



SECTORAL BRIEF "ANTI-CORRUPTION POLICY"

Authors: *Anastasiya Kozlovtseva, Head of the International Relations and Fundraising department, Transparency International Ukraine; Andriy Borovyk, Executive Director, Transparency International Ukraine; Elena Halushka, Head of International Relations department, Anti-Corruption Action Centre*

Reviewers: *Oksana Velychko, Head of "Together Against Corruption"; Olha Budnyk, Director of EIDOS Center*

1. Evaluation of reform policies of the Parliament and Government during the period of September 2019 – January 2020 and its compliance with the Toronto Principles (based on the analysis of the Government Program, the plans of the ministries and the adopted/rejected regulatory acts)

Over the past six years, Ukraine has developed an anti-corruption infrastructure to detect and investigate high-level corruption offenses and to punish them. Thus, in 2015, the National Anti-Corruption Bureau of Ukraine (NABU) was established. Under the procedural guidance of prosecutors of the Specialized Anti-Corruption Prosecutor's Office (SAPO), it conducted investigations of 892 cases involving high-ranking officials, 245 of which were sent to the court and 38 sentences were delivered. The High Anti-Corruption Court of Ukraine (HACC) began its work on September 5, 2019. National Agency of Ukraine for detection, investigation and management of assets received from corruption and other crimes (ARMA) was established with the aim to identify, trace and manage the corrupt assets.

Important steps were taken in order to increase transparency: integrated electronic declaration system was implemented; state registers were published in accordance with the open data standards. Public procurement is carried out through the open electronic procurement system ProZorro, which has already saved \$3.4 billion of the budgetary funds since 2016. Its activities are supported by the monitoring ecosystem DoZor-

ro. ProZorro. Sale brought \$930 million, into the state budget, made it possible to transparently sell assets of the bankrupt and state property, as well as to conduct small-scale privatization.

The Toronto Principles have identified a number of priority measures for 2019-2023 in the area of corruption prevention and counteraction, some of which have already been implemented during September 2019 — January 2020 by adopting the necessary legislation and its further implementation.

Legislative strengthening of NABU's powers and launch of HACC took place in the area of combating corruption. The regulation of the procedure of transferring the cases to HACC from the courts of general jurisdiction has helped to focus its work on high-level cases. HACC is provided with the necessary financial resources, but is housed at a temporary facility. The employees' selection for the apparatus was carried out based on an open competition. As of the beginning of February 2020, HACC has considered 170 substantive cases, as well as dozens of petitions, statements and complaints by the parties during the pre-trial phase on the everyday basis. The judges have already handed down indictments on two cases.

Lawmakers strengthened the powers of NABU by the legal act No. 187-IX from 4 October 2019, granting the institution with the right to wiretap (to receive the information from communication channels) directly, rather than through the resources of the Security Service of Ukraine (SBU). However, such powers have not yet been imple-

mented in practice, as they require the purchase and installation of the appropriate equipment.

The Parliament of Ukraine abolished the monopoly of state expert centres for criminal expertise, which was introduced in October 2017. This will shorten the time required for the examinations, which hinder pre-trial investigations, as well as reduce possibilities to exert the pressure on experts.

In addition, by legal act No. 263-IX from 31 October 2019, the Parliament reinstated the criminal liability of officials for illegal enrichment, which was abolished in February 2019 by Constitutional Court of Ukraine (CCU), as well as launched the institution of civil confiscation of assets, unreasonably acquired by the state officials. These cases will be investigated by NABU, procedural guidance will be exercised by the SAPO, while consideration of the cases will be carried out by HACC.

Prevention of the corruption has also shown some progress. On 2 October 2019, the VRU adopted legal act No. 140-IX, which allowed to change the leadership of the National Agency on Corruption Prevention (NACP) and established a new procedure for its selection with the participation of three international experts and three representatives of the Government in the competition commission. On 15 January 2020, the Government declared Alexander Novikov to be the new Head of the NACP. The NACP's accountability is also strengthening and will undergo an independent audit every two years. At the same time, the recent legislative changes have not strengthened the role and effectiveness of persons authorized to prevent corruption, who will continue to depend on the authorities. As for today, the NACP can only suspend their unfair release if they are the whistle-blowers.

On 6 June 2019, the CCU abolished discriminatory electronic declarations for anti-corruption activists. The Parliament has adopted a new Law on Public Procurement, which will enter into force on 19 April 2020, and which is harmonized with the standards of the European Union. The law is aimed at improving the electronic system, reducing the thresholds for competitive procurement procedures and increasing accountability

for violations in this area.

In October 2019, the Law on State and Municipal Property Lease was adopted. It implements a simple and transparent procedure for the leasing of state and municipal property through ProZorro.Sale. In addition, state and municipal property inventory databases, which will complicate the concealment of misuse of such property, should appear.

In 2019, more than UAH 1 billion of revenues was brought to the state budget through small-scale privatization. The large-scale privatization will start through ProZorro.Sale. Since 21 October 2019, the sale of property in bankruptcy cases of individuals or legal entities has been conducted only through electronic auctions in the two-tier electronic trading system "ProZorro.Sale".

