-ua/1680a01d6a>, (access date: 07.09.2023).

⁴⁰ https://zakon.rada.gov.ua/laws/show/966_001-04#Text, (access date: 08.09.2023).

⁴¹ Organisation for Economic Co-operation and Development, Istanbul Anti-corruption Action Plan, <https://www.oecd.org/corruption/can/istanbul-action-plan.htm>, (access date: 08.09.2023) ; Organisation for Economic Co-operation and Development, Ukrai-e - Anti-corruption reforms, <https://www.oecd.org/corruption/Anti-corruption-reforms-in-Ukraine.htm>, (access date: 08.09.2023).

⁴² Organisation for Economic Co-operation and Development, (2020), Anti-corruption reforms in Eastern Europe and Central Asia, progress and challenges, (2016-2019), <https://www.oecd.org/corruption/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2016-2019-ENG.pdf#page=362&zoom=100,82,140>, (access date: 08.09.2023).

⁴³ See Organisation for Economic Co-operation and Development, (2020), Anti-corruption reforms in Eastern Europe and Central Asia, progress and challenges, table 61.

⁴⁴ Verkhovna Rada of Ukraine, Agreement between the government of Ukraine and the Organization for economic cooperation and development on privileges, immunities and benefits granted to the organization and the office of the organization in Ukraine, https://zakon.rada.gov.ua/laws/show/966_001-22#Text, (access date: 07.02.2024).

⁴⁵ Organisation for Economic Co-operation and Development, (June, 2023), Ukraine country programme (7-8 June 2023), <https://www.oecd.org/mcm/documents/Ukraine-Country-Programme.pdf>, (access date: 08.09.2023).

Ukraine signed the Civil Law Convention on Corruption of the Council of Europe in 1999 and became a member of The Group of States against Corruption (GRECO) in 2006 along with the entry into force of the Convention.⁴⁶ Four rounds of GRECO evaluations of Ukraine have been completed,⁴⁷ and the fifth round has not been launched yet.⁴⁸ The results of the study show an improvement in anti-corruption efforts in Ukraine after each of the four rounds of GRECO evaluations.⁴⁹

Table 4: Summary of Article 5

	Evaluation	Comments
Implementation through national legislation	Fully compliant	Ukrainian legislation on the setting and implementation of anti-corruption policies is fully compliant with the requirements of Article 5 of the UNCAC. The law provides for the adoption of strategic anti-corruption documents and establishes proper practices to prevent corruption.
Practical enforcement	Moderate enforcement	The formation of the state's anti-corruption policy strongly depends on political will. Therefore, strategic anti-corruption documents are not adopted on time and are not fully implemented. The executors nominally follow certain anti-corruption practices. The body that is defined to form the anti-corruption policy and coordinate its implementation is mostly successful in fulfilling its mandate.

<p>Good practices</p> <ul style="list-style-type: none"> • The adoption of the Anti-Corruption Strategy in 2014 had a positive impact on the state's anti-corruption policy. The development and adoption of the Anti-Corruption Strategy for 2021-2025 was carried out with significant involvement of the different stakeholders and the public, and was based on real, not declarative, goals. • The formation of the state anti-corruption program involves broad public discussions and is based on clear measurable indicators.
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⁴⁶ Verkhovna Rada of Ukraine, Civil Convention on the fight against corruption, https://zakon.rada.gov.ua/laws/show/994_102#Text, (access date: 08.09.2023).

⁴⁷ The Group of States against Corruption, (March, 2023), The Interim Progress Report Ukraine after the fourth round of evaluation of measures on prevention of corruption against MPs, judges and prosecutors, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680aaa790>, (access date: 08.09.2023).

⁴⁸ Page regarding Ukraine on the official website of The Group of States against Corruption, <https://www.coe.int/en/web/greco/evaluations/ukraine>, (access date: 08.09.2023).

⁴⁹ Analysis of the change in the GRECO scores (and CPI scores, as there is a positive correlation between the two).

- The methodological support of the NACP regarding the adoption of anti-corruption programs in government agencies and legal entities is qualitative.
- Corruption research conducted by the NACP has increased significantly in recent years. Strategic research on corruption risks is conducted regularly and consistently, with positive results.
- Reporting on the implementation of state anti-corruption policy is regular and of high quality.

Deficiencies

- The lack of political will has a significant impact on the process of adopting the Anti-Corruption Strategy, which resulted in its absence for four years.
- Anti-corruption programs in state bodies and legal entities are not effective because of the formal approach to their development and implementation.
- Inadequate coverage of the implementation of anti-corruption policy by the Parliament.

4.1.2. Article 6 – Preventive anti-corruption body

Legal framework

According to the Law On Prevention of Corruption, the National Agency on Corruption Prevention (NACP) is the main body aimed at preventing corruption and implementing the state anti-corruption policy. This body was launched in 2016, but in 2019–2020 the NACP was “restarted”. In particular, the management model was replaced from collegial to individual, and several changes regarding the functioning of the body were introduced. Within this section, the “relaunched” NACP is reviewed.

The powers and rights of the NACP are enshrined by the Law On Prevention of Corruption. They are set out relatively clearly, their analysis allows us to understand the direction of the body and its main functions/tasks. Among the powers of the NACP are: formation and implementation of anti-corruption policy; prevention and settlement of conflicts of interest; control and verification of declarations; supervision of political party funding; and protection of whistleblowers.

The Law On Prevention of Corruption establishes special guarantees for the independence of the NACP to effectively implement the powers granted. Among these guarantees are:

1. Special procedure for selection of the head of the NACP

A special Commission involving international partners is established for the selection of the head of the NACP. The commission conducts testing and interviews with candidates, based on the results of which it independently approves the head.⁵⁰

⁵⁰ De jure, appointment of a candidate for the post of the head of the NACP is carried out by the Cabinet of Ministers. However, de facto, the Competition Commission proposes a single candidate for appointment and the Cabinet of Ministers has no choice.

2. *Special requirements for the head of the NACP and the deputies*

The Law On Prevention of Corruption specifies special requirements for the head of the NACP to ensure their professionalism (older than 35, higher education), political neutrality, and integrity (a person cannot be the head of the NACP if they have not submitted a declaration, have not passed a special check, have been prosecuted for a corruption offense). It is important that the head of the NACP is elected for 4 years and cannot hold this position for two consecutive terms.

3. *Special procedure for dismissal of the head of the NACP and prosecution of their deputies*

The head of the NACP may be dismissed only on clearly defined grounds set out by the Law On Prevention of Corruption. Dismissal on other grounds is not allowed. A notice of suspicion may be given to the head of the NACP and their deputies only by the General Prosecutor or the Head of the Special Anti-Corruption Prosecutor's Office (SACPO).

4. *Proper funding, facilities, and staffing*

The Law On Prevention of Corruption provides the financing of the NACP at such a level that it ensures the proper exercise of its powers. The NACP has the right to independently use the allocated funds. In addition, the salaries of the head of the NACP, their deputies, and other employees are determined by law, thus it makes it impossible to unjustifiably reduce the salaries. Competitive selection to the NACP is open and public, it is carried out separately and requires public participation.

To prevent abuse of power by the NACP, the Law On Prevention of Corruption provides mechanisms for monitoring the activities of the body. The mechanisms can be divided into internal and external:

1. *Internal control mechanisms.* Monitoring the compliance of the NACP employees with the Law on Prevention of Corruption; conducting integrity checks of the NACP employees and monitoring their lifestyles; conducting internal investigations, etc.
2. *External mechanisms.* Every two years, the Accounting Chamber controls the expenditure of the state budget; the specially created Public Council at the NACP performs public control, although the Council having several powers and rights at the low level; and a special Commission, established by the Cabinet of Ministers of Ukraine ("CMU") with the involvement of international partners evaluates the performance of the NACP.

Implementation

Independence of the NACP

The guarantees provided in the Corruption Prevention Law are sufficient to ensure the independence of the NACP.⁵¹ However, some guarantees of independence are not always successfully implemented in practice.

⁵¹ Transparency International Ukraine, Study of the capacity, governance and interaction of the anti-corruption infrastructure in Ukraine, https://drive.google.com/file/d/1wvDL3FcF6eVrkDho7hbNFxINF_8rESmJ/view, (access date: 09.09.2023).

1) *Special procedure for selection of the head of the NACP*

After the “re-launch” of the NACP, the competitive selection of the first head of the body began. In 2019, a competition commission composed of three foreign experts and three members of the public was formed.⁵² The competition process can be assessed very positively. It was fast, public, and open, and was not accompanied by political or corruption scandals. All meetings of the Competition Commission were streamed online, and materials of its meetings, evaluation results, and selected practical works of candidates were published.⁵³ The winner of the competition was chosen based on objective indicators. In particular, he met all the necessary criteria, received high scores on the test, passed the interview, and did not receive negative feedback from the public.⁵⁴

A report published by Transparency International Ukraine,⁵⁵ the authors of which are from the anti-corruption expert community, also praised the competitive selection, no significant remarks concerning the competition were made. At the same time, there was an opinion that the decisions of the Competition Commission should be better described,⁵⁶ as its final decision contained only a short justification.⁵⁷ The comments also referred to the lengthy procedure for the appointment of the selected candidate. The competition itself was quite fast, the winner was chosen within a month;⁵⁸ however, the government postponed his appointment for another month after the competition ended.⁵⁹

2) *Dismissal of the head of the NACP*

It can be argued that at the time of writing this report, the guarantees against the arbitrary dismissal of the head of the NACP have not been violated. For almost four years of work of the

⁵² The Cabinet of Ministers of Ukraine. Order On approval of the composition of the Competition Commission for the selection of the Head of the National Agency on Corruption Prevention No. 1017-p dated 28 October 2019, <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-skladu-konm1017kursnovi-komisiyi-z-vidboru-na-posadu-golovi-nacionalnogo-agentstva-z-pitan-zapobigannya-korupciyi>, (access date: 09.09.2023) ; Anti-Corruption Action Centre, (October, 2019), The Cabinet of Ministers appointed members of the Competition Commission that will select the new head of the NACP, <https://antac.org.ua/news/kabmin-vyznachyv-chleniv-konkursnoi-komisii-iaka-obyratyme-novoho-holovu-nazk/>, (access date: 09.09.2023).

⁵³ The Cabinet of Ministers of Ukraine, Home page on YouTube, <https://www.youtube.com/channel/UCYITFedAEZiqE6r9eY0PZ1A>, (access date: 09.09.2023) ; The Cabinet of Ministers of Ukraine, Notifications and announcements of the Competition Commission, <https://www.kmu.gov.ua/diyalnist/provedennya-konkursiv/arihiv/konkurs-z-vidboru-golovi-nacionalnogo-agentstva-z-pitan-zapobigannya-korupciyi/povidomlennya-i-ogoleshennya-konkursnovi-komisiyi>, (access date: 09.09.2023).

⁵⁴ TI Ukraine, Candidates for the NACP Head: analysis, <https://ti-ukraine.org/research/kandydaty-na-krislo-golovy-nazk-analityka/>, (access date: 09.09.2023).

⁵⁵ Transparency International Ukraine, Study of the capacity, governance and interaction of the anti-corruption infrastructure in Ukraine, <https://ti-ukraine.org/research/spromozhni-efektyvni-i-nezalezhni-analiz-antikoruptsiinyh-organiv/>, (access date: 07.02.2024).

⁵⁶ O. Kalitenko, Legal Advisor at Transparency International Ukraine. Interview with T. Khutor and Y. Shvab, September 21, 2021.

⁵⁷ Competition Commission for the selection of the Head of the National Agency on Corruption Prevention, Minutes No. 5 of 16.12.2019, <https://www.kmu.gov.ua/storage/app/sites/1/29-antikor/minutes-5-ukr-fin.docx>, (access date: 09.09.2023).

⁵⁸ Government portal. Page about the competition for the position of the Head of the National Agency on Corruption Prevention, <https://www.kmu.gov.ua/diyalnist/provedennya-konkursiv/arihiv/konkurs-z-vidboru-golovi-nacionalnogo-agentstva-z-pitan-zapobigannya-korupciyi>, (access date: 09.09.2023).

⁵⁹ The Cabinet of Ministers of Ukraine, (January 15, 2020), Order on the appointment of O. Novikov Head of the National Agency on Corruption Prevention, <https://www.kmu.gov.ua/npas/pro-priznachennya-novikova-o-f-golovoyu-nacionalnogo-agentstva-z-pitan-zapobigannya-t150120>, (access date: 09.09.2023).

new head, there have been no deliberate attempts to dismiss him. However, these guarantees have been breached in the past. This has set a dangerous precedent that could be repeated in the future. In particular, the Parliament dismissed the leadership of the “previous” NACP by introducing a one-time amendment into the Law On Prevention of Corruption.⁶⁰ Such an easy way to dismiss the leadership of independent bodies is very dangerous and extremely politicized, as the often-controlled Parliament can be a tool to influence people who do not suit the authorities.

3) Proper funding, facilities, and staffing

The NACP is sufficiently provided with resources and finances. This is confirmed by both the NACP representatives and the experts from civil society.⁶¹ Funding for the body increases every year since it started operating. For example, in 2021, approximately EUR 14 million was allocated for the NACP activities,⁶² which is 10% more compared to 2020.⁶³ The year 2023 was an exception. Due to the war, funding for anti-corruption infrastructure is planned to be reduced. Funding for the NACP in 2023 decreased by 16% compared to 2022 and amounts to approximately EUR 9.9 million.⁶⁴ In the context of the war, this decision should be seen as rather compelled to than aimed at reducing the NACP's capacity.

The financing of the NACP employees' salaries is at a fairly high level. A public survey shows that the NACP employees consider their salaries to be appropriate and express confidence in the NACP's prospects as an employer, especially during the COVID-19 pandemic.⁶⁵ Former NACP employees interviewed also indicated that there were no delays in the payment of salaries.⁶⁶ Approximately 57% of NACP's expenditures (EUR 8 million) are paid annually to its employees.⁶⁷ According to our information, the salary level remained stable during the ongoing Russian war against Ukraine.

There is an urgent need to establish the NACP territorial offices, which are defined by law. According to experts, they would significantly improve the work of the NACP in the regions.⁶⁸ But, since most of the experts we interviewed from various fields indicated that the NACP needs additional staff in almost every existing structural unit, there is a high risk of establishing new offices with incomplete staff.⁶⁹

⁶⁰ Verkhovna Rada of Ukraine, Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Effectiveness of the Institutional Mechanism for Preventing Corruption" of 02.10.2019 No. 140-IX, <https://zakon.rada.gov.ua/laws/show/140-20#Text>, (access date: 09.09.2023).

⁶¹ See Transparency International Ukraine, Report. Study of the capacity, governance and interaction of the anti-corruption infrastructure in Ukraine, (access date: 09.09.2023), pg. 195.

⁶² <https://zakon.rada.gov.ua/laws/show/1082-20#Text>, (access date: 09.09.2023).

⁶³ <https://zakon.rada.gov.ua/laws/show/294-20#Text>, (access date: 09.09.2023).

⁶⁴ <https://zakon.rada.gov.ua/laws/show/2710-20#Text>, (access date: 09.09.2023).

⁶⁵ Transparency International Ukraine, Study of the capacity, governance and interaction of the anti-corruption infrastructure in Ukraine, <https://drive.google.com/file/d/1eRiojn-Yr9xPa5Ti0O3v8PHMMmMjFpiB/view>, (access date: 09.09.2023), p.214.

⁶⁶ Interview with three former employees of NACP, who wished to stay anonymous. Interview with Y. Shvab, August 26, 2021.

⁶⁷ National Agency on Corruption Prevention, Report for 2020, (2021), <https://nazk.gov.ua/wp-content/uploads/2021/04/NAZK-Zvit-za-2020-rik-15.04.2021-1.pdf>, (access date: 09.09.2023).

⁶⁸ All the interviews in this Article.

⁶⁹ All the interviews in this Article.

4) Selection of employees

The NACP employees are selected in two ways, in particular, through an open competition in a special procedure approved by the head of the NACP,⁷⁰ and by transfer from other bodies. It should be noted that the possibility of holding positions in the NACP by transfer from other bodies should be excluded from the law. According to the experts from civil society, it does not ensure proper verification of the competence and integrity of employees with the participation of the public.⁷¹ Another drawback is the practice of the NACP (and other public authorities) to conclude direct temporary contracts during quarantine measures and martial law, which allowed to bypass the competitive procedure.

The competition selection procedure at the NACP deserves positive reviews. Participation of the NACP Public Council members in competition commissions significantly increases the transparency and efficiency of competitive selection.⁷² It is the members of the civil society who exercise proper external control over the competitions, which brings good results. Thus, after the “re-launch”, there is no information about unfair or fictitious competitions to the NACP, and the former employees we interviewed claimed that they did not observe violations of competition procedures and did not hear about such cases.⁷³ At the same time, media reports highlighted concerns about certain appointments due to integrity issues of those individuals.⁷⁴

Nevertheless, it is also worth noting certain shortcomings of the competition procedure itself. The current procedure provides for optional testing of general abilities and solving the cases. The decision to include such stages of the competition is made by the competition commission in each specific situation. According to experts, testing of general abilities should be mandatory.⁷⁵

5) Institutional independence

The current NACP staff has not been involved in any corruption or political scandals that would give grounds to question its independence. During almost four years of operation of the “re-launched” NACP, there have been repeated attempts to negatively influence the body, and it has constantly had to defend its independence. The greatest threat to the independence of the NACP is posed by the Parliament and the courts. For example, parliamentarians have repeatedly tried to deprive the NACP of some of its powers due to “inconvenient” decisions

⁷⁰ <https://zakon.rada.gov.ua/laws/show/z0331-20#Text>, (access date: 09.09.2023).

⁷¹ See O. Kalitenko, O. Lemenov, B. Malyshev, A. Marchuk, K. Serdiuk, R. Sivers, M. Khavroniuk, V. Chumak; Edited by M. Khavroniuk, Alternative Report on the Assessment of the Effectiveness of the Implementation of the State Anti-Corruption Policy (2021).

⁷² P. Ivanin, member of the Council of the Kharkiv Civic Coalition, head of the Slobozhansky Resource Center. Interview with T. Khutor and Y. Shvab, September 9, 2021.

⁷³ Interview with 2 out of 3 former employees of NACP, who wished to stay anonymous. Interview with Y. Shvab, August 26, 2021.

⁷⁴ Ukrayinska Pravda, New Head of the NACP Novikov: NACP's position is to win without getting into a battle, <https://www.pravda.com.ua/articles/2020/10/1/7268340/>, (access date: 22.03.2024).

⁷⁵ See O. Kalitenko, O. Lemenov, B. Malyshev, A. Marchuk, K. Serdiuk, R. Sivers, M. Khavroniuk, V. Chumak; Edited by M. Khavroniuk, Alternative Report on the Assessment of the Effectiveness of the Implementation of the State Anti-Corruption Policy (2021).

made by the NACP.⁷⁶ The most notorious case for encroachment on the independence of the NACP occurred in late 2020. The Constitutional Court of Ukraine declared its decision No. 13/2020, dated October 27, 2020,⁷⁷ declaring several provisions of the Corruption Prevention Law unconstitutional, thus abolishing several important anti-corruption mechanisms, and depriving the NACP of some of its powers. All those mechanisms became active again on December 30, 2020, after the adoption by the Parliament of the necessary amendments to the law.⁷⁸

One of its main functions, as we noted above, is to review the electronic declarations of public officials. The first attempt to restore e-declarations was made by Members of Parliament in September 2022, but it was never supported by the Parliament due to the lack of interest in it. However, in September 2023, the VRU voted in favour of a new law on the restoration of electronic declaration of officials. More details about this are provided under Articles 7.4, 8.1 and 8.5.

Transparency and control over NACP performance

With regard to the transparency of the NACP's activities, it is necessary to assess how openly the agency conducts its functions and how easy it is to find information about its activities.

1) Transparency of the NACP

In general, it can be stated that the NACP is a fairly transparent body. The NACP annually publishes high-quality reports on its activities including statistical data, information on the budget and its use, etc., during the year for public free access. However, there is a systematic problem with the publication of information on the total number of administrative violation reports drawn up by the NACP's authorized persons and the results of their review.⁷⁹ In 2022, 49.9% of respondents among the public and 73.2% of businesses consider themselves aware of the National Agency's activities. These statistics, among other things, are included in the NACP's annual self-assessment report.⁸⁰ For this purpose, 237 criteria in 8 spheres are applied. For example, in 2021, the NACP assessed its effectiveness at 98%.⁸¹ There is a positive trend in the content and quality of its reports. For example, the NACP's 2022 report

⁷⁶ About such attempts we described above and will describe within the context of other issues. At time when this report was being composed, all the attempts had failed due to the NACP and civil society response to the threat.

⁷⁷ Constitutional Court of Ukraine, (2020), Decision of the Grand Chamber of the CCU No. 13-r/2020, <https://ccu.gov.ua/docs/3260>, (access date: 09.09.2023).

⁷⁸ Consequently, the anti-corruption system in Ukraine did not fully function for 2 months, and it is impossible to bring to justice those who lied in their declarations for 2020, and law enforcement agencies had to close about 4 thousand criminal proceedings.

⁷⁹ The Cabinet of Ministers of Ukraine, Report on the External Independent Evaluation of the Performance of the National Agency for the Prevention of Corruption, <https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/zvit-komisii-z-provedennia-nezaleznoi-otsinky-efektyvnosti-dialnosti-nazk.pdf>, (accessed 22.03.2024), pg. 70.

⁸⁰ National Agency on Corruption Prevention, (2023), Report for 2022, <https://nazk.gov.ua/wp-content/uploads/zvit-2022/NACP-annual-report.pdf>, (access date: 09.09.2023), p.36.

⁸¹ NACP, (2021), Self-assessment report for 2021, <https://nazk.gov.ua/wp-content/uploads/2022/04/Zvit-pro-diyalnist-NAZK-za-2021-rik.pdf?fbclid=IwAR2r8vJVnaf0XtQ7lrHqp3ZrJmuNy0X8mR891CzLqh8hx8JCYdPkzRgsE78>, (access date: 09.09.2023), p.7.

differs significantly from previous ones. It is written in clear language, without using of formal and professional jargon, and it is much easier to read due to good visualization of statistics and other information. The Public Council under the NACP published an opinion on the NACP's report, in which it noted that the text of the report is structured and contains the necessary information on the Agency's activities during the reporting period, so it can be assessed as "good" (4.4 points out of 5). However, in its recommendations, it notes the need to provide more statistical information on the areas of work of the National Agency, not forgetting to demonstrate successful cases, as well as to publish regulations, acts of individual action, draft decisions to be discussed in full.⁸²

For the most part, the NACP complies with the requirements for the provision of public information, yet there are some shortcomings as well. The NACP publishes information about its budget on its website in special sections, including budget requests and budget program passports (detailed information on expenditures by individual categories).⁸³ Information on public procurement of the body is also published.⁸⁴ All information is available in open data format, which allows for automatic processing.⁸⁵ There are separate website sections for submission of a request for public information and citizen's inquiry in electronic forms.⁸⁶ Nevertheless, the public is concerned about certain cases of unjustified refusal to provide information or delay in responding.⁸⁷ Civil society is also critical of the non-disclosure by the NACP of its draft acts before their approval,⁸⁸ as well as the lack of public access to some regulations and other acts, especially in terms of control and verification of declarations.

2) Control over the activities of the NACP

Public control is a very effective way to monitor the NACP's activities. This control is conducted by the NACP's Public Council, which includes 15 representatives of civil society and other anti-corruption organizations.⁸⁹ The representatives were elected by open internet voting. The Public Council is active, in particular, its members participate in the competition and disciplinary

⁸² Conclusion of the Public Council of the National Agency on Corruption Prevention on the report on the activities of the National Agency on Corruption Prevention for 2022, <https://nazk.gov.ua/wp-content/uploads/2023/05/Vysnovok-GR-na-zvit-NAZK-2022.pdf>, (access date: 09.09.2023), p.9.

⁸³ The page on open budget on the National Agency on Corruption Prevention web portal <https://nazk.gov.ua/uk/open-budget/>, (access date: 09.09.2023).

⁸⁴ The page on public procurement on the National Agency on Corruption Prevention web portal, <https://nazk.gov.ua/uk/derzhavni-zakupivli/>, (access date: 09.09.2023).

⁸⁵ Page containing data sets on the National Agency on Corruption Prevention on the Diia portal, <https://data.gov.ua/organization/natsionalne-ahentstvo-z-pytan-zapobihannia-koruptsiyi>, (access date: 09.09.2023).

⁸⁶ National Agency on Corruption Prevention, Page for submitting a request for public information, <https://nazk.gov.ua/uk/zapyt-na-publichnu-informatsiu>, (access date: 09.09.2023) ; National Agency on Corruption Prevention, Page for submitting citizens' appeals, <https://nazk.gov.ua/uk/elektronne-zvernennya/>, (access date: 09.09.2023).

⁸⁷ See K. Ryzhenko, O. Danilyuk, O. Kalitenko, G. Kokhan, S. Kurinnyi. Study of the Capacity, Management and Interaction of Anti-Corruption Infrastructure Bodies of Ukraine, (access date: 09.09.2023), pg. 111.

⁸⁸ See K. Ryzhenko, O. Danilyuk, O. Kalitenko, G. Kokhan, S. Kurinnyi. Study of the Capacity, Management and Interaction of Anti-Corruption Infrastructure Bodies of Ukraine, (access date: 09.09.2023), pg. 112.

⁸⁹ National Agency on Corruption Prevention, Notice on the formation of the Public Council at the National Agency on Corruption Prevention formed, <https://nazk.gov.ua/uk/novyny/gromadska-rada-pry-nazk-sformovana/>, (access date: 09.09.2023).

commissions of the NACP,⁹⁰ provide conclusions to draft acts of the NACP,⁹¹ and consider complaints and inquiries from the public.⁹² Members of the NACP Public Council actively assisted in the preparation of this report. Due to the war in Ukraine, the term of powers of the NACP's Public Council has been extended until the martial law is lifted or ended.⁹³

To monitor the NACP's effectiveness, the law provides for an independent external evaluation. The evaluation should be conducted by an independent commission formed with the involvement of international experts. The first external assessment was to be conducted in early 2022, given that this is the middle of the current NACP Head's term of office. It was planned to do so according to the methodology and criteria defined by the Cabinet of Ministers.⁹⁴ The Commission started its work on 24 January 2022. Already in March, it suspended its activities due to Russia's full-scale invasion of Ukraine⁹⁵ and resumed them only on 6 June 2022.⁹⁶ In its report dated 24 July 2023,⁹⁷ the Commission pointed to the satisfactory fulfilment of most of the tasks assigned to the NACP. In particular, the current NACP has managed to correct many of the shortcomings that led to the disbandment of the previous one. According to the results of the assessment, the NACP fulfilled 148 (72%) of the 206 criteria that were taken into account in the calculation (other criteria were not taken into account because the Commission did not receive sufficient information to draw a conclusion on them or because the NACP could not fulfil them due to external factors). However, in several aspects, the NACP failed to produce high quality results, mainly due to insufficient transparency of the Agency's work, serious errors in the approach to the development of regulations governing the work of employees, shortcomings in the organizational structure and personnel decisions, as well as in the implementation of the internal control function.

Table 5: Summary of Article 6

⁹⁰ Public Council at the National Agency on Corruption Prevention, Minutes of the meeting No. 1 dated July 1, 2020, <https://nazk.gov.ua/uk/documents/protokol-1-zasidannya-gromadskoyi-rady-pry-natsionalnomu-agentstvi-z-pytan-zapobigannya-koruptsiyi/>. (access date: 09.09.2023).

⁹¹ Public Council at the National Agency on Corruption Prevention, Minutes of the meeting No. 7 of January 5, 2021, <https://nazk.gov.ua/uk/documents/protokol-7-zasidannya-gromadskoyi-rady-pry-natsionalnomu-agentstvi-z-pytan-zapobigannya-koruptsiyi/>. (access date: 09.09.2023).

⁹² Public Council at the National Agency on Corruption Prevention, Minutes of the meeting No. 5 dated 08.10.2020, <https://nazk.gov.ua/uk/documents/protokol-5-zasidannya-gromadskoyi-rady-pry-natsionalnomu-agentstvi-z-pytan-zapobigannya-koruptsiyi/>. (access date: 09.09.2023).

⁹³ <https://zakon.rada.gov.ua/laws/show/668-2022-%D0%BF#n2>. (access date: 20.09.2023).

⁹⁴ <https://zakon.rada.gov.ua/laws/show/458-2020-%D0%BF#Text>. (access date: 09.09.2023).

⁹⁵ The Commission for Independent Evaluation of the Performance of the National Agency on Corruption Prevention, Minutes of the meeting No. 2 dated March 17, 2022, <https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/pereklad-protokolu-17.03.2022.pdf>. (access date: 09.09.2023).

⁹⁶ The Commission for Independent Evaluation of the Performance of the National Agency on Corruption Prevention, Minutes of the meeting No. 3 dated June 6, 2022, <https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/pereklad-protokolu-06.06.2022.pdf>. (access date: 09.09.2023).

⁹⁷ The Commission for Independent Evaluation of the Performance of the National Agency on Corruption Prevention, (July 24, 2023) Report of the External Independent Evaluation of the National Agency on Corruption Prevention, <https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/zvit-komisiyi-z-provedennia-nezaleznoi-otsinky-efektivnosti-diialnosti-nazk.pdf>. (access date: 09.09.2023).

	Evaluation	Comments
Implementation through national legislation	Fully compliant	Ukrainian legislation regarding a preventive anti-corruption body is fully compliant with Article 6 of the UN Convention against Corruption. The law provides sufficient guarantees for the independence of the body, including the provision of adequate financial and human resources, and the procedure for electing and dismissal of its head. The law also establishes sufficient mechanisms for monitoring the activities of the body.
Practical enforcement	Moderate enforcement	Most of the established law requirements are successfully met. The “re-launch” of the NACP has ensured a sufficient level of independence of the body. The selection of the NACP head, financial support, and personnel selections deserve a positive assessment. But certain insignificant problems arise in the implementation of each of these elements of independence. The biggest problems are the shortage of staff in the NACP, the need to establish territorial offices, and the threat posed by the Parliament and the courts to the independence of the NACP. Some concerns arise about the unavailability of certain information.

Good practices

- The selection of the head of the NACP was carried out transparently and publicly. The competition was not accompanied by corruption or political scandals. The winner was selected based on objective criteria.
- The financial support of the NACP is sufficient for the exercise of its powers. Salaries of NACP employees are at a high level.
- Control over the activities of the NACP is carried out at the appropriate level. The Public Council at the NACP effectively performs the function of civil society control.
- The NACP operates transparently and openly. The reports of the NACP and its official website contain information in open data format, which allows for automatic processing. The information is constantly updated.

Deficiencies

- The former NACP leadership was dismissed in a manner not provided by law and in violation of the guarantees of their independence. There were attempts to narrow acting guarantees for the NACP's independence by making amendments to the law.
- There is a shortage of staff in the NACP, there is an urgent need to establish territorial offices of the body.
- There were attempts to interfere in the independence of the NACP. The most serious threat to the body is posed by the Parliament and the courts. The decision of Constitutional Court No. 13/2020, dated 27 October 2020, significantly affected the efficiency and independence of the NACP.

4.1.3. Article 7.1 – Public sector employment

Legal framework

In Ukraine, the legal and institutional framework for the civil service is defined by the Law of Ukraine On Civil Service ("Civil Service Law"),⁹⁸ adopted in December 2015. The Law defines approaches to the formation of the civil service system in Ukraine. The Civil Service Law, inter alia, defines: general requirements for entering the civil service; competition for civil service positions; appointment to civil service positions; civil service performance; and termination of civil service.

There are three categories ("A" - the highest category, "B" and "C") of civil service, which cover nine ranks. Each category contains requirements for professional activity and corresponds to the position held by an employee in the system of public authorities. The higher the category, the higher the level of duties and responsibilities assigned to the civil servant. The National Agency of Ukraine on Civil Service ("NACS") is responsible for the development and implementation of state policy in the civil service. The Commission on Senior Civil Service ("Commission") conducts competitions for civil service positions of category A and conducts disciplinary proceedings against civil servants of category A.

1) Competition for the "A" category civil service position

The decision to announce such a competition is taken by the appointing authority. Based on the results of the competition, the Commission shall submit to the appointing authority proposals for candidates for such positions in the total number of no more than three persons.

2) Competition for the "B" or "C" category civil service positions

The decision to hold the proper competition shall be taken by the head of the civil service in the relevant body, and the competition itself shall be held by a permanent competition commission.

3) Tailor-made competitions are carried out for civil service positions which are prone to corruption

⁹⁸ <https://zakon.rada.gov.ua/laws/show/889-19#n274>, (access date: 10.09.2023).

Tailor-made competitions are carried out according to separately-determined procedures under, largely, relevant laws (NABU Law, Public Prosecution Law, Corruption Prevention Law, etc.). They concern positions of high responsibility or positions with a high level of corruption risks (e.g., Head of NACP, Director of NABU, Director of SACPO). Following the Rules of Procedure for competition for civil service positions,⁹⁹ there are nine stages of the competitions. At the same time, due to the COVID-19 pandemic, certain stages of the competition may be held remotely by decision of an authorized person.¹⁰⁰

During the war, competitions are held under a simplified procedure. The applicant must submit an application, a completed personal card in the prescribed form and documents confirming the Ukrainian citizenship, education and work experience in accordance with the requirements of the legislation established for the relevant positions.¹⁰¹ Transparency of competitions is ensured through video and audio recording.¹⁰²

The commission decides on no more than three candidates who have received the highest number of points at all stages of the competition. Their candidacies are submitted to an authorized person, who selects the winner of the competition at their discretion. The results of the competition can be appealed to by the participants in court within 10 days from the date of announcement of the results. The grounds for appeal may be a violation of the procedure or conditions of the competition. During their tenure, civil servants must undergo annual performance appraisals. The Civil Service Law also provides for ongoing professional training, enhancing competencies and qualifications of civil servants. The level of professional competence of civil servants is enhanced during their service, including advanced training – at least once in three years.

Implementation

Despite provisions that appear effective, the law is oftentimes amended. Over the last three years, the law has been amended 17 times. Civil society experts who were interviewed noted that such amendments violate the principle of legal certainty and permanence of the civil service,¹⁰³ which harms the formation and implementation of public policy in this area.

Civil Service Competitions

Unified Portal of Civil Service Vacant Positions

The established requirements for the proper publication of all civil service vacancies are met at a high level. All announcements together with information about the competition are

⁹⁹ <https://zakon.rada.gov.ua/laws/show/246-2016-%D0%BF#n10>, (access date: 10.09.2023).

¹⁰⁰ <https://zakon.rada.gov.ua/laws/show/246-2016-%D0%BF#n10>, (access date: 10.09.2023).

¹⁰¹ National Agency of Ukraine on Civil Service, (May 19, 2022), During the period of martial law, a simplified procedure for entering public service positions is provided, <https://nads.gov.ua/news/u-period-diyi-voyennogo-stanu-peredbacheno-sproshchenu-proceduru-vstupu-na-posadi-publichnoyi-sluzhbi>, (access date: 10.09.2023).

¹⁰² It is mandatory for the competition for the “A” category positions, but for the competition for the “B” or “C” categories positions, it is carried out only by the decision of the competition commission, <https://zakon.rada.gov.ua/laws/show/246-2016-%D0%BF#n10>, (access date: 10.09.2023).

¹⁰³ J. Balabeniuk, former member of the Public Council at the National Agency, PhD in Human Resource Management and CEO of R&C Kyiv Group LLC. Interview with T. Riabchenko, October 19, 2021.

published on the Unified Portal of Civil Service Vacant Positions.¹⁰⁴ It allows for real-time tracking of the vacancies available in all government agencies. It provides an opportunity to submit documents for participation in the competition in electronic form. The portal also allows you to go through individual stages of the competition (e.g., tests). All of this combined contributes to the transparency and openness of competitions. Despite sufficient technical facilities for applying documents through the Unified portal, state bodies carry out consideration and approval of these documents in different terms. Some public bodies confirm the package of documents in a few days, but others can do it in a week.

The NACS also creates conditions for improving the use of the portal's functions. For its part, in 2018, to reduce the number of formal refusals to accept documents, the NACS issued a practical guide on mistakes typically made in submitting documents of candidates for vacant "A" category civil service positions.¹⁰⁵ Training in the use of the portal was conducted twice in 2021.¹⁰⁶ As of the end of September 2023, the portal is not functioning due to the war. Additionally, the announcements are published on the website of a state body where the competition was announced, and on other job search websites.¹⁰⁷

The published announcement of the competition shall specify all the necessary conditions, including the job responsibilities of a candidate; terms of remuneration; requirements for the professional competence of a candidate; a clear list of documents required for participation in the competition, and the deadline for their submission. The experts are convinced that despite a detailed list of conditions for entering the civil service, there are cases when a person may be faced with functional responsibilities for which they are not ready. This may cause the dismissal of the civil servants in prospect.¹⁰⁸

Peculiarities of conduction of competitions for civil service positions

The characteristic features of competitions for the civil servants in Ukraine are simplified access to the civil service and unified competition procedures. The latter factor in some cases has a negative impact on the competition. The open competition procedure has been changed due to the COVID-19 pandemic. The conduction of competitions has been temporarily terminated by the corresponding law.¹⁰⁹ For the period of quarantine instead of general competitions, for almost one whole year, a special selection procedure was used, specifically, the conclusion of fixed-term contracts. They were concluded based on the interviewing results, without any legal

¹⁰⁴ <https://career.gov.ua/>. Temporary unavailable due to the war in Ukraine.

¹⁰⁵ National Agency of Ukraine on Civil Service, (2018), Practical guide "typical problems that arise during the submission of documents by candidates for vacant civil service positions of category "a", <https://nads.gov.ua/storage/app/sites/5/Komisija%20A/zrazku%20document/posibnyk.pdf>, (access date: 10.09.2023).

¹⁰⁶ The response of the National Agency for Civil Service to the request of the ILI dated 20.08.2021.

¹⁰⁷ Home pages of job search websites, <https://www.work.ua/>, (access date: 10.09.2023) ; <https://robota.ua/>, (access date: 10.09.2023) ; <https://jobs.ua/>, (access date: 10.09.2023) ; <https://olx.ua/>, (access date: 10.09.2023).

¹⁰⁸ J. Balabeniuk, former member of the Public Council at the National Agency, PhD in Human Resource Management and CEO of R&C Kyiv Group LLC. Interview with T. Riabchenko, October 19, 2021.

¹⁰⁹ <https://zakon.rada.gov.ua/laws/show/553-20#Text>, (access date: 10.09.2023).

or regulatory criteria for the interview. Almost 20,000 people (approximately 10% of the total number of civil servants) were hired to the civil service without competitive selection).¹¹⁰

Although contracted persons are subject to open competition, the equality of all participants is not ensured. New candidates are in unequal conditions compared to those who have previously worked in the body. This can be seen for instance by the extra-selection procedure applied to the state secretaries of ministries. In four ministries, the state secretaries were appointed by the extra-selection procedure in 2020 and in 2021, all of them were appointed based on the results of already open competitions.¹¹¹ This was deemed a negative period by the experts interviewed for this report, as it was possible to recruit people who, in the case of open procedures, could not complete all the necessary stages of the competition. But there is a safeguard that the new employee may hold the position until the winner of the competition is appointed to the position or until the expiry of the 12-month period after the end or cancellation of martial law.

In 2021, competitions for the civil service were resumed.¹¹² After the resumption of competitions in Ukraine, two procedures operated in parallel, namely regular competitions and competitions for “additional selection” for vacant positions (so-called “dobirna vakansii”, where a contract is concluded). The number of competitions held in 2021 demonstrates a constant need for staff in the public sector.¹¹³ With the outbreak of a full-scale war in Ukraine, the procedure for holding competitions was again simplified. Most competitions are held without submission of declarations and documents proving proficiency in the official language. At the same time, for positions in some agencies (e.g., National Anti-Corruption Bureau of Ukraine (NABU) or Specialized Anti-Corruption Prosecutor's Office (SACPO)), the competition is open with all documents submitted. On the one hand, it increases the transparency and impartiality of the competition, but on the other hand, potential candidates face difficulties in preparing all the necessary documents.

In general, the experts interviewed for this report express their concerns over competitions (including the temporary extra-selection procedure). In particular cases, existing competition procedures can be bypassed, and it is possible to appoint a person, even if she or he is less qualified than other candidates. The extra-selection procedure only simplified these opportunities. Professionalism and candidates' position suitability are also questionable. The reasons are both the unwillingness of citizens to go into the civil service and the lack of state-employer branding.¹¹⁴ The experts suggest possible safeguards against non-transparent competitions. One of these may be to prevent candidates from being admitted to the

¹¹⁰ Mirror of the Week, (May, 2021), The agency of lost time, <https://zn.ua/ukr/internal/ahentstvo-vtrachenoho-chasu.html>, (access date: 10.09.2023).

¹¹¹ V. Derets, Scientist, analyst, author of publications on public administration, member of the Public Council at the National Agency of Ukraine on Civil Service. Interview with T. Riabchenko, October 28, 2021.

¹¹² <https://zakon.rada.gov.ua/laws/show/1285-20#n34> (access date: 10.09.2023).

¹¹³ Thus, during this period, 57208 competitions were announced, including: 291 – “A” category. 14735 – “B” category. 42182 – “C” category. National Agency of Ukraine on Civil Service, NAAU-2021. Results in facts and figures - Kyiv: NAUCS, 2022, 49 pages, <https://nads.gov.ua/storage/app/sites/5/01.03.2022/zvit-2022.pdf>, (access date: 10.09.2023).

