



Ten Years of Combating Corruption: Successes and Challenges Faced by Ukraine

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Introduction

After the Revolution of Dignity, Ukraine has firmly chosen the European integration course and began its fight against corruption practices that were formed at the level of the state and in all its spheres.

Over the past 10 years, the authorities and the public have jointly created anti-corruption infrastructure, adopted legislation and reformed public procurement. This all became the foundation on which the new European state has successfully been built. And in 2019, the Verkhovna Rada even amended the preamble of the Constitution of Ukraine, enshrining there 'the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine.'

Unfortunately, the Revolution of Dignity has not proven the last fight for the European future for Ukrainians. On this path, we had to overcome a lot of internal and external resistance to reforms – both at the political and at the legal level. But the real shock for Ukraine and its citizens was the full-scale Russian invasion on February 24, 2022. However, despite the brutal aggressive Russian war, Ukraine continues to make progress in democratic and rule of law reforms. In recent years Ukraine has ranked among the states that have made the most progress in the Corruption Perceptions Index (CPI). Thus,

in 2023 Ukraine received 36 points out of 100 possible, and now ranks 104th among 180 countries.¹ Thus, it has already reached the level of an EU candidate country, with Ukraine equalising Serbia, surpassing Turkey as well as Bosnia and Herzegovina, and staying one point behind Albania. This proves that even despite the war, Ukraine is successfully continuing its transformation.

According to a June 2023 opinion poll commissioned by Transparency International Ukraine, 73% of Ukrainians and 80% of business representatives are most concerned about the return of corruption schemes to the country's recovery process. Therefore, to ensure transparent and effective reconstruction, it is necessary to implement reforms in our country and strengthen the anti-corruption ecosystem.²

In this material we describe the main achievements of Ukraine in improving state transparency and anti-corruption reform from February 2014 to March 2024, as well as explore the issues of post-war reconstruction. For each of the issues under study we propose the following steps that will help cement the implemented reforms and bring Ukraine closer to EU membership.

List of Acronyms

ARMA – Asset Recovery and Management Agency (АРМА – Агентство з розшуку і менеджменту активів)

SASU – State Audit Service of Ukraine (Держаудитслужба – Державна аудиторська служба України)

DREAM – Digital Restoration Ecosystem for Accountable Management

AMCU – Antimonopoly Committee of Ukraine (АМКУ – Антимонопольний комітет України)

LSM – Lifestyle Monitoring (МСЖ – Моніторинг способу життя)

NABU – National Anti-Corruption Bureau of Ukraine (НАБУ – Національне антикорупційне бюро України)

NACP – National Agency on Corruption Prevention (НАЗК – Національне агентство з питань запобігання корупції)

SACP – State Anti-Corruption Programme (ДАП – Державна антикорупційна програма)

NSDC – National Security and Defense Council of Ukraine (РНБО – Рада національної безпеки і оборони України)

PCC – Public Control Council (РГД – Рада громадського контролю)

RPR – Reanimation Package of Reforms (РПР – Реанімаційний Пакет Реформ)

SSU – Security Service of Ukraine (СБУ – Служба безпеки України)

CCU – Constitutional Court of Ukraine (КСУ – Конституційний Суд України)