2. Current challenges / issues in the relevant policy area

3Lack of an effective system of checks and balances that can only be built by enhancing the efficiency and independence of institutions is a considerable challenge for Ukraine. Ukraine is a parliamentary-presidential republic and must meet all the hallmarks of this form of government.

Despite significant progress in anti-corruption reform, some of the challenges outlined in the Toronto Principles are still relevant. Some reforms are not moving, and pressure on independent institutions is continuing. For example, 7 on February 2020, the MPs registered the Resolution No. 3039 on dismissal of NABU Director Artem Sytnyk despite the illegality of such actions and the lack of legal grounds for his dismissal under Article 6, paragraph 4 of the Law on the National Anti-Corruption Bureau of Ukraine. The NABU audit has not yet been conducted, and the provisions of the law on the NABU that allow to make it politically motivated have not been changed. The corresponding legal act was registered in the Parliament on 3 January 2020 under No. 2714. The procedure for appointing a NABU Director following the procedure of selecting the head of the updated NACP with the involvement of independent internation-

al experts recommended by donors who support Ukraine in the area of anti-corruption actions needs improvement. If the selection procedure will not change, there is a risk that the current one will be neglected due to the membership of all the members of the selection board in one political party.

Restoration of confidence in the SAPO is also among the important Toronto Principles to be implemented. The Head's term of office ends on 30 November 2020. The current selection procedure foresees a decisive role in the selection committee for the representatives of the Parliament, so it is important to change it. There are no additional guarantees for the independence of the SAPO as a separate institution. As a consequence, the SAPO continues to be a weak link in the chain of NABU - SAPO - HACC institutions.

Contrary to the provisions of the Law on National Security, the systematic reform of the Security Service of Ukraine has not been launched. It continues to perform its atypical functions in the areas of combating corruption, combating economic crime and organized crime, resulting in abuse of power. The SSU has prepared a new legal act on the Security Service of Ukraine and submitted it to the Office of the President of Ukraine on 22 October 2019. An analysis of this bill revealed the authors' lack of a comprehensive vision of the reform, as well as an effort to expand rather than get rid of atypical functions. The President has not yet submitted a bill on the SSU to the Parliament.

Personnel changes in the Government did not affect the leadership of the Ministry of Internal Affairs of Ukraine, despite the demands of civil society to dismiss the Minister. Despite the fact that the Minister dismissed the National Police's Economics Protection Department in September 2019, police continued to investigate economic crimes, while the creation of a new law enforcement agency - the Bureau of Financial Investigation (BFI), which would take over the investigations of such crimes from the police, the SSU and the tax police, was blocked in the Parliament.

The implementation of sectoral reforms should have prevented corruption, as it was often the result of poor governance and lack of the reform.

However, such sectoral reforms are often unsystematic, incomplete, unsupported by adequate funding and implemented slowly due to institutional weakness of the authorities, low salaries of civil servants, which leads to negative staff selection and lack of project-based approach to the implementation of changes.

However, the unreformed judicial system remains the greatest threat to the sustainability of reforms in all the areas. The Parliament passed Law No. 193-IX from 16 October 2019 on restarting and clearing the judicial administration. However, in practice the High Council of Justice (HCJ) blocked its implementation, so from November 2019 to February 2020 no progress had been made.

3. Recommendations for priority actions in 2020-2021

The Parliament needs to:

- ensure that the judiciary is cleared of malign judges at all levels as effectively as possible; unlock reform by urgently adopting a law that will diminish the impact of HCJ on judicial reform and, accordingly, minimize its potential for further sabotage, strengthen the role of independent experts in the selection of new members of the judicial administration, change the procedure for dismissing questionable High Court justices;
- adopt the new law on NABU and SAPO audits;
- improve the competitive selection process of NABU Director with the involvement of international experts;
- change the competitive procedure for the selection of the SAPO leader with the involvement of international experts, and provide additional guarantees for the independence of the SAPO as a separate institution;
- adopt the law, which will allow for more effective implementation of the ARMA asset management function;
- adopt a new law on the SSU to deprive the service of atypical law enforcement, anti-corruption, economic crime, and organized crime combating powers by turning the SSU into a

special service agency focused on combating terrorism and countering terrorism;

- deprive the National Police of the right to investigate economic crimes;
- adopt a new BFI law with the guarantee of an independent competitive selection procedure of its Head;
- improve legislation on the parliamentary immunity;
- ensure that the drafts of normative legal acts and applicable legal acts are conducted and taken into account by the anti-corruption expert opinion;
- extend the definition of “whistle-blower” to areas other than corruption: human rights violations, the environment, security of food and household goods, public interests in line with the EU Directive on the protection of whistle-blowers and the best international practices.

For the Ministry of Justice of Ukraine – to approve and implement an effective verification mechanism for beneficiary owners.

For the Heads of central executive bodies and anti-corruption commissioners under facilitation and coordination by the renewed NAPC – to focus on identifying and eliminating factors that make it possible to commit corruption offenses.

For the Parliament and NAPC – to improve the general principles and features of private party financing; to increase the efficiency of the system of state financing of the political parties; to optimize the procedures involved in submitting financial accountability reports by the political parties; to increase the effectiveness of state control and legal accountability related to compliance with party financing legislation; to restrict television political advertising (agitation) on the national and regional media.