¹¹⁴ J. Balabeniuk, former member of the Public Council at the National Agency, PhD in Human Resource Management and CEO of R&C Kyiv Group LLC. Interview with T. Riabchenko, October 19, 2021.

competition at the stage of acceptance of documents if they do not meet the established requirements. To do this it is necessary, firstly, to check candidates' documents to evaluate the person's suitability for a position, and, secondly, to introduce any selective external control over competitions and the individuals going through them.¹¹⁵

Peculiarities of competitions for individual positions

In 2019, to improve the quality and integrity of the selection of candidates for civil service positions, particularly for certain civil service positions ("A" category, reform specialists, and candidates for NACS), the Center for Evaluation of Candidates for Civil Service Positions was established ("Center").¹¹⁶ Despite the war, the Center organised 132 competitions (in terms of testing) for civil service positions, involving a total of 2,409 candidates.¹¹⁷ The Center allowed to unify competitions, improve quality and transparency of each individual stage of the competition, and to create equal conditions for participants. Further actions need to be taken to expand the center's capacity as well as expanding the coverage of candidates for civil service to include other public authorities.

Competitions for positions of directors of independent bodies (e.g., NACP, NABU, SACPO, etc.) were held according to one of two models. One model was with domination of international experts' opinion, and the other with prevailing of decision made by experts delegated by the state. The most trusted competitions are those that ensure the predominant influence of international experts. The competition for the position of the NACP Head, that we mentioned in Article 6, is an example. At the same time, competitions in which the state-delegated members of the competition commission have a big or decisive influence on the competition result have been criticized; such competitions have proved to be inefficient. Recently held competitions for the hiring of the director of the Asset Recovery and Management Agency,¹¹⁸ Bureau for Economic Security, and the commissioner of National Energy and Utilities Regulatory Commission, demonstrated in real life how to appoint the "right" person with personal or political links, rather than the most competent candidate.¹¹⁹ Some positions with high corruption risks (in a broad sense) are elected or appointed, i.e., those held without open competitions (Prosecutor General, Head of the Antimonopoly Committee of Ukraine (AMCU),

¹¹⁵ J. Balabeniuk, former member of the Public Council at the National Agency, PhD in Human Resource Management and CEO of R&C Kyiv Group LLC. Interview with T. Riabchenko, October 19, 2021.

¹¹⁶ National Agency of Ukraine on Civil Service, Page on the Center for Evaluation of Candidates for Civil Service Positions on the official website of the NAUCS, <https://nads.gov.ua/diyalnist/centr-ocinyuvannya-kandidativ-na-zainyattya-posad-derzhavnoyi-sluzhbi>, (access date: 10.09.2023).

¹¹⁷ National Agency of Ukraine on Civil Service, Public Report of the Head of the National Agency of Ukraine on Civil Service for 2022 - Kyiv: NAUCS, 2023 - 40 pages, <https://drive.google.com/file/d/12lqCKmRz6NkU-OqG2-JOUSKSbtlqLzz0/view>, pg. 29, (access date: 10.09.2023).

¹¹⁸ The competition for the Head of ARMA lasted several years. Only in June 2023 was the Head appointed, however, the transparency of the competition and the candidacy of the Head have raised questions from the public and Ukraine's international partners. Ukrinform, (June, 2023), Commentary by G7 Ambassadors on the appointment of the Head of ARMA: It is important to follow procedures, <https://www.ukrinform.ua/rubric-polytics/3729850-posli-krain-g7-pro-priznacenna-golovi-arma-vazlivo-dotrimuvatis-procedur.html>, (access date: 10.09.2023) ; Suspilne.Novyny, (June 2023), The Cabinet of Ministers appoints Olena Duma as head of the ARMA, <https://suspilne.media/519215-kabmin-priznaciv-olenu-dumu-golovou-arma-nardep/>, (access date: 10.09.2023).

¹¹⁹ Bihus.Info, (2021), Talent show from the Presidential Office. Yarmak and Chotkyi Patsa will show how to (not) elect top officials, <https://www.youtube.com/watch?v=S1a2m4ma3lQ>, (access date: 10.09.2023).

State Property Fund of Ukraine (SPFU), Chief of the National Police, etc.). This method of appointment negatively affects the transparency and independence of the related bodies.

Peculiarities regarding dismissal from civil service and appealing the results of competitions

There are certain specifics regarding dismissals from the civil service. In 2019, the Labor Code was supplemented by an article that allowed the CMU to dismiss “A” category civil servants without specifying the grounds for such dismissal. Owing to that, in 2020, the heads of State Tax and Customs Services, as well as other officials, were dismissed. Instead of the dismissed, other persons were appointed without holding a competition (as the extra-selection procedure was in place). According to the experts, it violated the principles of permanence of the civil service and the independence of the personnel of the civil service from changes in the political leadership of the state, negated the progress already achieved in civil service over the past three years¹²⁰. In 2021, the article was abolished. As of 2023, the abuse of the right to civil service can only be challenged in court. According to the interviewed experts, this situation puts civil servants at a disadvantage and deprives them of the opportunity to more quickly appeal and protect their rights, as the judicial system in Ukraine is overloaded and cannot quickly defend the interests of civil servants. Appealing to court costs money and is time-consuming; moreover, unwillingness to challenge the competition results in a body where a person can be possibly working in the future, if the appeal is successful, does not in any way motivate future civil servants to appeal competitions in court.¹²¹

Education and advanced training of civil servants

The NACS is responsible for the advanced training of civil servants. Within these powers, the NACS:

- Created the Knowledge Management Portal¹²² to ensure the professional development of civil servants, heads of local state administrations, their deputies, officials of local self-government. As of 2022, the site contained 1493 advanced training programs including the English courses and anti-corruption ones, and 72 master’s degree educational programs.¹²³ In total, almost 95 thousand registered users, 121 educational institutions, 16 projects/programmes of the Ministry of International Development and other NGOs.
- Supports the activities of the Ukrainian School of Governance (the USG), i.e. an institution of postgraduate education that is managed by the NACS. The interviewed experts argue that the USG needs to be reformed and improve the quality of services it provides to civil servants.¹²⁴ The USG should focus on providing more practical and hands-on training, as well as on developing a more rigorous curriculum. They also

¹²⁰ V. Derets, Scientist, analyst, author of publications on public administration, member of the Public Council at the National Agency of Ukraine on Civil Service. Interview with T. Riabchenko, October 28, 2021.

¹²¹ J. Balabeniuk, former member of the Public Council at the National Agency, PhD in Human Resource Management and CEO of R&C Kyiv Group LLC. Interview with T. Riabchenko, October 19, 2021.

¹²² Home page of the Knowledge Management Portal on the official website of the NAUCS, <https://pdp.nacs.gov.ua/pages/about>, (access date: 10.09.2023).

¹²³ See National Agency of Ukraine on Civil Service, Public Report of the Head of the National Agency of Ukraine on Civil Service for 2022 – Kyiv: NAUCS, 2023, pg. 20.

¹²⁴ J. Balabeniuk, former member of the Public Council at the National Agency, PhD in Human Resource Management and CEO of R&C Kyiv Group LLC. Interview with T. Riabchenko, October 19, 2021.

V. Derets, Scientist, analyst, author of publications on public administration, member of the Public Council at the National Agency of Ukraine on Civil Service. Interview with T. Riabchenko, October 28, 2021.

believe that the USG should be more transparent and accountable to its stakeholders. By making these reforms, the USG can play a more effective role in improving the quality of governance in Ukraine.

In addition to the NACS, the state provides a master’s degree program in Public Administration at the National Academy of Public Administration under the President of Ukraine (“NAPA”).

The interviewed experts believe that despite the reform of the NAPA, its negative approaches to training and retraining have been not changed.¹²⁵ In general, the interviewed expert note the low quality of civil servants' training, arguing that approaches to training are outdated.¹²⁶ The courses conducted mostly do not provide new information, but rather teach what civil servants already know. Numerous training materials and certificates do not reflect the quality of such training. At the same time, there is no research on the effectiveness of the conducted training materials. Moreover, it is worth mentioning that the obligatory training of civil servants on issues of corruption prevention. However, the interviewed experts underline that, given the formal approaches to their conduct, the level of understanding of the materials and the effectiveness of their application in practice remain low.

Table 6: Summary of Article 7.1

	Evaluation	Comments
Implementation through national legislation	Fully compliant	National legislation of Ukraine is consistent with the civil service standards enshrined in Article 7.1 of the UNCAC. Competitions for vacant civil service positions are set forth to be transparent.
Practical enforcement	Moderate enforcement	The absence of competitions during the COVID-19 pandemic and the full-scale invasion of Russia had a negative impact on the civil service. Separate competitions for higher positions were held in violation of the law. There are still shortcomings with the training of civil servants, as it is often not effective.

¹²⁵ V. Derets, Scientist, analyst, author of publications on public administration, member of the Public Council at the National Agency of Ukraine on Civil Service. Interview with T. Riabchenko, October 28, 2021.

¹²⁶ J. Balabeniuk, former member of the Public Council at the National Agency, PhD in Human Resource Management and CEO of R&C Kyiv Group LLC. Interview with T. Riabchenko, October 19, 2021.

Good practices

- Competitions for civil servants are open and public.
- There is an independent body responsible for competitions for civil service positions of higher categories.
- International experts and civil society are involved in some competition commissions.
- Audio and video recording and open access to videos of competitions.

Deficiencies

- During the COVID-19 pandemic and full-scale invasion of Ukraine by Russia, no competitions were held.
- There is a lack of an accessible non-judicial system for appealing competition results. Thus, the rights of civil servants may be infringed.
- Many competitions for important government positions are not held because they are appointed.
- The quality of the system of training and advanced training of civil servants is insufficient.
- The possibility to appoint the “right” people with personal and political connections as opposed to the most qualified candidate to positions prevails and is taken advantage of even within open competitions.

4.1.4 Article 7.3 – Political Financing

Legal framework

The Law on Political Parties¹²⁷ is the main law governing the financing of political parties in Ukraine. In particular, it defines the main ways of financing political parties, limits of funding, and sets out reporting and control requirements. In turn, the detailed regulation of election campaigns is stipulated by the Electoral Code of 2019.

Requirements for Funding of Political Parties

According to the law, a political party is a non-profit organization, i.e. it can only spend money to carry out its statutory activities. Two possible sources of income for political parties are voluntary contributions to support the party and state funding. The Law on Political Parties clearly defines the term “contribution to support a political party” and sets out an exhaustive list of restrictions on receiving such contributions. In particular, the contributions are prohibited to be paid by the following entities: State authorities and state-owned enterprises; a legal entity whose ultimate beneficiary is a high-ranking official (with certain exceptions); a citizen, legal entity or state of a foreign country; a citizen of Ukraine under the age of 18; a legal entity providing state authorities with services, goods or works in the sum of more than EUR 3700. It is forbidden to make anonymous contributions, to donate more than EUR 75000 by an individual, and EUR 150000 by a legal entity during the year, etc. Contributions paid by several

¹²⁷ <https://zakon.rada.gov.ua/laws/show/2365-14#Text> (access date: 10.09.2023).

legal entities owned by one beneficiary owner are considered one contribution. Contributions in the form of works, goods, and services are allowed.

To ensure compliance with these restrictions and transparency of the parties' activities, regular reporting and annual audits (internal for all parties and external for those receiving state funding) are required. The party's report is submitted to the NACP each quarter and contains information on funds available on all accounts, securities, real estate, vehicles, etc.; contributions made in any form, as well as other funds received by a party; payments and expenses; and financial liabilities. Reports of political parties are publicly available and have been published in a special POLITDATA¹²⁸ register since May 2021. The reports are verified by the NACP. Administrative and criminal liability is provided for violation of the established rules.

Implementation

Reporting of Political Parties

Quarterly reports by political parties are a key tool for checking political finances. Until May 2021, each political party submitted its reports to the NACP in two forms, namely, in electronic (PDF and XLS) and paper form. The NACP, in turn, published these reports on its website (in PDF and XLS formats). Despite their openness and accessibility, this reporting format had several shortcomings. The reports published on the website were massive and often of poor quality. Interviewed experts¹²⁹ emphasize that their processing took a lot of resources and time because before the direct analysis the reports had to be unified, cleaned, and digitized.¹³⁰ Paper reports, in turn, were very large and required a significant amount of paper. For example, to print a report of one fairly large political party it was necessary to consume 70-80 packs of A4 sheets of paper. Transporting such a report to the NACP required several cars or one truck.¹³¹

In May 2021, the situation radically changed when the NACP fully launched the electronic system POLITDATA¹³² for reporting by political parties. Its launch significantly increased transparency in political funding. On the one hand, civil society was now able to check the

¹²⁸ POLITDATA, (May, 2021), electronic resource, developed by the NACP, for simplifying, facilitating, and saving resources when political parties submit their reports. NACP. Notification on the commissioning of the POLITDATA register, <https://nazk.gov.ua/uk/novyny/revestr-politdata-u-promyslovij-ekspluatatsiyi-vid-sogodni-nazk-pryimatyme-zvity-partij-za-2021-rik-lyshe-v-elektronnomu-vyglyadi/>, (access date: 10.09.2023).

¹²⁹ O. Kotsiuruba, Senior Legal Advisor, Civil Network OPORA. Interview with T. Khutor and Y. Shvab, September 16, 2021 and I. Feshchenko, Leading Political Finance Analyst, CHESNO Movement. Interview with T. Khutor and Y. Shvab, August 30, 2021.

¹³⁰ Movement Chesno, (July, 2020), What about the electronic register of parties' financial statements, <https://www.chesno.org/post/4135/> (access date: 10.09.2023).

¹³¹ A post on the Facebook page of the Chesno Movement about the amount of paper required for one report of a political party (11.11.2019), https://www.facebook.com/chesno.movement/posts/2716024135103944?comment_id=2716325885073769 (access date: 10.09.2023).

¹³² POLITDATA – electronic resource, developed by the NACP, for simplifying, facilitating, and saving resources when political parties submit their reports. NACP. Notification on the commissioning of the POLITDATA register (11.05.2021), <https://nazk.gov.ua/uk/novyny/revestr-politdata-u-promyslovij-ekspluatatsiyi-vid-sogodni-nazk-pryimatyme-zvity-partij-za-2021-rik-lyshe-v-elektronnomu-vyglyadi/>, (access date: 10.09.2023).

report in a shorter time and more efficiently due to the fact that information is accessible and unified, and on the other hand, political parties save their resources and time when submitting their reports. Unlike the usual posting of copies of reports on the NACP website, POLITDATA provides for automatic processing of such information. In particular, in addition to displaying reports in XLS format, POLITDATA provides information in the form of statistical and practical data with a search engine to find the required report.¹³³ All data in POLITDATA is placed in the open data format, particularly in API (machine-readable format), which greatly simplifies working political party reports out by the public. Since 2021, political party reports are submitted exclusively in the electronic form to POLITDATA.¹³⁴ For this purpose, political parties and their branches are registered in the system. As of September 2021, 112 political parties (out of more than 600) have been registered with POLITDATA, and 31 reports have been submitted.¹³⁵ After the full-scale invasion of Russia, since February 24, 2022, access to the public part of POLITDATA has been restricted to protect the data of parties and other users under martial law.¹³⁶ As of September 2023, access remained restricted. The head of the NACP has declared his desire to improve the work of the portal.¹³⁷

Despite the increasing transparency in political financing, political parties have the right not to submit such reports at the time of writing of this report. In April 2020, a law, that postponed the submission of reports by parties until the end of the quarantine imposed by the COVID-19 pandemic, entered into force. Taking such measures looks more like the whim of political parties than an urgent need since the quarantine hardly poses any obstacle to submitting such reports. And on March 7, 2022, the Law of Ukraine On protection of the interests of those submitting reports and other documents during martial law or a state of war¹³⁸ came into force. The law stipulates that, among other reporting documents, party reports must be submitted within three months after the end or termination of martial law or a state of war for the entire period of non-reporting.¹³⁹ Thus, parties have been able to avoid submitting their reports for more than three years now. Because of this, the public has not known how much money was spent for the local elections held in October 2020, and how political parties spent state funds.

¹³³ <https://politdata.nazk.gov.ua/#/reports> (access date: 06.06.2024).

¹³⁴ See National Agency on Corruption Prevention, Notification on the commissioning of the POLITDATA register (11.05.2021) (access date: 10.09.2023).

¹³⁵ National Agency on Corruption Prevention, 69 parties and 1,811 of their regional branches have been registered by POLITDATA since the beginning of the Registry's work (20.07.2021), <https://nazk.gov.ua/uk/novyny/politychna-koruptsiyava-novyny/69-partij-ta-1-811-yihnih-regionalnyh-oseredkiv-zareyestruvalysya-politdata-vid-pochatku-roboty-reyestru/> (access date: 10.09.2023).

¹³⁶ National Agency on Corruption Prevention, (February, 2022), Access to the public part of the Register of Declarations, the POLITDATA Register of Party Reports and the Register of Corrupt Officials is restricted, <https://nazk.gov.ua/uk/novyny/dostup-do-publichnoyi-chastyny-reyestru-deklaratsij-reyestru-zvitiv-partij-politdata-ta-reyestru-koruptsioneriv-obmezheni/>, (access date: 10.09.2023).

¹³⁷ The National Agency on Corruption Prevention plans to improve the POLITDATA register of political party reports and increase the level of digitalization in the country (May 8, 2023), <https://nazk.gov.ua/uk/novyny/pro-nazk/nazk-planuye-udoskonalyty-reyestr-zvitiv-politychnyh-partij-politdata-ta-pidvyshhyty-riven-tyfrovizatsiyi-v-krayini/>, (access date: 10.09.2023).

¹³⁸ <https://zakon.rada.gov.ua/laws/show/2115-20#Text>, (access date: 10.09.2023).

¹³⁹ National Agency on Corruption Prevention, (May, 2022), National Agency on Corruption Prevention clarification: when political parties have to submit property reports due to martial law, <https://nazk.gov.ua/uk/novyny/roz-yasnennya-nazk-koly-politychni-partiyi-mayut-podaty-majnovi-zvity-zvazhayuchy-na-diyu-voyennogo-stanu/>, (access date: 10.09.2023).

On 26 September 2023, the President of Ukraine signed the Law that restores the obligation of all political parties to report on their finances and property, as well as the functions of the NACP to verify these reports. The law specifies that parliamentary parties will be obliged to submit previously unsubmitted reports (for 2020-2023) on property, income, expenses and financial liabilities within 90 days after the law comes into force. Other political parties will have to report 120 days after the law comes into force. The law also sets a 90-day deadline for the NACP to verify reports. It is worth noting that due to the pause in reporting for almost three years, the NACP has faced a number of problems since the agency has a large number of reports at once, which will not allow them to be processed qualitatively due to the short deadlines for inspections. Secondly, those political parties that reported during the quarantine period and war period may be in a worse position than others because their reports can attract more attention from the NACP and the public.¹⁴⁰

The reports on election campaign funds are published on the websites of NACP, Central election commission (CEC), Territorial election commissions (TEC), etc. in pdf and xls formats. Despite the launch of the electronic system, the submitted reports will not be placed on POLITDATA. Such an approach leads to the same shortcomings as those related to the quarterly reports happening before, specifically, their processing will take a long time and require resources. It is unlikely to result in effective state and public control of election campaigns finance.

The level of openness and accessibility of the reports on local election campaign funds are low. There are no problems with this in the national elections (president and parliament), and the CEC and NACP publish election campaign reports in a timely and complete manner;¹⁴¹ however, the situation is worse in local elections. The public monitored the publication of reports by political parties and candidates in 15 major Ukrainian cities during the local elections in 2020. The results found that local branches of political parties did not publish 55% of their final financial reports. In turn, mayoral candidates published only 44% of all reports.¹⁴² The quality of inspections of reports is also poor. The results of a sample analysis conducted by the public showed that a significant part of TECs did not check any report, although, in situations where the checks were conducted, they were of declarative nature.¹⁴³ Experts believe that this problem arises because TECs are much busier with vote counting and processing of election results, and thus do not have enough capacity to properly audit financial statements.¹⁴⁴

Financing of Political Parties

¹⁴⁰ O. Kotsiuruba, Senior Legal Advisor, Civil Network OPORA. Interview with T. Khutor and Y. Shvab, September 16, 2021 and I. Feshchenko, Leading Political Finance Analyst, CHESNO Movement. Interview with T. Khutor and Y. Shvab, August 30, 2021.

¹⁴¹ O. Tymoshchuk, Lawyer at the Center for Democracy and Rule of Law, N. Shuvar, Lawyer, researcher at the Center for Democracy and Rule of Law. Interview with T. Khutor and Y. Shvab, September 14, 2021.

¹⁴² Opora, Experts discussed the problems of electoral finance to develop solutions at the parliamentary working group (April, 2021), <https://oporaua.org/news/vybory/23034-eksperti-obgovorili-problemi-viborchikh-finansiv-shchob-napratsiuвати-yikh-virishennia-na-parlamentskii-robochii-grupi>. (access date: 11.09.2023).

¹⁴³ See Opora, Experts discussed the problems of electoral finance to develop solutions at the parliamentary working group (22.04.2021) (access date: 10.09.2023).

¹⁴⁴ O. Kotsiuruba, Senior Legal Advisor, Civil Network OPORA. Interview with T. Khutor and Y. Shvab, September 16, 2021.

Despite of the openness of financial statements of political parties and the ability to control everything incoming to the party's budget, it cannot be said that political parties in Ukraine are fully transparent. It is almost impossible to understand who finances political parties and how big the financing is. Legislative requirements for party financing can be easily circumvented with the help of developed schemes, the most popular of which are described below.

1) *Use of fictitious donors.* This scheme is as follows: a person who is interested in financing a political party hands the cash over to another person (he or she is called "pidstavna osoba"). This person, in turn, transfers, identifying his or her name, the money to the party's bank account and receives a reward for such a transaction. Given that the maximum sum of a voluntary contribution paid by an individual is EUR 75000, it is not necessary to involve many fictitious donors to transfer big money. According to experts, besides fictitious "poor" donors (whose insolvency can be easily proven), there are also schemes with fictitious "rich" donors. That means that political parties are looking for people who can easily explain the legality of their earnings and use them to fund political parties. For example, one party received funds directly from the top management of large Ukrainian companies owned by an oligarch.¹⁴⁵

2) *Use of fictitious legal entities.* This scheme is similar to the previous one, but legal entities are used instead of individuals. For example, in 2019, one of the largest political parties in Ukraine received approximately EUR 90,000 from two companies that were registered by one person a month before the transfer. The ruling party used a similar scheme.¹⁴⁶ Experts note that there are cases when the amount of donation paid by a legal entity is equal to (or even less than) its total annual revenue¹⁴⁷. Due to the financing of political parties by legal entities, it is possible to evade the restrictions imposed on financing made by foreign citizens. For example, a foreign citizen can invest in a legal entity registered in Ukraine, and the latter, in turn, can legally finance the party.¹⁴⁸

Financing of Election Campaigns

There are also many ways for political parties to hide their income and expenditures during election campaigns. For example:

1) *Use of public organizations with the same name as a political party.* To implement this method, there must be an NGO registered with the same name as a political party. Then the NGO finances political advertising and pays salaries to employees, advertisers, and the political party's staff. The political party does not report on these expenses, as they were, de

¹⁴⁵ I. Feshchenko, Leading Political Finance Analyst, CHESNO Movement. Interview with T. Khutor and Y. Shvab, August 30, 2021.

¹⁴⁶ Movement Chesno on party funding, (February, 2020), "Batkivshchyna" financed by companies with signs of fictitiousness for 3 million, <https://www.chesno.org/post/3843/>. (access date: 11.09.2023).

¹⁴⁷ O. Kotsiuruba, Senior Legal Advisor, Civil Network OPORA. Interview with T. Khutor and Y. Shvab, September 16, 2021 and I. Feshchenko, Leading Political Finance Analyst, CHESNO Movement. Interview with T. Khutor and Y. Shvab, August 30, 2021.

¹⁴⁸ O. Kotsiuruba, Senior Legal Advisor, Civil Network OPORA. Interview with T. Khutor and Y. Shvab, September 16, 2021.

jure, carried out by a separate legal entity. For example, such a scheme was actively used during the local elections in 2020¹⁴⁹ and the parliamentary elections in 2019.¹⁵⁰

2) *Concealment of expenses on social media advertising.* The popularity of political advertising on social media is growing rapidly. According to civil society estimates, in the first half of 2020, politicians spent about USD 850000 on Facebook advertising, and USD 1.2 million for the same period in 2021.¹⁵¹ Despite such high expenses, political parties mostly did not report on it.¹⁵² As a result, a huge amount of money spent on election campaigns remains in the shadows. Experts interviewed for this report note that in practice there are several shortcomings in reporting the cost of advertising on social media, and among them are:

- Lack of a convenient way to pay for advertising from the election campaign fund account. It happens due to the inability of legal entities to pay for advertising on Facebook, and due to the lack of official representative office in Ukraine;¹⁵³
- Lack of a separate category of expenditures in the forms of final and interim reports approved by the CEC.¹⁵⁴ Experts believe that the form of reports should be further detailed, as currently the “other expenses” column covers a significant number of possible transactions that need to be allocated separately.
- Shadow cash used by political parties during election campaigns is widespread. A large amount of money is spent on the salaries of political party observers and polling stations staff, which is paid in envelopes (without declaration and taxation).¹⁵⁵ One of the interviewed experts estimates that about half a million people are needed to organize the election campaign.¹⁵⁶ Accordingly, one can only imagine the scale of this practice.

Liability for violation of requirements of the law

The widespread use of the described schemes is possible for several reasons, but the main one, in our opinion, is the avoidance of prosecution, and petty sanctions for violations of the law. In addition to the general problems of administrative liability that we described in Article 7.4, 8.1 and 8.4, the cases of violations of the requirements for financing a political party and election campaigns have certain peculiarities. The effectiveness of bringing to administrative liability for violation of political parties (election campaigns) funding and reporting (“cases of

¹⁴⁹ Gromadske.Volyn, (March, 2021), "Svidomi" party campaigned for several months through NGOs and did not show this in the party report, <https://hromadske.volyn.ua/svidomi-kil-ka-misiatsiv-vely-kampaniiu-cherez-ho-i-ne-pokazaly-ts-oho-u-partiynomu-zviti/>, (access date: 11.09.2023).

¹⁵⁰ Chesno Movement on party funding, (April, 2020), Non-profit NGOs financed parties for UAH 25.6 million. Unofficially, it is much more, <https://www.chesno.org/post/3923/>, (access date: 11.09.2023).

¹⁵¹ Chesno Movement on on campaign finance, (August, 2021), Politicians' spending on social media advertising increased by a third in 2021, <https://www.chesno.org/post/4853/>, (access date: 11.09.2023).

¹⁵² Chesno Movement on political advertising, (September, 2020), How to pay for social media advertising from the election fund and how to report on it? <https://www.chesno.org/post/4217/>, (access date: 11.09.2023).

¹⁵³ O. Kotsiuruba, Senior Legal Advisor, Civil Network OPORA. Interview with T. Khutor and Y. Shvab, September 16, 2021.

¹⁵⁴ Movement Chesno on political advertising, how to pay for social media advertising from the election fund and how to report on it?

¹⁵⁵ See Opora, Experts discussed the problems of electoral finance to develop solutions at the parliamentary working group (22.04.2021) and O. Kotsiuruba, Senior Legal Advisor, Civil Network OPORA. Interview with T. Khutor and Y. Shvab, September 16, 2021.

¹⁵⁶ I. Feshchenko, Leading Political Finance Analyst, CHESNO Movement. Interview with T. Khutor and Y. Shvab, August 30, 2021.

political parties”) is extremely poor. Courts dismiss most of the cases, impeding bringing to justice. According to information provided by the NACP, in 2020, courts dismissed 299 cases, that is 88% of all the cases heard in courts. Among them, 198 cases (66%) were dismissed on the grounds of the expiry of procedural deadlines, 81 cases (27%) because of the absence of the offense, and 8 cases (2,7%) due to minor insignificance. The tendency of closing cases goes up, particularly in 2018, courts closed 77% of cases, but, in 2019, they closed 82% of cases.¹⁵⁷ Factually, administrative liability is enforced in 12% of cases, and even when it happens, the sanctions impede prevention because, in 2020, the average fine imposed by court resolution was EUR 144.¹⁵⁸ Among the main shortcomings appearing in the consideration of this category of cases by courts (except for the general shortcomings that are inherent in all administrative cases), the interviewed experts note:

- A lack of a clearly defined subject of the administrative offense responsible for submitting the report of the political party, and the place of commission of such an offense, which affects the jurisdiction of such cases;¹⁵⁹
- An insufficient time limit (24 hours) set for drawing up a report, starting from the moment when the person who committed an offense was identified;
- Absence of a deadline during which the NACP representatives are obliged to send the report to the court after the report is drawn up;
- Ambiguity of court practice regarding the return of case materials in case of violation of jurisdiction, etc.¹⁶⁰

The situation with the effectiveness of criminal prosecution is even worse. In particular, in 2020, the NACP sent 22 notifications to the police about the detection of the facts of a criminal offense, as a result of which 11 proceedings were opened, but those cases did not reach the court. And for the whole time of existence of the article of the Criminal Code (since 2006), there was only 1 court case proceeding with a guilty verdict.¹⁶¹

Table 7: Summary of Article 7.3

	Evaluation	Comments
Implementation through national legislation	Fully compliant	National legislation of Ukraine is consistent with the political funding standards provided by Article 7.3 of the UNCAC. Well-grounded

¹⁵⁷ National Agency on Corruption Prevention, National Report on the Implementation of Anti-Corruption Policy in 2020 (2021), https://nazk.gov.ua/wp-content/uploads/2021/06/NAZK_Nats.dopovid_15_06.pdf (access date: 11.09.2023), p. 22-23.

¹⁵⁸ See National Agency on Corruption Prevention, National Report on the Implementation of Anti-Corruption Policy in 2020 (2021), p.23.

¹⁵⁹ O. Kotsiuruba, Senior Legal Advisor, Civil Network OPORA. Interview with T. Khutor and Y. Shvab, September 16, 2021.

¹⁶⁰ Opora, Legal analysis of the support on the problems of legislative regulation of electoral finance, court practice and recommendations (22.04.2021), <https://www.oporaua.org/news/vybory/23033-iuridichnii-analiz-opori-shchodo-problem-zakonodavchogo-reguluvannia-viborchikh-finansiv-sudova-praktika-ta-rekomendatsiyi>, (access date: 11.09.2023).

¹⁶¹ See Opora, Legal analysis of the support on the problems of legislative regulation of electoral finance, court practice and recommendations (22.04.2021).

		limitations on financing political parties and election campaigns, as well as state funding of political parties and their reporting, are set by the laws.
Practical enforcement	Moderate enforcement	Legal requirements are not always properly implemented. The requirements for the financing of political parties and election campaigns can be easily evaded by a number of schemes. Nevertheless, transparency and accessibility of the reports, submitted by political parties, make it possible for civil society to detect such misconduct and monitor political funding. The reporting obligation of political parties was temporarily suspended during the quarantine and martial law, but will be resumed in the near future. The public and state authorities will be able to control budget expenditures for several years at once, but due to the large amount of material, there are concerns about the low quality of the audits. Extremely low efficiency of criminal and administrative liability for violation of political financing law requirements does not ensure bringing lawbreakers to justice.

Good practices

- The introduction of the electronic system for submitting political party reports (POLITDATA) has significantly increased the transparency and accessibility of information on political party financing.
- State funding of political parties is provided at a proper level.
- NACP's control over party finances is efficient and of proper quality.

Deficiencies

- Political parties have been able to avoid submitting their reports for more than three years.
- Reports of local election campaign funds are practically not published and are not checked by the regulatory bodies.
- Legislative requirements and restrictions on the financing of political parties and election campaigns can be easily circumvented. There are a number of common ways to do this.
- Shortcomings of the mechanism for holding those breaking the law to justice allow offenders to evade responsibility.

4.1.5 Articles 7.4, 8.1 and 8.5 – Conflicts of Interest and Declarations

Legal framework

Declarations

One of the main mechanisms for preventing corruption is the submission of property declarations by officials. There are four types of declarations in Ukraine:

- Of a candidate for a position — submitted for election to the position;
- Annual — submitted by all declarants annually;
- Before dismissal — submitted by the declarant before dismissal, covers the period for which no declarations were submitted;
- After dismissal — submitted one year after dismissal.

The Law On Prevention of Corruption envisages a detailed list of persons¹⁶² who are required to submit declarations. It is quite extensive and covers almost all officials from different branches of government. Everything that is owned by the declarant and what they use or actually own is subject to declaration. Declarations also include information about members of families and their assets. The data in the declarations is publicly available, but without some personal data of the declarant, such as passport number, bank account numbers, location of objects, places of residence of individuals, etc., which are hidden. The National Agency on Corruption Prevention (NACP) checks declarations. For this purpose, several mechanisms are provided: control over the timeliness of submission; control over the correctness and completeness of filling out the declaration; logical and arithmetic control; full verification of declarations; monitoring of the declarant's lifestyle. Violations of the declaration rules are subject to criminal and administrative liability.

Preventing conflict of interest

The rules for eliminating and preventing conflict of interest apply to all civil servants, including judges, prosecutors, and senior state officials. The specialized laws may establish certain features regarding the settlement of conflict of interest with certain categories of persons. The Law On Prevention of Corruption imposes certain responsibilities on civil servants to resolve or prevent conflict of interest and regulates the application of measures to eliminate it. The measures range from restricting access to information to dismissal. The NACP is the main body that monitors and controls compliance with the rules of conflict of interest at the national level. It is also worth mentioning that in the courts and prosecutor's office, part of the functions of the NACP in this area are performed by judicial/prosecutor's self-government bodies (for more information, see Article 11.1 and Article 11.2). Violations of the conflict of interest requirements are subject to administrative and disciplinary liability. Sanctions for violations range from fines to confiscation of income or gifts. Together with the main sanction, the court may impose a ban on taking certain positions or engaging in certain activities. The court's decision takes into account the circumstances of the offence.

¹⁶² Article 45 of the Law of Ukraine "On Prevention of Corruption", <https://zakon.rada.gov.ua/laws/show/1700-18#Text>, (access date: 10.02.2024).

Implementation

Submission of declarations, their accessibility, and functioning of the declaration register

The submission of declarations is a complex process, especially for those who are submitting it for the first time. Difficulties may arise both regarding the correct display of information and the submission process itself. To avoid such difficulties, the NACP provides support on filling out declarations, which deserves merit. In particular, NACP:

- Provides technical support¹⁶³ (online and by phone) in case of difficulties and publishes recommendations on the work with the register;¹⁶⁴
- Provides clarifications on the correct filling out of declarations, which are received well by many users and are regularly updated;¹⁶⁵
- Provides individual clarifications – according to the NACP, it provided more than 40,000 clarifications during the declaration campaign in 2021;¹⁶⁶
- Conducts training on correct declaration. In particular, a separate website dedicated exclusively to declarations has been created,¹⁶⁷ a series of training videos on declarations has been created,¹⁶⁸ and a training project “Declare correctly” has been developed for declarants and all comers, for which it may be required in the future.¹⁶⁹

In addition to the NACP, the public provides tangible assistance to declarants. For example, after the introduction of declarations, members of the public created a chatbot that allows

¹⁶³ National Agency on Corruption Prevention, Technical assistance in working with the Register of Declarations (September, 2020), <https://nazk.gov.ua/uk/departament-perevirky-deklaratsij-ta-monitoryngu-sposobu-zhyttya/tehnichna-dopomoga/?fbclid=IwAR3O2Phs8VqkN8q3gePCVLoEB2zrUIASCZVsLJS6eYPrBtm3ambW7hgBJZU>, (access date: 10.02.2024).

¹⁶⁴ Webpage on Recommendations for Working with the Unified State Register of Declarations of Persons Authorised to Perform State or Local Government Functions on the official website of the National Agency on Corruption Prevention, <https://nazk.gov.ua/uk/rekomendatsiyi-pry-roboti-z-yedrd/>, (access date: 11.09.2023).

¹⁶⁵ Knowledge base and explanations on working with registers on the official website of the National Agency on Corruption Prevention, <https://wiki.nazk.gov.ua/category/deklaruvannya/>, (access date: 12.09.2023).

¹⁶⁶ Of these, 16,000 were provided by the NACP Contact Center, 25,000 answers were provided on technical issues, and 657 written answers were provided to requests on declaration. National Agency on Corruption Prevention. Declaration campaign 2021 is over: almost 800 thousand declarations submitted (01.04.2021). <https://nazk.gov.ua/uk/novyny/kampaniya-deklaruvannya-2021-zavershena-nadiishlo-majzhe-800-tysyach-deklaratsij/>, (access date: 11.09.2023).

¹⁶⁷ Declaruy 2022. Webpage with explanations on how to fill in the declarations, <https://deklaruy.org.ua/>, (access date: 11.09.2023).

¹⁶⁸ National Agency on Corruption Prevention, (March, 2021), A video guide on obtaining a qualified electronic signature on the NACP's YouTube channel, <https://www.youtube.com/watch?v=sIRgXNXzLrw&list=PLQCyS3bbFoFd0KaQp9bASgvqCGdvT6yZ9>, (access date: 12.09.2023).

¹⁶⁹ NACP Integrity Office, page of the project "Declare correctly" on the official website, <https://prosvita.nazk.gov.ua/category/deklaruisya-pravylnopro-elektronne-deklaruvannya>, (access date: 12.09.2023).

declarants to fill out the declaration correctly.¹⁷⁰ Individual government agencies¹⁷¹ and the NACP¹⁷² recommended using this tool on their official resources page.

The availability and openness of declarations can be positively assessed. All declarations, except for those of individuals performing functions related to the national security are published in the Register.¹⁷³ Access to declarations is open, free of charge, and round-the-clock.¹⁷⁴ For convenience, the Register has a simple and intuitive search system. Declarations can be searched by the person's name, and the options found can be sorted by eight criteria. The system stores declarations from 2015 to the present day, during this time more than 6 million documents have been collected in the Register.¹⁷⁵

Despite the good work of the NACP in providing assistance on declarations, the issue of simplifying the process of filling out declarations remains quite relevant. For example, the automatic filling out of those sections of the declaration that contain information that can be obtained from other state registers (real estate, vehicles, etc.) has not yet been implemented. According to interviewed experts, the introduction of this mechanism would significantly facilitate the process of filling out declarations and reduce the number of unintentional errors.

Since the beginning of the full-scale invasion of Ukraine by the Russian Federation, access to the public part of the Register has been restricted.¹⁷⁶ This is due to the need to protect the personal data of declarants. As of December 2022, it is possible to log in exclusively to your personal account using an electronic key. The first attempt to restore e-declaration was made by Members of Parliament in September 2022, but it was never supported by the Parliament due to the lack of interest in it. However, in September 2023, the VRU voted in favor of a new

¹⁷⁰ Anti-Corruption Headquarters, TARAS Chatbot page, which helps civil servants fill out electronic declarations accurately and quickly, <https://shtab.net/pages/view/taras-chatbot>, (access date: 12.09.2023).

¹⁷¹ State Inspectorate of Energy Supervision, Information on the chatbot "Taras the State Servant", <https://sies.gov.ua/zapobigannya-ta-protidiya-korupciyi/informacijno-analitichni-materiali/informaciya-shchodo-chat-botu-derzhsluzhbovec-taras>, (access date: 12.09.2023).

¹⁷² National Agency on Corruption Prevention, (May, 2020), 5 days until the end of the 2020 declaration campaign, <https://nazk.gov.ua/uk/novyny/5-dniv-do-kintsya-kampaniyi-deklaruvannya-2020/> (access date: 12.09.2023).

¹⁷³ Ukrayinska Pravda, (April, 2020), SBU cancelled the act on classified declarations of the management - The NACP, <https://www.pravda.com.ua/news/2020/04/7/7246886/>, (access date: 12.09.2023) ; National Agency on Corruption Prevention, (April, 2020), NACP and SBU ensure transparency of declarations of senior security officials, https://nazk.gov.ua/uk/novyny/nazk-ta-sbu-zabezpechuyut-prozorist-deklaruvannya-vysokoposadovtsiv-spetssluzhby/?fbclid=IwAR0LV9J7fsV4URvK8_cEsEAq2eL3ztCp6jTVvIO-wQG7vLqxxgvdZm2Upo, (access date: 12.09.2023) ; Radio Svoboda, Schemes (May, 2020), Zelenskyy asked the Rada to classify declarations of the SBU leadership. Now he says he will discuss it again with Bakanov, <https://www.radiosvoboda.org/a/news-schemes-zelenskyy-sbu-deklaratsiyi/30622226.html> (access date: 12.09.2023) ; Radio Svoboda, (May, 2020), Zelenskyy asked the Rada to classify the declarations of the SBU leadership. "Classify me if you can": the wealth of SBU leaders and Bakanov's Spanish secret (investigation), <https://www.radiosvoboda.org/a/schemes/30626345.html>, (access date: 12.09.2023).

¹⁷⁴ National Agency on Corruption Prevention, Progress of filing annual declarations for 2021, <https://public.nazk.gov.ua/>, (access date: 12.09.2023).

¹⁷⁵ See National Agency on Corruption Prevention, Progress of filing annual declarations for 2021.

¹⁷⁶ National Agency on Corruption Prevention, (February, 2022), Access to the public part of the Register of Declarations, the POLITDATA Register of Party Reports and the Register of Corrupt Officials is restricted, <https://nazk.gov.ua/uk/novyny/dostup-do-publichnoyi-chastyny-revestru-deklaratsij-revestru-zvitiv-partij-politdata-ta-revestru-koruptsioneriv-obmezhenno/>, (access date: 12.09.2023).

law on the restoration of electronic declaration of officials.¹⁷⁷ It specified that officials had to submit declarations not only for 2023 but also for the two previous years, but that their data should be kept secret from the public due to "security issues". The latter condition was heavily criticized by anti-corruption activists, and a petition was immediately posted on the President's website demanding that he veto the law and eventually open the register of officials' property declarations. The President responded by vetoing the law,¹⁷⁸ which essentially means cancelling the last voting results and opening the procedure for its reconsideration in the VRU.

On 20 September 2023, the Parliament adopted this law,¹⁷⁹ taking into account the President's proposals. The registry should be made publicly available immediately, and the NACP should ensure that all bylaws, guidelines, etc. are aligned with the new declaration procedure. However, some issues have been further enhanced. If a declarant pays a fine of UAH 17,000-42,500 (EUR 390-980) for failing to indicate information in a declaration worth UAH 1,342,000 (EUR 30,700), they will not be held administratively liable. Civil society organizations criticized this approach.¹⁸⁰

Declaration verification

There are several mechanisms for verification of declarations:

- 1) Verification of the timeliness of declaration submission, logical and arithmetic control and verification of accuracy and completeness of filling in the declaration,
- 2) Full verification of declarations,
- 3) Verification of declarations of certain categories of persons.

In this section, we will discuss the full verification of declarations as the main and comprehensive verification mechanism. It is aimed at finding out the accuracy of the declared information, the accuracy of the assessment of declared assets, the presence of conflict of interest and signs of illegal enrichment or unreasonableness of assets. A full verification is conducted in accordance with the Procedure approved by the NACP. In general, the experts interviewed for this report and the public have no significant comments on this document and it is of high quality.¹⁸¹ At the same time, the expert community expresses some criticism regarding the mechanism of automated distribution of declarations subject to verification

¹⁷⁷ Verkhovna Rada: The Committee on Anti-Corruption Policy Prepared and Adopted Three Laws by the Verkhovna Rada in 2023, <https://www.rada.gov.ua/en/news/News/245334.html>, (access date: 06.06.2024).

¹⁷⁸ Iryna Balanchuk, (September, 2023), Zelenskyy vetoes law on officials' declarations: register must be launched now, <https://www.pravda.com.ua/eng/news/2023/09/12/7419429/>, (access date: 13.09.2023).

¹⁷⁹ The Law of Ukraine "On Amendments to Certain Laws of Ukraine on Determining the Procedure for Submitting Declarations of Persons Authorized to Perform State or Local Government Functions under Martial Law", <https://zakon.rada.gov.ua/laws/show/3384-20#Text>, (access date: 10.02.2024).

¹⁸⁰ Transparency International Ukraine, One more veto is needed: how the adopted draft law No. 9587-D can ruin the e-declaration system, <https://ti-ukraine.org/blogs/potribne-shhe-odne-veto-yak-pryjnyaty-zakonoprojekt-9587-d-mozhe-zipsuvaty-systemu-e-deklaruvannya/>, (access date: 22.03.2024).

¹⁸¹ See O. Kalitenko, O. Lemenov, B. Malyshev, A. Marchuk, K. Serdiuk, R. Sivers, M. Khavroniuk, V. Chumak; Edited by M. Khavroniuk, Alternative Report on the Assessment of the Effectiveness of the Implementation of the State Anti-Corruption Policy (2021), p.91.

among NACP employees, since it does not provide sufficient guarantees against undue influence on the distribution process.¹⁸²

The effectiveness of full verification can be evaluated by quantitative and qualitative indicators. The first indicator is that the number of verified declarations (about 1,000 annually) is extremely low compared to the total number of declarations (about 950,000) submitted during the year. Despite the fact that it is only 0.1% of the total number of declarations, this is quite high considering the resources available to the NACP.¹⁸³ Taking into account the number of submitted declarations, priority in full verification is given to the declarations of persons holding responsible positions or positions with high corruption risks. This approach is justified because it allows addressing top corruption, but it has several disadvantages. In particular, declarations of lower-level civil servants are practically not checked. This significantly reduces the effectiveness of declarations in the regions and allows lower-level civil servants to avoid liability for submitting false information in declarations.¹⁸⁴ It is possible to increase the effectiveness of full verification by increasing the resources of the NACP, because, according to experts, the body does not have enough resources to carry out effective control of declarations.¹⁸⁵ In turn, the quality of verifications has significantly improved lately. In particular, according to experts, a more thorough verification is conducted upon signs of illegal enrichment or unjustified assets.¹⁸⁶

The decision of the Constitutional Court in case No. 13-p/2020, which declared certain provisions of the Law On Corruption Prevention on declaration unconstitutional, significantly affected the effectiveness of conducting full verifications of declarations.¹⁸⁷ This decision resulted in the suspension of 530 full verifications and the closure by law enforcement agencies of 4,712 criminal proceedings on declaring false information. In addition, one of the most significant consequences of this decision was the inability to hold liable the persons who lied in the declarations for 2020.

Conflict of interest

¹⁸² See O. Kalitenko, O. Lemenov, B. Malyshev, A. Marchuk, K. Serdiuk, R. Sivers, M. Khavroniuk, V. Chumak; Edited by M. Khavroniuk, *Alternative Report on the Assessment of the Effectiveness of the Implementation of the State Anti-Corruption Policy (2021)*, p.101-102.

¹⁸³ NACP, *Report on the Activities of the National Agency for the Prevention of Corruption for 2019*, <https://nazk.gov.ua/wp-content/uploads/2020/04/Zvit-NAZK-za-2019-rik-15.04.2020.pdf>, (access date: 10.02.2024).

¹⁸⁴ P. Ivanin, member of the Council of the Kharkiv Civic Coalition, head of the Slobozhansky Resource Center. Interview with T. Khutor and Y. Shvab, September 9, 2021.

¹⁸⁵ K. Butko, Activist of the Automaidan NGO, coordinator of the PROSUD project. Interview with T. Khutor and Y. Shvab, September 13, 2021 and O. Kalitenko, Legal Advisor at Transparency International Ukraine. Interview with T. Khutor and Y. Shvab, September 21, 2021.

¹⁸⁶ See O. Kalitenko, O. Lemenov, B. Malyshev, A. Marchuk, K. Serdiuk, R. Sivers, M. Khavroniuk, V. Chumak; Edited by M. Khavroniuk, *Alternative Report on the Assessment of the Effectiveness of the Implementation of the State Anti-Corruption Policy (2021)* and O. Kalitenko, Legal Advisor at Transparency International Ukraine. Interview with T. Khutor and Y. Shvab, September 21, 2021.

¹⁸⁷ Decision of the Constitutional Court of Ukraine No. 13-r/2020 of 27.10.2020 in the case on the constitutional petition of 47 MPs of Ukraine on the compliance of certain provisions of the Law of Ukraine "On Prevention of Corruption" and the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality), https://ccu.gov.ua/sites/default/files/docs/13_p_2020.pdf, (access date: 13.09.2023).

The main body that monitors and controls the implementation of legislation on conflict of interest is the NACP. However, a number of other bodies have similar powers. For example, the Council of Judges of Ukraine monitors the implementation of legislation on conflict of interest in the activity of judges, and the Council of Prosecutors of Ukraine monitors the same in the activity of prosecutors. However, the National Police (“NP”) has greater powers to monitor compliance with the legislation on conflict of interest issues. The only difference between the NACP and the NP is the subjects, in respect of which these bodies have the right to draw up protocols. Since 2020, the NACP has been drawing up protocols for violating the legislation on conflict of interest exclusively in relation to high-ranking officials (persons holding responsible positions or positions with a high risk of corruption), and the NP deals with other subjects.

The legislation on conflict of interest, according to experts, is complete,¹⁸⁸ but its application is not always consistent. An interesting opinion on this issue was expressed by one of the experts we interviewed. He pointed out that “for quite a long time of existence of these norms (regarding conflict of interest), even judges do not fully understand how to apply them correctly.”¹⁸⁹ Due to the complexity of the legislation, the NACP has the function of providing individual and general clarifications (recommendations) on the application of the legislation. The performance of the NACP in this direction can be assessed quite positively. The Head of the NACP separately pointed out that the development of these clarifications was realized to implement the UN Convention against Corruption.¹⁹⁰ Interviewed experts positively assess the publication of the draft methodological recommendations for commenting, as well as the availability of more practical examples.¹⁹¹ However, they note that their quality should be improved, in particular, in their opinion, complex issues of law enforcement were ignored.¹⁹² They also suggest that the NACP create online simulators of potential conflict of interest situations so that civil servants can train and gain a better understanding of what a conflict of interest could look like.¹⁹³

¹⁸⁸O. Kalitenko, Legal Advisor at Transparency International Ukraine. Interview with T. Khutor and Y. Shvab, September 21, 2021 and European Union Anti-Corruption Initiative, (March, 2018), Management of conflicts of interest in Ukraine and the National Agency on Corruption Prevention (NACP). Conclusions and recommendations, <https://euaci.eu/assets/userfiles/resources/CoisumUA1.pdf>, (access date: 13.09.2023).

¹⁸⁹ O. Kalitenko, Legal Advisor at Transparency International Ukraine. Interview with T. Khutor and Y. Shvab, September 21, 2021.

¹⁹⁰ National Agency on Corruption Prevention, (April, 2021), All about the conflict of interest: NACP published new guidelines, <https://nazk.gov.ua/uk/novyny/prosto-pro-konflikt-interesiv-nazk-opublikovalo-novi-metodychni-rekomendatsiyi/>, (access date: 13.09.2023).

¹⁹¹ See O. Kalitenko, O. Lemenov, B. Malyshev, A. Marchuk, K. Serdiuk, R. Sivers, M. Khavroniuk, V. Chumak; Edited by M. Khavroniuk, Alternative Report on the Assessment of the Effectiveness of the Implementation of the State Anti-Corruption Policy (2021), pg. 86.

¹⁹² See O. Kalitenko, O. Lemenov, B. Malyshev, A. Marchuk, K. Serdiuk, R. Sivers, M. Khavroniuk, V. Chumak; Edited by M. Khavroniuk, Alternative Report on the Assessment of the Effectiveness of the Implementation of the State Anti-Corruption Policy (2021), pg. 86 and O. Kalitenko, Legal Advisor at Transparency International Ukraine. Interview with T. Khutor and Y. Shvab, September 21, 2021.

¹⁹³ See O. Kalitenko, O. Lemenov, B. Malyshev, A. Marchuk, K. Serdiuk, R. Sivers, M. Khavroniuk, V. Chumak; Edited by M. Khavroniuk, Alternative Report on the Assessment of the Effectiveness of the Implementation of the State Anti-Corruption Policy (2021), pg. 86 and O. Kalitenko, Legal Advisor at Transparency International Ukraine. Interview with T. Khutor and Y. Shvab, September 21, 2021.

The public also plays an important role in the prevention of conflicts of interest. Representatives of the public sector created the online tool “Hidden Interests”,¹⁹⁴ which allows to automatically identify conflicts of interest in the activity of civil servants. The specified tool can also automatically analyze official documents for conflict of interest when they are accepted.¹⁹⁵ The “Hidden Interests” tool has already demonstrated its efficiency at the NACP. During the first 3 months of using the portal, 2000 risks were analyzed using four filters. Based on the results of this work, 47 investigations have been launched.¹⁹⁶ The project is currently being updated. Soon, users will be able to research conflicts of interest again.

Administrative liability

Administrative liability is the main type of liability for violation of the Law on Corruption Prevention. It is designed to deter people from violating the requirements of the law and ensuring the inevitable punishment of offenders. In Ukraine, administrative liability differs significantly from criminal liability. In particular, it is characterized by simplified standards for protecting the rights and interests of the person being held liable, as well as a distinctive procedure for considering cases by courts.

Despite the rather high importance of administrative liability for the effective fight against corruption in Ukraine, it has some disadvantages that greatly reduce its effectiveness. For the purposes of this paragraph, we will highlight three main groups of administrative cases.¹⁹⁷ Based on information obtained during interviews with experts, the following shortcomings of the procedure for bringing to administrative liability can be identified:

1) Return of cases for revision

After detecting an offense, authorized persons draw up an administrative report. Then the report and other case materials are referred to the court. Based on the materials received, the courts decide whether there are grounds for opening an administrative case. If there are any, then consideration of the case begins, and if there are no grounds, the court must refuse to open the case. However, judicial practice has developed in such a way that if the courts identify certain shortcomings in the case materials, they return them for revision to the relevant body. However, such a procedure is not envisaged by law at all. The main consequence of the return of cases by the courts is the impossibility of bringing persons to justice, since while the reports on offenses are being corrected, the time limit for bringing to administrative responsibility expires. However, it is worth noting that the number of returned cases has decreased over the

¹⁹⁴ Anti-Corruption Headquarters, Home page of the online tool "Hidden Interests", which is currently being updated, <https://shtab.net/pages/view/instrument-na-stadiji-onovlennya> (access date: 13.09.2023).

¹⁹⁵ S. Mytkalyk, Head of the Board of the Anti-Corruption Headquarters. Interview with T. Khutor and Y. Shvab, August 27, 2021.

¹⁹⁶ National Agency on Corruption Prevention, (2022), Report on the Activities of the National Agency on Corruption Prevention for 2021, <https://nazk.gov.ua/wp-content/uploads/2022/06/zvit-nazk-final1.pdf>, (access date: 13.09.2023).

¹⁹⁷ Corruption-related offenses (violation of requirements for preventing and resolving conflict of interest, violation of financial control requirements, etc.), “party” offenses (failure to submit financial statements and violation of requirements for contributions to support the party), and failure to comply with the requirements of the NACP.

years. For instance, 13% of corruption cases were returned in 2018, 10% the following year, and only 6% in 2020.¹⁹⁸

2) *Low sanctions*

If the court decides that the person is guilty, it imposes a penalty. The main penalty is generally in the form of a fine. However, in addition, the court may apply an additional penalty in the form of deprivation of the right to hold certain positions or engage in certain activity, or apply confiscation of items or money. Statistics show that judges are extremely loyal to those who have committed corruption-related offenses. The number of fines imposed is mostly minimal or slightly higher than the minimum. For example, for violating the requirements for receiving a gift, the law sets a fine from EUR 53 to 425 (in case of repeated commission). At the same time, the average fine imposed by the courts for this offense in 2020 is EUR 53 – that is, the minimum threshold at that time (statistics are compiled on the basis of 5 decisions).¹⁹⁹

3) *Heterogeneous judicial practice and inequality of parties*

Scientists and experts interviewed in the context of this section point out that one of the main problems of administrative liability is heterogeneous judicial practice. Quite often, courts have different views on the consideration of the described categories of cases. Each court interprets the provisions of the law at its discretion, which significantly reduces the effectiveness of the institution of administrative liability as a whole. The presence of the person who drew up the report on an administrative offence (an employee of the NACP or the NP) at the court hearing is not required. As a result, the motives and explanations of the person who drew up the protocol and who is much more familiar with the case are not considered by the courts. The decision of the court of first instance can only be contested by the person in respect of whom the protocol on an administrative offence was drawn up. Prosecutors do not have such an opportunity in this category of cases. As a result, if the decision of the court of first instance was made in favor of the person in respect of whom the protocol was drawn up, it remains in force and is not contested.

Table 8: Summary of Articles 7.4, 8.1 and 8.5

	Evaluation	Comments
Implementation through national legislation	Fully implemented	Ukrainian legislation on declaration and conflict of interest is of high quality and meets the requirements of Articles 7 and 8 of the UNCAC. The law establishes a wide range of declarants and assets to be declared, as well as sufficient ways to carry out effective control of declarations. The legislation sets forth sufficient safeguards to prevent conflicts of interest and

¹⁹⁸ See National Agency on Corruption Prevention, National Report on the Implementation of Anti-Corruption Policy in 2020 (2021), p.372.

¹⁹⁹ See National Agency on Corruption Prevention, National Report on the Implementation of Anti-Corruption Policy in 2020 (2021), p.377.

		envisages a variety of measures to eliminate them.
Practical enforcement	Moderate enforcement	The full scope of declarants, the all-embracing range of assets to be declared, and the availability and openness of declarations give grounds to claim that the declaration system functions properly. However, due to insufficient resources and problems with certain tools, the verification of declarations is not fully effective. The declarations of lower-level civil servants often turn unnoticed by the state. The activities of the NACP in identifying and resolving conflicts of interest, and in providing methodological assistance on these issues, should be commended. However, the low effectiveness of bringing to administrative responsibility allows avoiding punishment not only for violation of the rules of declaration and requirements on conflict of interest but also for violation of the entire anti-corruption legislation.

Good Practices

- Methodological support provided by the NACP in the declaration process is of good quality and significantly helps the declarants.
- Established mechanisms for checks are sufficient to ensure full control over the declarations. The quality of the full declaration verification has recently significantly increased.
- The NACP effectively monitors and controls compliance with the legislation on conflict of interest.
- The public is interested in and involved in the development of the process of conflict of interest checks.

Deficiencies

- The process of filing declarations is quite complicated and needs to be simplified.
- The number of full declaration verifications is low due to insufficient resources in the NACP. Declarations of lower-level officials are almost never checked.
- The absence of obligation to submit electronic declarations after the full-scale invasion (in process of changing).
- The low effectiveness of the institution of administrative responsibility allows avoiding punishment for violations of anti-corruption legislation.

4.1.6 Article 8.4, and Article 13.2 – Mechanisms for the reporting of acts of corruption and protection of whistleblowers

Legal framework

The issue of protection of whistleblowers, reports of acts of corruption, payment of a reward to whistleblowers, etc. is regulated by the Law On Prevention of Corruption.²⁰⁰ In 2019, the law was supplemented with the section on whistleblowers, so there is no widespread practice of its application yet. According to the law, a reporter of acts of corruption (a whistleblower) can only be an individual who:

- 1) Has information about the commission of an act of corruption or corruption-related offense or other violation of the Corruption Prevention Law, and is convinced of such commission;
- 2) Has received such information while exercising his or her employment, professional, economic, social, scientific activity, service or training or participation in the procedures provided by law, which are mandatory for the beginning of such activity, service or training;
- 3) Has reported such information.

A whistleblower can report corruption through three channels available for reporting: internal channels (to send an allegation to the body where a whistleblower works); external channels (allegations made through other persons); regular channels (allegations to the authorized bodies, namely, the Prosecutor's Office, National Police, National Anti-Corruption Bureau of Ukraine (NABU), State Bureau of Investigation (SBI), and National Agency of Corruption Prevention (NACP). All state bodies, local self-government bodies, and legal entities under public law are obliged to maintain and ensure the functioning of internal channels. In turn, the prosecutor's offices, the police, the NABU, SBI, and the NACP, in addition to internal channels, are obliged to ensure the functioning of regular channels. Regardless of how an allegation is sent, it is to be registered in the Unified Whistleblower Allegation Portal,²⁰¹ i.e., a special system that accumulates information about all allegations made by whistleblowers. The portal is held by the NACP, and access to the portal is limited. A whistleblower's allegation is considered within 10 days, and in case of confirmation of the facts, an internal investigation begins, or the materials of the case are handed over to the pre-court investigation body. If a whistleblower's allegation is based on conjecture or unconfirmed information, it is returned to the whistleblower and is considered as an inquiry made by a citizen.

To protect whistleblowers and their closest, the Law On Prevention of Corruption provides appropriate guarantees, in particular:

²⁰⁰ <https://zakon.rada.gov.ua/laws/show/1700-18#Text>, (access date: 10.09.2023).

²⁰¹ NACP, Unified Whistleblower Allegation Portal, <https://whistleblowers.nazk.gov.ua/#/>, (access date: 12.02.2024).

- 1) Protection against unlawful encroachments on life, health, property, etc. (with security, means of protection, possible change of documents and/or appearance to be provided);
- 2) Protection of labor rights (impossibility of dismissal, refusal to employment, or bringing to disciplinary responsibility);
- 3) The right to confidentiality and anonymity;
- 4) The right to receive free legal and psychological assistance;
- 5) The right to be released from legal liability (in definite cases);
- 6) The right to receive an award (in the case of an allegation about an act of a corruption offense that has caused the state damage in the sum of approximately EUR 372000. The amount of an award is 10% of the damage but may not exceed approximately EUR 562000.

Implementation

As mentioned above, the institute of whistleblower protection is new for Ukraine, which is why there is no widespread practice of using this institute yet. Therefore, the effectiveness of the new legislation and its implementation is assessed through specific cases and recently obtained statistical data.

Allegations About Acts of Corruption

The current Law On Prevention of Corruption establishes a Unified Whistleblower Reporting Portal.²⁰² At the time of writing this report, the portal itself has been created and officially transferred to the NACP. The portal had a test-mode with 9 agencies connected to the test environment for a while. The National Agency had set up a working group that worked to ensure that the portal is put into commercial operation within the timeframe set out in the State Anti-Corruption Program for 2023-2025 (July-August 2023). Finally, on 6 September 2023, the NACP launched the promised Portal, where citizens can report corruption cases they have detected. So far, only two agencies have been connected, but over 92,000 more organisations will be added within 180 working days. This portal is a convenient tool that minimizes the human factor and prevents interference with the system and information leakage. Any person who becomes aware of a corruption or corruption-related offence can report it through the portal. During the first month (September 2023), 345 appeals were already recorded, of which 84 are being processed and 47 have already been reviewed by the relevant authorities. Recently, civil society representatives published the monitoring report on the implementation of the Law On Prevention of Corruption in terms of the protection of whistleblowers by certain executive bodies.²⁰³ This report, in particular, examines the functioning of internal reporting channels. According to its results, the researchers concluded that as of the end of 2020, most

²⁰² National Agency on Corruption Prevention, The Unified whistleblower reporting portal - the main page of the official web portal, <https://whistleblowers.nazk.gov.ua/#/>, (access date: 03.09.2023).

²⁰³ Anti-corruption Research & Education Centre, (August, 2021), Monitoring report on the implementation of the provisions of the Law of Ukraine «On Prevention of Corruption» in terms of protection of whistleblowers by central executive bodies and regional state administrations in 2020, <https://acrec.org.ua/wp-content/uploads/2021/08/research-nazk-v-NN-3.pdf>, (access date: 14.09.2023).

of the analyzed bodies were fragmentally compliant with the requirements of the Corruption Prevention Law in terms of allegations of whistleblowers and their protection.²⁰⁴

Having analyzed the regular channels of reporting that operate in the NABU, NACP, SBI, the Ministry of Internal Affairs, and the Prosecutor's Offices, it can be argued that in general, they provide appropriate conditions for reporting. The NABU, NACP, SBI, and the Ministry of Internal Affairs have maintained a capacity to report through a fairly convenient and user-friendly online form on their websites, via e-mail, or by phone.²⁰⁵ Prosecutor General Office and the National Police provide the capacity to report only corruption or other violations committed by specific employees of these bodies, and it is not possible to report corruption committed in other structures.²⁰⁶ All these websites retain the ability to submit allegations anonymously. Relevant sections with the facility to submit an allegation can be easily found on the official websites of all these bodies.

The whistleblowers we interviewed for this report believe that there are currently no significant obstacles to reporting. In their views, every citizen is free to report corruption, as there are enough tools and information in support of this.²⁰⁷ Nevertheless, the experts are concerned about some problems in this context:

1) *Lack of mechanisms for reporting corruption related to state secrets*

Factually, the law does not regulate the specifics of reporting corruption related to state secrets. That is why whistleblowers, due to fear of responsibility for the disclosure of a state secret, are reluctant to report it. Moreover, whistleblowers of corruption linked to state secrets are limited in their use of external channels of reporting, as the persons to whom they can report (journalists, MPs, etc.), due to law restrictions, will not be able to process such information.²⁰⁸ This problem is currently extremely pressing for Ukraine, since many corruption schemes

²⁰⁴ Anti-corruption Research & Education Centre, (August, 2021), Summary of the monitoring report on the implementation of the provisions of the Law of Ukraine «On Prevention of Corruption» in terms of protection of whistleblowers by central executive bodies and regional state administrations in 2020, <https://acrec.org.ua/wp-content/uploads/2021/08/poicy-paper-ukr-NN-1-1.pdf>, (access date: 14.09.2023), p.12.

²⁰⁵ National Agency on Corruption Prevention, «Report corruption» page on the official web portal, <https://nazk.gov.ua/uk/povidomyty-pro-koruptsiyu/>, (access date: 07.09.2023) and National Anti-Corruption Bureau of Ukraine, «The most common questions» page on the official web portal, <https://nabu.gov.ua/activity/nayposhyrenishi-zapytannya/>, (access date: 07.09.2023) and State Bureau of Investigation, «Submit an appeal» page on the official web portal, <https://dbr.gov.ua/contact-forms>, (access date: 07.09.2023) and Ministry of Internal Affairs of Ukraine, «Prevention of corruption» page on the official web portal, <https://mvs.gov.ua/activity/prevention-corruption>, (access date: 07.09.2023).

²⁰⁶ Prosecutor General's office of Ukraine. Form for reporting corruption, https://old.gp.gov.ua/ua/corruption_notice_form.html (access date: 07.09.2023) and National Police of Ukraine. Form for reporting corruption, <https://www.npu.gov.ua/gromadyanam/povidomiti-pro-korupciyu-v-policiyi> (access date: 07.09.2023).

²⁰⁷ O. Polishchuk, Anti-Corruption Commissioner-Whistleblower. Interview with T. Khutor and Y. Shvab, September 5, 2021 and R. Marzhan, whistleblower prosecutor at the Chortkiv local prosecutor's office. Interview with Y. Shvab, September 1, 2021.

²⁰⁸ O. Nesterenko, Executive Director of ACREC, A. Biletskyi, Expert in the field of implementation of online educational programs in the field of anti-corruption and the role of civil society in anti-corruption reforms. Interview with T. Khutor and Y. Shvab, August 27, 2021.

related to defense procurement have emerged since 2014²⁰⁹ and they have only gained momentum after 2022.

2) *Lack of guarantees of anonymity and confidentiality in practice*

Civil society experts argue that the authorities approach the creation of reporting channels formally. As a result, e-mail boxes and allegation record books can be accessed by a wide range of people. Besides, state bodies hardly have proper software able to protect the confidentiality and anonymity of electronic messages. Subsequently, allegations are received by the authorities without proper protection. This problem, according to experts, arises due to the lack of law regulation of these issues. Neither the law nor the by-laws specify requirements for software to protect reporting channels.²¹⁰ This situation can be explained by the lack of financing for state bodies to create adequate protection of reporting channels. The creation of the Unified Whistleblower Allegation Portal should not only ensure confidentiality and anonymity but also save significant funds of state bodies, compared to the option of each of them separately ensuring the protection of reporting channels.²¹¹

Protection of Whistleblowers

The guarantees for whistleblowers set forth by the Corruption Prevention Law are violated quite often. Even during the short period of validity of the Ukrainian legislation on the protection of whistleblowers, several examples of such violations have already happened. Given this, it is crucially critical to ensure the effective functioning of the protection tools. The NACP is the authorized body for the protection of whistleblowers. To exercise these powers, the NACP applies two main tools, namely, prescriptions and representation in court hearings.

1) *Prescriptions*

The prescription of the NACP is a law requirement addressed to the heads of state bodies, enterprises, institutions to eliminate violations of the law, conduct an internal investigation, bring law-breakers to justice, etc.²¹² In the context of the protection of whistleblowers, a prescription is an operational measure taken by the NACP to respond to violations of whistleblowers' rights, as its application requires only on the will of the NACP. Nevertheless, the practice of prescriptions is not widely applied. According to statistical data, in 2020, the NACP made only 5 prescriptions aiming at the protection of whistleblowers.²¹³

The most famous case of application of the NACP's prescriptions is the case of a whistleblower who worked as an anti-corruption commissioner at a big state-owned enterprise. In 2020, he

²⁰⁹ O. Nesterenko, Executive Director of ACREC, A. Biletskyi, Expert in the field of implementation of online educational programs in the field of anti-corruption and the role of civil society in anti-corruption reforms. Interview with T. Khutor and Y. Shvab, August 27, 2021.

²¹⁰ O. Nesterenko, Executive Director of ACREC, A. Biletskyi, Expert in the field of implementation of online educational programs in the field of anti-corruption and the role of civil society in anti-corruption reforms. Interview with T. Khutor and Y. Shvab, August 27, 2021.

²¹¹ National Agency on Corruption Prevention, (June, 2021), The whistleblower portal is a billion-dollar saving of public funds - Oleksandr Novikov, <https://nazk.gov.ua/uk/novyny/portal-vykryvachiv-tse-milyardna-ekonomiya-derzhavnyh-koshtiv-oleksandr-novikov/>, (access date: 16.09.2023).

²¹² Transparency International Ukraine, What is a NACP prescription and when is it made? (26.07.2021), <https://ti-ukraine.org/news/shho-take-prypys-nazk-i-koly-vin-vnosytsya/> (access date: 16.09.2023).

²¹³ See National Agency on Corruption Prevention, Report for 2020 (15.04.2021), pg. 20.

reported facts of possible corruption offenses committed by the management of the enterprise. After that, he received disciplinary sanctions and was dismissed, despite significant progress made in creating an effective compliance system in the enterprise.²¹⁴ In March 2021, the NACP issued two prescriptions, one prescription was made in respect of the Cabinet of Ministers requiring to conduct an internal investigation of the dismissal,²¹⁵ and another one was directed to the head of the enterprise with a demand to reinstate the whistleblower.²¹⁶ According to the results of the prescription, the Cabinet of Ministers commenced an internal investigation, which was terminated because the provision on the basis of which the NACP issued the order was declared unconstitutional.²¹⁷ Instead, the acting head of the enterprise (against whom the allegation was made) did not execute the prescription to reinstate the whistleblower. Consequently, the NACP drew up an administrative protocol against the head for non-compliance with the prescription.²¹⁸ Soon after, the whistleblower reported that with the assistance of the NACP as a third party in the case, the court declared the dismissal illegal. Such court decisions are an important signal to all heads of state institutions that their illegal actions against whistleblowers will have concrete consequences and will not be ignored by the NACP. In November 2022, the decision to reprimand the whistleblower was recognized as illegal and was revoked by the Supreme Court.²¹⁹

Another example of the NACP's prescription is the case of a whistleblower judge, who exposed corrupt practices by the mayor of Poltava and the court's management. After that, the judge was subjected to pressure from the head of the court and her colleagues. In particular, they were illegally deprived of part of their court remuneration and were pressured in various ways. In 2020, the NACP issued an enforcement prescription to the new head of the court, ordering them to pay the whistleblower lost court fees and conduct an internal investigation into the former head of the court and other judges who had put pressure on the whistleblower.

²¹⁴ Transparency International Ukraine, A whistleblower who was not protected: the story of XX (11.02.2021), <https://ti-ukraine.org/blogs/vykryvach-yakogo-ne-zahystyly-istoriya-olega-polishhuka/> (access date: 17.09.2023).

²¹⁵ National Agency on Corruption Prevention, National Agency on Corruption Prevention Head Oleksandr Novikov submitted a prescription to the CMU to eliminate violations of anti-corruption legislation in the activities of Energoatom and cancel the company's illegal order to dismiss whistleblower XX (03.03.2021), <https://nazk.gov.ua/uk/novyny/golova-nazk-oleksandr-novikov-vnis-prypys-kmu-dlya-usunennya-porushen-antikoruptsiynogo-zakonodavstva-v-diyalnosti-energoatomu/> (access date: 17.09.2023).

²¹⁶ The full text of the order of the National Agency on Corruption Prevention to the acting president of Energoatom regarding XX, https://nazk.gov.ua/wp-content/uploads/2021/03/03_03_Prypys-Energoatom.pdf?fbclid=IwAR1jP9VkdZkggcXtlqbmD5T5HC83BcFlrYj4yh8NCfCZnM-B3XHCVaVduE (access date: 17.09.2023).

²¹⁷ Radio Svoboda, Official investigation against Energoatom CEO terminated due to CCU decision - Energy Ministry (03.03.2021), <https://www.radiosvoboda.org/a/news-kotin-prypynennya-rozsliduvannya/31131279.html> (access date: 17.09.2023).

²¹⁸ National Agency on Corruption Prevention, Over the past week, the NACP has sent 16 administrative protocols to court, including against the acting president of Energoatom and two leaders of political parties (04.20.2021) <https://nazk.gov.ua/uk/novyny/za-mynulyj-tyzhden-nazk-naprawylo-do-sudu-16-adminprotokoliv-utomu-chysli-shhodo-t-v-o-prezydenta-dp-naek-energoatom-ta-dvoh-kerivnykiv-politychnyh-partij/> (access date: 18.09.2023).

²¹⁹ National Agency on Corruption Prevention, Report on the Activities of the National Agency on Corruption Prevention for 2022 (2023), <https://nazk.gov.ua/wp-content/uploads/zvit-2022/NACP-annual-report.pdf> (access date: 15.09.2023).

Ultimately, the judge managed to get their lost money back, but according to them, the internal investigation was not actually conducted and the NACP did not respond properly.²²⁰

The provided examples lead to the conclusion that the prescriptions made by the NACP are exercised partially, but according to the whistleblowers interviewed, they nevertheless remain the operative tool for the restoration of their rights.²²¹ In general, it can be argued that compliance with the prescription depends only on the will of the person to whom it was sent. This practice is primarily due to the lack of real responsibility for non-compliance with prescriptions. The reasons for this are:

- Low extent of liability for non-compliance with prescriptions. The maximum sanction provided by the Code of Administrative Offenses is EUR 160.²²² At the same time, the average fine applied by the courts in 2020 is only EUR 58.²²³
- Poor prosecution in courts for non-compliance with a prescription. In 2020, only 10 people were brought to justice in 50 cases (40 cases were closed by the court).²²⁴
- Cancellation of prescriptions by courts.
- Procedural errors made by the NACP during the issuance of prescriptions.
- Lack of experience in the application of the concept of prescriptions²²⁵ among NACP employees.

2) NACP as a party to the litigation

To protect whistleblowers, the NACP often acts in litigation as a third party on the whistleblower's side. Litigation involving the NACP mainly concerns the restoration of the violated rights of a whistleblower or appeals against prescriptions. The activity of the NACP in the use of this tool can be assessed positively. According to statistical data, in 2020, the NACP participated on the side of the whistleblower in 70 cases heard in courts. This tool significantly increases the chances of whistleblowers to succeed in the case;²²⁶ in 2020, out of 23 court cases, the NACP succeeded in 15 cases.²²⁷

Given that whistleblowing court practice is just beginning to take shape, the NACP's involvement in court cases is important. However, the NACP representatives have recently stated that they wish to hand judicial representation over to free legal aid centers (LACs).²²⁸

²²⁰ Larysa Holnyk, Being a whistleblower: government promises vs. judicial realities (05/23/2021), <https://blog.liga.net/user/lgolnik/article/39950> (access date: 18.09.2023).

²²¹ O. Polishchuk, Anti-Corruption Commissioner-Whistleblower. Interview with T. Khutor and Y. Shvab, September 5, 2021 and L. Holnyk, Whistleblower judge of the Oktyabrsky District Court of Poltava. Interview with T. Khutor and Y. Shvab, September 5, 2021.

²²² See Transparency International Ukraine, What is a NACP prescription and when is it made? (26.07.2021).

²²³ See National Agency on Corruption Prevention, National Report on the Implementation of Anti-Corruption Policy in 2020 (2021), pg. 377.

²²⁴ See National Agency on Corruption Prevention, National Report on the Implementation of Anti-Corruption Policy in 2020 (2021), pg. 374.

²²⁵ O. Kalitenko, Legal Advisor at Transparency International Ukraine. Interview with T. Khutor and Y. Shvab, September 21, 2021.

²²⁶ M. Bilak, Judge of the Supreme Court. Interview with T. Khutor and Y. Shvab, September 14, 2021.

²²⁷ See National Agency on Corruption Prevention, Report for 2020 (15.04.2021), pg. 20.

²²⁸ Access to the recording of the Facebook broadcast "Corruption Whistleblowers in Ukraine: Success and Challenges (Part 3)" (24.06), https://www.facebook.com/watch/live/?v=327038992338892&ref=watch_permalink (access date: 19.09.2023).

Such statements have been sharply criticized by civil society experts²²⁹ and whistleblowers,²³⁰ because, firstly, at the stage of formation of judicial practice it is necessary to involve as many resources of the profile body as possible, and secondly, the LACs are not very trusted by whistleblowers.²³¹

Methodological support of whistleblowers and NACP's capacity

Given the novelty of whistleblowing in Ukraine, it is essential to disseminate information about it to the public and provide methodological support. This function is performed by the NACP and, it should be noted that it copes with it quite well. The official NACP website provides clarifications on key issues related to whistleblowers and their protection.²³² In 2020, an educational series about whistleblowers was released²³³ and a short-term training program on "Organization of work with whistleblowers in a state body" was developed.²³⁴ The NACP has also recently issued a practical guide for anti-corruption commissioners on working with whistleblowers²³⁵ as well as a practical guide for whistleblowers, which provides an algorithm for reporting and answers to various questions.²³⁶ In addition, the NACP together with the public and international partners in 2022 held the second international conference on whistleblower protection.²³⁷

All whistleblowers we interviewed are generally positive about the work of the NACP. They emphasize their trust in this body and good enough qualifications of employees.²³⁸ The whistleblowers claim that despite certain problems in the work of the NACP, the activities of

²²⁹ O. Kalitenko, Legal Advisor at Transparency International Ukraine. Interview with T. Khutor and Y. Shvab, September 21, 2021.

²³⁰ L. Holnyk, Whistleblower judge of the Oktyabrsky District Court of Poltava. Interview with T. Khutor and Y. Shvab, September 5, 2021.

²³¹ From the beginning of 2020 to May 2021, the LACs provided legal assistance to 24 whistleblowers, which is twice less than what the NACP did only in 2020. See access to the recording of the Facebook broadcast "Corruption Whistleblowers in Ukraine: Success and Challenges (Part 3)" and See National Agency on Corruption Prevention, National Report on the Implementation of Anti-Corruption Policy in 2020 (2021).

²³² Knowledge base and explanations for whistleblowers on the official website of the National Agency on Corruption Prevention, <https://wiki.nazk.gov.ua/category/vykryvachi-koruptsiyi/> (access date: 19.09.2023).

²³³ The page of the course "Whistleblower in Law" from Diia.Osvita, available for free at the link:

<https://osvita.dii.gov.ua/courses/vikrivac-u-zakoni> (access date: 19.09.2023).

²³⁴ See National Agency on Corruption Prevention, Report for 2020 (15.04.2021), pg. 21.

²³⁵ National Agency on Corruption Prevention, Practical Guide on Working with Whistleblowers for Authorized Units (Authorized Persons) on Corruption Prevention and Detection (2021), <https://wiki.nazk.gov.ua/wp-content/uploads/2021/07/Guide-final.pdf> (access date: 20.09.2023).

²³⁶ National Agency on Corruption Prevention, A guide for whistleblowers, https://wiki.nazk.gov.ua/wp-content/uploads/2022/10/v-gude_N07072022-1.pdf (access date: 20.09.2023).

²³⁷ National Agency on Corruption Prevention, How to create a culture of whistleblowing and why whistleblowers of corruption and other offenses during the war are important were discussed during the conference "Whistleblowers in Ukraine: Successes and Challenges" (05.09.2022), <https://nazk.gov.ua/uk/novyny/yak-sformuvaty-kulturu-vykryvannya-ta-chomu-vazhlyvi-vykryvachi-koruptsiyi-ta-inshyh-pravoporushen-pid-chas-vijny-obgovoryly-pid-chas-konferentsiyi-vykryvachi-koruptsiyi-v-ukrayini-uspihy-ta-vyklyky/?highlight=%D0%B2%D0%B8%D0%BA%D1%80%D0%B8%D0%B2%D0%B0%D1%87> (access date: 20.09.2023).

²³⁸ O. Polishchuk, Anti-Corruption Commissioner-Whistleblower. Interview with T. Khutor and Y. Shvab, September 5, 2021.

R. Marzhan, whistleblower prosecutor at the Chortkiv local prosecutor's office. Interview with Y. Shvab, September 1, 2021.

L. Holnyk, Whistleblower judge of the Oktyabrsky District Court of Poltava. Interview with T. Khutor and Y. Shvab, September 5, 2021.

the body are important to ensuring their guarantees. However, despite the many positive reviews, it is also necessary to point out certain problems in this context, namely:

- 1) *Lack of resources.* According to the interviewed experts, the NACP has limited resources to protect whistleblowers.²³⁹ In particular, as of 2022, the specialized department employed only four people who were supposed to provide defense in 69 cases. In 2022, the courts made 14 decisions in favor of the whistleblowers. In addition, there is a problem with the protection of whistleblowers in the regions, as the NACP is located in Kyiv and has no regional offices.
- 2) *Discrediting whistleblowers by the NACP.* Despite the NACP being active in protecting whistleblowers, there are cases when the body has discredited the whistleblowers it supported. The case of the whistleblower of the big state-owned enterprise we described above is one example. Following the reporting of corruption, the NACP included this whistleblower in the register of corrupt officials.²⁴⁰ The formal reason was the violation of the Law On Prevention of Corruption. As an anti-corruption commissioner at the enterprise, the whistleblower allegedly failed to create secure channels for reporting corruption. The director of the company (against whom the charges were brought) issued an order "on the application of disciplinary measures", according to which the whistleblower was dismissed, and which they and the NACP challenged in court.²⁴¹ Through such actions performed by the NACP, whistleblowers are subjected to additional pressure. The information that the NACP applies similar measures against whistleblowers is used by the people against whom whistleblowers report to discredit the whistleblowers in the eyes of the public. This practice of the NACP is not widespread, but it is troublesome to whistleblowers. Even in cases where there are grounds for bringing whistleblowers to justice, the NACP should avoid public disclosure of this information, as the harm to the whistleblower may outweigh the public interest in the disclosure of such information.

Table 9: Summary of Article 8.4, and Article 13.2

	Evaluation	Comments
Implementation through national legislation	Fully compliant	Ukrainian legislation regarding mechanisms for the reporting of acts of corruption and protection of whistleblowers is compliant with Article 8.4 and Article 13.2 of the UN Convention against Corruption. The law provides wide-ranging capacities for reporting corruption and guarantees the anonymity and confidentiality of

²³⁹ L. Holnyk, Whistleblower judge of the Oktyabrsky District Court of Poltava. Interview with T. Khutor and Y. Shvab, September 5, 2021.

²⁴⁰ National Agency on Corruption Prevention, Access to the Unified State Register of Persons Who Committed Corruption or Corruption-Related Offenses: <https://corruptinfo.nazk.gov.ua/> (access date: 20.09.2023).

²⁴¹ XX's comment on the Energoatom case on his Facebook page, <https://www.facebook.com/oleg.polisuk/posts/3860814883995190> (access date: 20.09.2023).

		allegations. However, there is a certain lack of legal regulation regarding specifications for reporting channels. The law also provides sufficient guarantees for the protection of whistleblowers.
Practical enforcement	Moderate enforcement	Legal requirements are not always implemented successfully. Although in practice there are proper mechanisms for reporting corruption, there are still several shortcomings that do not contribute to effective reporting. The NACP protects whistleblowers, despite their lack of resources, and the fact that the tools available for protection are not fully effective. Due to the novelty of the institute of whistleblowers, certain problems arise in the implementation of laws and they need to be resolved as soon as possible.

Good practices

- The creation of the Unified Whistleblower Allegation Portal should ensure proper confidentiality and anonymity of allegations, as well as save the budget funds.
- Capacities for reporting corruption are provided at a sufficient level. Everyone can choose the method and channels for reporting.
- The NACP actively uses available tools to protect whistleblowers. The work of the body in this direction can be assessed quite positively.
- Methodological support for whistleblowers and dissemination of information on the importance of reporting corruption is provided by the NACP at a good level.

Deficiencies

- State bodies have only partially complied with the requirements to create appropriate conditions for reporting corruption. Some law enforcement agencies do not comply with the requirements for the establishment of regular reporting channels.
- Guarantees of anonymity and confidentiality are not fulfilled in practice when reporting corruption related to state secrets.
- Protection tools do not always apply effectively. Due to the lack of liability, compliance with the NACP's prescription depends solely on the will of the person against whom it was made.
- Lack of resources undermines the NACP's effectiveness in protecting whistleblowers.
- Discrediting whistleblowers by the NACP itself negatively affects the reputation of whistleblowers and exerts pressure on them.

4.1.7 Article 9.1 – Public procurement

Legal framework

Legal Requirements for Public Procurement

In 2015, the basic Law On Public Procurement (PPL) was adopted.²⁴² The PPL determines the legal and economic basis for the procurement of goods, works, and services to meet the needs of the state and local communities.²⁴³ Information on announced procurements enters the central Prozorro database²⁴⁴ and is simultaneously published on electronic platforms. Procuring entity tender documentation is placed on these platforms. According to the PPL, the tender documentation sets out the conditions for the tender. Suppliers submit their bids based on the tender documents. Their evaluation takes place through the use of an electronic auction. Before the start of the auction, all information on the prices of tender offers is published. The winner of the procurement is the bidder who best meets the requirements of the tender documentation and the established criteria: 1) price; or 2) cost of the life cycle (the cost of servicing the subject of procurement); or 3) price along with non-price criteria: terms of payment, term of performance, warranty service, technology transfer, and others. If, in addition to the price, a procuring entity uses other evaluation criteria, the specific weight of the price criterion cannot be lower than 70%, except in cases of applying the competitive dialogue procedure.

The PPL determines several ways to obtain public procurement information:

- Annual procurement plans published by public authorities on their websites and containing all necessary information on future orders.
- An electronic procurement system, in which a procuring entity publishes information about the procurement through the above-mentioned authorized electronic platforms.

All procurement is divided into several types depending on their cost and complexity. This is necessary to ensure the effectiveness of the procurement system. The PPL, in particular, defines the following types of procurement: 1) Procurement without the use of the electronic procurement system; 2) simplified procurement; and 3) direct procurement through an electronic catalog, the so-called Prozorro market. These three types belong to the below-threshold procurement. Additionally, general procurement procedures (or above-threshold procurement) entail the use of an electronic system. When using this type of procurement, a procuring entity independently chooses one of the four procurement procedures: open tender; competitive dialogue; negotiated procurement procedure (only by exception); or limited participation tender. When the cost for goods or services is higher than EUR 133000, and for works higher than EUR 5.15 million, the procurement notice must be published in English (along with the Ukrainian version). There is a tendency to exclude certain goods, services, and works from the PPL scope (the assessment of which we provide below).

²⁴² <https://zakon.rada.gov.ua/laws/show/922-19?lang=en#Text> (access date: 02.09.2023).

²⁴³ <https://zakon.rada.gov.ua/laws/show/922-19#Text> (access date: 02.09.2023).

²⁴⁴ Prozorro, The main page of the official web portal, <https://prozorro.gov.ua/>, (access date: 03.09.2023).

Upon the outbreak of Russia's full-scale invasion of Ukraine, the Cabinet of Ministers adopted Resolution No. 169 'Some Issues of Defense and Public Procurement of Goods, Works and Services under Martial Law',²⁴⁵ which regulated the procurement procedure under martial law until October 2022. As of the end of October 2022, the CMU Resolution No. 1178 'On Establishing the Peculiarities of Public Procurement of Goods, Works and Services for Procuring Entities Envisaged by the Law of Ukraine on Public Procurement for the Period of Martial Law in Ukraine and within 90 days from the date of its end or cancellation'²⁴⁶ is in force. The latter Resolution does not apply to defense procurement. In September 2023, this resolution was amended.²⁴⁷ This reduced the number of cases in which the customer can purchase goods and services (except for routine maintenance services) with a value equal to or exceeding UAH 100 thousands, routine maintenance services with a value equal to or exceeding UAH 200 thousands, works with a value equal to or exceeding UAH 1.5 million by concluding a procurement agreement without the use of open tenders and/or an electronic catalogue for the procurement of goods in certain cases, which are determined by the peculiarities of martial law.

Oversight in Procurement

The PPL establishes monitoring as a procurement oversight mechanism, and the Law of Ukraine "On the Basic Principles of State Financial Control in Ukraine" provides a fairly large list of possible oversight mechanisms in addition to monitoring (for example, revisions, inspections, audits, etc.). Such control is carried out by The State Audit Service of Ukraine (SASU).

There are also some entities with different mandates to perform the control functions:

- The Antimonopoly Committee of Ukraine (AMCU);
- The State Treasury Service of Ukraine (STSU);
- The Accounting Chamber (AC);
- civil society organizations,
- the National Police, and Prosecutors' Offices.

The PPL also stipulates rules of procedure for appealing procurement procedures. The responsible body, i.e., the Antimonopoly Committee of Ukraine (the AMCU), is an independent arbitrator between business and government customers with a special status and additional guarantees for its independence.²⁴⁸

The NACP, as the authorized body for corruption risk assessment, also carries out relevant activities in the field of public procurement. In 2021, the NACP published a study "Typical Corruption Risks in Public Procurement",²⁴⁹ and "Corruption risks during public procurement

²⁴⁵ <https://zakon.rada.gov.ua/laws/show/169-2022-%D0%BF#Text> (access date: 05.09.2023).

²⁴⁶ <https://zakon.rada.gov.ua/laws/show/1178-2022-%D0%BF#Text> (access date: 16.09.2023).

²⁴⁷ <https://zakon.rada.gov.ua/laws/show/3384-20#Text>, (access date: 12.02.2024).

²⁴⁸ <https://zakon.rada.gov.ua/laws/show/3659-12#Text> (access date: 21.09.2023).

²⁴⁹ National Agency on Corruption Prevention, (March, 2021), Typical corruption risks in public procurement, <https://nazk.gov.ua/wp-content/uploads/2021/03/Typovi-koruptsiini-ryzyky-v-publichnyh-zakupivlyah-2.pdf>, (access date: 20.09.2023).

under martial law" in June 2023.²⁵⁰ It describes the risks that arise in the application of procurement procedures and the specific examples in which they manifest themselves. This helps to respond to identified risks in a prompt way.

Implementation

Prozorro System

Public procurement operates through the electronic Prozorro system. It was created within the cooperation of Transparency International Ukraine, private electronic platforms, Quintagroup IT-company, and the Ministry of Economy of Ukraine.²⁵¹ In 2016, Quintagroup Co. handed the Prozorro system over to the Prozorro state-owned enterprise.²⁵² Registration for public procurement is carried out through private authorized Prozorro websites, being part of the Prozorro system. All actions of procurement participants are carried out through their personal accounts on the electronic platform. There are 12 inter-competing private authorized procurement websites, with their usage rules being available in open free online access.²⁵³ Such a system proves to eliminate the monopoly role of the state and corruption-related risks. According to civil society experts, the existence of such a system (state-owned enterprise together with private websites) allows, on the one hand, to develop and strengthen competition, and on the other, to prevent websites from manipulating and behaving in a non-competitive manner. Anyone who meets the requirements can become a procurement platform and provide technical capabilities to authorized entities and members to participate in and conduct procurement.²⁵⁴

In 2021, the number of procurements was 5.46 million, with 34.52 thousand procuring entities and 262.1 thousand tenderers.²⁵⁵ In 2022 the number of procedures equated to 2.98 million, 30.28 thousand procuring entities, and 184.56 thousand participants.²⁵⁶ According to Prozorro data, in 2021, the application of the electronic system saved more than EUR 1.57 billion,²⁵⁷ in 2022 – it was EUR 0.56 billion. 93% of procurement cases were below-threshold, and only 7%

²⁵⁰ National Agency on Corruption Prevention, (June, 2023), Corruption risks in public procurement under martial law, https://nazk.gov.ua/wp-content/uploads/2023/06/Kor-ryzyky_zakupivli.pdf, (access date: 20.09.2023).

²⁵¹ Prozorro, «About us» page on the Prozorro web portal, <https://prozorro.gov.ua/about>, (access date: 03.09.2023).

²⁵² From April 1, 2016, it became mandatory for central authorities and monopolists, and from August 1, 2016, – for other public procuring entities (in the original Ukrainian language it is called «zamovnyk»). Prozorro is a platform that currently unites more than 35000 state and municipal authorities and enterprises (procuring entities who purchase goods, works, and services) and about 250000 commercial companies (i.e., suppliers, in original Ukrainian language it is called «postachalnyk»)[#].

²⁵³ Prozorro, Information on private authorized procurement websites on the Prozorro web portal, <https://prozorro.gov.ua/majdanchiki-prozorro>, (access date: 03.09.2023).

²⁵⁴ V. Zadvornyj, Director General of ProZorro. Interview with T. Khutor and T. Riabchenko, September 3, 2021. A. Zahrebelska, Founder of the Anti-Trust League, State Commissioner of the AMCU in 2015-2019. Interview with T. Khutor, August 26, 2021.

²⁵⁵ Of these, more than 5.04 million procurement procedures were below-threshold procurement (i.e., without the use of an electronic system), with a total value of more than EUR 6.25 billion. Above-threshold procurement (i.e., using an electronic system) was used in about 420240 cases, with their total value being over EUR 46,6 billion.

²⁵⁶ Of these, more than 2.78 million procurement procedures were below-threshold procurement (i.e., without the use of an electronic system), with a total value of more than EUR 9 billion. Above-threshold procurement (i.e., using an electronic system) was used in about 201270 cases, with their total value being over EUR 17,5 billion.

²⁵⁷ Idem.

happened to be above-threshold ones. In 2021, the total value of above-threshold procurement is seven times higher (EUR 46 billion versus EUR 6 billion) than the total value of below-threshold procurement. Only in the first year of war, the total value was two times higher due to changes in procurement procedures (the removal of public procurement from the Prozorro system, ignoring competitive procedures, non-disclosure of procurement process due to security reasons, temporary permission to conduct procurement directly, etc.).

In terms of below-threshold procurement, the introduction of simplified procurement in 2020 ensured transparency and accountability of procurement and created oversight opportunities. During the year when simplified procurement was applied, almost EUR 100 thousand was saved.²⁵⁸ At the same time, there are risks in conducting simplified procurement. Procuring entities most often complained about the PPL inaccuracies, the duration of simplified procurement, and misunderstandings of the requirements for the simplified procurement duration terms. Moreover, participants highlighted the problems related to the impossibility of appealing simplified procurement to the AMCU, as well as collusions, and discrimination.²⁵⁹

Annual procurement plans are to be published on the websites of state bodies of various levels, from central to local, as well as on the “data.gov.ua” site²⁶⁰ (i.e., the portal, which contains a large array of open data of state bodies), where anyone can find information about the funds of any operator they are interested in. Due to the war, for security reasons, procuring entities may not indicate their location in the annual procurement plan. Information on annual procurement plans is also included in the central Prozorro database.²⁶¹ Information is simultaneously being published on the portal and displayed on Prozorro sites.²⁶² According to interviewed experts,²⁶³ Ukraine is thought to be one of the exemplary countries in terms of disclosure of procurement plans and the scope of information obligatory to be provided by public procurement participants. Public procuring entities do not attempt to hide or omit information about procurement plans.²⁶⁴

²⁵⁸ Prozorro, (April, 2021), Ukraine saved 2.9 billion hryvnias for the year thanks to the reduction of the threshold for mandatory procurements in Prozorro, <https://prozorro.gov.ua/news/ukrayina-zaoshchadyla-29-mlrd-grn-za-rik>, (access date: 06.09.2023).

²⁵⁹ Transparency international Ukraine, (December, 2020), Report «Not Simplified Procurement: Impressions of Customers and Businesses», <https://ti-ukraine.org/wp-content/uploads/2020/12/NeSproshheni-zakupivli.-Vrazhennya-zamovnykiv-i-biznesu.pdf>, (access date: 14.09.2023), p.25.

²⁶⁰ The only state web portal of open data DIYA, Annual procurement plans, https://data.gov.ua/dataset/richni_plany_zakupivel, (access date: 10.09.2023).

²⁶¹ Prozorro, Information on annual procurement plans on the Prozorro web portal, <https://prozorro.gov.ua/search/plan>, (access date: 03.09.2023).

²⁶² State procurement.Online, Information on annual procurement plans on private authorized procurement website, <https://www.dzo.com.ua/tenders/plans?page=1>, (access date: 04.09.2023).

Zakupki.Prom, Information on annual procurement plans on private authorized procurement website, <https://zakupki.prom.ua/gov/plans>, (access date: 04.09.2023).

²⁶³ S. Mytkalyk, Head of the Board of the Anti-Corruption Headquarters. Interview with T. Khutor and Y. Shvab, August 27, 2021 and A. Ferentc, Procurement Specialist, Coordinator of the regional direction of the Dozorro project at Transparency International Ukraine. Interview with T. Khutor and T. Riabchenko, September 6, 2021 and V. Zadvornyi, Director General of ProZorro. Interview with T. Khutor and T. Riabchenko, September 3, 2021.

4. A. Zahrebelska, Founder of the Anti-Trust League, State Commissioner of the AMCU in 2015-2019. Interview with T. Khutor, August 26, 2021.

²⁶⁴ S. Mytkalyk, Head of the Board of the Anti-Corruption Headquarters. Interview with T. Khutor and Y. Shvab, August 27, 2021 and A. Ferentc, Procurement Specialist, Coordinator of the regional direction of the Dozorro

Procurement by public bodies

Tender committees were engaged in procurement conducted by public bodies until 2022. They consisted of approximately 5-10 employees of the body, who often did not have anything to do with procurement issues. As a result, the tender committees were not efficient enough and had some shortcomings. For such shortcomings to be addressed, the institute of authorized persons has been established. An authorized person is enshrined to be a definite public official responsible for the organization and conduction of procurement. Studies have shown that the introduction of such an institution has reduced the time of organization of below-threshold procurement (by 2 hours), above-threshold (by 5 hours), and reduced the share of unsuccessful procedures (from 30% to 20%).²⁶⁵

Starting from January 1, 2022, an authorized person had to conduct all procurements. By January 1 2022, the authorized person had to pass a test on the web portal to confirm the required level of knowledge in the field of public procurement. According to interviewed experts, personal responsibility for procurement is seen as the main advantage of the institution of an authorized person.²⁶⁶ The authority has a person responsible for the entire procurement process. It is worth noting that experts have concerns about the salary, as well as the heavy workload of the authorized person, since numerous procurements are conducted annually.

Exceptions from the Law

Most procurements are made in the electronic system under the rules of procedure prescribed by the PPL. However, there are cases of exclusion of certain categories of goods, works, or services from the scope of the PPL. A great number of draft laws aiming at making certain categories of exceptions from the PPL are registered every year. More often than not, the draft amendments proposing exceptions are not well-grounded, consequently, most of them were not adopted by the Parliament. However, there were cases when certain amendments were supported.²⁶⁷

project at Transparency International Ukraine. Interview with T. Khutor and T. Riabchenko, September 6, 2021 and V. Zadvornyi, Director General of ProZorro. Interview with T. Khutor and T. Riabchenko, September 3, 2021 and A. Zahrebelska, Founder of the Anti-Trust League, State Commissioner of the AMCU in 2015-2019. Interview with T. Khutor, August 26, 2021.

²⁶⁵ Centre of excellence in procurement at Kyiv School of Economics, (2019), Research «Implementation of the authorized person in the context of optimization of public procurement processes», <https://cep.kse.ua/article/upovnovajena-osoba/upovnovajenaOsoba.pdf>, (access date: 25.09.2023).

²⁶⁶ S. Mytkalyk, Head of the Board of the Anti-Corruption Headquarters. Interview with T. Khutor and Y. Shvab, August 27, 2021 and A. Ferentc, Procurement Specialist, Coordinator of the regional direction of the Dozorro project at Transparency International Ukraine. Interview with T. Khutor and T. Riabchenko, September 6, 2021 and V. Zadvornyi, Director General of ProZorro. Interview with T. Khutor and T. Riabchenko, September 3, 2021 and A. Zahrebelska, Founder of the Anti-Trust League, State Commissioner of the AMCU in 2015-2019. Interview with T. Khutor, August 26, 2021.

²⁶⁷ 1) Thus, on June 3, 2021, the PPL was amended, and «works on construction (including construction work-related services) of the Big Ring Road around the city of Kyiv (Kyiv region)» were excluded from the Law scope. The amendments were adopted despite the negative assessment of public agencies (NACP, AMCU, SASU) and the public. The value of such works reaches EUR 2.6 billion, and procurement is made without the use of Prozorro. It significantly affects the transparency of the use of state budget funds.

2) National Agency on Corruption Prevention, (June, 2021), Facebook post «The draft law No.5309, adopted by the parliament, contains corruption-inducing factors - anti-corruption examination of the NACP», <https://www.facebook.com/NAZKgov/photos/a.1070146733045250/4095959350463958/>, (access date: 15.09.2023) and

In the first months of the Russian invasion of Ukraine, it became objectively impossible to conduct procurement under the existing procedures. As of September 2022, procuring entities in the defense sector and some law enforcement agencies (e.g., the Ministry of Defense, the Ministry of Internal Affairs, etc.) carried out public/defense procurement without using regular procurement procedures/simplified procedures. Other procuring entities, in cases where the value of procurement is less than UAH 50,000 (~1,235 euros), carried out procurement without using the electronic procurement system, had to comply with the principles of public procurement, not to include information about such procurement in the annual plan and not to publish a report in the electronic procurement system on the procurement contract concluded without using the electronic procurement system. Procurements above UAH 50,000 or EUR 1,235 were mostly made by concluding contracts directly without using competitive procedures or using simplified procurement. However, as of November 2022, open tenders and other procedures have been reintroduced for procurement in other areas (except defense), but in a simplified form in comparison to what is set forth in the Law. The trend towards the return of transparent procedures is positive.

Public procurement control

As mentioned above, six entities are responsible for controlling public procurement. Despite this, the experts interviewed criticize that the control system does not work well enough or does not work at all.²⁶⁸ First and foremost, it is based on the ratio between the number of procurements and the number of control measures taken, especially by SASU. In particular, each year, about three million procurement cases are conducted, and the SASU monitors 10,000-12,000 procurement cases. This negatively affects the possibility of bringing violators of procurement procedures to justice.

The State Audit Service conducts monitoring, inspections, and audits of procurement.²⁶⁹ In 2022, in most cases (7947 procurement cases), violations committed by procuring entities affected the results of procurement, and such violations were mostly rooted in wrongful decisions made in consideration of tender bids, violations regarding the disclosure of

Antitrust League, (June, 2021), Facebook post «Antitrust League» asks the President of Ukraine to promise the Law on the reform of the AMCU Tender Board due to the harmfulness of some of its provisions for the procurement sphere», <https://www.facebook.com/league.antitrust/posts/342383210579967> (access date: 15.09.2023).

3) Another exception made it possible to procure the staff needed for celebrating Independence Day and Constitution Day by applying negotiated procurement procedures, without any competitive bidding. According to the Ministry of Finance of Ukraine estimations, the celebration cost over EUR 150 million[#], with not related to the celebration large-scale infrastructure projects added to the cost. Such law application abuses the use of budget funds.

²⁶⁸ S. Mytkalyk, Head of the Board of the Anti-Corruption Headquarters. Interview with T. Khutor and Y. Shvab, August 27, 2021 and A. Ferentc, Procurement Specialist, Coordinator of the regional direction of the Dozorro project at Transparency International Ukraine. Interview with T. Khutor and T. Riabchenko, September 6, 2021 and V. Zadvorny, Director General of ProZorro. Interview with T. Khutor and T. Riabchenko, September 3, 2021 and A. Zahrebelska, Founder of the Anti-Trust League, State Commissioner of the AMCU in 2015-2019. Interview with T. Khutor, August 26, 2021.

²⁶⁹ During 2022, the State Audit Office and its interregional territorial bodies monitored 11958 procurement procedures with a total value of about EUR 6.5 billion, resulted in detection of violations of the law, committed by procuring entities in 7947 procurement cases (that is almost 66% of procurement cases audited), with a total value of about EUR 3.5 billion.

procurement information, the conclusion of procurement contracts and making amendments to them, and the use of negotiated procurement procedures.²⁷⁰

Public control of procurement is carried out through by public associations and their projects, such as DOZORRO²⁷¹ which was launched by TI Ukraine. Moreover, the DOZORRO expert team created the BI public analytics module,²⁷² which is a free analytical tool that contains data on all procurement made through the Prozorro system since 2015. Based on the results of the procurement analysis, the DOZORRO community submitted some allegations of crimes and other violations in the field of public procurement. During 2021, 11 criminal proceedings were opened; 79 contracts were terminated; members of tender committees or authorized persons were brought to justice in 24 cases.²⁷³ During 2022, we checked 640 procurement procedures, sent more than 130 appeals about violations and prepared two research studies in the field of procurement.²⁷⁴ During July 2022 - August 2023, 30 criminal proceedings were opened and 25 contracts were terminated. With the help of open data on public procurement, investigative journalists can prepare materials about abuses and corruption in this area. In Ukraine, the Nashi Groshi, Bihus.INFO, and other projects are actively engaged in this, despite possible threats to life from the subjects of investigations.²⁷⁵ The interviewed experts are certain that the information available to the public is complete. If desired, it is possible to obtain all necessary information about a tender bid.²⁷⁶ In addition, some experts observe that the amount of this type of information is growing, the available fields are expanding, thus improving the quality of procurement in general, and enhancing civil society control.²⁷⁷

Complaints about public procurement

According to various estimates, the percentage of appeals against procurement to the AMCU is about 8% of those who have the right to do so. In the year 2021, the Antimonopoly Committee of Ukraine received 14,828 complaints, of which 14,003 complaints (94%) were taken into consideration. Based on the results of the review of complaints, 13,646 decisions were made on the merits of the claims.²⁷⁸ In 2022, the Antimonopoly Committee of Ukraine received 3,865

²⁷⁰ State Audit Service of Ukraine, (February, 2023) Annual report for SASU in 2022, p. 21/=. https://www.kmu.gov.ua/storage/app/sites/1/17-civik-2018/zvit2022/Zvit_audit_2022.pdf, (access date: 07.03.2024).

²⁷¹ DoZorro, DoZorro community members on the official website, <https://dozorro.org/community/ngo>, (access date: 13.09.2023).

²⁷² DoZorro, BI public analytics module, <https://bi.prozorro.org/hub/stream/aaec8d41-5201-43ab-809f-3063750dfafd>, (access date: 14.09.2023).

²⁷³ Transparency international Ukraine, (2021), Annual report of Transparency International Ukraine - 2021, <https://ti-ukraine.org/research/zvit-ti-ukrayina-2021-rik-ta-vykonannya-strategiyi>, (access date: 10.09.2023).

²⁷⁴ Transparency international Ukraine, (2022), Annual report of Transparency International Ukraine - 2022, <https://report.ti-ukraine.org/2022/>, (access date: 10.03.2024).

²⁷⁵ Nashi Hroshi, The main page of the official web portal, <https://nashigroshi.org/>, (access date: 22.09.2023) and

Bihus.Info, The main page of the official web portal, <https://bihus.info/>, (access date: 10.09.2023).

²⁷⁶ S. Mytkalyk, Head of the Board of the Anti-Corruption Headquarters. Interview with T. Khutor and Y. Shvab, August 27, 2021 and A. Ferentc, Procurement Specialist, Coordinator of the regional direction of the Dozorro project at Transparency International Ukraine. Interview with T. Khutor and T. Riabchenko, September 6, 2021 and A. Zahrebelska, Founder of the Anti-Trust League, State Commissioner of the AMCU in 2015-2019. Interview with T. Khutor, August 26, 2021.

²⁷⁷ V. Zadvorny, Director General of ProZorro. Interview with T. Khutor and T. Riabchenko, September 3, 2021.

²⁷⁸ 3517 refusals to satisfy the complaint (25,8%); 10129 complaints were satisfied in full or partially (74,2%); 357 decisions on termination of complaints.

complaints. Based on the results of the review of complaints, 3770 decisions were made.²⁷⁹ On the one hand, this shows trust in the current appeal mechanism and its sufficiently active participants of procurement procedures. On the other hand, the percentage of appeals is quite high and consequently, the AMCU considers thousands of complaints annually. Due to amendments made in terms of procurement appeals in April 2020,²⁸⁰ the share of satisfied complaints increased from 43% to 65%. The novel additional safeguards reduced the number of unscrupulous complainants, thus deterring complaints from being submitted solely to delay the procurement process. In 2022, the number of complaints decreased due to the non-application of open procurement procedures for almost the entire year; in 2022, the Antimonopoly Committee of Ukraine received 3,865 complaints.²⁸¹

At the same time, the negative aspect of appeals to the AMCU, namely inconsistent decision-making practices, was confirmed by all interviewed civil society experts and published research results. This practice discouraged the desire to appeal due to the increase in the fee for filing complaints, as well as the risk of receiving unfavorable decisions in similar cases. That is, you can file a complaint in one case and win, and lose in another case with a similar complaint. To remedy this situation, the experts recommended generalizing the AMC's practice, which, on the one hand, would allow them to act at earlier stages of decision-making, and, on the other hand, would allow complainants to predict the outcome of their complaints in the future.²⁸²

The Committee's order of May 18 2023 established the Commissions of the Antimonopoly Committee of Ukraine²⁸³ for consideration of complaints about violations of procurement legislation and approved the rules of procedure for their work. The commission members specialize exclusively in procurement. As of September 2023, 4 members of the commission

Antimonopoly Committee of Ukraine, (April, 2022), Annual report of the Antimonopoly Committee of Ukraine for 2021, <https://amcu.gov.ua/storage/app/uploads/public/627/ccb/c10/627ccbc10ef3d640199715.pdf>, (access date: 11.09.2023), p.101.

²⁷⁹ 848 refusals to satisfy the complaint; 3046 complaints were satisfied in full or partially (74,2%); 124 decisions on termination of complaints.

Antimonopoly Committee of Ukraine, (March, 2023), Annual report of the Antimonopoly Committee of Ukraine for 2022, <https://amcu.gov.ua/storage/app/uploads/public/641/87f/e95/64187fe957f1c745683055.pdf>, (access date: 21.03.2024), p.101.

²⁸⁰ Approach to charge fee from a complaint depending on the cost and subject of the procurement, with payment made only online for filing a complaint, reimbursement of the paid administrative fee to the complainants in case of satisfaction of the complaint, the possibility of appealing the procuring entity's decision to cancel procurement, the impossibility of withdrawing the complaint, etc.

²⁸¹ Antimonopoly Committee of Ukraine, (March, 2023), Annual report of the Antimonopoly Committee of Ukraine for 2022, <https://amcu.gov.ua/storage/app/uploads/public/641/87f/e95/64187fe957f1c745683055.pdf>, (access date: 18.09.2023), p.101.

²⁸² S. Mytkalyk, Head of the Board of the Anti-Corruption Headquarters. Interview with T. Khutor and Y. Shvab, August 27, 2021 and A. Ferentc, Procurement Specialist, Coordinator of the regional direction of the Dozorro project at Transparency International Ukraine. Interview with T. Khutor and T. Riabchenko, September 6, 2021 and V. Zadvornyi, Director General of ProZorro. Interview with T. Khutor and T. Riabchenko, September 3, 2021 and A. Zahrebelska, Founder of the Anti-Trust League, State Commissioner of the AMCU in 2015-2019. Interview with T. Khutor, August 26, 2021.

²⁸³ Antimonopoly Committee of Ukraine, AMCU Order of May 04, 2023, No. 8-rp, <https://amcu.gov.ua/npas/pro-zatverdzhennya-reqlamentu-roboti-komisiji-antimonopolnogo-komitetu-ukrayini-z-rozglyadu-skarg-pro-porushennya-zakonodavstva-u-sferi-publichnih-zakupivel-2>, (access date: 12.02.2024).

have been elected.²⁸⁴ Of particular interest is the last section of the Regulations – reporting on the Commission's activities. This section stipulates that the Commission may provide the structural unit of the Committee responsible for organizational support of the Commission's work with proposals, information and necessary materials for the preparation and submission for consideration and approval by the Committee of the generalized practice of reviewing complaints about violations of the legislation in the field of public procurement. The AMCU has already started to move in this direction, gradually creating consistent conclusions, but it is expected that such changes will speed up the process.

Table 10: Summary of Article 9.1

	Evaluation	Comments
Implementation through national legislation	Fully compliant	National legislation of Ukraine is consistent with Article 9.1 of the UNCAC. Public procurement is conducted according to open procedures and each procurement tender is known of in advance. Consequently, anyone can participate.
Practical enforcement	Good enforcement	The active application of the Prozorro system, as well as continual updating of the system and uprooting errors in its application prove the effectiveness of public procurement. Because of this, there are oftentimes attempts to displace particular goods, works, or services from the scope of the PPL to reduce the transparency of procurement. The procurement appeals system operates effectively. A challenge is the need to strengthen the effectiveness of control over procurement. Another challenge was the non-use of Prozorro procurement at the beginning of the Russian full-scale invasion of Ukraine and the gradual return to pre-war procurement procedures.

Good practices

- The whole process of public procurement is transparently conducted in an electronic system.
- Accessibility of information on the conduction of public procurement is guaranteed.
- The introduction of the institute of an authorized person obliged to conduct public procurement professionally is guaranteed.
- There is experienced civil society oversight over public procurement processes.

²⁸⁴ Nashi Groshi, The AMCU has created new Commissions for appealing tenders: four people out of the required ten have been hired, <https://nashigroshi.org/2023/05/30/amku-stvoriv-novi-komisii-po-oskarzhenniu-tenderiv-vzialy-choty-och-liudev-z-neobkhidnykh-desiaty/>, (access date: 22.03.2024).

- The AMCU is an effective appellate body that responds flexibly to the need for change.

Deficiencies

- Amendments to the legislation excluding particular goods or services from the scope of the Law on Public Procurement are oftentimes made. There is a wide range of goods and services that can be procured through a direct contract instead of competitive procedures for above-threshold amounts, without the possibility of appealing such direct contracts – unlike the negotiation procedure that applied previously to the amendments.
- There is an insufficient number and quality of inspections conducted by regulatory authorities, and as a consequence, the possibility of avoiding liability for violations in the field of public procurement is high.
- The inconsistent practice of the AMCU in making decisions based on the results of public procurement appeals is combined with an ineffective judicial appeals mechanism.
- There is a lack of a unified approach to understanding non-price criteria. There are unclear issues of formation of the expected value of the tender and the price of the direct contract.

4.1.8 Article 10 and Article 13.1 – Access to information & Participation of society

Legal framework

Overarching Law on Access to Public Information

The transparency and openness of public authorities (i.e., all government bodies of all branches of power, local self-government bodies and their officials and employees) and, accordingly, the implementation of everyone's right to access public information are ensured at the constitutional, law and by-law levels. Since 2011, the Public Access to Information Law of Ukraine (Law on Access)²⁸⁵ is in force. It is the overarching law in the sphere of access to public information administered by holders of public information. The law incorporates international standards on access, including the provisions of the Council of Europe Convention on Access to Official Documents (in 2020, Ukraine ratified the Tromsø Convention²⁸⁶).

²⁸⁵ The Law on Access was developed in compliance with A Model Freedom of Information Law. According to Global Right to Information Rating 2013, among 134 countries, Ukraine was ranked the 20th, scoring 115 out of 150 scores possible.

On the rating, see here: The RTI Rating, The main page of the official web portal, <https://www.rti-rating.org/>, (access date: 16.09.2023).

About Ukraine, see here: The RTI Rating, «By Country» page on the official web portal, <https://www.rti-rating.org/country-data/>, (access date: 16.09.2023), <https://zakon.rada.gov.ua/laws/show/2939-17#Text> (access date: 16.09.2023).

²⁸⁶ <https://zakon.rada.gov.ua/laws/show/631-20#Text> (access date: 17.09.2023).

Overriding public interest is the guarantee against restrictions on access to information, i.e., information of public interest.²⁸⁷ A holder can restrict access to information under the three-part test.²⁸⁸ If it is activated, the information is considered confidential, privileged, or official. By law,²⁸⁹ the dissemination of restricted information is not punishable if it is judged by a court to be of public interest. However, the subjects of power are envisaged to be criminally punished for their disclosure of state secrets, even if such information is of public interest. If the document contains information with restricted access, the part of the information that is not restricted is provided for review. Ukraine ranks 18th on the Global Right to Information Rating, which speaks to the law's comprehensive nature.²⁹⁰

Appealing

There is no Information Commissioner in Ukraine. Instead, the right to access public information, as well as other human rights, is overseen by the Parliamentary Commissioner for Human Rights (the Ombudsman), which is regulated by a special law.²⁹¹ The Ombudsman is appointed for five years and dismissed by the VRU. A complaint to the Ombudsman is free of charge and may be filed within one year after a violation of human and civil rights and freedoms is discovered. The term may be extended for up to two years.

Legislation Provisions on Involvement of the Public in Decision-Making Processes

The involvement of citizens in the development of administrative decisions is guaranteed at the constitutional, law, and by-law levels. For example, the Law On Citizens' Appeals²⁹² regulates, inter alia, citizens' participation in and influence on public administration. The authorities are obliged to consider citizens' appeals,²⁹³ ensure the right to be heard; cancel or amend the appealed decisions, stop unlawful actions, identify and eliminate the causes and conditions that contributed to violations. There are provisions in place that provide monitoring by civil society (through public councils at the bodies), involvement in policy development and monitoring, corruption proofing of acts and draft acts.²⁹⁴ The Law on Local Self-Government²⁹⁵ covers application of corresponding instruments at the local level (referendum, general meetings, public hearings, local initiatives, e-petitions, self-organized civil society bodies).

Implementation

Means for Access to Information

²⁸⁷ The right of the public to know the information outweighs the potential harm caused by the dissemination of such information and <https://zakon.rada.gov.ua/laws/show/2657-12#Text> (access date: 17.09.2023).

²⁸⁸ a) restriction of access is necessary solely in the interests of national security, territorial integrity or public order in order to prevent riots or crimes, to protect public health, to protect the reputation or rights of others, to prevent the disclosure of confidential information, or to maintain the authority and impartiality of justice; b) disclosure of information could cause significant harm to these interests; c) the harm from disclosing information outweighs the public interest in obtaining it.

²⁸⁹ <https://zakon.rada.gov.ua/laws/show/2657-12#Text> (access date: 17.09.2023).

²⁹⁰ Global Rights to Information Rating, <https://www.rti-rating.org/country-data/>, (access date: 01.09.2023).

²⁹¹ <https://zakon.rada.gov.ua/laws/show/776/97-%D0%B2%D1%80#Text> (access date: 20.09.2023).

²⁹² <https://zakon.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80#Text> (access date: 17.09.2023).

²⁹³ The appeals are determined to be proposals (remarks), statements (petitions), and complaints made in writing or orally.

²⁹⁴ <https://zakon.rada.gov.ua/laws/show/996-2010-%D0%BF#n173> (access date: 18.09.2023).

²⁹⁵ <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80> (access date: 18.09.2023).

According to the ILI's survey, (during September-October 2021, by online anonymous questioning 80 representatives of civil society and the media from 21 out of 24 regions of Ukraine, the Institute of Legislative Ideas conducted a survey asking about a variety of aspects outlining the situation in Ukraine over the last two years in terms of access to information, public involvement, freedom of speech (hereinafter referred to as "the survey")), requests,²⁹⁶ open online resources, and instruments²⁹⁷ are the most frequently applied means for access to public information. The communication, directed towards the public and journalists, for ensuring transparency and accountability of the public sector is neither suitable nor adequate. Very few respondents use public officials' speeches or meetings as their source of public information.

After the start of Russia's full-scale invasion of Ukraine, a number of state institutions removed some public information, including open data on their work, closed state registers, and suspended reporting on their work. The public called for the restoration of access to public information, as this situation has significantly worsened the transparency of the work of state and local governments.²⁹⁸ According to the World Press Freedom Index, in 2023, Ukraine moved up 27 positions in the media freedom ranking, to 79th place.²⁹⁹ A survey of journalists on freedom of speech was conducted in May 2023. Among the 132 journalists surveyed, the majority (78%) said that the Russian invasion had increased the number of cases of self-censorship. Among the reasons why journalists self-censor, three are crucial: fear of making mistakes or difficulties in verifying information (45%), their own beliefs (45%) and fear of losing their jobs (44%).³⁰⁰ Moreover, numerous journalists believe that it is possible to conceal certain information if it is useful or necessary for the state. This motive, combined with the closure of state registers during martial law, which we have described above, may lead to further restrictions on freedom of speech and is quite dangerous, as it is supported by journalists themselves.

Open data helps save taxpayers' money and prevents corruption. Accordingly, the information analysed in this section reflects the situation that existed before the full-scale invasion. 88% of executive authorities publish monthly, quarterly, weekly and annual reports on their

²⁹⁶ 72% of respondents say that they send requests for public information, among which 60% of respondents most often send requests in electronic form to the e-mail box, 12% send in paper form most often.

²⁹⁷ 41% of respondents also mention open data as a source of public information. By open online resources, and instruments we mean, inter alia, open state-owned registries, official websites of the state bodies, the «Statistics» rubric of the «Access to Truth» («Dostup do pravdy») website instrument (Access to Truth, «Statistics» page on the official web portal, <https://dostup.pravda.com.ua/statistics>, (access date: 06.09.2023), where in open access there are 116999 replies on inquiries sent to 2329 holders of information: Access to Truth, «Successful requests» page on the official web portal, <https://dostup.pravda.com.ua/list/successful?#results>, (access date: 06.09.2023).

²⁹⁸ Effective Regulation Office BRDO, (March, 2023), The public demands to open registers and renew access to public information - the statement, <https://brdo.com.ua/news/gromadskist-vymagaye-vidkryty-reyestry-ta-ponovyty-dostup-do-publichnoyi-informatsiyi-zayava/>, (access date: 17.09.2023).

²⁹⁹ Serhiy Albul, (May, 2023), Ukraine rises 27 places in media freedom ranking amid 'terrible state' of press freedom in the world, https://lb.ua/world/2023/05/03/553897_ukraina_pidnyalas_reytingu_svbodi.html (access date: 10.09.2023).

³⁰⁰ Zmina, (May, 2023), During war, freedom of speech preserved in Ukraine but united telethon should be stopped, <https://zmina.ua/en/event-en/during-war-freedom-of-speech-preserved-in-ukraine-but-united-telethon-should-be-stopped-survey-of-journalists/> (access date: 10.09.2023).

websites.³⁰¹ Although the authorities keep electronic records of requests for information and publish regular reports on the processing of them, the data regarding this in their reports is quite superficial, since it is limited to quantitative indicators (e.g., total number of requests received, considered, denied).

Citizens are highly active in sending requests for public information. Citizens and their associations are the most active category of requesters (82,6%). Among the possible reasons, there are difficulties in online access to open sources, lack of information or incompleteness of information published, and low awareness of the existence of open resources. Sending an email has become the most popular channel for making requests for information, although in 2016, it was common practice to deny requests received by email.³⁰² In the context of the COVID-19 pandemic, there was a significant increase in the need for access to digital information, and electronic means of sending requests and responding to them. Requests are a tool for public monitoring. According to the survey, 12% of respondents appealed to law enforcement agencies based on information received on their requests. Responses to requests are often the basis for publicity and investigation by journalists.

The vast majority of public bodies nominally comply with the requirements³⁰³ to publish regular reports on their performance on their official websites and social media pages. The lower-level the body is (e.g., from the ministry to its subordinate bodies, or from the regional level to a village or small town), the less information it publishes. 83 out of 96 executive bodies³⁰⁴ fulfil their obligations to publish regular reports on their performance on their website,³⁰⁵ or on the unified state-owned web portal of open data (<https://data.gov.ua>), access to which is free, and user-friendly. The vast majority of executive bodies (83%) have electronic databases containing information on documents held by them, and they publish them on their websites (73%).³⁰⁶ Hence, an overwhelming number of local bodies and municipal entities do not publish information, or do not even have a website.

Initiatives of IT tools for access to open data, implemented in Ukraine, are recognized

³⁰¹ Analysis of data for the period from May 2011 to December 2020 on the implementation of the main provisions of the Law of Ukraine «On Access to Public Information» by executive authorities, conducted in early 2021 by the Secretariat of the CMU (hereinafter referred to as «the analysis by the Government»): The Unified web portal of executive authorities of Ukraine, (2021), Research «Ensuring information transparency of the work of executive authorities», <https://www.kmu.gov.ua/gromadskosti/dostup-do-publichnoyi-informaciyi/rezultati-anketuvannya-organiv-vikonavchoyi-vladi-ta-monitoringu-oficijnih-veb-sajtiv/zabezpechennya-informacijnoyi-prozorosti-roboti-organiv-vikonavchoyi-vladi>, (access date: 27.09.2023).

³⁰² Back in 2016, it was a common practice for holders of information to refuse responding a request due to its receipt by e-mail. But now, according to the survey, 60% of respondents most often receive public information by requesting public information in the electronic form to an e-mail box or through an electronic form posted on the official website; 12% do it in paper.

³⁰³ <https://zakon.rada.gov.ua/laws/show/z0028-17#Text> (access date: 09.09.2023).

³⁰⁴ See The Unified web portal of executive authorities of Ukraine, (2021), Research «Ensuring information transparency of the work of executive authorities».

³⁰⁵ Ministry of Economy of Ukraine as an examples of a site with open data: Ministry of Economy of Ukraine, (May, 2023), Register of data sets in the possession of the Ministry of Economy, <https://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=f7fcc5dd-8e30-4599-b3cc-611afbif0d21&title=Restr-perelik-NaborivVidkritikhDanikhMinisterstva>, (access date: 12.09.2023).

³⁰⁶ The requirement is established by <https://zakon.rada.gov.ua/laws/show/1277-2011-%D0%BF#Text> (access date: 12.09.2023).

worldwide, and have become possible, in particular, thanks to the Open Government Partnership Initiative,³⁰⁷ being implemented in Ukraine since 2011. In 10 years, four action plans have been fulfilled,³⁰⁸ and the fifth action plan is currently being implemented.³⁰⁹ Ukraine has received numerous awards within the Initiative.³¹⁰ The top 10 achievements³¹¹ are recognized to be the access to information in open data format, disclosure of beneficiary owners,³¹² e-petitions, e-appeals, Prozorro, DoZorro, and ProZorro.Sale e-systems, e-declarations, open public finance, access to communist regime archives, Extractive Industries Transparency Initiative,³¹³ and e-services.³¹⁴ The ProZorro.Sales won the Open Government Partnership Awards-2021.³¹⁵ Open data demonstrates anti-corruption and social impact: it has

³⁰⁷ Video about the Initiative: Civil society and the government, (May, 2018), Video «Partnership «Open Government» - what is it?», https://www.youtube.com/watch?v=B_WeADzVgjl, (access date: 10.09.2023); its Facebook: Partnership Open Government, The main page of the initiative on Facebook, <https://www.facebook.com/ogpUkraine>, (access date: 10.09.2023); official page: The Unified web portal of executive authorities of Ukraine, Official page of the initiative Partnership «Open Government», <https://www.kmu.gov.ua/gromadskosti/gromadyanske-suspilstvo-i-vlada/partnerstvo-vidkritij-uryad>, (access date: 10.09.2023).

³⁰⁸ Plans and reports: The Unified web portal of executive authorities of Ukraine, «Plans, reports» page on the official web portal, <https://www.kmu.gov.ua/gromadskosti/gromadyanske-suspilstvo-i-vlada/partnerstvo-vidkritij-uryad/plani-zviti>, (access date: 16.09.2023).

³⁰⁹ <https://zakon.rada.gov.ua/laws/show/149-2021-%D1%80#Text> (access date: 11.09.2023).

³¹⁰ The 1st action plan is recognized to be amongst the best 10 action plans; the ProZorro system is the winner of the Open Gov Awards 2016: The Unified web portal of executive authorities of Ukraine, (December, 2016), ProZorro received the prestigious international Open Government Awards 2016, <https://www.kmu.gov.ua/news/249566015>, (access date: 07.09.2023); Ukraine is amongst the leading participants of the Global registry of beneficiary owners: Ministry of Justice of Ukraine, (May, 2017), The Ministry of Justice signed a memorandum on the transfer of information on the ultimate beneficiaries of Ukrainian companies to the global database of business owners, <https://minjust.gov.ua/news/ministry/minyust-pidpisav-memorandum-pro-peredachu-do-globalnoi-bazi-vlasnikiv-biznesu-informatsii-pro-kintsevih-benefitsiariv-ukrainskih-kompaniy-23642>, (access date: 07.09.2023); an inclusive process for developing action plans to implement the Initiative is one of the best practices of the Partnership.

³¹¹ Initiative Partnership Open Government, (2021), Infographic «Top 10 achievements (2011-2021)», https://auc.org.ua/sites/default/files/sectors/u-6780/242163889_941711646410949_2008563314233676152_n.jpg, (access date: 08.09.2023).

³¹² To submit a free of charge request to the Ministry of Justice of Ukraine for information from the Unified State Registry of Legal Entities, Sole Entrepreneurs, and Civil Society Associations: Ministry of Justice of Ukraine, Official portal «Free inquiry» in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, <https://usr.minjust.gov.ua/content/free-search>, (access date: 07.09.2023).

³¹³ Extractive industry data portal in Ukraine: Extractive Industries Transparency Initiative, «About EITI» page on the official web portal, <https://eiti.org.ua/pro-eiti/>, (access date: 18.09.2023).

³¹⁴ The Unified web portal of executive authorities of Ukraine, The main page of the official web portal, <https://www.kmu.gov.ua/>, (access date: 15.09.2023);

Diia, The main page of the official web portal, <https://diia.gov.ua/>, (access date: 15.09.2023);

The Unified system of local petitions DEM, The main page of the official web portal, <https://petition.e-dem.ua/>, (access date: 15.09.2023);

Opentenders.Online, The main page of the official web portal, <https://www.opentenders.online/>, (access date: 15.09.2023);

E-tender.UA, The main page of the official web portal, <https://e-tender.ua/en/prozoro>, (access date: 15.09.2023);

Prozorro.Sale, The main page of the official web portal, <https://info.prozorro.sale/en>, (access date: 15.09.2023);

National Agency on Corruption Prevention, The main page of the official web portal, <https://public.nazk.gov.ua/>, (access date: 15.09.2023);

CoST Ukraine, «Reports» page on the official web portal, <https://portal.costukraine.org/zviti/>, (access date: 15.09.2023);

Open Budget, The main page of the official web portal, <https://openbudget.gov.ua/>, (access date: 15.09.2023).

³¹⁵ Prozorro.Sale, (December, 2021), Ukrainian State-owned IT company Prozorro.Sale Has Got to the World Top in Open Governance <https://prozorro.sale/news/ukrainian-state-owned-it-company-prozorrosale-has-got-world-top-open-governance/>, (access date: 18.09.2023).

a positive effect on the detection and cessation of illegal activities, and increases transparency in various areas. There are frequent cases when received or disclosed public information is a reason to appeal to anti-corruption and law enforcement agencies. According to the survey, more than half of the respondents (57%) directed allegations, based on the public information they got, inter alia from open sources, to NABU, NACP, SBI, or the National Police.

Cases of Denial of Access to Public Information, and Other Restrictions

The overall rate of denials of access to public information is relatively low. However, denials certainly often occur in situations that pose risks of corruption or other misconduct. In such cases, the most common reason for denial of access is the unjustified classification of information as restricted. In 2011-2020, executive authorities refused to provide information in response to 4.6% of the total number of requests received (31990 requests out of 702653), while the requested information was classified as restricted information in only 1.3% (9300) of requests.³¹⁶ The previously described survey results show that one in three respondents has at least once received a refusal to provide the requested information, citing the fact that the requested information is marked "for official use", "trade secret" or "confidential". One of the reasons for refusals is the lack of knowledge of requesters. 3.3% (22690) of the 4.6% of refusals to provide information (31990 refusals out of 702653 requests) were made on the grounds that the request was sent to a body that does not hold the requested information.³¹⁷ The survey results also show cases of refusals for this reason. In addition, respondents mention cases of refusals because the requested information is available in open sources (e.g., on the body's website), or because the body perceives the request as a statement rather than a request, or because the body believes that the law on access to information does not apply to it (e.g., a military unit). There are also cases where requesters perceive a request for payment for copying or scanning services as a refusal to provide access to information.

The survey shows that almost every second respondent has experienced a case where their request needs a charge to be paid; and for every third such requester, such a fee was exorbitant.³¹⁸ According to information received from executive authorities, reimbursement of actual costs for copying and printing documents is requested on average by 1-2 times per month. On the one hand, officials complain that there are situations where applicants abuse their rights, thus, charging a fee can serve as a safeguard against, inter alia, "paralysis" of a public body.³¹⁹ On the other hand, even if only a few pages need to be printed, public authorities may refuse to provide the requested information until the requestor pays for the copying costs.

³¹⁶ To be precise: 0,7% (4937) of requests related to confidential information, 0,5% (3351) – secret, 0,1% (1012) – for internal use only.

³¹⁷ The analysis: See The Unified web portal of executive authorities of Ukraine, (2021), Research «Ensuring information transparency of the work of executive authorities».

³¹⁸ 29% (23 out of 80) of respondents say that they have been charged exorbitant fees for copying or scanning the documents they requested. At the same time, 45% (36 out of 80) argue that they have not been charged a fee for public information.

³¹⁹ E.g., during January-May 2020, the Executive Committee of the Odessa City Council received 1421 inquiries from one applicant, the State Judiciary Administration – 1668, the Prosecutor General – 4500 inquiries: Ukrainian Parliament Commissioner for Human Rights, (March, 2021), Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human and citizen rights and freedoms in Ukraine, <https://ombudsman.gov.ua/storage/app/media/uploaded-files/schoricha-dopovid-2020.pdf>, (access date: 26.09.2023), p.78. E.g., the Department for Prevention of Political Corruption, NACP repeatedly received several one-type inquiries to provide paper copies of the financial reports of political parties during the

Appeals

The number of cases of appeals against waiving access to public information is growing. In most cases, complaints are satisfied. In 2021, compared to the previous year, the number of reports of such violations increased 1.5 times.³²⁰ The survey revealed that every second requester who experienced a waiver appealed against it. In most cases (60% of respondents), their complaints were satisfied.

The most common way to lodge a complaint is with the Ombudsman (68% of those who have complained), one in three files a lawsuit in court, and almost one in five complains to a higher authority in the hierarchy. The Ombudsman is said to be independent, but its capacity needs strengthening. Regular annual reports of the Ombudsman lack uniformity in structure and information delivery. Although the Ombudsman addresses recommendations to state and local bodies, there are no mechanisms and instruments to guarantee their implementation. Even though assessing and rating of state and local bodies according to methodology are believed to be the right direction of development, the one-time initiative of such rating on the criteria of openness, transparency, accessibility, etc. ended in 2015. Regular rating could have become a good practice. The Ombudsman lacks staff and there is a constant high turnover of personnel. Although the Ombudsman received three times fewer complaints against violations of the right to access to information in 2020 than it did in 2019, the protocols drawn up in 2020³²¹ accounted for 5% of the total number of complaints received.

Involvement of Civil Society

During 2016 – 2020, the number of civil society institutions increased significantly.³²² Online resources of state bodies, as well as personal contacts, are the most common sources of information about the initiation of public consultations, discussions, etc. by the authorities. The survey shows that 38% of respondents most often learn about start of public consultations and discussions from the authorities' websites, 28% from their social networks, and 29% from personal contacts.

The more corruption risks are in the sector, the less the public is engaged in decision-making processes. For example, the Ministry of Strategic Industries was stalling its Public Council's

short time when political parties were submitting their regular financial reports to the Department. Till May 2021, there was no e-registry for political parties in place yet (<https://politdata.nazk.gov.ua/#/>), and all parties used to carry their regular reports in person to the premises of the Agency, one such report could consist of thousands of pages.

³²⁰ See Ukrainian Parliament Commissioner for Human Rights, (2021), Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human and citizen rights and freedoms in Ukraine, p.74.

³²¹ See Ukrainian Parliament Commissioner for Human Rights, (2021), Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human and citizen rights and freedoms in Ukraine, p.74.

³²² According to the State Statistics Service of Ukraine, there was an increase in the number of legal entities: NGOs – by 22149 (from 70321 as of January 1, 2016, to 92470 as of January 1, 2021), public associations – by 1122 (from 753 to 1875, respectively), charitable organizations – by 4428 (from 15384 to 19812, respectively), religious organizations – by 3390 (from 23261 to 26651, respectively), creative unions (other professional organizations) – by 38 (from 279 to 317, respectively), trade unions and their associations – by 2392 (from 26321 to 28713, respectively), bodies of self-organization of the population – by 234 (from 1415 to 1649, respectively).

establishment, and was reluctant to engage the public in its discussion of its draft strategic documents. The public appeal to the Cabinet of Ministers ended up with the return of the issue to the level of that Ministry, which did not resolve the situation in essence.³²³ A common problem of not only the executive but also the legislative branch is the general misunderstanding of the essence of work with the public and other stakeholders.³²⁴

In the vast majority of cases, barriers to the engagement of civil society are encountered in the regions; citizens are reluctant to complain about non-admission to decision-making, or about violations of public engagement rules. According to the survey, 84% of respondents, in the 2019-2020, did not appeal against any state/local authority's decision made without public discussions, consultations, etc. On the contrary, 16% appealed against such decisions. Only 4% of appeals resulted in revoking or revising the decision, and in 12% of cases appealing did not produce any changes. At the same time, 61% of the respondents to the survey indicate that, in the 2019-2020, they have not been hindered by the authorities from engaging in public consultations which they plan to participate in. Despite the small number of cases, there are some good practices of civil society involvement. For example, the Ministry of Community and Territory Development of Ukraine has drafted a National Strategy for Civil Society Development in Ukraine for 2021-2026,³²⁵ and NACP has developed a draft of updated Anti-Corruption Programme for 2023-2025 with an impressive civil society involvement by means of online discussions that, given the restrictions caused first by COVID-19 restrictions and then by the war, have proved to become an effective way of civil involvement.³²⁶

Table 11: Summary of Article 10 and 13.1

	Evaluation	Comments
Implementation through national legislation	Fully compliant	Ukrainian laws regarding transparency in the public sector and the participation of individuals and groups outside the public sector to contribute to the public sector decision-making processes are fully compliant with Article 10 and Article 13.1 of the UNCAC. Necessary legal instruments and mechanisms for the access to public information, with certain restrictions being set forth by law, and the contribution of the

³²³ S. Musiyaka, Head of Research and Policy Development at NAKO. Interview with T. Khutor, September 28, 2021.

³²⁴ Institute of Legislative Ideas, (2021), Research paper Activity of Parliamentary Committees in 2020: Effectiveness and Interaction with Stakeholders, <https://izi.institute/en/research/diyalnist-komitativ-vru-2020-rezultativnist-ta-vzayemodiya-zi-stejkholderami/>, (access date: 10.09.2023).

³²⁵ <https://zakon.rada.gov.ua/laws/show/487/2021#Text> (access date: 12.09.2023).

³²⁶ The process of preparing the Strategy seemed to be maximum open, as civil society representatives could easily join the specially created public-government platform, more than 40 public discussion events, including regional: Civil society and the government. Interaction, (June, 2021), Facebook post «The government approved the project of a new national strategy for promoting the development of civil society», https://www.facebook.com/1077694278934517/posts/4031687790201803/?fbclid=IwAR3-y60nlVQixczMCDS_K6gZSP8Gkiq4GtCrgHOiZWqx3drdtwfHjmfi4, (access date: 12.09.2023).

		public to decision-making processes, are in place. There are institutes of appeal in place.
Practical enforcement	Moderate enforcement	The use of electronic channels for access, and dissemination of information has become common practice. Despite a solid legal framework, there are cases of unjustified restrictions by the state on access to information (non-disclosure, or rejection to disclose), and decision-making processes, especially at the regional level, due to a lack of understanding and commitment to the spirit of the law. Despite successful cases of exposing corruption and other offenses due to numerous advanced online resources for access to public information, such resources are not fully used. There is a need to strengthen the institutional capacity of the Ombudsman.

Good practices

- There are advanced online tools in place for access to information about the public administration (online requests, online applications, open data platforms, exchange of experience).
- Detection of corruption and other offenses is possible through online tools to access information on public administration.
- Citizens are generally aware of their right to information and make use of it.
- An effective appeals procedure is available in case of unjustified failure to provide public information.

Deficiencies

- Ill-grounded refusals to access of information by marking it as information “for internal use only”, secret information, confidential information.
- Lack of readiness for regular creation and collection of analytical data from the state side, as well as for posting such information on convenient and understandable interfaces of state bodies' websites.
- Lack of nationwide communication and awareness-raising campaigns aimed at forming values of integrity and zero tolerance of corruption in society.

4.1.9 Article 11.1 – Measures relating to the judiciary

Legal framework

The legislative framework for the activity of the judicial branch in Ukraine is the Constitution and the Law on the Judiciary and the Status of Judges (LJSJ).³²⁷ The Constitution of Ukraine guarantees the administration of justice in Ukraine exclusively by the courts, and any legal dispute or any criminal charge is subject to the jurisdiction of judges. Delegation of functions of judges is not allowed. The LJSJ is a specialized law that regulates issues related to the organization of courts and the composition of the judiciary (selection, service, dismissal, evaluation, etc.).

The judicial system in Ukraine consists of courts of three instances and is built on the principles of territoriality, specialization, and instantiation. The highest link in the judicial system is the Supreme Court. Additionally, there are two higher specialized courts in Ukraine — the High Court of Intellectual Property, which is in the process of launching, and the High Anti-Corruption Court (HACC). It is worth noting that there is also the Constitutional Court of Ukraine, which decides on the compliance of laws of Ukraine or other acts with the Constitution of Ukraine, provides official interpretation of the Constitution of Ukraine, and has other powers under the Constitution.

The main staffing body of the judiciary is the High Council of Justice (HCJ). Its powers include: direct participation in the appointment of judges; making a decision on the dismissal of a judge from office, granting permission for the arrest of a judge; conducting disciplinary proceedings against judges (for this purpose, the HCJ has disciplinary chambers), consideration of complaints against the decision of the authorities to bring a judge or prosecutor to disciplinary liability; appointment of HCJ members. The HCJ consists of 21 members appointed by self-governing bodies of judges, prosecutors, attorneys, as well as the President, Parliament, and representatives of higher legal educational institutions and scientific institutions. From July 3, 2021, the Ethical Council has been involved in the selection of HCJ members, which provides conclusions on the candidates' compliance with the requirements of professional ethics and integrity.

In the judicial system, there are also several state bodies aimed at ensuring the functioning of the courts. For example, the High Qualification Commission of Judges (HQCJ) is responsible for the selection of judges and conducting qualification assessments, and the judicial protection service functions to ensure the protection (including judges and their family members) and maintain public order in courts.

It is best to consider the independence of the judiciary in Ukraine through the basic principles of judicial independence:³²⁸

1) Qualification, selection, and training

The selection of judges in all cases is conducted by the HCJ, but the selection procedure for local courts and higher courts (appellate courts, higher specialized courts, and the Supreme Court) is different. In particular, the selection procedure for local courts consists of a selection

³²⁷ <https://zakon.rada.gov.ua/laws/show/1402-19#Text>, (access date: 22.09.2023).

³²⁸ Adopted by General Assembly resolutions 40/32 and 40/146 of 29 November and 13 December 1985.

exam, special training, a qualification exam (assessment of practical knowledge), and considering recommendations regarding the selected candidates by the HCJ. However, the selection procedure for higher courts is conducted according to the qualification assessment procedure (see below). The LJSJ requires that the selection of candidates be conducted in a transparent and public manner. The public and the media may be present during the examination. To participate in the competition, candidates must submit asset declarations.

The LJSJ establishes the conduct of a qualification assessment of judges. The basis for conducting it may be a judge's application or a decision of the HJCJ. During the assessment, the competence, professional ethics, and integrity of the judge are checked. It takes place in two stages — passing an exam (an anonymous questionnaire and a practical task) and dossier review with an interview (the dossier contains information related to the activities of a judge or a candidate for the position of a judge for the entire period of work). The assessment is open and transparent, involving the Public Integrity Council (PIC) at the HJCJ, which has the right to submit its conclusions on the judges' compliance with the criteria of professional ethics and integrity.³²⁹ In case of a negative decision of the PIC regarding a judge, the HJCJ can decide to let a judge pass the qualification assessment only having 11 votes (out of 16). If the judge fails to pass the qualification assessment, they may be dismissed by the decision of the HCJ.

2) Accountability, removal from office, and dismissal

The Constitution of Ukraine sets forth an exhaustive list of grounds for dismissal and termination of a judge's powers. The law provides for the procedure of bringing a judge to disciplinary responsibility. The disciplinary proceedings are conducted by the HCJ disciplinary chambers, which, after considering the case, may issue a warning, reprimand or severe reprimand (with loss of the right to receive supplemental payments), temporarily suspend the judge from office with retraining, transfer to a lower court or dismiss him/her.

The law provides for a number of anti-corruption instruments to prevent corruption in the judiciary. First, judges are required to file annual asset declarations as provided for by the Law on Prevention of Corruption, as well as annual declarations of family ties and declarations of integrity. All declarations are public (with some data being kept confidential). Secondly, judges are subject to requirements to comply with the rules of ethical behavior. The main requirements for ethical behavior are set out in the Code of Judicial Ethics approved by the Congress of Judges of Ukraine.³³⁰ It sets forth general requirements for judges' behavior, as well as requirements for behavior during court proceedings and in extrajudicial activities. Violation of ethical standards may lead to disciplinary proceedings against a judge.

Implementation

³²⁹ In the event of a negative decision of the public council, the HJCJ can decide on the judge's compliance only if there are 11 votes out of 16.

³³⁰ Verkhovna Rada of Ukraine, Resolution of the XI (regular) Congress of Judges of Ukraine of 22.02.2013 "On Approval of the Code of Judicial Ethics", <https://zakon.rada.gov.ua/rada/show/n0001415-13#Text>, (access date: 12.02.2024).

The judicial system in Ukraine is frequently at the center of political and corruption scandals. This affects the overall confidence of the population in the court. According to opinion polls in 2021, only 27% of professional lawyers trust the court, and among the public, this figure is even lower — 10%.³³¹

One of the reasons for this low confidence rating are problems with ensuring the independence of the judicial system and judges. Only 6% of respondents agree that the courts in Ukraine are independent and are not influenced by politicians, authorities, oligarchs, etc. Among lawyers, this figure is slightly higher — 9%.³³² Judges themselves rate the independence of the judicial system in Ukraine by an average of 5-8 points out of 10 (63% of respondents assessed this range).³³³ The reputation of the judiciary has been significantly affected by the recent corruption scandal involving an alleged bribe to the Head of the Supreme Court in May 2023.³³⁴ On January 31, 2024, he was released from the pre-trial detention center on bail, and on February 6, the High Council of Justice suspended him from the court until April 6, 2024.³³⁵ The problem of ensuring the independence of judges and the judicial system is complex and requires a detailed study of every aspect of it.

1) Selection of judges

Full-fledged selection processes of judges in Ukraine have not been conducted since 2017. As a result, the shortage of judges is constantly increasing, and the average workload of judges is growing. In November 2019, the law terminated the powers of HJC members.³³⁶

However, due to problems with the formation of the selection commission, the new composition of the body had not been appointed as of November 2021. Initially, the main reason was the Regulation on the Competition, approved by the HCJ. It allowed the HCJ not to consider the decision of the selection commission, which invalidated the competition procedure as a whole.

³³¹ USAID, (June, 2021), «New justice» program. Surveys on trust in the judicial branch of government, judicial independence and accountability, perception of corruption readiness and its manifestation are low. Survey of the population and professional lawyers who participate in court proceedings, but are not judges or court staff, https://newjustice.org.ua/wp-content/uploads/2021/06/2021_Surveys_Presentation_ROL060221_UKR-1.pdf, (access date: 19.09.2023), p.1

³³² USAID, (July, 2021), «New justice» program. Surveys on trust in the judicial branch of government, judicial independence and accountability, perception of corruption readiness and its manifestation are low. Survey of the population, judges and professional lawyers who participate in court proceedings, but are not judges or employees of the court apparatus, https://newjustice.org.ua/wp-content/uploads/2021/07/2021_Surveys_Presentation_Combined_UKR_JUL2021.pdf, (access date: 19.09.2023), p.19, 29.

³³³ USAID Ukraine, (April, 2021), Report on the results of a survey of judges on the independence and accountability of the judiciary, judicial reform, perception of corruption and willingness to report its manifestations, https://newjustice.org.ua/wp-content/uploads/2021/07/2021_Survey_Judges_Report_UKR.pdf, (access date: 19.09.2023), p.3.

³³⁴ Suspilne Novyny, Head of the Supreme Court exposed for receiving \$2.7 million in bribes, <https://suspilne.media/477196-golovu-verhovnogo-sudu-vikrili-na-otrimanni-27-mln-habara/>, (access date: 12.02.2024).

³³⁵ Zahid.Net, Supreme Court Chief Justice Vsevolod Knyazev, detained for bribery, removed from justice, https://zaxid.net/zatrimanogo_na_habari_golovu_verhovnogo_sudu_vsevoloda_knyazyeva_vidstonili_vid_pra_vosuddya_n1579472, (access date: 12.02.2024).

³³⁶ Ukrinform, (November, 2019), The Higher Qualification Commission of Judges of Ukraine has announced the termination of the powers of the current composition, <https://www.ukrinform.ua/rubric-society/2813958-vkks-zaavila-pro-pripinenna-svoih-povnovazen.html>, (access date: 15.09.2023).

As a result, international partners refused to delegate their representatives to the commission and the competition was blocked.

Later, the selection commission was formed and held its first meeting in January 2022. However, due to the war, the work of the commission was suspended and resumed in July 2022. In December 2022, 64 candidates for the position of HJC members were admitted to the interview stage.³³⁷ At the meeting on 1 June 2023, 16 members of the HJC were appointed. The reopening of the HJC is one of the seven recommendations of the European Commission regarding Ukraine's application for membership in the European Union. On 14 September 2023, the HJC announced a competition to fill 560 vacant positions of judges in local courts. They were expected to be filled by early 2024.

At the same time, on 20 August 2023, a law³³⁸ clarifying the provisions on the competitive selection of candidates for the position of a judge of the Constitutional Court of Ukraine (CCU) came into force. We hope that there will be fewer reasons to complain about "dubious appointments" to the Constitutional Court, and that the transparency of the procedures will motivate lawyers with an impeccable reputation to apply for the positions. Thus, the competition will be held with the help of a specially created Advisory Group of Experts. It will further assess the moral qualities and level of competence in the field of law of candidates for the position of a judge of the Constitutional Court.

The procedure for the selection of judges is generally well-defined by law. The experts we interviewed mostly gave positive assessments of the legal regulation of the selection of judges.³³⁹ At the same time, they believe that, firstly, objective data collected through these procedures have at best only an indirect impact on the results of the selection due to the peculiarities of their interpretation by the judicial governance bodies, and secondly, that the procedure for the selection of local courts should provide for more thorough checks of the integrity of candidates, in particular with the involvement of the PIC, as is provided for the selection of judges of higher courts.³⁴⁰

At the same time, the implementation of legislative provisions in practice has a number of shortcomings, such as the HJC's reluctance to take into account obvious facts gathered and provided by NGOs and official bodies in accordance with the law. For example, in the selection of judges to the Supreme Court in 2019, the HJC selected 15 candidates despite the negative conclusions of the PIC.³⁴¹ Among them were those who, in the opinion of the public, made

³³⁷ Liga Zakon, (December, 2022), The list of 64 candidates for the position of a member of the HJC, admitted to the interviews, has been announced, https://jurliga.ligazakon.net/news/216196_ogolosheno-perelk-z-64-kandidatv-na-posadu-chlena-vkksu-dopushchenikh-do-spvbesdi, (access date: 19.09.2023).

³³⁸ <https://zakon.rada.gov.ua/laws/show/3277-20?lang=en#Text>, (access date: 22.09.2023).

³³⁹ M. Zhernakov, Co-founder and chairman of the board of the DEJURE Foundation, Doctor of Law. Interview with T. Khutor and Y. Shvab, September 2, 2021 and R. Kuibida, Deputy Chairman of the Board of the Center of Policy and Legal Reform, PhD in Law. Interview with T. Khutor and Y. Shvab, August 12, 2021.

³⁴⁰ M. Zhernakov, Co-founder and chairman of the board of the DEJURE Foundation, Doctor of Law. Interview with T. Khutor and Y. Shvab, September 2, 2021 and R. Kuibida, Deputy Chairman of the Board of the Center of Policy and Legal Reform, PhD in Law. Interview with T. Khutor and Y. Shvab, August 12, 2021.

³⁴¹ Public Integrity Council, (March, 2021), Report on the results of the work of the second member of the Public Integrity Council (2018-2020),

illegal decisions against the participants of the Revolution of Dignity,³⁴² or, for example, interfered with the operation of the automated system for distributing court cases.³⁴³ If we consider all the competitions, 44 candidates who received negative conclusions from the PIC during the competition became judges of the Supreme Court.³⁴⁴ One of the candidates who, despite the PIC's negative conclusion,³⁴⁵ became a judge of the Supreme Court and for a long time chaired the Commercial Court of Cassation, ended up in a scandal in late 2022, due to his citizenship of the aggressor state,³⁴⁶ which resulted in significant reputational losses for the institution.

Despite these challenges, there are positive aspects of the judicial selection procedure that interviewed experts point out. An indisputable positive aspect was the procedure for selecting judges for the HACC. It was conducted at a high level and did not allow candidates who did not meet the integrity criteria to pass the competition. A decisive role in the selection was played by a specially created Public Council of International Experts (PCIE), which, like the PIC, participated in the competition. However, the key difference between them was the PCIE's ability to effectively veto candidates. As a result, 42 candidates out of 113 were excluded from the competition due to the work of the PCIE because they did not meet the integrity criteria.³⁴⁷

2) Qualification assessment of judges

In 2016, the procedure for mandatory qualification assessment of all judges began. It was introduced to test judges' integrity, competence, and professional ethics. The main task of the assessment was to purge the judiciary of persons who did not meet the criteria. The qualification assessment was not completed. It stopped along with the selection of judges due to the absence of the HCJ's authorized composition. According to the HCJ, another 2,132 judges did not pass the mandatory qualification assessment.³⁴⁸ The qualification assessment of judges is due to resume on 16 October 2023, and the first 57 judges are expected to pass it by 31 October 2023. Thus, in this section, we will give a preliminary assessment of the procedure that is about to begin.

https://grd.gov.ua/wp-content/uploads/2021/03/GRD_zvit_18-20-1.pdf?fbclid=IwAR0dPg5w1F9LN88Uew3T4J0HHcec_PsQgPvbqtxW1vNP7ZzEnLiOk31h5jc, (access date: 22.09.2023), pg.11.

³⁴² Mass public protests in Ukraine in 2013-2014 were directed against the current ruling regime of President Yanukovich at that time.

³⁴³ Radio Svoboda, (May, 2019), 44 judges of the Supreme Court of Ukraine are «dishonest» - PIC, <https://www.radiosvoboda.org/a/29926985.html>, (access date: 23.09.2023).

³⁴⁴ See Radio Svoboda, (2019), 44 judges of the Supreme Court of Ukraine are «dishonest» - PIC.

³⁴⁵ Public Integrity Council, (May, 2017), Conclusion on the non-compliance of the candidate for the position of judge of the Supreme Court Lviv Bohdan Yuriyovych with the criteria of integrity and professional ethics, https://grd.gov.ua/wp-content/uploads/data/files/conclusions/16_05_2017/vysn/lvov_vysn.pdf, (access date: 20.09.2023).

³⁴⁶ Supreme Court, (October, 2022), The Chairman of the Supreme Court Vsevolod Knyazev expelled Judge Bohdan Lviv from the staff of the Supreme Court, <https://supreme.court.gov.ua/supreme/press-centr/news/1329898/>, (access date: 20.09.2023).

³⁴⁷ DEJURE Foundation, (September, 2019), Judicial (in)dependence: judicial governance lessons for eastern partnership countries, <https://drive.google.com/file/d/1DDgPEXQ7yWU7cbA5PCR4BJfBFdjPrf6x/view>, (access date: 18.09.2023), pg.8.

³⁴⁸ High Council of Justice, (August, 2021), Annual report for 2020 on the state of ensuring the independence of judges in Ukraine, https://hcj.gov.ua/sites/default/files/field/file/shchorichna_dopovid_za_2020_rik_pro_stan_zabezpechennya_nezalezhnosti_suddiv_v_ukrayini.pdf, (access date: 08.09.2023), p.86.

Despite a proper legislative framework, in practice, the mandatory qualification assessment of judges has proven to be completely ineffective. The number of judges who were dismissed based on its results is insignificant, and the procedure itself contained a number of critical shortcomings.³⁴⁹ In the opinion of the expert community, the reasons for the low efficiency of the qualification assessment procedure are: rapid pace of interviews (on average, 320 per month); not difficult enough anonymous written testing (only 0.2% of judges did not pass it); opaque assessment (written works of judges and assessments based on criteria were classified);³⁵⁰ consideration of cases by members of the HJC who have a conflict of interest and themselves committed actions for which they may be dismissed,³⁵¹ etc. Furthermore, the HJC's cooperation with the public during the qualification assessment was not constructive. The reason for this was the unwillingness of the HJC to consider the conclusions of the PIC.³⁵² Cases of its circumvention did not contribute to the effectiveness of the qualification assessment either. Thus, in one day, 34 judges of the Kyiv Administrative Court (KAC) (more on this court below) did not come to take the exam due to a sudden simultaneous illness.³⁵³ As a result, they never participated in the qualification assessment.

3) Accountability, removal from office, and dismissal of a judge

First of all, it is necessary to mention two types of dismissals of a judge: under general circumstances and special circumstances. In the first case, the judge resigns voluntarily, retires, or is dismissed for health reasons. In the second case, the dismissal is due to disciplinary misconduct, or as a result of a qualification assessment, or due to a breach of eligibility requirements. The two types of dismissals have different consequences. For example, if a judge retires (which is possible only after 20 years of service), the right to certain bonuses is retained, including a lifetime monthly cash benefit. In other cases, judges lose this right. Given this, judges mostly seek to end their service by voluntary resignation.

Judges often abuse their right to resign, even when there are special circumstances for their dismissal. The HJC, in turn, actively assists judges in abusing this right. For example, several judges who had to be dismissed under special circumstances (failure to pass a qualification assessment) applied for voluntary resignation. Instead of considering the issue of dismissal due to failure to pass the qualification assessment, the HJC simply accepted the applications. This provided the judges with a one-time payment, a monthly cash reward, and lifetime salary.³⁵⁴ Due to such actions of the HJC, the judges did not face negative consequences

³⁴⁹ Center of Policy and Legal Reforms, DEJURE Foundation, VO «Avtomaidan», (April, 2019), Qualification evaluation of judges: a brief overview of interim results (as of April 1, 2019), <https://drive.google.com/file/d/1vfnoCr5b8WsTb2Cs0gw-1IKXiPDBW7dM/view>, (access date: 08.09.2023), p.3.

³⁵⁰ See Center of Policy and Legal Reforms, DEJURE Foundation, VO «Avtomaidan», (2019), Qualification evaluation of judges: a brief overview of interim results (as of April 1, 2019), p.3.

³⁵¹ PROSUD, (June, 2017), The investigation «Who are the judges over the judges?», https://blog.prosud.info/a_suddi_nad_suddyamy_khto.html, (access date: 10.09.2023).

³⁵² See Public Integrity Council, (2021), Report on the results of the work of the second member of the Public Integrity Council (2018-2020), p.11.

³⁵³ Ukrayinska pravda, (May, 2019), 34 judges of the District Administrative Court of Kyiv did not come to the exam: all were ill, <https://www.pravda.com.ua/news/2019/05/10/7214683/>, (access date: 14.09.2023).

³⁵⁴ DEJURE Foundation, (January, 2021), Golden parachutes of the judiciary. How much money was spent on judges who should have been fired, <https://dejure.foundation/library/zoloti-parachuty-sudovoi-vlady>, (access date: 09.09.2023).

(including the ban on holding the position of a judge in the future), and the state budget spends hundreds of thousands of euros annually for the salaries of judges.³⁵⁵ The HCJ may apply the procedure of "termination of a judge's resignation" on certain grounds (commission of an intentional crime, reappointment, termination of citizenship or death). In this case, the payment of monthly life-long financial support is terminated.

At the same time, it is worth mentioning the courts that have not been liquidated since the start of the judicial reform in 2016, which are now in the process of liquidation. This means that they do not work, but the employees and, in particular, the judges who remain on their staff and do not administer justice, receive salaries. This is not just one court and not just one judge, but 43 such judges. There are four courts. All this time they have been receiving salaries. According to our estimates, for over 5.5 years, judges who do not administer justice have received UAH 225 million (~5,56 million Euro) in salaries from the state and have not yet been dismissed or transferred³⁵⁶. However, the fate of judges may be decided by a draft law that is currently in the final stages of adoption.

4) Independence of the judiciary (institutional independence)

Opinions of judges and experts on the independence of the judiciary are dramatically different. Surveys and statistics show that judges see institutions that seek to reform the judiciary, including the public and parliament, as the greatest threat to their independence. In addition, most judges do not believe that their colleagues and other members of the judiciary are interfering in their activities.³⁵⁷ The expert community, on the other hand, believes that internal influence is the greatest threat to judicial independence.³⁵⁸ Here are the most common ways of influence, according to experts:

1) Influence by the Head of the court

This practice most often takes the form of friendly advice, recommendations, consultations, requests or instructions.³⁵⁹ Such actions are often not perceived by judges as attempts to influence them. According to public opinion polls, "*judges tend to tolerate illegal*

³⁵⁵ See DEJURE Foundation, (2021), Golden parachutes of the judiciary.

³⁵⁶ Hromadske Radio, Over 5.5 years, judges who do not administer justice have received UAH 225 million in salaries from the state - investigative journalist (01.09.2023), <https://hromadske.radio/podcasts/603-700-km/za-5-5-rokiv-suddi-iaki-ne-chyniat-pravosuddia-otrymaly-vid-derzhavy-225-mln-hrn-zarplaty-zhumalistka-rozsliduvachka> (access date: 25.09.2023).

³⁵⁷ In a 2021 survey of judges, 83% of respondents indicated that they were not pressured to make a decision in the case, and only 8% said otherwise. More than 85% of the judges surveyed said that there were **no cases** of violation of independence by: the court leadership (89%); the Council of Judges and the HCJ (87%); The Supreme Court (86%). Instead, more than 20% of respondents said that their independence was violated by: Government and Parliament (25%), NGOs (21%); demonstrators near the courthouse, the media and the President (20%). - See USAID Ukraine, (2021), Report on the results of a survey of judges on the independence and accountability of the judiciary, judicial reform, perception of corruption and willingness to report its manifestations, p.14.

³⁵⁸ L. Holnyk, Whistleblower judge of the Oktyabrsky District Court of Poltava. Interview with T. Khutor and Y. Shvab, September 5, 2021 and K. Butko, Activist of the Automaidan NGO, coordinator of the PROSUD project. Interview with T. Khutor and Y. Shvab, September 13, 2021 and M. Zhernakov, Co-founder and chairman of the board of the DEJURE Foundation, Doctor of Law. Interview with T. Khutor and Y. Shvab, September 2, 2021 and R. Kuibida, Deputy Chairman of the Board of the Center of Policy and Legal Reform, PhD in Law. Interview with T. Khutor and Y. Shvab, August 12, 2021.

³⁵⁹ R. Kuibida, Deputy Chairman of the Board of the Center of Policy and Legal Reform, PhD in Law. Interview with T. Khutor and Y. Shvab, August 12, 2021.

requests/demands from representatives of the judiciary or not even perceive them as interference".³⁶⁰ Yet, such informal influence is perhaps the greatest threat to judicial independence.³⁶¹ Legislation does not provide heads of courts with much opportunity to exert pressure on judges. In practice, the methods of influence impede the effective work performance and significantly affect the psychological state of judges. For example, court heads can: impede the arrangement of vacations, business trips or training;³⁶² instruct court staff to interfere with the system of automatic distribution of court cases;³⁶³ put pressure on the judge's office staff, fail to appoint court clerks; assign the worst offices, unequipped courtrooms, etc.³⁶⁴ A striking example of this practice is the case of a Judge who received direct instructions from the head of the court on how to rule on a particular case. After delivering an "incorrect" judgement, the judge received threats from the head of the court, which can be heard in the published audio recording.³⁶⁵

2) Influence from the HCJ and its members

The HCJ's influence is most often exercised through the use of mechanisms of bringing judges to disciplinary responsibility.³⁶⁶ To do this, they use fake complainants who submit false complaints against judges who demonstrate independence.³⁶⁷ They are then actively considered by the HCJ and a decision is made to sanction judges. The case of the Head of Kyiv Administrative Court (KAC)³⁶⁸ is an example of a flagrant violation of the independence of individual judges, judicial governance agencies, and the judiciary as a whole. The head was accused of trying to seize state power. During the period from 2019 to 2020, detectives of the

³⁶⁰ Center of Policy and Legal Reforms, (2020), Alternative report for 2019 «On the state of ensuring the independence of judges in Ukraine», <https://pravo.org.ua/wp-content/uploads/2020/11/1588586222cplr.-shadow-report-on-judges-independence-2019.pdf>, (access date: 21.09.2023), p.19.

³⁶¹ L. Holnyk, Whistleblower judge of the Oktyabrsky District Court of Poltava. Interview with T. Khutor and Y. Shvab, September 5, 2021 and K. Butko, Activist of the Automaidan NGO, coordinator of the PROSUD project. Interview with T. Khutor and Y. Shvab, September 13, 2021 and M. Zhernakov, Co-founder and chairman of the board of the DEJURE Foundation, Doctor of Law. Interview with T. Khutor and Y. Shvab, September 2, 2021 and R. Kuibida, Deputy Chairman of the Board of the Center of Policy and Legal Reform, PhD in Law. Interview with T. Khutor and Y. Shvab, August 12, 2021.

³⁶² Liga. Blogs, (January, 2020), The Chairman of the court oppresses the corruption whistleblower. On whose side is the Council of Judges of Ukraine?, <https://blog.liga.net/user/lqolnik/article/35651>, (access date: 15.09.2023).

³⁶³ LB.ua, (September, 2016), Serhii Bondarenko: «Judges are a reflection of society, when people refuse to engage in corruption, we will come to our senses», https://lb.ua/news/2016/09/28/346342_serhii_bondarenko_suddi-tse.html, (access date: 18.09.2023).

³⁶⁴ L. Holnyk, Whistleblower judge of the Oktyabrsky District Court of Poltava. Interview with T. Khutor and Y. Shvab, September 5, 2021.

³⁶⁵ See LB.ua, (2016), Serhii Bondarenko: «Judges are a reflection of society, when people refuse to engage in corruption, we will come to our senses» and Public Integrity Council, (April, 2019), Conclusion on the inconsistency of the judge of the Court of Appeal of the Cherkasy region Babenko Volodymyr Mykolayovych with the criteria of integrity and professional ethic, https://grd.gov.ua/wp-content/uploads/data/files/conclusions/Kvalifikatsiine%20Otsiniuvania%202019/2019_04_08/Babenko_vysn.pdf, (access date: 20.09.2023).

³⁶⁶ See Center of Policy and Legal Reforms, (2020), Alternative report for 2019 «On the state of ensuring the independence of judges in Ukraine», p.18.

³⁶⁷ L. Holnyk, Whistleblower judge of the Oktyabrsky District Court of Poltava. Interview with T. Khutor and Y. Shvab, September 5, 2021.

³⁶⁸ KAC is Kyiv Administrative Court with a jurisdiction over cases connected with appealing decisions of all higher public authorities. This court can overturn almost any decision of all central authorities. As a result, every government sought to control it.

NABU managed to gather the information that may indicate the head's intervention and their associates in the activities of the HCJ, HQCJ, CCU, NACP, and other authorities of Ukraine. The recordings of conversations between the head of the court and their colleagues contain evidence: providing instructions to individual judges on specific cases; bypassing qualification assessment; blackmail of heads of state bodies for closing cases; etc. However, the biggest story was the head's conversation with their deputy, in which they discussed the prospects of satisfying the lawsuit to recognize the absence of a coalition in Parliament, which was the basis for dismissing the Parliament "to get back at the incumbent authorities".³⁶⁹ In the described case, the HCJ defended the head even after the recordings of the judge's conversations were published in the media. The HCJ refused to grant the request to remove the KAC president from office, which allowed the head to continue to administer justice.³⁷⁰ These and other factors led to the liquidation of the District Administrative Court of Kyiv and the establishment of a new Kyiv City District Administrative Court.³⁷¹

3) *Disciplinary liability of judges*

The institution of disciplinary liability is widely used to exert pressure on judges by the HCJ, as well as on participants in court cases considered by the judge. It is due to the large number of disciplinary complaints that the HCJ has an excessive workload.³⁷² For example, in 2020, the HCJ considered 13,425 disciplinary complaints (an average of 36 complaints in one day, including holidays and weekends).³⁷³ According to statistics, the HCJ does not apply harsh reprimands to judges. In 2020, they commonly applied warnings (in 51% of cases), reprimands (in 19% of cases), severe reprimands (in 15% of cases), but only 14 judges were dismissed based on the results of disciplinary complaints (9% of cases considered).³⁷⁴ Despite the rather large volume of disciplinary complaints, the expert community raises a number of concerns that cast doubt on the impartiality and neutrality of HCJ members:

³⁶⁹ Ukrayinska pravda, (July, 2020), «Did you doubt our political prostitution?» How Vovk's new tapes showed the judicial empire of power, <https://www.pravda.com.ua/articles/2020/07/19/7259869/>, (access date: 23.09.2023) and

LB.ua, (August, 2019), «Vovk's tapes», or What are the judges talking about?, https://lb.ua/news/2019/08/01/433707_plivki_vovka_abo_pro_shcho_govoryat.html, (access date: 23.09.2023).

³⁷⁰ Radio Svoboda, (September, 2020), HCJ refused to remove Vovk. What now?, <https://www.radiosvoboda.org/a/vrp-ne-vidstoronyla-vovka-shcho-teper/30817363.html>, (access date: 23.09.2023) ;

Transparency International Ukraine, (September, 2020), The High Council of Justice did not suspend Pavlo Vovk, <https://ti-ukraine.org/news/vyshha-rada-pravosuddya-ne-vidstoronyla-pavla-vovka/>, (access date: 23.09.2023).

³⁷¹ Suspilne News, (December, 2022), Zelensky signed the law on the liquidation of the Kyiv District Administrative Court, <https://suspilne.media/337570-parlament-pidtrimav-likvidaciu-okruznogo-administrativnogo-sudu-kieva/>, (access date: 23.09.2023).

³⁷² National Academy of Legal Sciences of Ukraine, (2020), Proceedings of the Lviv Laboratory of Human and Citizen Rights Monograph «Independence and disciplinary responsibility of judges: international standards and national practice», https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/Monografia_20201_01_22.pdf?fbclid=IwAR1j5wLZDPm96B89jtwEPnzXAtat_seSY5WHU7LiegCY3xqXS6Cb21kw3Q, (access date: 15.09.2023), p.136.

³⁷³ As a result, only 404 disciplinary cases were opened (on 3% of complaints), and 129 decisions were made to bring 141 judges to disciplinary liability. See High Council of Justice, (2021), Annual report for 2020 on the state of ensuring the independence of judges in Ukraine, p.100.

³⁷⁴ See High Council of Justice, (2021), Annual report for 2020 on the state of ensuring the independence of judges in Ukraine, p.100.

- 1) *Delays.* Despite the statutory deadlines for disciplinary proceedings (60 days from the date of receipt of the complaint), it is almost always violated. The consideration time actually depends on the will of the HCJ member. For example, some cases can take years to be considered, while others can be considered within a month. This practice is widespread due to excessive discretion in determining the time limit for reviewing a complaint and the lack of liability for its violation.
- 2) *Inconsistent practice.* The HCJ's disciplinary practice is highly controversial. In similar or even identical situations, the HCJ's decisions may be entirely different. Such decisions are often politically motivated. For example, the HCJ refused to open a disciplinary case against a judge who issued an unjustified search warrant for a civil society activist.³⁷⁵
- 3) *Violation of publicity.* Previously, all HCJ meetings were broadcast online, but in November 2019, the HCJ adopted amendments to its Rules of Procedure, which stipulate that meetings may be broadcast only with the consent of all parties in disciplinary proceedings. In fact, such amendments led to the absence of broadcasting, as judges who are brought to justice usually oppose broadcasting. In addition, there are cases when disciplinary proceedings have only one party – a judge in respect of whom the HJCJ has issued a recommendation for dismissal or appointment. The situation even deteriorated further with the introduction of quarantine during the COVID-19 pandemic, as restrictions on the physical presence of other persons at the hearing were imposed. In addition, according to the public, the HCJ is a systematic violator of the Law on Access to Public Information, as it does not publish open data and fails to provide the requested information without valid reasons.³⁷⁶

Preventing corruption in the judiciary

1) *Declarations*

Judges, unlike other officials, are obliged to submit three types of declarations instead of just one. In addition to the asset declaration required of all officials, judges also submit a declaration of family ties and a declaration of integrity. Judges' asset declarations are verified by the NACP, and a judge may be brought to administrative or criminal liability for falsifying them. At the same time, judges do not bear any responsibility in practice for false statements in the other two declarations (although the law provides for disciplinary liability). The absence of liability of judges for false statements in integrity declarations and declarations of family ties is the result of the HCJ's misinterpretation of the law. The fact is that the HCJ refuses to verify these declarations and claims that it is the function of the HJCJ alone. However, since the HJCJ has not been functioning for about two years, judges are not actually responsible.³⁷⁷ As a result, the effectiveness of declarations of integrity and family ties is minimal. This is confirmed by the

³⁷⁵ DEJURE Foundation, (2020), HCJ applies double standards when considering disciplinary cases, <https://vrpfails.dejure.foundation/page11316877.html>, (access date: 10.09.2023).

³⁷⁶ DEJURE Foundation, (April, 2021), Invariable problems with bringing judges to disciplinary responsibility, <https://dejure.foundation/constant-problems-with-disciplinary-proceedings>, (access date: 10.09.2023).

³⁷⁷ See DEJURE Foundation, (2021), Invariable problems with bringing judges to disciplinary responsibility.

experts and judges we interviewed,³⁷⁸ as well as official statistics – in 2020, no judges were brought to justice for failure to submit/indicate false information in these declarations.³⁷⁹ Accordingly, it is necessary to increase their effectiveness through proper application.

2) Codes of ethical conduct

In their professional activities, judges use the Code of Judicial Conduct, which was adopted in 2013 by the main body of judicial self-government - the Conference of Judges of Ukraine.³⁸⁰ The Code is based on a series of international documents, including the Bangalore Principles of Judicial Conduct. In 2016, the Council of Judges of Ukraine (COJ), together with international partners, developed a detailed commentary to the Code. It contains a detailed description of each article of the Code, analysis and examples of its application.³⁸¹

Despite the satisfactory quality of the Code of Judicial Conduct, the assessment of its application is controversial. On the one hand, the experts we interviewed positively assess the Code, pointing out that judges, in particular under the influence of the Public Integrity Council and the PCIE, are increasingly paying attention to its provisions in their work.³⁸² On the other hand, the HCJ very rarely holds judges accountable for violating it,³⁸³ and in cases of prosecution, the HCJ's practice is ambiguous and politically biased.³⁸⁴

Table 12: Summary of Article 11.1

	Evaluation	Comments
Implementation through national legislation	Fully implemented	Ukrainian legislation on judicial independence and anti-corruption in respect of the judiciary is mostly in compliance with Article 11 of the UN Convention against Corruption. However, certain legislative

³⁷⁸ M. Zhernakov, Co-founder and chairman of the board of the DEJURE Foundation, Doctor of Law. Interview with T. Khutor and Y. Shvab, September 2, 2021 and R. Kuibida, Deputy Chairman of the Board of the Center of Policy and Legal Reform, PhD in Law. Interview with T. Khutor and Y. Shvab, August 12, 2021 and L. Holnyk, Whistleblower judge of the Oktyabrsky District Court of Poltava. Interview with T. Khutor and Y. Shvab, September 5, 2021.

³⁷⁹ See High Council of Justice, (2021), Annual report for 2020 on the state of ensuring the independence of judges in Ukraine.

³⁸⁰ <https://zakon.rada.gov.ua/rada/show/n0001415-13#Text>, (access date: 07.09.2023).

³⁸¹ Council of Judges of Ukraine, (February, 2016), Commentary on the Code of Judicial Ethics, <https://rsu.gov.ua/uploads/article/komentar-kodeksusuddivskoietiki-fd35472a7d.pdf>, (access date: 07.09.2023).

³⁸² M. Zhernakov, Co-founder and chairman of the board of the DEJURE Foundation, Doctor of Law. Interview with T. Khutor and Y. Shvab, September 2, 2021 and R. Kuibida, Deputy Chairman of the Board of the Center of Policy and Legal Reform, PhD in Law. Interview with T. Khutor and Y. Shvab, August 12, 2021 and L. Holnyk, Whistleblower judge of the Oktyabrsky District Court of Poltava. Interview with T. Khutor and Y. Shvab, September 5, 2021.

³⁸³ In 2020, only 13 judges were brought to disciplinary responsibility for these reasons (9% of the total number of those brought to disciplinary responsibility) - See High Council of Justice, (2021), Annual report for 2020 on the state of ensuring the independence of judges in Ukraine.

³⁸⁴ M. Zhernakov, Co-founder and chairman of the board of the DEJURE Foundation, Doctor of Law. Interview with T. Khutor and Y. Shvab, September 2, 2021 and L. Holnyk, Whistleblower judge of the Oktyabrsky District Court of Poltava. Interview with T. Khutor and Y. Shvab, September 5, 2021.

		provisions need to be improved, as they grant excessive discretion to the judiciary.
Practical enforcement	Poor enforcement	Compliance with legal requirements is very low. The judiciary is constantly at the center of political and corruption scandals. The independence of judges is often violated. The main threats to the independence of judges are the judges themselves as well as representatives of the judiciary, who are well integrated into informal relations with various political forces. The body that was supposed to ensure the independence and integrity of the judiciary has long been biased, corrupt, and exercised undue influence over judges. After its reform, such negative practices no longer exist. The main reason for the improper implementation of the law is the dishonesty of individual judges and representatives of the judiciary.

Good practices

- The selection of judges to the High Anti-Corruption Court followed a transparent and open procedure. International experts contributed to the selection of virtuous and professional judges.
- The reform of the judiciary has begun, intending to clear the HCJ of dishonest members, increasing the capacity of this body and increasing the effectiveness of disciplinary proceedings against judges.
- The Code of Judicial Ethics is a high-quality document. An increasing number of judges are compliant with the Code in the course of their work and outside there.
- The judicial assessment procedure is in the process of being renewed, which means that insufficiently qualified judges will be removed.

Deficiencies

- The qualification evaluation of judges, conducted in 2018-2019, has not yet been completed and has demonstrated low efficiency.
- The HCJ's discretion allows the dismissal of judges against whom disciplinary proceedings have been instituted, which guarantees them monthly retirement benefits.
- Informal practices of influencing judges by peers, Heads of courts, and the HCJ are common. The HCJ uses disciplinary responsibility in order to influence specific judges, as well as abuses the guarantees of independence for judges who are reasonably believed to have committed crimes.

- Due to the incomplete process of liquidation of courts in the course of the judicial reform, many judges receive salaries directly without exercising their powers. This, in turn, leads to misuse of the budget.
- While judges, unlike other officials, are obliged to submit three types of declarations instead of just one – asset declaration, a declaration of family ties and a declaration of integrity – these are not checked and there are no administrative or other sanctions for false declarations.

4.1.10 Article 11.2 – Measures relating to the prosecution services

Legal framework

The special act that regulates the activities of prosecution in Ukraine is the Law On Prosecution.³⁸⁵ In particular, it determines the organizational principles of the prosecutor's office, the powers of prosecutors, the procedure for dismissal of prosecutors, bringing them to justice, etc.

In 2019, when the new government came to power, the prosecution reform was launched. For this purpose, a special law was adopted on priority measures to reform the prosecution authorities. In particular, it established a temporary procedure for the selection, evaluation (certification) and consideration of disciplinary proceedings against prosecutors. The main task of the reform was to clear the prosecutor's office of unprofessional and dishonest employees. It lasted for two years from September 2019 to September 2021, which is why, in the context of this report, we will focus on the results of the reform. The activities and independence of prosecutors should be viewed through the prism of compliance with the "Guidelines On the Role of Prosecutors".³⁸⁶

1) Qualification, selection and training

The Law on Priority Measures provided that the selection of prosecutors is carried out by specially created temporary personnel commissions,³⁸⁷ and the main stages of the competition include two anonymous tests and an interview. The selection of candidates is transparent and public. Among other documents, applicants submit an income declaration and a declaration of integrity and family ties, as well as undergo a special examination. A detailed procedure for selection is determined by the Prosecutor General.

The reform of the prosecutor's office provided for mandatory certification by all prosecutors for two years. It included an assessment of the professional competence, professional ethics, and integrity of the prosecutor. Certification was carried out by personnel commissions in three stages – two exams and an interview. The Law on Priority Measures guaranteed the publicity

³⁸⁵ <https://zakon.rada.gov.ua/laws/show/1697-18?lang=en#Text>, (access date: 07.09.2023).

³⁸⁶ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990.

³⁸⁷ Formed by the Prosecutor General and consist of 6 people, 3 of whom are delegated by international partners.

and transparency of the certification process. If the prosecutor refused to pass the certification or failed to pass any of its stages, he or she was dismissed from office.

2) Disciplinary proceedings and dismissal of prosecutors

The Law on Prosecution provides a clear list of grounds for dismissal of prosecutors.³⁸⁸ Decisions on dismissal of a prosecutor may be taken by the Prosecutor General (for prosecutors of the Prosecutor General's Office), the head of the SAPO (for SACPO prosecutors), and the heads of regional prosecutor's offices (for prosecutors of regional and district prosecutor's offices). In addition, prosecutors may be subject to disciplinary liability. Disciplinary proceedings during the reform period were carried out by personnel commissions. Now, these powers are exercised by the Qualification and Disciplinary Commission of Prosecutors (QDC). The prosecutor may be subject to disciplinary responsibility for an exhaustive list of grounds established by law.³⁸⁹ Any person has the right to file a disciplinary complaint. All complaints are registered in a system that automatically distributes them. The decision of the personnel commission or the QDC can be appealed to the court or the HCJ.

Implementation

Independence of prosecutors

Despite the beginning of the reform, public confidence in the prosecutor's office remains low. According to opinion polls in 2019 (before the reform), 70% of the population did not trust the prosecutor's office, and only 15% did.³⁹⁰ In 2020, the level of distrust fell to 68%, and trust rose to 19%.³⁹¹

In 2021, the last year of the reform, the level of distrust increased to 71%, and trust dropped slightly to 18%.³⁹²

The low level of trust in the prosecutor's office is a consequence of complex problems, but not least by the problems with an insufficient level of independence of this body.

1) Qualification of prosecutors

The procedure of mandatory certification of prosecutors introduced during the reform has proved to be quite effective in comparison with a similar procedure of qualification assessment

³⁸⁸ They include: commission of a crime / administrative offense related to corruption, violation of the requirements for multiple positions, by decision of a disciplinary body, etc.

³⁸⁹ For example: non-performance or improper performance of official duties; disclosure of secrets; violation of the requirements for filing declarations; violation of prosecutorial ethics; influence on the activities of another prosecutor, etc.

³⁹⁰ Razumkov Center, (March, 2019), Level of trust in public institutions and electoral orientation of Ukrainian citizens, <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/riven-doviry-do-suspilnykh-instytutiv-ta-elektoralni-orientatsii-gromadian-ukrainy-2>, (access date: 25.09.2023).

³⁹¹ Razumkov Center, (February, 2020), Citizens' evaluation of government activity, level of trust in social institutions and politicians, electoral orientations of citizens (February 2020), <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/otsinka-gromadianamy-dialnosti-vlady-riven-doviry-do-sotsialnykh-instytutiv-ta-politykiv-elektoralni-orientatsii-gromadian-liutyi-2020r>, (access date: 25.09.2023).

³⁹² Razumkov Center, (August, 2021), Trust in the institutions of society and politicians, electoral orientations of citizens of Ukraine (July–August 2021), <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/dovira-do-instytutiv-suspilstva-ta-politykiv-elektoralni-orientatsii-gromadian-ukrainy>, (access date: 25.09.2023).

of judges. As of the beginning of 2021, almost 7,157 prosecutors had passed the certification procedure (64% of all those who participated). Approximately 35-40% of prosecutors were dismissed as a result of the certification process (approximately 2,000 people, according to the Prosecutor General).³⁹³ However, there have been cases of successful court appeals against decisions of failing the tests due to technical problems.

Certification of prosecutors at different levels was also different. The evaluation of prosecutors of the Prosecutor General's Office, which took place first, showed better efficiency than the evaluation of lower-level prosecutors. In particular, only 45% of prosecutors were certified in the Prosecutor General's Office, while in regional and local prosecutor's offices, this figure is much higher – 67% and 66%, respectively.³⁹⁴ This difference is explained primarily by the information support of personnel commissions. Experts note that during the attestation of the Prosecutor General's Office, the personnel commissions were better provided with information on each prosecutor, in particular due to the availability of detailed NABU reports containing aggregated data from various state registers. However, the amount of information on prosecutors available to the personnel commissions during the attestation of regional and local prosecutor's offices was significantly less.³⁹⁵

The effectiveness of attestation could have been improved. In particular, the experts point to several approaches to the problems that they identified during various stages of evaluation:

- Leakage of the tests and official answers, which led to identical answers to practical tasks from many prosecutors;
- Incomplete and different amounts of information.

A sign that does not allow to consider the attestation successful is the practice of prosecutors appealing its results. Dismissed prosecutors began to sue en masse for violating their labor rights. In their claims, they asked the court to reinstate them in their jobs and pay compensation for the entire period of their forced absence from work.³⁹⁶ The exact number of reinstated prosecutors and the amount of compensation awarded is not known, although experts point out that this practice is quite common.³⁹⁷ In 2020, the Prosecutor General noted that there were

³⁹³ Analitychnyi portal «Slovo i dilo», (January, 2021), In Ukraine, about 2,000 prosecutors have not passed certification, <https://www.slovoidilo.ua/2021/01/22/novyna/suspilstvo/ukrayini-atestacziyu-ne-projshly-2-tysyach-prokuroriv>, (access date: 11.09.2023).

³⁹⁴ Censor.net, Only 45% of prosecutors have successfully passed the certification to the Prosecutor General's Office https://censor.net/ua/news/3195840/lyshe_45_prokuroriv_uspishno_proyishly_atestatsiyu_v_ofis_genprokurora_scho_moje_pryzvesty_do_kadrovyyh, (access date: 18.09.2023).

³⁹⁵ R. Marzhan, whistleblower prosecutor at the Chortkiv local prosecutor's office. Interview with Y. Shvab, September 1, 2021 and V. Petrakovskiy, Law Lecturer at the National University of Kyiv-Mohyla Academy, former prosecutor. Interview with T. Khutor and Y. Shvab, August 26, 2021 and R. Kuibida, Deputy Chairman of the Board of the Center of Policy and Legal Reform, PhD in Law. Interview with T. Khutor and Y. Shvab, August 12, 2021.

³⁹⁶ Reanimatsiyyny paket reform, (July, 2021), Prosecutorial certification: on the way to the ECtHR?, <https://rpr.org.ua/news/prokurorska-atestatsiia-na-shliakhu-do-yespl/>, (access date: 13.09.2023) ; Go Law, (December, 2020), Reform in the prosecutor's office: judicial consequences, <https://golaw.ua/ua/insights/publication/reforma-v-organah-prokoratyru/>, (access date: 13.09.2023).

³⁹⁷ R. Marzhan, whistleblower prosecutor at the Chortkiv local prosecutor's office. Interview with Y. Shvab, September 1, 2021 and V. Petrakovskiy, Law Lecturer at the National University of Kyiv-Mohyla Academy, former prosecutor. Interview with T. Khutor and Y. Shvab, August 26, 2021.

about 1,000 such cases in courts, and also mentioned that the amount of compensation that the courts ruled to be due reached are "horrible numbers."³⁹⁸

Journalists highlight examples of high-profile reinstatements. For instance, one of the reinstated prosecutors was somebody who had directly interfered in the investigation concerning his father's company. Another similar example was a prosecutor guilty of a DUI accident that resulted in children getting injured.³⁹⁹ In another case, a prosecutor was reinstated despite doubts about his integrity, and he received about EUR 25,000 of compensation from the Prosecutor General's Office.⁴⁰⁰

Evaluating the certification procedure, experts note that it was not entirely successful. In particular, due to its unstable results, multiple grounds for appealing the decisions of the personnel commissions⁴⁰¹ and the concentration of powers to conduct certification in the hands of the Prosecutor General.⁴⁰² However, the reform is not over. It is an absolute illusion that some stage of reform has passed. It was supposed to reduce the number of prosecutors from 15,000 to 10,000, but this did not happen. One expert suggested that there is a need to develop a different staff structure for prosecutor's offices. The prosecutor's office does not need so many heads of departments, their deputies, and heads of divisions, because each prosecutor is independent and autonomous⁴⁰³.

2) Institutional independence

Neither prosecutors nor prosecution, in general, can be considered independent. The reason for this is the institutional structure of the body and the excessive politicization of the Prosecutor General. Any prosecutor can be pressured by any superior prosecutor, and the Prosecutor General in turn is influenced by the country's leadership. The widespread practice of informal influence is a threat to prosecutors' independence, similar to the situation with judges. The OSCE report on the independence of prosecutors' offices in Eastern Europe in 2020 states that the practice of providing verbal, informal recommendations by senior prosecutors to lower-level prosecutors is quite common.⁴⁰⁴

³⁹⁸ Ukrinform, (September, 2021), «Terrible numbers»: Venediktova spoke about compensation for prosecutors who were reinstated through the courts, <https://www.ukrinform.ua/rubric-society/3323321-zahlivi-cifri-venediktova-rozpovila-pro-kompensacii-ponovlenim-cerez-sudi-prokuroram.html>, (access date: 10.09.2023).

³⁹⁹ Bihus.Info, (July, 2021), Video «Drunk prosecutors from deadly accidents are back to Prosecutor General's Office and SIB», <https://www.youtube.com/watch?v=HjCSNV1xt9A>, (access date: 26.09.2023).

⁴⁰⁰ Slidstvo.Info, (January, 2021), Scandalous Kulyk, polished and uncertified: to whom the Prosecutor General Office paid more than 20 million UAH, <https://www.slidstvo.info/articles/skandalnyj-kulyk-lyustrovani-ta-neatestovani-komu-ofis-genprokurora-vyplatyv-bilshe-20-mln-grn/>, (access date: 25.09.2023).

⁴⁰¹ R. Marzhan, whistleblower prosecutor at the Chortkiv local prosecutor's office. Interview with Y. Shvab, September 1, 2021 and V. Petrakovskyi, Law Lecturer at the National University of Kyiv-Mohyla Academy, former prosecutor. Interview with T. Khutor and Y. Shvab, August 26, 2021.

⁴⁰² See Reanimatsiynyy paket reform, (2021), Prosecutorial certification: on the way to the ECtHR?

⁴⁰³ Ukrinform, (September, 2023), 10 years of reforming the prosecutor's office. Research presentation, <https://www.ukrinform.ua/rubric-presshall/3761319-10-rokiv-reformuvanna-prokuraturi-prezentacia-doslidzenna.html>, (access date: 17.09.2023).

⁴⁰⁴ OSCE, ODIHR, Needs assessment report. Strengthening the functional independence of prosecutors in Eastern European member states, https://www.osce.org/files/f/documents/3/5/447865.pdf?fbclid=IwAR1pHu6He7hBSZ6-dueJXmspRxZ_rq3dP_lmNtwmNBaS-h_IYvbg5bMbk-g#page=34&zoom=100,0,0, (access date: 17.09.2023), p.34.

Unlike judges, prosecutors understand and identify the problem. An anonymous survey of 84 prosecutors showed that they do not consider themselves independent. Unfortunately, they are forced to carry out sometimes dubious instructions from their superiors, and are burdened with some unclear work that often comes down from above and takes a lot of time. Because of this, they are forced to perform the functions of the prosecutor's office less than to be "good".⁴⁰⁵

There are many methods of influencing prosecutors. A fairly common way to influence prosecutors is their suspension from criminal proceedings. The head of the prosecutor's office independently distributes criminal cases among subordinate prosecutors, as there is no automated system. Similarly, the head of the prosecutor's office can easily withdraw their subordinate from the procedural management of any case. This practice is usually common when a prosecutor refuses to follow certain instructions from their management regarding a particular case. Thus, heads of prosecutor's offices can control the progress of any case investigated in their body. Experts interviewed by us point out that this practice is extremely common at all levels and indicates direct interference in the independence of prosecutors.⁴⁰⁶

There is a clear hierarchy in the Ukrainian prosecution system. Each level of prosecutors is subordinated to the next one. That is why the position of the Prosecutor General is essential for control of the entire institution. In turn, the process of appointing and dismissing the Prosecutor General is completely dependent on the government. The President appoints and dismisses the Prosecutor General with the consent of the Parliament. No competitive element is envisaged in the selection of the Prosecutor General. The candidate only has to meet the criteria set out in the law (as practice shows, the requirements of the law can be changed to appoint a particular person⁴⁰⁷). As a result, the Prosecutor General becomes extremely dependent on the government and their disobedience will mean resignation. The dependence of the Prosecutor General was best confirmed by the President of Ukraine himself in a conversation with the President of the United States, where Mr. Zelenskyy called the then-Prosecutor General "100% his person".⁴⁰⁸ Experts point out that almost every Prosecutor General is dismissed for political reasons.⁴⁰⁹

3) *Disciplinary liability*

Disciplinary complaints during the reform of the prosecutor's office were considered by a designated personnel commission. It consisted of 7 members, each of whom was a representative of the Prosecutor General's Office.⁴¹⁰ The members of the commission were

⁴⁰⁵ See Ukrinform, (2023), 10 years of reforming the prosecutor's office. Research presentation.

⁴⁰⁶ R. Marzhan, whistleblower prosecutor at the Chortkiv local prosecutor's office. Interview with Y. Shvab, September 1, 2021 and V. Petrakovskyy, Law Lecturer at the National University of Kyiv-Mohyla Academy, former prosecutor. Interview with T. Khutor and Y. Shvab, August 26, 2021.

⁴⁰⁷ Ukrayinska pravda, (May, 2016), Rada passed a law on the GPU - the way was opened for Lutsenko, <https://www.pravda.com.ua/news/2016/05/12/7108205/>, (access date: 14.09.2023).

⁴⁰⁸ Ukrayinska pravda, (October, 2019), «100% honest prosecutor»: Zelensky explained what he actually told Trump, <https://www.pravda.com.ua/news/2019/10/10/7228686/>, (access date: 14.09.2023).

⁴⁰⁹ V. Petrakovskyy, Law Lecturer at the National University of Kyiv-Mohyla Academy, former prosecutor. Interview with T. Khutor and Y. Shvab, August 26, 2021.

⁴¹⁰ https://old.gp.gov.ua/ua/file_downloader.html?_m=fslib&_t=fsfile&_c=download&file_id=208224 (access date: 21.09.2023).

appointed by the Prosecutor General, which casts doubt on the independence of this body. Experts note that the members of the commission did not have the institutional capacity (sufficient experience and knowledge) to consider disciplinary cases.⁴¹¹ Moreover, the practice of reviewing disciplinary complaints by the personnel commission, according to prosecutors, is selective and non-uniform.⁴¹² We also take note of the unclear wording of disciplinary offenses that become the basis for disciplinary liability. The need to eliminate this problem was noted by GRECO, but this recommendation has not been implemented.⁴¹³

The General Inspectorate is in charge of ensuring the integrity and control of prosecutors in the Prosecutor General's Office. It is subordinated to the Prosecutor General of Ukraine and acts based on a bylaw – the Order of the Prosecutor General. The Law on Prosecution does not define the functions, powers, and tasks of this structural unit, but only provides for its creation.

The institution of disciplinary liability is often used to put pressure on certain prosecutors by the institution's leadership. The General Inspectorate is actively used for this purpose. Experts believe that it is through the Inspectorate that the Prosecutor General can easily influence any prosecutor through official investigations and secret integrity checks. According to experts, the General Inspectorate can create materials for dismissal, which are usually of poor quality.⁴¹⁴ The prosecutor we interviewed aptly described the General Inspectorate as the Prosecutor General's "personal whip".⁴¹⁵

Table 13: Summary of Article 11.2

	Evaluation	Comments
Implementation through national legislation	Partially compliant	Ukrainian legislation on the independence of prosecutors and the fight against corruption in the prosecutor's office is partially compliant with Article 11 of the UNCAC. The organizational structure of the prosecutor's office, established by law, does not ensure the independence of prosecutors. There are several shortcomings in

⁴¹¹ V. Petrakovskiy, Law Lecturer at the National University of Kyiv-Mohyla Academy, former prosecutor. Interview with T. Khutor and Y. Shvab, August 26, 2021.

⁴¹² R. Marzhan, whistleblower prosecutor at the Chortkiv local prosecutor's office. Interview with Y. Shvab, September 1, 2021 + *In 2020, personnel commissions considered 1,217 disciplinary complaints, of which 274 disciplinary proceedings were opened. As a result of the proceedings, disciplinary sanctions were applied to 63 prosecutors, including: - 22 reprimands against 25 prosecutors; - a ban on promotion or transfer to a higher-level prosecutor's office for 12 people; - dismissal of 26 prosecutors (in 9% of cases).*

⁴¹³ GRECO, Second Conformity Assessment Report of the Fourth Assessment Round for Ukraine, <https://nazk.gov.ua/wp-content/uploads/2022/04/GrecoRC4202125-Final-UKR.pdf>, (access date: 22.03.2024), pg. 24.

⁴¹⁴ V. Petrakovskiy, Law Lecturer at the National University of Kyiv-Mohyla Academy, former prosecutor. Interview with T. Khutor and Y. Shvab, August 26, 2021.

⁴¹⁵ R. Marzhan, whistleblower prosecutor at the Chortkiv local prosecutor's office. Interview with Y. Shvab, September 1, 2021.

		the amendments recently made in the legislation aimed at reforming the prosecutor's office.
Practical enforcement	Moderate enforcement	The implementation of the law in practice is moderate. Even after being dismissed, many prosecutors were reinstated. A certain hierarchy remains in the prosecution services, so that the higher-level prosecutors have many ways of influencing the lower-level prosecutors. The position of Prosecutor General is highly politicized and controlled due to insufficient safeguards in their appointment and dismissal.

<p>Good practices</p> <ul style="list-style-type: none"> • The attempt to reform the prosecutor's office and courts by introducing a mandatory assessment of the integrity and professionalism of prosecutors. • Prosecutors acknowledge their problem of lack of independence and are ready to fight this issue. <p>Deficiencies</p> <ul style="list-style-type: none"> • There is still a clear hierarchy in the prosecutor's office. This makes subordinates more dependent on their leadership. The leadership has sufficient leverage over prosecutors. • The Prosecutor General is a highly politicized figure. He or she is dependent on the President and the Parliament, as he or she is appointed and dismissed at the political will of these authorities. • The certification of prosecutors has not completely cleared the body of unscrupulous employees. • The activities of the General Inspectorate are dependent on the Prosecutor General. Through this body, the Prosecutor General can put pressure on any prosecutor by conducting official investigations and bringing him or her to disciplinary liability.

4.1.11 Article 12 – Private sector transparency

Legal framework

Within the analysis of the implementation of this Article, we focus on the launch of anti-corruption programmes in public sector legal entities, functioning of the state register of legal

entities, and entering data on ultimate beneficiary owners. We also analyze accounting practices of legal entities and the deductibility of expenses that constitute bribes.

Ukrainian legislation establishes a number of mandatory and recommended anti-corruption preventive instruments in respect for private sector legal entities. Section 10 of the Law of Ukraine "On Prevention of Corruption"⁴¹⁶ establishes provisions on the prevention of corruption in the activity of legal entities. It is a right for some legal entities, while it is an obligation for others. Detailed analysis of this issue has been provided in the discussion of Article 5.

In general, the development of internal anti-corruption programme⁴¹⁷ is obligatory for all legal entities participating in tenders for procurement of goods, works, or services with a price of, or exceeding, EUR 625000 (Art. 17, Public Procurement Law of Ukraine).

State regulators can additionally provide for the creation of compliance systems in specific spheres. E.g. National Commission on Securities and Stock Market approved the Basic Corporate Governance Code⁴¹⁸ in 2020. Ukrainian legislation does not require companies to comply with the Code. As in many other cases, this is a soft law tool, i.e., it provides recommendations. Its application is strongly recommended for companies that act in the capital market.⁴¹⁹ Although, it can also be applied by other companies.

In contrast, the banking sphere of Ukraine has its mandatory compliance rules which cover any bank's activities in Ukraine. They are Resolution of the Board of the National Bank of Ukraine No. 64 approving the Regulation on the Organization of Risk Management System in Ukrainian Banks and Banking Groups,⁴²⁰ and the Resolution of the Board of the National Bank of Ukraine⁴²¹ approving the Regulation on the Organization of Internal Control System in Ukrainian Banks and Banking Groups.

The protection of the interests of private individuals from undue influence of public bodies is also an important aspect of anti-corruption. Therefore, necessary legal mechanisms should be established. The Business Ombudsman Council has been operating in Ukraine since 2014. Its activities are aimed to protect business interests from the unfair administration of public authorities.

⁴¹⁶ <https://zakon.rada.gov.ua/laws/show/1700-18#n648>, (access date: 17.09.2023).

⁴¹⁷ The anti-corruption program of a legal entity is a set of rules, standards and procedures for detecting, combating and preventing corruption in the activities of a legal entity. Definition within the meaning of Article 62 of the Law of Ukraine "On Prevention of Corruption", <https://zakon.rada.gov.ua/laws/show/1700-18#Text>, (access date: 22.02.2024).

⁴¹⁸ The Unified web portal of executive authorities of Ukraine, (March, 2021), NSSMC has approved the Code of Corporate Governance, its key requirements and recommendations, <https://www.kmu.gov.ua/news/nkcpfr-zatverdila-kodeks-korporativnogo-upravlinnya-jogo-klyuchovi-vimoqi-i-rekomendaciyi>, (access date: 20.09.2023).

⁴¹⁹ NSSMC, (March, 2020), The National Code of Corporate Governance has been approved, <https://www.nssmc.gov.ua/natsionalnyi-kodeks-korporatyvnoho-upravlinnia-zatverdzheno/>, (access date: 20.09.2023).

⁴²⁰ <https://zakon.rada.gov.ua/laws/show/v0064500-18#Text>, (access date: 24.09.2023).

⁴²¹ <https://zakon.rada.gov.ua/laws/show/v0088500-19#Text>, (access date: 24.09.2023).

To ensure proper identification of all entities acting in Ukraine the Law of Ukraine “On State Registration of Legal Entities and Individual Entrepreneurs and Public Organisations”⁴²² (“the Law”) has been adopted. It regulates any relations in the field of state registration relating to legal entities and individual entrepreneurs. The Law provides for the creation of the Unified State Register which gathers, accumulates, processes, protects, records, and supplies the information on legal entities and individual entrepreneurs. The Law provides for criminal and administrative liability for violations. Administrative liability is established for violation of the procedure for state registration of a legal entity, individual entrepreneur, the procedure for storing registration files of legal entities and individual entrepreneurs, as well as for failure to provide information about the ultimate beneficial owner. The sanction for these violations is a fine of EUR 5 to EUR 1,500 (approximately). Criminal liability is provided for by the Criminal Code of Ukraine for falsification of documents submitted for state registration. This crime is punishable by a fine or imprisonment for up to five years. There is also liability for legal entities for bribing an official of a private law legal entity. The sanction ranges from a fine to imprisonment.

The term “ultimate beneficiary owner” has been defined by the Law “On Money Laundering.” It is an individual having an ultimate/final decisive impact (control) on activities and/or individuals on whose behalf the financial transaction is conducted. A sign of a direct decisive impact on activities is direct ownership by an individual of a share of at least 25 % of the authorized (compound) capital or voting rights of a legal entity.⁴²³

Since 2014, legal entities are obliged to disclose information about their ultimate beneficiary owner through the Unified State Register, inter alia, to provide information necessary for her or his identification (full name, passport details, place of residence, etc.).⁴²⁴ The latest version of the Law on Prevention and Counteraction of Laundering of Proceeds Derived from Crime, Financing Terrorism and Financing Proliferation of Weapons of Mass Destruction⁴²⁵ obliges legal entities to provide the latest information about their ultimate beneficiary owners and ownership structure. Because of the full-scale invasion of Ukraine by the Russian Federation, legal persons must submit this information no earlier than 90 days after the date of cancellation of martial law in Ukraine.⁴²⁶

Implementation

System for the Prevention of Corruption in respect of Legal Entities in Ukraine

Ukraine is gradually introducing anti-corruption policies, a compliance system and risk-based approaches to doing local business. We believe that it is necessary to move forward legal requirements for compliance systems, as well as practical implementation and enforcement of these requirements. There are specific cases to review.

⁴²² <https://zakon.rada.gov.ua/laws/show/755-15#Text>, (access date: 24.09.2023).

⁴²³ <https://zakon.rada.gov.ua/laws/show/361-20#Text>, (access date: 24.09.2023).

⁴²⁴ <https://zakon.rada.gov.ua/laws/show/1701-18#Text>, (access date: 24.09.2023).

⁴²⁵ <https://zakon.rada.gov.ua/laws/show/361-20#n829>, (access date: 24.09.2023).

⁴²⁶ <https://zakon.rada.gov.ua/laws/show/361-20#n833>, (access date: 24.09.2023).

Legal entities implement anti-corruption programmes as a formality in most cases.⁴²⁷ Although the NACP approved the typical anti-corruption programme of a legal entity⁴²⁸ for the formation of a common understanding among legal entities of such kinds of programmes, many entities just copy the wording.⁴²⁹ It is a common practice especially for companies for which an anti-corruption programme is an obligatory requirement for participation in public procurement. Legal entities lack understanding of any positive aspects which arise when an anti-corruption programme is approved and influences their practice.

The Ukrainian Network of Integrity and Compliance (UNIC) has been operating in Ukraine since 2017. As of September 2023, it included 45 companies.⁴³⁰ UNIC promotes responsible business standards and the development of compliance programmes. For example, it developed the methodical guide for the authorized persons in terms of drafting and implementation of anti-corruption programmes of a legal entity.⁴³¹

In the banking sector, the National Bank of Ukraine facilitated the creation of risk management systems in banks and banking groups. A clear timeframe for their creation was established. All market participants created these systems including compliance departments, conflict of interest policies and codes of ethics. Such systems are in place at PrivatBank,⁴³² Crédit Agricole Ukraine,⁴³³ Oschadbank⁴³⁴ etc. The interviewed experts state that these systems is a fully-functional tool and the respective policies are actively used by banks in their activity.⁴³⁵ UNIC engages representatives of the bank sector to exchange experience in risk management systems.⁴³⁶

Experts also speak about the lack of functional systems when it comes to legal entities, including the companies of public interest and state companies where their implementation is extremely important.⁴³⁷ The adoption of risk-management systems is not obligatory for most

⁴²⁷ A. Prudko, Head of the UNIC Secretariat, Y. Vrublevska, UNIC Project Coordinator, in person with T. Khutor, Head of the ILI, T. Riabchenko, Analyst of the ILI, Kyiv, September 26, 2021 and O. Lagodienko, Co-founder and Executive Director of Ethicontrol. Interview with T. Khutor and Y. Shvab, November 25, 2021.

⁴²⁸ <https://ips.ligazakon.net/document/re37324?an=2>, (access date: 24.09.2023).

⁴²⁹ New Voice, (September, 2021), Why does business need an anti-corruption program?, <https://biz.nv.ua/ukr/experts/dlya-kogo-obov-yazkova-antikorupciyna-programa-navishcho-vona-biznesu-novini-ukrajini-50185064.html>, (access date: 23.09.2023).

⁴³⁰ UNIC, «Members of the Network» page on the official web site, <https://unic.org.ua/members/>, (access date: 19.09.2023).

⁴³¹ UNIC, Methodological recommendations for authorized persons on preparation and implementation of the anti-corruption program of a legal entity, https://unic.org.ua/upload/files/Methodical_recommendations_on_preparation_and_implementation_NAZK_UK_R.docx, (access date: 12.09.2023).

⁴³² Bank PrivatBank, (June, 2021), Corporate Governance Code, https://static.privatbank.ua/files/Code_of_Corporate_Governance_18062021.pdf, (access date: 20.09.2023).

⁴³³ Credit Agricole Bank, «Compliance» page on the official web site, <https://credit-agricole.ua/o-banke/komplaens>, (access date: 20.09.2023).

⁴³⁴ Bank Oschadbank, «Corporate ethics and compliance» page on the official web site, <https://www.oschadbank.ua/korporativna-etika-ta-komplaens%20%20>, (access date: 20.09.2023).

⁴³⁵ Interview with anonymous bank experts, Kyiv.

⁴³⁶ A. Prudko, Head of the UNIC Secretariat, Y. Vrublevska, UNIC Project Coordinator, in person with T. Khutor, Head of the ILI, T. Riabchenko, Analyst of the ILI, Kyiv, September 26, 2021.

⁴³⁷ Interview with anonymous bank experts, Kyiv.

businesses; there is no monitoring and control of the systems which have been already implemented. So, it means that this sphere is in dire need of improvement.

The Business Ombudsman Council protects the interests of businesses in their relations with state bodies and can provide recommendations based on the results of complaints against state bodies. In 2022, the Business Ombudsman Council reviewed 521 complaints, and 247 cases were closed as a result. Most of the complaints (360) dealt with the State Fiscal Service of Ukraine.⁴³⁸ Since the Business Ombudsman Council started its activities, 18 comprehensive reports have been issued highlighting different spheres where Ukrainian businesses face problems. The experts recognize the good performance of the Business Ombudsman Council, and the quality of its examinations and reports.⁴³⁹

To sum it up, compliance systems in Ukraine are going through a development stage. Understanding the global trend, Ukrainian legal entities implement them into their activities step by step. The experts encourage the role of the state in this process, taking particular actions. For example, ensuring liability in case of absence of a compliance system in a legal entity, introducing incentives, training compliance officers, and continuously raising awareness in order to develop compliance systems in Ukraine.⁴⁴⁰

Maintenance of the Unified State Register

The Unified State Register⁴⁴¹ is administered by the Ministry of Justice. The Register provides information about a legal entity, including its name and individual number; the amount of the authorized capital; ultimate beneficiary owner; the date of commencement of enforcement proceedings, etc. Information is delivered both free of charge and as a paid service. Free requests include the above information. The search function utilizes *individual numbers or the name of a legal entity / natural person*. Paid requests (approximately EUR 3) provide the same amount of information, but are more user-friendly. In particular, they enable information mining by using *data on the founders/heads/authorized signatories*. Also, paid requests provide an option to choose the date as to which information is given or save it in a selected format. The service is simple and easy to use. It allows prompt data mining for civil society representatives to get and follow the information on the beneficiary ownership of public officers and other public figures.⁴⁴² Access to the register is available even during martial law.

Information on Beneficiary Owners

⁴³⁸ Business Ombudsman Council, (2023), Annual report 2022,

<https://boi.org.ua/files/pg/7s/8%20years%20ua%20fin.pdf>, (access date: 17.09.2023).

⁴³⁹ A. Prudko, Head of the UNIC Secretariat, Y. Vrublevska, UNIC Project Coordinator, in person with T. Khutor, Head of the ILI, T. Riabchenko, Analyst of the ILI, Kyiv, September 26, 2021.

⁴⁴⁰ A. Prudko, Head of the UNIC Secretariat, Y. Vrublevska, UNIC Project Coordinator, in person with T. Khutor, Head of the ILI, T. Riabchenko, Analyst of the ILI, Kyiv, September 26, 2021 and O. Lagodienko, Co-founder and Executive Director of Ethicontrol. Interview with T. Khutor and Y. Shvab, November 25, 2021.

⁴⁴¹ Ministry of Justice of Ukraine, Unified state register of legal entities, individual entrepreneurs and public organizations, official web portal, <https://usr.minjust.gov.ua/content/home>, (access date: 10.09.2023).

⁴⁴² In 2019, there were 682,300 paid inquiries; in 2020, there were 587,678 paid inquiries, and in 8 months of 2021, there were 383800 paid inquiries. The Ministry of Justice does not have any information on the number of free inquiries performed. Ministry of Justice's response at the ILI request of Aug. 20, 2021.

Ukraine has become the first country to submit information on legal entities to the Global OpenOwnership Register.⁴⁴³ The necessary legal acts were adopted by the Cabinet of Ministers of Ukraine in May 2017.⁴⁴⁴ In August 2020, the Unified State Register software was updated to hold structured information on ultimate beneficiary owners or their absence. The launch of the Unified State Registry faces three main obstacles. First, some legal entities do not provide information on their ultimate beneficiary owners. Among the most spread methods to avoid disclosure of information about beneficiary owners are as follows: using offshore companies in the company ownership structure; indicating absent ultimate beneficiary owners in the submitted information; claiming that the legal entity head is its ultimate beneficiary owner; indicating a nominee owner as the ultimate beneficiary owner.⁴⁴⁵

Secondly, the relevance of information on beneficiary owners is seen as a serious obstacle, due to the fact that a great deal of data is not being updated, thus, can be outdated.⁴⁴⁶ In 2020 the State Financial Monitoring Service of Ukraine issued its analytical research “The Guideline to the Disclosing of Information on Ultimate Beneficiary Owners”.⁴⁴⁷ This publication includes the analysis of the international standards and foreign experiences in this matter as well as the analysis of the national legislation and description of the issues related to the identification of ultimate beneficiary owners.

Finally, when regulatory bodies have no capacity to verify the validity of information their check-ups get purely formal. It is also one of the reasons why the Unified State Register provides some out-of-date and incomplete information.

The experts are concerned about data not being validated (e.g., misspelling of names, addresses, codes). Moreover, constant information exchange between state bodies is not ensured, there is a lack of training on how to identify ultimate beneficiary owners.⁴⁴⁸ All the above-mentioned shortcomings prevent the proper check of information about ultimate beneficiary owners. Due to the Russian full-scale invasion, the update of information has been postponed indefinitely, which negatively affects the beneficial ownership disclosure. As of September 2023, there is insufficient information to conclude on the effectiveness of sanctions

⁴⁴³ Open Ownership Register, The main page of the official web portal, <https://register.openownership.org/>, (access date: 15.09.2023).

⁴⁴⁴ Transparency International Ukraine, (May, 2017), Information about the beneficial owners will be entered into the public register, <https://ti-ukraine.org/news/informatsiia-pro-benefitsiarnykh-vlasnykiv-bude-zvedena-u-publichnyi-reiestr/>, (access date: 10.09.2023).

⁴⁴⁵ Zero Corruption, Report «Beneficiary. What the USR tells about company owners», <https://project.liga.net/projects/beneficiar/#conclusions>, (access date: 13.09.2023).

⁴⁴⁶ As of June 2019, only 21.6 % (360,660) legal entities out of 1,672,576 registered ones have provided information on their ultimate beneficiary owners. Some 51.2 % (856,413) of them enjoy the right to abstain from providing information on their ultimate beneficiary owners. Almost 27 % (455,503) of legal entities did not meet the requirement. Detail information: See, Zero Corruption, Report «Beneficiary. What the USR tells about company owners».

⁴⁴⁷ The State Financial Monitoring Service of Ukraine, (2020), Analytical research «The Guideline to the Disclosing of Information on Ultimate Beneficiary Owners», https://fiu.gov.ua/assets/userfiles/340/201209_1707_170x240_KerivniNastanovy.pdf, (access date: 20.09.2023).

⁴⁴⁸ N. Chornohub, GR Manager of YouControl, Y. Tomyn, Analyst, Compliance Officer of YouControl. Interview with T. Khutor and T. Riabchenko, November 23, 2021.

for violations of the requirements for submitting information on beneficial owners. Due to the postponement of the submission deadlines in 2021 and then due to the war in Ukraine, it is too early to determine the impact of the increased penalties on administrative liability.

In Ukraine, there are also private services in place, simplifying the search of information by using open data, inter alia, about ultimate beneficiary owners. For example, Youcontrol⁴⁴⁹ service allows analyzing enterprises. It helps businesses to avoid financial risks and journalists and civil society activists to investigate important public cases. Additionally, the Youcontrol experts provide state bodies systematic support to advance the quality of obtained information, elimination of errors in the system, and ensure the development and operation of effective mechanisms for verifying information about ultimate beneficiary owners.⁴⁵⁰ In 2023, Youcontrol boasts 5,000,000 files. The paid subscription costs approximately EUR 1,300 a year.

Table 14: Summary of Article 12

	Evaluation	Comments
Implementation through national legislation	Fully compliant	National legislation of Ukraine complies with Article 12 of the UNCAC. Anti-corruption programs for legal entities are provided for by law. The unified state register containing information on legal entities is constantly functioning. Notification of any changes in the ultimate beneficiary ownership is mandatory by law.
Practical enforcement	Moderate enforcement	Anti-corruption programmes and compliance systems are developing slowly and have not yet become an effective mechanism for combating corruption in legal entities. The information in the unified state register needs to be checked for relevance and accuracy. Liability for violations is not fully effective and does not prevent breaches in the private sector. As one of the safeguards against undue influence of the state on business, the Business Ombudsman Council is actively working.

Good practices

- The open Unified State Register of Legal Entities, containing information that is accessible for everyone.

⁴⁴⁹ YouControl, «About us» page on the official web site, https://youcontrol.com.ua/about_us/#about-system, (access date: 17.09.2023).

⁴⁵⁰ N. Chornohub, GR Manager of YouControl, Y. Tomyn, Analyst, Compliance Officer of YouControl. Interview with T. Khutor and T. Riabchenko, November 23, 2021.

- Private services that allow forming a complete dossier on a legal entity, and contain various data analysis tools.
- Performance of the Business Ombudsman Council to protect business interests.

Deficiencies

- Lack of an effective compliance system in most state-owned enterprises, and companies of public interest. Formality approach to the adoption and approval of anti-corruption programmes in private legal entities.
- Lack of adequate liability for failure to provide information on the ultimate beneficiary owner.
- Lack of mechanisms to verify the completeness and accuracy of information about the ultimate beneficiary owners. The Unified State Register contains outdated information on the ultimate beneficiary owners.

4.1.12 Article 14 – Measures to prevent money-laundering

Legal framework

Financial Intelligence Unit in Ukraine

In 2010, Ukraine ratified the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.⁴⁵¹ Under paragraph 13 of Article 46 of this Convention, the body authorized by Ukraine to perform the functions of a financial intelligence unit (FIU) is the State Financial Monitoring Service of Ukraine (SFMS). Its activities are directed and coordinated by the CMU through the Minister of Finance.⁴⁵²

The tasks, functions, and powers of the SFMS are established by the Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction"⁴⁵³ ("Law on Money Laundering") and the Regulation on this agency.⁴⁵⁴ Regarding internal and external cooperation, one of the tasks of the SFMS is to establish cooperation with government agencies, competent authorities of foreign countries, and international organizations in the field of prevention and response to money laundering.

Financial monitoring system

A financial monitoring system has been established and is operating in Ukraine. The financial monitoring system consists of primary and national levels. The subjects of state financial monitoring are the National Bank of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Justice of Ukraine, the National Commission on Securities and Stock Market, the Ministry of

⁴⁵¹ https://zakon.rada.gov.ua/laws/show/994_948, (access date: 12.02.2024).

⁴⁵² <https://zakon.rada.gov.ua/laws/show/537-2015-%D0%BF#Text>, (access date: 10.09.2023).

⁴⁵³ <https://zakon.rada.gov.ua/laws/show/361-20#n521>, (access date: 10.09.2023).

⁴⁵⁴ <https://zakon.rada.gov.ua/laws/show/537-2015-%D0%BF#Text>, (access date: 10.09.2023).

Digital Transformation of Ukraine, and the SFMS itself. Each of them supervises individual subjects of primary financial monitoring.

In accordance with the Law on Money Laundering, the SFMS generates summary materials, i.e. information on financial transactions which were the object of financial monitoring and which the analysis found suspicious. The summarized materials are a source of circumstances that may indicate the commission of a criminal offense and give grounds for the investigator or the prosecutor to initiate a pre-trial investigation.

The subjects of primary financial monitoring (SPFM) are banks, insurers, credit unions, payment organizations, commodities and other exchanges, etc. The procedure for carrying out financial monitoring measures by these entities is regulated by a separate NBU resolution.⁴⁵⁵ SPFMs are required to apply a risk-based approach in their activities, taking into account the relevant risk criteria. If there is information about suspicious transactions, SPFM must immediately notify the SFMS.

Implementation

State financial monitoring and its cooperation

The SFMS became a separate executive body in 2005. The independence of the SFMS is ensured due to the system of prevention and counteraction to money laundering built since 2005, the risk-based approach and software that enables quick tracking and blocking of all suspicious transactions, as well as to generate summary materials for submission to law enforcement agencies. According to experts, there is no political interference in the agency's activities.⁴⁵⁶

1) Cooperation at the national level

The SFMS actively works with various public agencies in Ukraine and internationally. In Ukraine, the SFMS has signed information exchange agreements with six state regulators, eight state law enforcement agencies (such as the MIA, the NABU, the ARMA, the SIB, the PGO, etc.), thirteen other state agencies (such as the SPFM, the AMCU) and one institution (the National Depository of Ukraine). Twenty-three Memorandums with state authorities, institutions and organisations and eleven joint orders of the SFMS with state regulators and other state authorities were also signed.⁴⁵⁷

⁴⁵⁵ <https://zakon.rada.gov.ua/laws/show/v0090500-20#Text>, (access date: 10.09.2023).

⁴⁵⁶ A. Horbenko, NGO «Ukrainian Compliance Association». Interview with T. Riabchenko, September 1, 2021.

⁴⁵⁷ The State Financial Monitoring Service of Ukraine, List of joint acts of the SFMSU with state regulators, other state bodies and public organizations on interaction and information exchange in the field of prevention and countermeasures against legalization (laundering) of proceeds obtained through crime, financing of terrorism and financing of the proliferation of weapons of mass destruction, <https://fiu.gov.ua/assets/userfiles/330/%D0%9F%D0%B5%D1%80%D0%B5%D0%BB%D1%96%D0%BA%20%D1%81%D0%BF%D1%96%D0%BB%D1%8C%D0%BD%D0%B8%D1%85%20%D0%B0%D0%BA%D1%82%D1%96%D0%B2%202019.pdf>, (access date: 21.09.2023).

The SFMS staff indicate that access to databases of state bodies is open, permanent, and provided as required.⁴⁵⁸ Requested information is received on time and in full from the SFMS side. At the same time, information from public bodies at their own initiative (if they identify financial irregularities) does not come in full. One of the reasons is their frequent reorganization and, as a consequence, the need to renegotiate information exchange agreements.

At the domestic level, the SFMS constantly cooperates with SPFM. Thus, for the last five years, SPFMs have provided the following number of reports on financial transactions subject to financial monitoring.⁴⁵⁹ The decrease in the number of reports in 2020 - 2022 was due to the adoption in 2019 of a new version of the Law of Ukraine on Money Laundering, which raised the threshold for reporting financial transactions and introduced case reporting on suspicious transactions. This change was welcomed by experts, who noted that the new version of the Law meets the requirements of European directives, the requirements of MONEYVAL, and allows for increasing the level of competition in this area.⁴⁶⁰

2) Cooperation at the international level

At the international level, the SFMS actively cooperates with:

- The Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). In 2017, Ukraine passed the 5th round of mutual evaluation of the national financial monitoring system by the MONEYVAL Committee, which resulted in the publication of the MONEYVAL Report on the Mutual Evaluation of Ukraine in January 2018;⁴⁶¹
- Financial Action Task Force (FATF);
- Egmont Group of Financial Intelligence Units. Since 2004, the SFMS has been a member of the Egmont Group. During 2003-2020, 81 Memoranda of Understanding were signed with FIUs of foreign countries.⁴⁶² According to the information provided by

⁴⁵⁸ Representatives of the State Financial Monitoring Service. Interview with T. Khutor and T. Riabchenko, September 27, 2021.

⁴⁵⁹ In 2018, banks sent 9871608 notifications on financial transactions subject to financial monitoring, 98184 notifications were sent by non-banking financial institutions. In 2019, banks sent 11,327,040 notifications on financial transactions subject to financial monitoring, 110334 notifications were sent by non-banking financial institutions. In 2020, banks sent 4675432 notifications on financial transactions subject to financial monitoring, 50105 notifications were sent by non-banking financial institutions. In 2021, banks sent 1,638,433 notifications on financial transactions subject to financial monitoring, 21,394 notifications were sent by non-banking financial institutions. In 2022, banks sent 1,174,044 notifications on financial transactions subject to financial monitoring, 5348 notifications were sent by non-banking financial institutions.

⁴⁶⁰ A. Horbenko, NGO «Ukrainian Compliance Association». Interview with T. Riabchenko, September 1, 2021 and Bank representatives. Anonymous interviews with T. Riabchenko, September 16, 2021.

⁴⁶¹ MONEYVAL, (January, 2018), Report on the Mutual Evaluation of Ukraine, https://fiu.gov.ua/content/file/Site_docs/2018/20180305/ZVIT_UKR.pdf, (access date: 23.09.2023).

⁴⁶² The State Financial Monitoring Service of Ukraine, «Memorandums of understanding with foreign FIUs that have been signed» page on the official web portal, <https://fiu.gov.ua/pages/dijalnist/mizhnarodne-spivrobitnictvo/memorandumi-pro-vzamorozuminnja/pidpisani-memorandumi-pro-vzajemorozuminnja-z-inozemnimi-pfr.html>, (access date: 23.09.2023).

the SFMS, in 2021⁴⁶³ and in 2022,⁴⁶⁴ it can be concluded that the level of cooperation of the SFMS at the international level was high and stable.

Features of the new version of the Law on Money Laundering

There appeared to be some shortcomings in the realization of the latest version of the Law on Prevention and Counteraction. Banking institutions have an obligation to ensure the automatic exchange of information between them and the SFMS. While large banks have the financial resources and understanding of how to implement this, small banks do not.⁴⁶⁵

To eliminate this problem, the Ministry of Finance is planning to create e-profiles of SPFM. E-profiles will allow simplified submission of SPFM reports to the SFMS. The relevant order of the Ministry of Finance was supposed to enter into force at the end of November 2021. However, in November 2021,⁴⁶⁶ the entry into force was postponed to May 1, 2022,⁴⁶⁷ and in May 2022 it was postponed to the first Monday of the fourth month after the termination or cancellation of martial law.⁴⁶⁸

In general, this step speeds up the speed of providing information and saves IFM financial resources, which is absolutely a positive aspect. At the same time, one of the challenges at the current stage is to ensure the security of channels for the transmission of this information by the government. Furthermore, the new version of the Law on Money Laundering formalizes a risk-based approach to banking activities. In particular, they are obliged to determine the risk criteria on their own, taking into account information from state regulators. At the same time, according to the experts we interviewed, in practice, this leads to a different approach to risk formation. There may be a situation in which the same customer will be assigned to different risk categories in different banks, which will not contribute to a uniform practice of their application.⁴⁶⁹ Still, the employees of the SFMS see a positive aspect in this as well. In their opinion, such a varied approach allows for developing a variety of criteria, which will accelerate and improve the development of their application.⁴⁷⁰

⁴⁶³ The State Financial Monitoring Service sent 591 requests to 78 foreign FIUs and received 722 responses to requests from 77 foreign FIUs. In addition, the State Financial Monitoring Service received 373 requests from 55 foreign FIUs and provided 559 responses to 60 foreign FIUs. The most active exchange of information was carried out with the FIUs of Latvia, Poland, Switzerland, Cyprus, Germany and the USA.

⁴⁶⁴ The State Financial Monitoring Service sent 1242 requests to 147 foreign FIUs and received 965 responses to requests from 104 foreign FIUs. In addition, the State Financial Monitoring Service of Ukraine received 245 inquiries from 46 foreign FIUs and provided 395 responses to 67 FIUs of foreign countries. The most active exchange of information was carried out with the FIUs of Poland, Switzerland, Cyprus and the USA.

⁴⁶⁵ Bank representatives. Anonymous interviews with T. Riabchenko, September 16, 2021.

⁴⁶⁶ The State Financial Monitoring Service of Ukraine, (August, 2021), For the information of the subjects of primary financial monitoring, <https://fiu.gov.ua/pages/dijalnist/funkcional/news/Kopdo-vidoma-sub-jektiv-pervinnogo-finansovogo-monitoringu.html>, (access date: 23.09.2023).

⁴⁶⁷ E-cabinet of the financial monitoring system of Ukraine, (November, 2021), For the information of the subjects of primary financial monitoring (on the work of the e-cabinet of the financial monitoring system), <https://cabinet.fiu.gov.ua/news/a3581f5b327240cabbdf169d8f4904b9>, (access date: 24.09.2023).

⁴⁶⁸ E-cabinet of the financial monitoring system of Ukraine, (May, 2022), For the information of the subjects of primary financial monitoring on the order of the Ministry of Finance No. 322, <https://cabinet.fiu.gov.ua/news/3efa900153ce429b962c54728325ad7c>, (access date: 24.09.2023).

⁴⁶⁹ Bank representatives. Anonymous interviews with T. Riabchenko, September 16, 2021.

⁴⁷⁰ A. Horbenko, NGO «Ukrainian Compliance Association». Interview with T. Riabchenko, September 1, 2021.

To address the issue of a risk-based approach, experts suggest either clearly establishing criteria at the NBU level and providing them to banks to ensure a unified approach, or establishing separate key criteria for assigning individuals to different risk groups, as well as additional criteria that banks can set independently. For its part, in 2020, the SFMS presented a Guide to a Risk-Oriented Approach for Specially Defined SPFM⁴⁷¹ for a better understanding of risks and a risk-based approach. Also in 2021, the Methodology for the National Money Laundering and Terrorist Financing Risk Assessment in Ukraine was updated.⁴⁷²

Assessment of the national financial monitoring system

In 2017, Ukraine passed the 5th round of mutual evaluation of the national financial monitoring system by the MONEYVAL Committee, which resulted in the MONEYVAL Committee publishing the Report on Mutual Evaluation of Ukraine in January 2018.⁴⁷³ The annex to the Report provides a detailed analysis of the Ukraine's implementation of the 40 FATF Recommendations.⁴⁷⁴ In the next two years (2019 and 2020), Ukraine's progress in complying with these recommendations had to be re-evaluated. The results of the assessment are described below.

Over the past two years (2019 and 2020), Ukraine has raised its score on two recommendations — No. 5 “Terrorist financing offense” and No. 35 “Sanctions,” although the score dropped on two other recommendations, No. 15 “New technologies” and No. 21 “Tipping-off and confidentiality.” Thus, progress in improving the FATF recommendations is slow. However, the initial assessment is quite optimistic, which gives hope that the score on other FATF recommendations will be raised in the future.

In 2019, the 1st Enhanced Follow-up Report & Technical Compliance Re-Rating was received (conducted by the Isle of Man and Israel).⁴⁷⁵ In conclusion, limited measures have been taken to implement the new elements under Recommendations 2, 7, 18, and 21. In 2020, the 2nd Enhanced Follow-up Report & Technical Compliance Re-Rating was published (conducted by the Isle of Man and Cyprus).⁴⁷⁶ Overall, Ukraine has made progress in addressing the gaps in technical compliance identified in the Mutual Evaluation Report in the 5th round of mutual

⁴⁷¹ The State Financial Monitoring Service of Ukraine, (2020), Guide to a risk-oriented approach for specifically designated subjects of primary financial monitoring, <https://fiu.gov.ua/assets/userfiles/books/2020/KerivnyxtvoSPFM.pdf>, (access date: 29.09.2023).

⁴⁷² The State Financial Monitoring Service of Ukraine, (2022), Report of the State Financial Monitoring Service of Ukraine for 2021, <https://fiu.gov.ua/assets/userfiles/0350/zvity/zvit2021ukr.pdf>, (access date: 29.09.2023), p.54.

⁴⁷³ MONEYVAL, (2018), Report on the Mutual Evaluation of Ukraine.

⁴⁷⁴ Compliant — 12 recommendations; Largely compliant — 20 recommendations; Partially compliant — 7 recommendations; Not applicable — 1 recommendation.

⁴⁷⁵ MONEYVAL, (July, 2019), First Enhanced Follow-up Report & Technical Compliance Re-Rating of Ukraine, [https://fiu.gov.ua/assets/userfiles/200/%D0%9C%D1%96%D0%B6%D0%BD%D0%B0%D1%80%D0%BE%D0%B4%D0%BD%D1%96%20%D1%81%D1%82%D0%B0%D0%BD%D0%B4%D0%B0%D1%80%D1%82%D0%B8/ukr_MONEYVAL\(2019\)7_SR_5th%20Round_FUR%20Ukraine.pdf](https://fiu.gov.ua/assets/userfiles/200/%D0%9C%D1%96%D0%B6%D0%BD%D0%B0%D1%80%D0%BE%D0%B4%D0%BD%D1%96%20%D1%81%D1%82%D0%B0%D0%BD%D0%B4%D0%B0%D1%80%D1%82%D0%B8/ukr_MONEYVAL(2019)7_SR_5th%20Round_FUR%20Ukraine.pdf), (access date: 23.09.2023).

⁴⁷⁶ MONEYVAL, (June, 2020), Second Enhanced Follow-up Report & Technical Compliance Re-Rating of Ukraine, [https://fiu.gov.ua/assets/userfiles/200/%D0%9C%D1%96%D0%B6%D0%BD%D0%B0%D1%80%D0%BE%D0%B4%D0%BD%D1%96%20%D1%81%D1%82%D0%B0%D0%BD%D0%B4%D0%B0%D1%80%D1%82%D0%B8/UKR_MONEYVAL\(2020\)9_SR_2nd%20Enhanced%20FuR_UA.pdf](https://fiu.gov.ua/assets/userfiles/200/%D0%9C%D1%96%D0%B6%D0%BD%D0%B0%D1%80%D0%BE%D0%B4%D0%BD%D1%96%20%D1%81%D1%82%D0%B0%D0%BD%D0%B4%D0%B0%D1%80%D1%82%D0%B8/UKR_MONEYVAL(2020)9_SR_2nd%20Enhanced%20FuR_UA.pdf), (access date: 23.09.2023).

evaluations and has been reassessed on the implementation of the Recommendations. Recommendations No. 5 and No. 35, initially assessed as PC (partially compliant), were reassessed as LC (largely compliant). Recommendation No. 15, initially assessed as LC (largely compliant), was reassessed as PC (partially compliant).

Experts believe that Ukraine has implemented most of the FATF recommendations in its legislation.⁴⁷⁷ In addition, they note that Ukraine is one of those countries that has established and strict rules and recommendations of international organizations and adheres to them, and this should be emphasized constantly. In November 2022, the Law⁴⁷⁸ was passed that limited the period of monitoring of public officials (PEPs) to three years after leaving office. Such changes are not in line with FATF recommendations and may become an obstacle to Ukraine's accession to the EU. On October 17, 2023, the President of Ukraine signed amendments to the Law of Ukraine "On Prevention and Counteraction" and removed the three-year term for recognizing a person as a PEP.⁴⁷⁹ However, he also established the rules under which a PEP does not bear the risks inherent in the PEP after the termination of public functions.

Performance indicators of the SFMS

One of the most important aspects of the SFMS's activities is the formation and submission of summarized materials to law enforcement agencies, which serve as the basis for criminal proceedings. It should be noted that the following statistics are compiled on a regular basis. The investigation of certain cases can take years, and if the progress (referral to court, sentencing, etc.) occurred in a particular year, it is included in the statistical information for that year. The SFMS constantly monitors the movement of summary materials it provides. It should be noted that hundreds of summary materials are sent to law enforcement agencies every year. However, only some of them (15 in 2021, 9 in 2022) are used by law enforcement agencies during pre-trial investigation and formation of materials for referral to court.

The following statistical indicators characterize SFMS activity for 2021-2022:

- a) Submitted materials by categories of financial transactions: Investigations of financial transactions suspicious of corruption offences⁴⁸⁰ Investigation of transactions related to budget assets.⁴⁸¹
- b) The use of summary materials in criminal proceedings.⁴⁸²

⁴⁷⁷ A. Horbenko, NGO «Ukrainian Compliance Association». Interview with T. Riabchenko, September 1, 2021 and Bank representatives. Anonymous interviews with T. Riabchenko, September 16, 2021.

⁴⁷⁸ <https://zakon.rada.gov.ua/laws/show/2736-IX#Text>, (access date: 20.09.2023).

⁴⁷⁹ LigaZakon, The President signed the Law on Strengthening Financial Monitoring of PEP, https://biz.ligazakon.net/news/223095_prezident-pdpisav-zakon-pro-posilennya-fnansovogo-montoringu-pep, (access date: 22.02.2024).

⁴⁸⁰ In 2021, the SFMS sent 160 summary materials related to suspicions of corruption to law enforcement agencies, in 2022 – 121.

⁴⁸¹ In 2021, the SFMS sent 64 summary materials related to budget assets to law enforcement agencies. For reference, in 2022 – 56.

⁴⁸² According to law enforcement agencies, in 2021, 538 summary materials of the SFMS were used in 509 criminal proceedings during pre-trial investigations. In 2022, the figure was 360 materials in 349 proceedings. The State Financial Monitoring Service of Ukraine, (2023), Report of the State Financial Monitoring Service of Ukraine for 2022, <https://fiu.gov.ua/assets/userfiles/0350/zvity/zvit2022ukr.pdf>, (access date: 29.09.2023).

In general, it should be emphasized that the summarized material itself is not evidence in criminal proceedings. Law enforcement officers need to recollect all the information from banking institutions, taking into account the information already received from the SFMS. Therefore, it is necessary to obtain information on all accounts and transactions of the client. All this requires significant time and human resources. Experts note that this mechanism should be improved.

Table 15: Summary of Article 14

	Evaluation	Comments
Implementation through national legislation	Fully compliant	National legislation of Ukraine is consistent with Article 14 on the prevention of money laundering of the UNCAC. The Intelligence Unit (FIU) in place functions. Necessary tools have been created for prompt response to detected violations in terms of money laundering. The profile legislation was updated, which was positively assessed by MONEYVAL.
Practical enforcement	Good enforcement	The FIU actively cooperates with the state agencies and with FIUs of foreign countries. Active work is underway to investigate possible offenses and transfer to file materials based on the results of investigation results. The FIU is striving to ensure that Ukraine meets the requirements to comply with MONEYVAL.

<p>Good practices</p> <ul style="list-style-type: none"> ● Promptly functioning Financial Intelligence Unit with the necessary tools. ● Adoption and implementation of a risk-based approach to the activities of banks as the main subjects of SPFM. ● Adoption of a new progressive Law on Prevention and Counteraction. ● Active cooperation of SFMS within the country and with FIUs of foreign countries. ● Availability of information on the activities of SFMS. <p>Deficiencies</p> <ul style="list-style-type: none"> ● Lack of qualified personnel in law enforcement agencies that can promptly deal with generalized materials. ● Different approaches to determining risk criteria in banking institutions.

4.2. Chapter V

4.2.1 Article 52 and 58 – Anti-Money Laundering

Legal framework

Ukraine has adopted the Law ‘On Prevention and Counteraction to Legalization (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction’⁴⁸³ (the Law on Prevention and Counteraction) in 2019, which is the key law in the field of asset recovery. In particular, the Law on Prevention and Counteraction defines the terms ‘identification’ and ‘verification’ of a client. Identification is the measures taken by the primary financial monitoring entity (hereinafter referred to as the PFME) to establish a person by obtaining their identification data. Verification, on the other hand, is the measures taken by the PFME to verify that the identification data received by the PFMS actually belongs to the person concerned and/or to confirm the data that allows to identify the ultimate beneficial owners or their absence. Identification and verification shall be carried out prior to the establishment of a business relationship. However, in order not to interfere with normal business practices, customer verification may be carried out, if necessary, during the establishment of a business relationship or after opening an account, but before the first financial transaction is made on it. Additionally, the Law on Prevention and Counteraction stipulates that documents and customer data must be stored for at least 5 years after the termination of business relations with the customer or the completion of a one-time financial transaction without establishing business relations with the customer. Moreover, this period may be even longer if it is considered necessary in light of a risk-based approach.

The Law on Prevention and Counteraction also defines the concept of ‘ultimate beneficial owner’ (hereinafter referred to as UBO), which we described in the analysis of the implementation of Article 12 of the UNCAC. The system of obtaining, controlling and updating information on the UBO and ownership structure is enshrined in Article 5¹ of the Law on Prevention and Counteraction.⁴⁸⁴ If it is impossible to establish the data that allows the identification of the UBO, the PFME shall be obliged to:

- Refuse to establish (maintain) business relations;
- Refuse to open an account (to service) to the client, including by terminating business relations;
- Close the account / deny the financial transaction.

The concept of ‘politically exposed persons’ (hereinafter referred to as PEPs) covers individuals who are national and foreign public figures and figures performing public functions in international organizations.⁴⁸⁵ National/foreign public figures are individuals who perform or used to perform prominent public functions in Ukraine or in foreign countries during the last three years. The Law also establishes a list of positions that fall into these categories. Persons related to the PEP are natural persons who are known to have joint beneficial ownership of a

⁴⁸³ <https://zakon.rada.gov.ua/laws/show/361-20#Text>, (access date: 13.09.2023).

⁴⁸⁴ <https://zakon.rada.gov.ua/laws/show/361-20#n1449>, (access date: 13.09.2023).

⁴⁸⁵ <https://zakon.rada.gov.ua/laws/show/361-20#n1449>, (access date: 13.09.2023).

legal entity, trust or other similar legal entity with the PEP or have any other close business relationship with the PEP, as well as to be a UBO of a legal entity, trust or other similar legal entity known to have been de facto established for the benefit of the PEP. The family members of a PEP are the husband/wife or persons of equal status, son, daughter, stepson, stepdaughter, adopted person, person under guardianship or custody, son-in-law and daughter-in-law and persons of equal status, father, mother, stepfather, stepmother, adoptive parents, guardians or trustees.

The State Financial Monitoring Service of Ukraine (hereinafter referred to as the SFMSU), which we mentioned in the analysis of Article 14 of UNCAC, is responsible for collecting financial intelligence. The administrative model of the unit for collecting financial intelligence has been established and is under development in Ukraine. The SFMSU acts as a bridging link between the financial and other sectors subject to reporting obligations. Additionally, the SFMSU performs an analytical function – it prepares analytical materials, reports, and provides official recommendations on the fulfilment of obligations to prevent and detect money laundering.⁴⁸⁶

In Ukraine, the law defines the concept of a "shell bank" as a non-resident institution (bank, other financial institution, institution carrying out activities similar to those of financial institutions) that does not have a physical presence in the country of registration and licensing and is not part of a regulated financial group subject to effective consolidated supervision.⁴⁸⁷ They are usually used to evade financial controls and avoid detection of corruption schemes. Identification of such institutions contributes to the creation of effective mechanisms for preventing financial corruption, ensuring transparency in global financial transactions, and is also important in the context of asset recovery.

Implementation

Ukraine has introduced remote identification and verification. There are full models (without setting limits on transaction volumes) and simplified models (with existing limits on transaction volumes).

Full models include:

1. Verification using the NBU's BankID system and a qualified electronic signature (QES).
2. Communication between the client and an authorized employee via video conference.
3. E-passport sharing through integration with Diia («ДіЯ»).

Simplified verification mechanisms include:

1. Receiving customer identification data through the NBU BankID System.

⁴⁸⁶ The State Financial Monitoring Service of Ukraine, «Recommendations» page on the official website, <https://fiu.gov.ua/pages/finansovii-monitorint/metodologija/rekomendaci>, (access date: 09.09.2023).

⁴⁸⁷ <https://zakon.rada.gov.ua/laws/show/361-20#n1449>, (access date: 13.09.2023).

⁴⁸⁸ An online portal for public services in Ukraine developed by the Ministry of Digital Transformation of Ukraine, where citizens' digital documents are available. Diia, The main page of the official web portal, <https://diia.gov.ua/>, (access date: 15.09.2023).

2. Obtaining copies of identification documents certified by the QES of the owner of such documents.
3. Reading identification data from a contactless electronic medium implanted in the ID-card.
4. Verification of data through the Credit Bureau.
5. Performing the first transaction for a symbolic amount to transfer funds from your own account opened in another bank of Ukraine.

Simplified models are used if the risk of a business relationship with a customer (a financial transaction without establishing a business relationship) is low, and subject to applicable limits. The total limit for expense financial transactions on all accounts and e-wallets opened for the customer in the bank should not exceed \approx EUR 1 000 per month (approximately) and \approx EUR 10 000 per year (equivalent), and the total balance should not exceed \approx EUR 1 000. At the same time, the bank may use any of the of the two models mentioned above of simplified customer identification and verification.⁴⁸⁹

At the same time, in 2023, the National Bank of Ukraine (the NBU) strengthened its supervision of the banking market, which led to the imposition of fines on banks. The total amount of fines in the first quarter of 2023 amounted to about EUR 6 million. This is 1.3 times more than in the whole of 2022. The vast majority of fines relate to financial monitoring.⁴⁹⁰ In addition, Ukraine is working to ensure the functioning of a unified register of accounts of individuals and legal entities and individual bank safes to prevent the use of the financial system for money laundering or terrorist financing.⁴⁹¹ Currently, the register has not been created. Further work on the register is planned for May-June 2024.⁴⁹²

Access to information on UBOs is provided through the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations (hereinafter referred to as the USR). The peculiarities and problems of the USR functioning were discussed in the analysis of the implementation of Article 12 of UNCAC. The period for updating the information on UBOs in the USR started on July 11, 2021 and was supposed to end on July 11, 2022, with the need for annual confirmation of information starting in 2023.⁴⁹³ Due to the introduction of martial law in Ukraine, the Cabinet of Ministers of Ukraine postponed this obligation until the end of martial

⁴⁸⁹ National Bank of Ukraine, (November, 2020), Remote identification and verification of the client, https://bank.gov.ua/admin_uploads/article/2_pr_2020-11-20.pdf?v=4, (access date: 10.09.2023), p.3,4,11.

⁴⁹⁰ Forbes, (September, 2023), The NBU obliged banks to respond to abnormal operations of individuals, <https://forbes.ua/news/nbu-zobov'yazav-banki-reaguvati-na-anomalni-operatsii-fizosib-07092023-15850>, (access date: 10.09.2023).

⁴⁹¹ National Agency on Corruption Prevention, (February, 2023), Expected strategic results from the implementation of the State Anti-Corruption Program for 2023-2025, https://nazk.gov.ua/wp-content/uploads/2023/02/4.-Dodatok_1-do-DAP_OSR-01.02.23.pdf, (access date: 12.09.2023).

⁴⁹² National Agency on Corruption Prevention, (January, 2023), Minutes of the conciliation meeting of the National Bank of Ukraine and the National Agency for the Prevention of Corruption regarding the draft resolution of the Cabinet of Ministers of Ukraine «On approval of the State Anti-Corruption Program for 2023-2025», <https://nazk.gov.ua/wp-content/uploads/2023/01/NBU.pdf>, (access date: 12.09.2023), p.4.

⁴⁹³ <https://zakon.rada.gov.ua/laws/show/361-20#n829>, (access date: 13.09.2023).

law.⁴⁹⁴ Additionally, the Ministry of Justice of Ukraine has announced⁴⁹⁵ that such information may be provided within 3 months from the date of lifting of martial law in Ukraine.⁴⁹⁶ Nevertheless, the need to submit information on the UBO when establishing a legal entity or when registering changes in the state register still remains, as well as the legal right and technical possibility to do so during the martial law.

In order to solve the problem with verification and updating the information on UBO, in June 2023, the state enterprise NAIS updated the software of the USR.⁴⁹⁷ In particular, a new registration action 'State registration of confirmation of the accuracy of information on the UBO and/or ownership structure' was introduced. Also in this regard, in 2021, the Ministry of Finance of Ukraine approved the Regulation on the Form and Content of the Ownership Structure,⁴⁹⁸ and in September 2023, the CMU and the NBU approved the Methodology for Determining the Legal Entity's UBO.⁴⁹⁹

In June 2022, Ukraine became a candidate for accession to the European Union and received 7 recommendations, one of which was the introduction of European approaches to combating money laundering, namely the harmonization of domestic legislation with international standards of the Financial Action Task Force (FATF). To implement this, the CMU has already approved the Asset Recovery Strategy for 2023-2025⁵⁰⁰ and is working to improve the regulation of the status of PEPs. The FATF indicates that the status of a PEP is lifelong, and cannot be limited to three years after leaving a significant position. Taking this into account, Ukraine received and implemented a recommendation from the Committee of the Council of Europe to eliminate this technical inconsistency.⁵⁰¹ However, in November 2022, the Verkhovna Rada brought back the three-year term for the status of a PEP,⁵⁰² indicating a negative trend in the development of legislation.

In response to the concerns expressed by international partners, in September 2023, the Ukrainian parliament introduced a draft law that would eliminate the three-year limitation period for the status of a PEP. The National Bank of Ukraine also adopted Resolution No. 107 'On Approval of the Regulation on Financial Monitoring by Entities'.⁵⁰³ This act clarifies the concept

⁴⁹⁴ <https://zakon.rada.gov.ua/laws/show/209-2022-%D0%BF#n2>, (access date: 13.09.2023).

⁴⁹⁵ Ministry of Justice of Ukraine, (July, 2022), Letter-Clarification regarding the postponement of the update of information about the UBO in the USR, <https://minjust.gov.ua/files/general/2022/07/27/20220727142101-56.pdf>, (access date: 13.09.2023).

⁴⁹⁶ <https://zakon.rada.gov.ua/laws/show/2115-20#Text>, (access date: 13.09.2023).

⁴⁹⁷ Debit-Credit, (June, 2023), A number of changes regarding the ultimate beneficiary have been implemented in the USR, <https://news.dtki.ua/accounting/automation/84175-v-jedr-vprovadili-nizku-zmin-shhodo-kincevogo-beneficiara>, (access date: 13.09.2023).

⁴⁹⁸ <https://zakon.rada.gov.ua/laws/show/z0768-21#Text>, (access date: 13.09.2023).

⁴⁹⁹ Mind, (September, 2023), The government together with the NBU approved the methodology for determining the ultimate beneficiary by a legal entity, <https://mind.ua/news/20262818-uryad-spilno-z-nbu-zatverdili-metodologiyu-viznachennya-yurosoboyu-kincevogo-beneficiara>, (access date: 20.09.2023).

⁵⁰⁰ <https://zakon.rada.gov.ua/laws/show/670-2023-%D1%80#Text>, (access date: 02.09.2023).

⁵⁰¹ The State Financial Monitoring Service of Ukraine, (2021), Guidelines «Management of business relations with politically exposed persons»,

<https://fiu.gov.ua/assets/userfiles/320/%D0%9C%D0%B5%D1%82%D0%BE%D0%B4%D0%BE%D0%BB%D0%BE%D0%B3%D1%96%D1%8F/Kerivninastanovy%20new.pdf>, (access date: 15.09.2023), p.91.

⁵⁰² <https://zakon.rada.gov.ua/laws/show/2736-20#Text>, (access date: 10.09.2023).

⁵⁰³ <https://zakon.rada.gov.ua/laws/show/v0107500-20#Text>, (access date: 10.09.2023).

of 'in-depth monitoring' of PEPs. Such actions include prompt detection by the institution of financial transactions containing indicators of suspicious financial transactions, financial transactions that do not meet the client's risk profile and/or the institution's expectations regarding the volume of financial transactions that can be rationally explained given the information available to the institution about the client, new material circumstances and events regarding the PEP that may significantly affect the level of risk of business relations with it.

However, in June 2023, the NBU Board relaxed some of the requirements for enhanced monitoring of the PEPs. From now on, banks should move away from a formal approach to determining the level of risk of a PEP. In each individual case, the assignment of any risk level must be properly justified. In addition, the limits on the volume of financial transactions on all accounts of PEPs opened with the bank have been increased from \approx EUR 5 000 per quarter to \approx EUR 10 000 per month, which is one of the conditions for not taking measures to establish the sources of PEPs' wealth.⁵⁰⁴

As part of the analysis of the status of PEPs, it is worth noting that in Ukraine, if a PEP or a member of their family opens a foreign currency account in a non-resident bank, the relevant entity is obliged to notify the National Agency on Corruption Prevention (hereinafter NACP) in writing within ten days. Failure to notify or untimely notification will result in administrative liability in the form of a fine of UAH 1700 to 3400 (from EUR 42 to 83).⁵⁰⁵ Since 2021, the NACP shall be notified only by filling in the relevant electronic notification form after authentication in the personal electronic account of the Unified State Register of Declarations of Persons Authorized to Perform State or Local Government Functions. It should be noted that the notifications are submitted regardless of whether the reporting entity is located in Ukraine or abroad.⁵⁰⁶

PFME, which are financial institutions, are prohibited from opening and maintaining anonymous (numbered) accounts and establishing correspondent relations with shell banks, as well as with banks and other non-resident financial institutions known to maintain correspondent relations with shell banks. Such prohibitions are defined at the level of internal documents of banks. For example, in JSC CB PrivatBank, the prohibition is set out as follows: 'the bank refuses to establish (maintain) business relations/refuses to open an account (service) to a person (client) if the correspondent financial institution is a shell bank and/or maintains correspondent relations with a shell bank'.⁵⁰⁷ In JSC Kredobank: 'the bank does not cooperate with shell companies and shell banks'.⁵⁰⁸

⁵⁰⁴ <https://zakon.rada.gov.ua/laws/show/v0074500-23#Text>, (access date: 10.09.2023).

⁵⁰⁵ NACP, Explanation of the NACP on liability for failure to submit or late submission of information, <https://wiki.nazk.gov.ua/category/deklaruvannya/hhiv-vidpovidalnist-za-porushennya-vymog-finansovogo-kontrolyu/#post4775>, (access date: 12.02.2024).

⁵⁰⁶ <https://zakon.rada.gov.ua/laws/show/z0989-21#Text>, (access date: 10.09.2023).

⁵⁰⁷ PrivatBank, (October, 2021), Policy in the field of prevention and countermeasures against legalization (laundering) of proceeds obtained through crime, financing of terrorism and financing of proliferation of weapons of mass destruction, https://static.privatbank.ua/files/17112021_politica_2021.pdf, (access date: 21.09.2023), p.11.

⁵⁰⁸ CredoBank, (October, 2021), Policy on preventing and countering the legalization (laundering) of proceeds of crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction of the JSC

The activities of the SFMSU in performing its main functions and cooperating with the PFMS and the SFMS were also described in detail in the analysis of the implementation of Article 14 of UNCAC. The exchange of information on financial monitoring in Ukraine is facilitated by the introduction of an electronic secure information and telecommunication system (the ‘Electronic Cabinet of the Financial Monitoring System’, hereinafter - the E-Cabinet). The SFMSU cooperates with foreign financial intelligence units (FIUs), international and intergovernmental organizations. In 2022, the SFMSU carried out interaction and information exchange with 147 FIUs. Thus, 1,242 inquiries were sent to the competent authorities of foreign countries and 965 responses to inquiries were received from 104 foreign FIUs. In addition, the State Financial Monitoring Service received 245 requests from 46 foreign FIUs and provided 395 responses to 67 FIUs of foreign countries.⁵⁰⁹ As of 2023, the State Financial Monitoring Service has already concluded 80 Memorandums of Understanding with foreign FIUs.⁵¹⁰

Table 16: Summary of Article 52 and 58

	Evaluation	Comments
Implementation through national legislation	Fully compliant	Ukrainian legislation comprehensively regulates the issue of combating money laundering in accordance with Articles 52 and 58 of the UN Convention against Corruption. Specialized terminology, procedures and regulations have been implemented, and a national FIU has been established.
Practical enforcement	Moderate enforcement	Financial institutions carry out customer identification and verification in accordance with the law. Problems remain with updating data on ultimate beneficial owners in the national register. There is a ban on dealing with shell banks, and the process of bringing the status of politically exposed persons (PEPs) in line with international standards is ongoing, which should take into account the existing practice in Ukraine. The information exchange between the State Financial Monitoring Service and foreign FIUs is sufficiently established.

KredoBank, <https://kredobank.com.ua/public/upload/649b2a36960cb6f27d168ef0e08891ee.pdf>, (access date: 21.09.2023), p.3.

⁵⁰⁹ See The State Financial Monitoring Service of Ukraine, (2023), Report of the State Financial Monitoring Service of Ukraine for 2022, p.54.

⁵¹⁰ See The State Financial Monitoring Service of Ukraine, «Memorandums of understanding with foreign FIUs that have been signed» page on the official web portal.

Good practices

- Possibility of remote client verification using several services.
- Introduction of the 'Electronic Cabinet of the Financial Monitoring System', which ensures synchronized exchange and processing of information between the PFMS and the SFMS.
- Established international cooperation between Ukrainian government agencies and relevant foreign partners.

Deficiencies

- Deferral of updating the information on the UBO under martial law.
- Adoption of amendments by the Verkhovna Rada of Ukraine regarding the status of the PEP that reduce compliance with the FATF recommendations.

4.2.2 Article 53, 56 and 54 – Measures for direct recovery of property and confiscation tools

Legal framework

Ukraine has introduced the mechanism of special confiscation (Articles 96-1 and 96-2 of the Criminal Code of Ukraine)⁵¹¹ as a criminal law measure, which consists of the compulsory uncompensated seizure of money, valuables and other property into the ownership of the state by a court decision, provided that an intentional criminal offense has been committed.

Within the framework of international cooperation, any procedural actions may be taken in Ukraine to fulfil a foreign request for international legal assistance. Therefore, in accordance with Article 568 of the Criminal Procedure Code of Ukraine (hereinafter - the CPC of Ukraine), property and money acquired from the commission of crimes and property owned by the convicted person may be seized and confiscated by national authorized bodies.⁵¹² Ukraine applies the approach of recognizing and enforcing a foreign court decision on confiscation rather than initiating new proceedings under domestic law. Ukraine has also introduced non-conviction-based forfeiture (NCBF) or 'civil forfeiture of unjustified assets' – a separate procedure under the rules of civil proceedings, where assets that a person cannot prove to be lawful are forfeited and a prosecutor of the Specialized Anti-Corruption Prosecutor's Office (SACPO) files a lawsuit with the HACC. In cases of recognition of assets as unjustified and their recovery into the state's revenue in respect of assets of a NABU employee, SACPO prosecutor or assets acquired by other persons in cases provided for in Article 290 of the Civil Procedure Code of Ukraine, the prosecutors of the Prosecutor General's Office of Ukraine shall apply to the court and represent the state in court on behalf of the Prosecutor General. The basic provisions are set out in Articles 290-292 of the Civil Procedure Code of Ukraine.⁵¹³

Implementation

⁵¹¹ <https://zakon.rada.gov.ua/laws/show/2341-14#Text>, (access date: 12.02.2024).

⁵¹² <https://zakon.rada.gov.ua/laws/show/4651-17#n4362>, (access date: 20.09.2023).

⁵¹³ <https://zakon.rada.gov.ua/laws/show/1618-15#Text>, (access date: 12.02.2024).

In 2021, 12 requests for the recognition and enforcement of a foreign court judgment were considered by the courts of first instance as part of international legal assistance, of which eight were granted, two were denied, one was returned, and one has not yet been considered. There were also 10 requests for the seizure and confiscation of property, of which seven were granted by Ukrainian courts and three were rejected.⁵¹⁴

In 2022, two requests for the recognition and enforcement of a foreign court judgment were pending in the courts of first instance under the international legal aid procedure, of which only one was granted. There were also two requests for the seizure and confiscation of property, both of which were granted by Ukrainian courts.⁵¹⁵

However, these statistics comprise all crimes, not just the offenses covered by UNCAC, so there is no evidence of active international cooperation in asset recovery. Ukraine is constantly improving its anti-money laundering legislation and is not an attractive jurisdiction for such actions,⁵¹⁶ and the fact that Ukraine is at war affects the inflow of foreign capital to Ukraine in general. Ukraine's position was 65th place out of 128 countries in the Basel Institute's 2022 AML rating⁵¹⁷ and 78th place out of 152 in 2023.⁵¹⁸

Concerning requests for confiscation of property abroad filed by domestic courts, the experts interviewed noted that this practice was absent in the case of the HACC at the time of preparation of this report. After the full-scale invasion of Russia, Ukraine introduced a mechanism that allows for the confiscation of assets of Russian Federation accomplices (oligarchs, MPs, senators, etc.) as part of the sanctions regime.⁵¹⁹ As of September 2023, 29 such decisions have been rendered. As for the confiscated assets, so far all of them are located in Ukraine (except for the shares in the authorized capital of foreign LLCs).

In cases where the seized property of a foreign state has been confiscated by Ukraine, the requesting party may decide to confiscate this property in its favor to compensate the victims for the damage caused by the crime. At the request of the Ministry of Justice, the court may decide to approve the transfer of confiscated property or its monetary equivalent on the basis of a request or in accordance with international treaties of Ukraine regulating such allocation

⁵¹⁴ The State Judicial Administration of Ukraine, (February, 2021), Report of the Courts of First Instance on the Consideration of Criminal Proceedings for 2021, https://court.gov.ua/userfiles/media/new_folder_for_uploads/main_site/1k_2021_02.xlsx, (access date: 20.09.2023).

⁵¹⁵ The State Judicial Administration of Ukraine, (2022), Report of local general courts on court proceedings for 2022, https://court.gov.ua/userfiles/media/new_folder_for_uploads/main_site/1-k%20%204-%202022.xls, (access date: 20.09.2023).

⁵¹⁶ P. Demchuk, Legal Advisor, Transparency International Ukraine. Interview with T. Riabchenko, October 18, 2023.

⁵¹⁷ Basel AML INDEX, «Methodology» page on the official website, <https://index.baselgovernance.org/methodology>, (access date: 12.09.2023).

⁵¹⁸ Basel AML INDEX, Global Ranking in 2023, <https://index.baselgovernance.org/ranking>, (access date: 12.02.2024).

⁵¹⁹ For details see: Institute of Legislative Ideas, (2022), Research paper Forfeiture of assets belonging to persons responsible for Russia's aggression against Ukraine, <https://izi.institute/en/research/forfeiture-of-assets-belonging-to-persons-responsible-for-russias-aggression-against-ukraine/>, (access date: 19.09.2023).

issues.⁵²⁰ Despite the legislative provision, no such practice has been observed in Ukraine in the last three years.

The number of persons subject to special confiscation in 2021 and 2022 amounted to 678 and 530, respectively. At the same time, the number of verdicts that came into force for criminal offenses and in which special confiscation was applied in accordance with Articles (191, 209, 368, 368-3, 368-4, 369, 369-2) of the Criminal Code of Ukraine (corruption offenses) is 152 in 2021 and 14 in 2022.⁵²¹ The experts interviewed noted that the possibility of applying special confiscation is provided for in the legislation, but there is no settled international practice of applying this mechanism.⁵²²

As of September 2023, the SACPO has filed 10 lawsuits with the HACC to recognize assets as unjustified (obtained by criminal means) and recover them for the state. In one case, the claim was denied.⁵²³ About 30 thousand euros and 1.25 million UAH have already been confiscated from a former Member of Parliament, who was charged with high treason in April 2022.⁵²⁴ Other cases are at different stages of the proceedings (first instance, appeal, and even the Supreme Court).⁵²⁵ It is also possible to apply this mechanism to foreigners who, for example, can file declarations in Ukraine. However, there is no practice of such application. There are also no cases of civil forfeiture of assets of Ukrainian citizens abroad. However, journalists discovered the Ukrainian military commissioner's assets abroad worth several million euros.⁵²⁶ We hope this case will become a good practice for civil forfeiture in the future.

It is important to note that only assets acquired by a person after November 28, 2019 (the date of entry into force of the special law) are subject to confiscation. Assets acquired earlier, even if their value does not correspond to the official's legitimate income, are not subject to confiscation. The application of the civil procedure rules with the "balance of probabilities" standard of proof speeds up the proceedings.

Due to the full-scale invasion of Ukraine by Russia, access to the register of declarations was restricted. As a result of the submission of declarations becoming optional since February 24, 2022, most of the data on declarants' assets for 2021 and 2022 is missing. This has affected

⁵²⁰ <https://zakon.rada.gov.ua/laws/show/4651-17#n4362>, (access date: 20.09.2023).

⁵²¹ Supreme Court, (2023), State of administration of justice in criminal proceedings and cases of administrative offenses by courts of general jurisdiction in 2022, https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/ogliady/Stan_Pravosuddya_Criminal_2022.pdf, (access date: 20.09.2023), p.61, 66.

⁵²² P. Demchuk, Legal Advisor, Transparency International Ukraine. Interview with T. Riabchenko, October 18, 2023.

⁵²³ Asset Recovery and Management Agency, (November, 2022), Asset confiscation outside of criminal proceedings: how does the mechanism work?, <https://arma.gov.ua/news/typical/konfiskatsiya-aktiviv-poza-mejami-kriminalnogo-provadjennya-yak-pratsyue-mehanizm>, (access date: 20.09.2023).

⁵²⁴ Transparency International Ukraine, (August, 2022), «How does civil forfeiture function now?», <https://ti-ukraine.org/en/news/how-does-civil-forfeiture-function-now/>, (access date: 15.09.2023).

⁵²⁵ Ukrayinska Pravda, (August, 2023), Apartments, cars, and a cesspool: unjustified assets of officials subject to civil forfeiture, <https://www.pravda.com.ua/columns/2023/08/18/7416030/>, (access date: 10.09.2023).

⁵²⁶ UNIAN, Villa and a whole car fleet: The media showed the property of Odesa military commander Borisov's family in Spain, <https://www.unian.ua/society/yevgen-borisov-ukrajinska-pravda-znayshla-milyonni-statki-odeskogo-voyenkoma-v-ispniji-novini-odesi-12303087.html>, (access date: 22.03.2024).

the use of the NCBF tool in Ukraine, as electronic declarations were one of the most important sources for obtaining information about assets and the possibility of declaring them unjustified. With the resumption of the obligation to file declarations and opening of the register in September 2023, we expect the use of the NCBF in Ukraine to intensify.

Table 17: Summary of Article 53, 56 and 54

	Evaluation	Comments
Implementation through national legislation	Fully compliant	Ukraine has provided for the possibility of confiscation of property and assets derived from crimes in accordance with UNCAC. The special confiscation and non-conviction-based forfeiture (NCBF) have been introduced. The approach of recognizing and enforcing a foreign judgment and a foreign request for international legal assistance on confiscation issues is being applied.
Practical enforcement	Moderate enforcement	There is no settled practice of applying special and civil confiscation mechanisms. In terms of civil forfeiture, this is due, among other things, to the absence of an obligation to file electronic declarations. Foreign court decisions are enforced, but there are not many such cases. Ukraine has not recently had any successful examples of implementing its decisions abroad. There are no examples of returning assets confiscated in Ukraine to foreign countries.

Good practices

- Establishing and implementing the NCBF mechanism in national legislation.
- Establishing a legal framework for cooperation between Ukraine and foreign countries in asset recovery.

Deficiencies

- Lack of settled practice of applying the rules on the recovery of assets from abroad under the existing mechanisms in Ukraine.

4.2.3 Article 51, 54, 55, 56 and 59 – International cooperation for the purpose of confiscation

Legal framework

Ukraine acknowledges the importance of cooperation at the international level in order to establish an effective mechanism for the recovery of property acquired through corruption. International cooperation in the field of asset tracing and recovery is based on the principle of reciprocity. The Criminal Procedure Code of Ukraine stipulates that the National Anti-Corruption Bureau (NABU) may request international legal assistance in criminal proceedings during pre-trial investigation of corruption crimes and considers relevant requests from foreign competent authorities. Other authorities, when investigating such offenses, such as the SBI, must apply under the general procedure through the PGO. The Ministry of Justice of Ukraine (hereinafter referred to as the MoJ) submits requests for international legal assistance in criminal proceedings to courts during trial and considers relevant requests from foreign courts. In order to execute requests, any procedural actions provided for by the CPC of Ukraine or an international treaty may be carried out on the territory of Ukraine.⁵²⁷ The possibility to enter into multilateral and bilateral treaties is provided for by the Law of Ukraine 'On International Treaties of Ukraine'.⁵²⁸

The Asset Recovery and Management Agency (hereinafter referred to as ARMA) is the leading government agency in the field of detecting, tracing and managing illegally acquired or unjustified assets. ARMA's status is set out in the Law of Ukraine 'On the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes'⁵²⁹ (the Law on ARMA).

The ARMA, in particular:

- Takes measures to identify and trace assets in accordance with requests from pre-trial investigation authorities, prosecutors, and courts, and cooperates with these authorities to seize such assets and confiscate them or recover them for the state as a result of declaring them unjustified;
- Carries out international cooperation with the relevant authorities of foreign countries;
- Ensures cooperation with international, intergovernmental organizations, networks (including the Camden Asset Recovery Interagency Network (CARIN)), and represents Ukraine in this organization.⁵³⁰

In exercising its powers to enforce court decisions, ARMA cooperates with the Ministry of Justice of Ukraine. Their cooperation is regulated by a joint order⁵³¹ of these authorities adopted in 2020. With regard to freezing or seizing property on the basis of a foreign state's order or request, ARMA cooperates with the Office of the Prosecutor General of Ukraine on the basis of a joint order⁵³² on cooperation approved in 2022. ARMA also has established cooperation with law enforcement agencies on the basis of cooperation orders.

⁵²⁷ <https://zakon.rada.gov.ua/laws/show/4651-17#n4235>, (access date: 18.09.2023).

⁵²⁸ <https://zakon.rada.gov.ua/laws/show/1906-15#Text>, (access date: 18.09.2023).

⁵²⁹ <https://zakon.rada.gov.ua/laws/show/772-19#Text>, (access date: 18.09.2023).

⁵³⁰ <https://zakon.rada.gov.ua/laws/show/772-19>, (access date: 18.09.2023).

⁵³¹ <https://zakon.rada.gov.ua/laws/show/z0116-20#Text>, (access date: 20.09.2023).

⁵³² <https://zakon.rada.gov.ua/laws/show/z0582-22#Text>, (access date: 20.09.2023).

Recommendations for the establishment of formal and informal procedures for the exchange of information and the use of modern means of communication are being developed by Ukraine as part of the development of special cooperation and the adoption of the Asset Recovery Strategy for 2023-2025.⁵³³

Implementation

As of September 2023, Ukraine has concluded 67 bilateral international agreements within the framework of bilateral cooperation.⁵³⁴ As for multilateral treaties, Ukraine is a party to most universal and regional international treaties concluded under the auspices of the UN and the Council of Europe. They regulate the issues of asset seizure, confiscation and recovery. These include the United Nations Convention against Corruption, the Criminal⁵³⁵ and Civil Conventions on Corruption⁵³⁶, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism⁵³⁷, among others. All multilateral treaties, bilateral agreements and memorandums of understanding are available on the websites of the responsible government agencies (Ministry of Justice,⁵³⁸ the PGO,⁵³⁹ etc.) and on the official website of the Ukrainian Parliament.⁵⁴⁰

Although the number of these agreements is quite high, most of them were concluded more than 10 years ago. Given the development of legislation and the creation of new bodies in Ukraine, in particular the ARMA, there is a need to update these agreements in terms of asset recovery. Despite the likely long duration of these processes, the new treaties on international legal assistance will allow further development of cooperation between states, including in the field of asset recovery.⁵⁴¹

Cooperation between Ukraine and foreign countries is realized directly through bilateral treaties signed by Ukraine in the field of international legal cooperation and in Memoranda of Understanding with foreign FIUs. For example, the Treaty between Ukraine and the Republic of Kazakhstan on Legal Assistance in Criminal Matters states that without prejudice to their own investigations or proceedings, the competent authorities of either Party may, without prior

⁵³³ <https://zakon.rada.gov.ua/laws/show/670-2023-%D1%80#Text>, (access date: 02.09.2023).

⁵³⁴ Ministry of Justice of Ukraine, «Bilateral international agreements of Ukraine» page on the official website, <https://minjust.gov.ua/m/4906>, (access date: 23.09.2023).

⁵³⁵ https://zakon.rada.gov.ua/laws/show/994_101#Text, (access date: 12.02.2024).

⁵³⁶ https://zakon.rada.gov.ua/laws/show/994_102#Text, (access date: 12.02.2024).

⁵³⁷ https://zakon.rada.gov.ua/laws/show/994_948, (access date: 12.02.2024).

⁵³⁸ Ministry of Justice of Ukraine, «List of Bilateral and Multilateral International Agreements in the field of legal assistance and legal cooperation in civil and criminal matters (by country)» page on the official website, <https://minjust.gov.ua/m/perelik-dvostoronnih-ta-bagatostoronnih-mijnarodnih-dogovoriv-u-sferi-pravovoi-dopomogi-ta-pravovogo-spivrobotnitstva-u-tsivilnih-ta-kriminalnih-spravah-po-krainah>, (access date: 23.09.2023).

⁵³⁹ Prosecutor General's Office of Ukraine, «International multilateral agreements of Ukraine in the field of mutual assistance in criminal cases» page on the official website, <https://old.gp.gov.ua/ua/mijbogato.html>, (access date: 23.09.2023).

⁵⁴⁰ Verkhovna Rada of Ukraine, «International documents» page on the official website, <https://zakon.rada.gov.ua/laws/main/c>, (access date: 23.09.2023).

⁵⁴¹ Representatives of Asset Recovery and Management Agency. Interview with T. Riabchenko, October 13, 2023 and P. Demchuk, Legal Advisor, Transparency International Ukraine. Interview with T. Riabchenko, October 18, 2023.

request, transmit to the competent authorities of the other Party information obtained during the investigation if such information will help the other Party initiate or complete the investigation or proceedings or if such information may serve as a basis for a request by the other Party.⁵⁴² However, in practice, such cooperation is not often carried out.

According to ARMA officials and experts interviewed, a clear list of information/evidence of the alleged crime has to be found in the criminal proceedings. If information is found that is not relevant to criminal proceedings, it is not passed on, as there is no clear mechanism for transferring such information, since ARMA is not designated by law as a body authorized for special cooperation. The solution to this situation is to update international treaties on legal assistance and define effective mechanisms of cooperation at the level of national legislation.⁵⁴³ Information is exchanged in a secured manner, and for this purpose, the parties mostly use the Egmont secure network (ESW).

In order to identify and trace the assets of persons subject to criminal proceedings for money laundering, fraud, and tax evasion, in 2021, ARMA officers sent 82 requests to competent foreign institutions, and processed 96 requests from competent foreign authorities to identify and trace assets. In 2022, 520 requests were sent to competent foreign institutions, and 41 requests from the competent authorities of foreign countries were processed for asset tracing and identification.⁵⁴⁴ The intensification in this area is related to the search for assets belonging to the aggressor country's accomplices.

The ARMA has also officially finalized the opening of the Unified State Register of Assets Seized in Criminal Proceedings. The register consists of an open part, accessible to every interested person, and a classified part, intended for law enforcement. The database contains more than 150,000 records, of which about 49,000 relate to assets transferred to ARMA⁵⁴⁵ for the enforcement of court decisions that have entered into force, including special confiscation (432 records), although there has been only one such record in the last three years.⁵⁴⁶ As of October 2023, the register does not contain any records of seizure or confiscation of assets in Ukraine by foreign competent authorities or civil forfeiture. According to ARMA officials, the data is still being updated, and some information is not yet reflected for technical reasons.⁵⁴⁷ We hope that all the data will be updated as soon as possible.

⁵⁴² https://zakon.rada.gov.ua/laws/show/398_002-18#n133, (access date: 10.09.2023).

⁵⁴³ Representatives of Asset Recovery and Management Agency. Interview with T. Riabchenko, October 13, 2023 and P. Demchuk, Legal Advisor, Transparency International Ukraine. Interview with T. Riabchenko, October 18, 2023.

⁵⁴⁴ Asset Recovery and Management Agency, (April, 2023), Report on the activities of the Asset Recovery and Management Agency obtained from corruption and other crimes for 2022, <https://arma.gov.ua/files/general/2023/04/14/20230414151815-81.pdf>, (access date: 15.09.2023), p.20.

⁵⁴⁵ Asset Recovery and Management Agency, (August, 2023), ARMA has officially opened access to the Register of Seized Assets, <https://arma.gov.ua/news/typical/arma-ofitsiyno-vidkrilo-dostup-do-reestru-areshtovanih-aktiviv>, (access date: 24.09.2023).

⁵⁴⁶ Asset Recovery and Management Agency, The unified state register of assets subject to seizure in criminal proceedings - the official web portal, <https://reestr.arma.gov.ua/#/>, (access date: 25.09.2023).

⁵⁴⁷ Representatives of Asset Recovery and Management Agency. Interview with T. Riabchenko, October 13, 2023.

In general, by the end of 2022, ARMA had established cooperation with 88 countries (Germany, Italy, France, Israel, the United States, the United Kingdom, etc.) and universal international organizations (CARIN, Interpol, StAR, Europol, the Platform of Asset Recovery Offices of EU Member States, ARIN-WA, etc.), participated in 1083 investigations, provided information on the assets of non-residents and citizens in Ukraine upon 221 international requests. In 2022, ARMA took part in 558 investigations, including 349 investigations within the Task Force.⁵⁴⁸

Table 18: Summary of Article 53, 56 and 54

	Evaluation	Comments
Implementation through national legislation	Fully compliant	National legislation on international cooperation is consistent with the requirements of the UNCAC. International cooperation in the field of asset recovery is based on reciprocity. It provides for the possibility of sending and executing requests for international legal assistance, concluding multilateral and bilateral international agreements in this area.
Practical enforcement	Moderate enforcement	International cooperation is carried out through the exchange of international requests for legal assistance through authorized bodies. ARMA actively cooperates with foreign countries in asset tracing and participates in international investigations. In the course of cooperation, the parties are mainly guided by the norms of bilateral agreements.

Good practices

- The use of secure communication channels, in particular the Egmont network, guarantees the security of the exchange of classified information between countries.
- ARMA has established cooperation with foreign jurisdictions and international organizations in the field of asset recovery.

Deficiencies

- Most mutual legal assistance treaties need to be updated in accordance with new challenges in the field of asset recovery.
- Difficulty in using the mechanism of special cooperation outside of criminal proceedings.

⁵⁴⁸ See Asset Recovery and Management Agency, (2023), Report on the activities of the Asset Recovery and Management Agency obtained from corruption and other crimes for 2022, p.20.

V. Recent Developments

While the COVID-19 pandemic and Russia's full-scale invasion undoubtedly presented significant obstacles to Ukraine's anti-corruption efforts, it is crucial to recognize the remarkable dedication and perseverance of the Ukrainian people and their institutions in this ongoing struggle. Despite the immense pressure, anti-corruption reforms have continued, demonstrating the deep-seated commitment to transparency and accountability that defines modern Ukraine.

Many of these positive changes are listed in the relevant articles of Chapters II and V of the UNCAC, with the note that they were temporarily suspended after the full-scale invasion and up to September 2023. However, we note that even from September 2023 to February 2024, new changes occurred. We associate this with the flexibility of Ukrainian legislation. Therefore, below, we will chronologically summarize the changes that occurred from October 2023 to February 2024.

In February 2024, the Cabinet of Ministers of Ukraine approved the Public Procurement System Reform Strategy for 2024-2026.⁵⁴⁹ The key areas of the strategy are: harmonization of Ukrainian public procurement legislation with the relevant EU directives; development of the institutional structure of public procurement; realization of Ukraine's reconstruction projects; professionalization of public procurement; development of an electronic procurement system; involvement of civil society in the development of public procurement; international cooperation in public procurement.

On February 13, 2024, the NACP engaged⁵⁵⁰ 144 organizations in the Unified Whistleblower Reporting Portal. In particular, 17 ministries, 18 regional state (military) administrations, 4 regional and 7 city councils have gained access to this resource.

In January 2024, it became known that state authorities, including the Security Service of Ukraine, interfered with the activities of journalists.⁵⁵¹ Employees of the SSU's Department for the Protection of National Statehood installed cameras in the hotel complex where the journalists of the Bihus.INFO editorial office were staying. These facts became known, and the journalists were able to identify those who were monitoring them. The head of this Department was fired, and the investigation into this interference is ongoing.

In January 2024, the guidelines for preventing and resolving conflicts of interest were updated.⁵⁵²

⁵⁴⁹ Cabinet of Ministers of Ukraine, Strategy for Reforming the Public Procurement System for 2024-2026, <https://www.kmu.gov.ua/storage/app/uploads/public/65c/0df/904/65c0df904bcd9998217616.pdf>, (access date: February 22, 2024).

⁵⁵⁰ NACP, NACP engage 144 organizations to the Whistleblower Reporting Portal, <https://nazk.gov.ua/uk/nazk-pidklyuchylo-do-portalu-povidomlen-vykryvachiv-144-organizatsii/>, (access date: 22.02.2024).

⁵⁵¹ Bihus.Info, Bihus.Info was illegally surveilled by the SSU, the operation was carried out by the Department for the Protection of National Statehood, <https://bihus.info/za-bihus-info-nezakonno-stezhyla-sbu-operacziyu-zdijsnyuvav-departament-zahystu-naczderzhavnosti/>, (access date: 22.02.2024).

⁵⁵² NACP, NACP updated methodological recommendations on prevention and settlement of conflicts of interest, <https://nazk.gov.ua/uk/novyny/nazk-onovylo-metodychni-rekomendatsii-schodo-zapobigannya-ta-vregulyuvannya-konfliktu-interesiv/>, (access date: 22.02.2024).

At the end of December 2023, the Cabinet of Ministers of Ukraine approved the Communication Strategy for Preventing and Combating Corruption for the period up to 2025.⁵⁵³ The strategic goals of the Communication Strategy include increasing public trust in government anti-corruption initiatives and government agencies; reducing tolerance to corruption and any of its manifestations; creating a communication infrastructure for the State Anti-Corruption Program (SAP), ensuring effective communication between its implementers and the public.

At the end of December 2023, the Cabinet of Ministers of Ukraine approved the Action Plan for the period up to 2026 aimed at preventing and reducing the negative consequences of money laundering.⁵⁵⁴ The approved Action Plan provides for the institutional, legislative, organizational and practical improvement of the national anti-money laundering system in accordance with international standards.

In December 2023, a report on public expert monitoring of the implementation of the state anti-corruption program was presented. The report covered 121 anti-corruption measures implemented in 2023.

The results of monitoring of these measures showed that: nine measures have been implemented without any comments, 37 are in the process of implementation, 14 measures have been formally implemented, 19 measures have missed deadlines, 18 have not been started, 16 measures have been disrupted, seven measures have lost their relevance, and one measure has been implemented in another way.⁵⁵⁵ The monitoring revealed existing problems and challenges in the implementation of the state anti-corruption program. At the same time, we would like to emphasize once again the importance of implementing all the measures envisaged by the SAP.

An amendment to the Procedure for Conducting Full Verification of Declarations came into force in December 2023. Among other things, an automatic full verification of declarations is going to replace the manual verification by an authorized person with some exceptions. Anti-corruption activists have criticized of this approach, noting that it will increase the number of inspections, but may also negatively affect their quality.⁵⁵⁶

On November 13, 2023, the competition for the position of the NACP Head was launched⁵⁵⁷, as the term of office of the current Head expired on January 15, 2024. As of February 2024,

⁵⁵³ NACP, The Government Approved the Strategy for Communications in the Field of Preventing and Combating Corruption for the Period up to 2025, <https://nazk.gov.ua/uk/novyny/uryad-shvalyv-strategiyu-komunikatsiy-u-sferi-zapobigannya-ta-protydii-koruptsii-na-period-do-2025-roku/>, (access date: 22.02.2024).

⁵⁵⁴ Ministry of Finance of Ukraine, The Government Approved the Action Plan to Prevent Money Laundering and Terrorist Financing for the Next Three Years, <https://www.mof.gov.ua/uk/news/uriad-skhaliv-plan-zakhodiv-spriamovanikh-na-zapobigannia-vidmivanniu-koshtiv-ta-finansuvanniu-terorizmu-na-naiblizhchi-tri-roki-4365>, (access date: 22.02.2024).

⁵⁵⁵ Report on the Public Monitoring of the Implementation of the State Anti-Corruption Program, <https://drive.google.com/file/d/1XuUmuwnpWS9fMFnYntMKr9Tik3tBiPT7/view?fbclid=IwAR3F1f0-0GuW9qQTr4AjrlbDt0HjPp0JtJ2QeQVgQaC59H1Ho541kwi2wBA>, (access date: 22.02.2024).

⁵⁵⁶ Transparency International Ukraine, New iteration of full NACP checks: how it will work now, <https://ti-ukraine.org/news/nova-iteratsiya-povnyh-perevirok-nazk-yak-tse-vidbuvatymetsya-teper/>, (access date: 22.03.2024).

⁵⁵⁷ NACP, Competition for the position of the Head of the NACP: documents are now being accepted, <https://nazk.gov.ua/uk/konkurs-na-posadu-golovy-nazk-rozpochato-pryjom-dokumentiv/>, (accessed on 22.02.2024).

the last stages of the competition, including interviews with candidates, are being completed. The Institute of Legislative Ideas is analyzing the candidates and monitoring the competition together with other NGOs. The prompt election of the Head of the NACP will facilitate the proper functioning of the agency, including the preparation of a self-assessment report on the implementation of UNCAC provisions.

In November 2023, the HQCJ⁵⁵⁸ resumed the assessment of judges for suitability for their positions after a four-year break.

In October 2023, the NACP resumed access to the POLITDATA⁵⁵⁹ registry, taking into account the requirements for personal data protection. The submission of reports by political parties became mandatory on December 26, 2023. The NACP expects about 4000 reports to be submitted. Verification of this amount of data will require significant human and time resources.

On October 12, 2023, a law restoring the filing of electronic declarations came into force.⁵⁶⁰ By January 31, 2024, declarations for 2021 and 2022 (including even candidates for office), as well as declarations upon dismissal for 2022 and 2023 (if the obligation to submit them came before October 11, 2023) had to be submitted.⁵⁶¹ As of November 30, 2023, civil servants have already submitted 434,434 declarations to the NACP for 2021, and 351,687 for 2022. The total number of declarants is approximately 800 thousand people.⁵⁶²

On October 2, 2023, the HACC approved a plea agreement between the SAPO prosecutor and the former first deputy head of the Kyiv tax service.⁵⁶³ As part of this agreement, for the first time, a decision was made to pay a reward to the whistleblower, which will amount to UAH 13.3 million (about 320,000 euros).

⁵⁵⁸ Suspilne.Novyny, HQCJ resumed evaluation of judges: what is the procedure and how it works, <https://suspilne.media/616743-vkks-ponovila-ocinuvanna-suddiv-so-ce-za-procedura-ta-ak-vona-pracue/>, (access date: 22.02.2024).

⁵⁵⁹ NACP, NACP opens the Political Parties Reporting Register POLITDATA, <https://nazk.gov.ua/uk/novyny/nazk-vidkryvaye-reyestr-zvitnosti-politpartij-politdata/?fbclid=IwAR1JUJBjy8imthvQhtlCnYavY9AE858pGSNoIYn4PkbvcZMw67zLvMSulqo>, (access date: 22.02.2024).

⁵⁶⁰ The Law of Ukraine "On Amendments to Certain Laws of Ukraine on Determining the Procedure for Submitting Declarations of Persons Authorized to Perform State or Local Government Functions under Martial Law", <https://zakon.rada.gov.ua/laws/show/3384-20#Text>, (access date: 22.02.2024).

⁵⁶¹ NACP, Resumption of declaration: what declarations must be submitted, <https://nazk.gov.ua/uk/novyny/vidnovlennya-deklaruvannya-yaki-deklaratsiyi-neobhidno-podaty/>, (access date: 22.02.2024).

⁵⁶² Ukrainian Radio, Civil servants have already filed 800 thousand declarations - NACP, <https://ukr.radio/news.html?newsID=102869&fbclid=IwAR0LAWwMTz3Psut3z8EXRR1YN0C4a1VszBNfqSHiuwTYAwTyG-FmWmURrM>, (access date: 22.02.2024).

⁵⁶³ High Anti-Corruption Court, HACC delivered a verdict against the former deputy head of the Kyiv tax service, <https://hcac.court.gov.ua/hcac/pres-centr/news/1485178/>, (access date: 22.02.2024).

VI. Recommendations

Article 5 – Preventive anti-corruption policies and practices

1. Implement the provisions of the State Anti-Corruption Programme in the relevant regulatory legal acts (laws and bylaws) of Ukraine.
2. Enhance the role of anti-corruption programmes in the activities of state authorities.

Article 6 – Preventive anti-corruption body or bodies

3. Provide necessary conditions for the formation of territorial offices of the National Agency on Corruption Prevention (NACP).

Article 7.1 – Public sector

4. Restore the procedure of full-fledged competitions for civil service positions.
5. Adopt the law on the introduction of an administrative procedure for appealing the procedure or results of competitions for civil service positions.

Article 7.3 – Political Financing

6. Eliminate legislative shortcomings that allow bypassing the requirements for financing political parties, and increase the effectiveness of administrative and criminal liability for such violations.

Article 7.4, 8.1, 8.5 – Conflict of interest and declarations of assets and interests

7. Increase the capacity of the NACP to conduct asset declaration verifications.

Article 8.4 and 13.2 – Reporting Mechanisms and Whistleblower Protection

8. Expand the capacities of the whistleblower portal and involve all government agencies in its work.

Article 9.1 – Public Procurement

9. Abstain from the practice of excluding certain goods/works/services from the scope of the Law of Ukraine "On Public Procurement".
10. Enhance the capacity of regulatory authorities to inspect procurement.

Article 10.1 and 13.2 – Access to information and participation of society

11. Enhance the protection of the rights of journalists and civil society activists.

Article 11.1 – Judiciary

12. Perform a qualification assessment of judges and fill vacant judicial positions in the judicial system of Ukraine.

Article 11.2 – Prosecution services

13. Ensure the political independence of the Prosecutor General through open competition.

Article 12 – Private Sector Transparency

14. Implement provisions on verification of information on the ultimate beneficial owner (“UBO”). Ensure liability for failure to update or enter data on UBOs into the Unified State Register.

Article 14, Article 52 and 58 – Measures to Prevent Money-Laundering and Anti-Money Laundering

15. Strengthen cooperation between law enforcement agencies and the State Financial Monitoring Service.

Article 53 and 56 – Measures for Direct Recovery of Property

16. Intensify the work of the competent Ukrainian authorities on the recovery of assets from abroad

17. Develop the practice of filing complaints with Ukrainian courts for the return of assets for further enforcement of these resolutions abroad.

Article 51, 54, 55, 56 and 59 – International cooperation for the purpose of confiscation

18. Revise bilateral agreements on legal assistance to include new asset recovery challenges.

VII. Annex

7.1 Table on Freedom of information requests

No	Institution	Date of request	Date of answer	Information requested	Information provided
1	National Agency on Corruption Prevention	18/08/2021	27/08/2021	Information on the implementation of Chapter II of UNCAC in terms of NACP competence	Yes
2	State Financial Monitoring Service of Ukraine	20/08/2021	28/08/2021	Statistics and information on the implementation of article 14 of UNCAC	Yes
3	National Agency of Ukraine on Civil Service	18/08/2021	27/08/2021	Statistics and information on the implementation of article 7.1 of UNCAC	Yes
4	National Bank of Ukraine	19/10/2021	22/10/2021	Statistics and information on the implementation of article 12 of UNCAC	Yes
5	State Audit Service of Ukraine	18/08/2021	30/08/2021	Statistics and information on the implementation of article 9.1 of UNCAC	Yes
6	Ministry of Finance of Ukraine	19/10/2021	25/10/2021	Statistics and information on the implementation of article 12 of UNCAC	Yes
7	Ministry of Justice of Ukraine	19/10/2021	28/10/2021	Statistics and information on the implementation of article 12 of UNCAC	Yes

8	Ukrainian Parliament Commissioner for Human Rights	18/08/2021	27/08/2021	Statistics and information on the implementation of articles 10 and 13.1 of UNCAC	Yes
9	National Commission on Securities and Stock Market	19/10/2021	22/10/2021	Statistics and information on the implementation of article 12 of UNCAC	Yes

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9. Center of Policy and Legal Reforms, (November, 2020), Alternative report for 2019 «On the state of ensuring the independence of judges in Ukraine», <https://pravo.org.ua/wp-content/uploads/2020/11/1588586222cplr.-shadow-report-on-judges-independence-2019.pdf>, p.19.
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