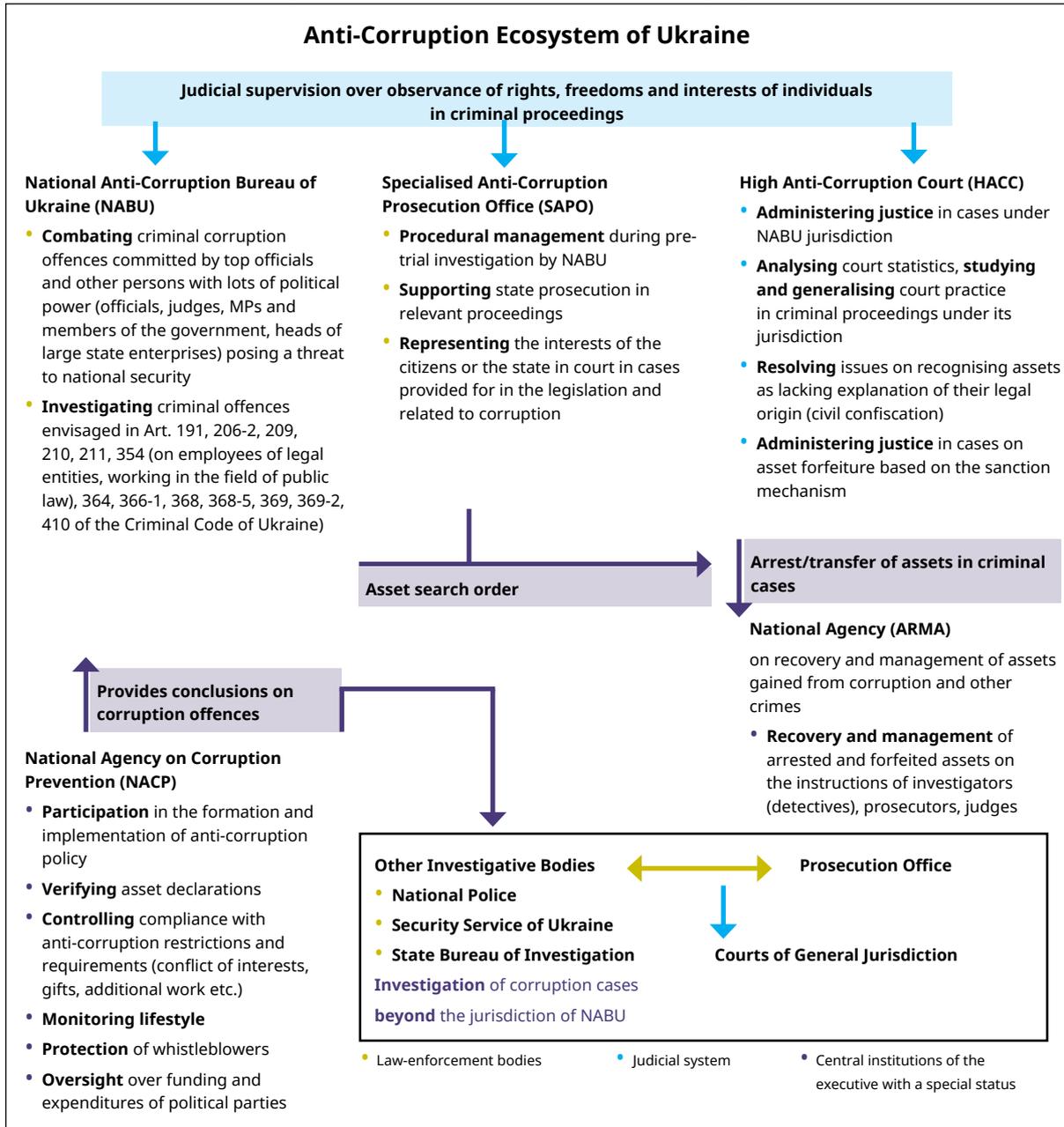
SAPO – Specialised Anti-Corruption Prosecutor's Office (САП – Спеціалізована антикорупційна прокуратура)

HACC – High Anti-Corruption Court (ВАКС – Вищий антикорупційний суд)

1 *Індекс сприйняття корупції – 2023 [Corruption Perceptions Index – 2023]* Transparency International Ukraine, <https://ti-ukraine.org/research/indeks-spryinyattyu-koruptsiyi-2023/>.

2 *Як відбудувати Україну – соціологічне опитування громадян та представників бізнесу [How to Reconstruct Ukraine – Sociological Survey of Citizens and Business Representatives]*, https://ti-ukraine.org/research/yak-vidbudovuvaty-ukrayinu-sotsiologichne-opytuvannya-gromadyan-ta-predstavnykiv-biznesu/?utm_source=newsletter&utm_medium=email&utm_campaign=posilennya_antikorupciynoji_borotbi_dlya_prozoroji_ta_efektivnoji_vidbudovi&utm_term=2024-07-31.

Overview of Anti-Corruption Reform from the Revolution of Dignity to March 2024



Anti-corruption infrastructure

Recently, Ukraine celebrated the 10th anniversary of the Revolution of Dignity, which enabled the state to overthrow the criminal pro-Russian government and set a clear course for European integration. Over these 10 years, the country has made more progress in anti-corruption reform than in the previous 23 years of independence.

This result was achieved primarily owing to the Association Agreement with the EU and the Visa Liberalisation and Conditions of Macro-Financial Assistance Action Plan. Ukraine has undertaken and fulfilled a number of important commitments in this area.

In particular, from 2014 to 2019, a **working system of anti-corruption bodies was created** – the National Anti-Corruption Bureau of Ukraine (NABU), the Specialised Anti-Corruption Prosecutor's Office (SAPO), the High Anti-Corruption Court (HACC), the National Agency on Corruption Prevention (NACP), and the Asset Recovery and Management Agency (ARMA).

Also, the country introduced a variety of anti-corruption tools: e-declaration, the system of public e-procurement Prozorro and the system for the sale and lease of public property Prozorro.Sale. Among others, state registers have been opened, a whistleblower protection institute and a single web-portal for the use of public funds have been launched, etc.

Despite repeated attempts to undermine anti-corruption reform, Ukraine managed to withstand and continue to move forward. And here, **the biggest challenge to the fight against corruption was the shameful decision of the Constitutional Court of Ukraine (CCU) of October 27, 2020, which essentially cancelled the significant part of the NACP mandate, in particular electronic declaration and, in fact, the function of the body's financial control.** In addition, criminal liability for deliberately false declaration or intentional failure to submit a declaration was declared unconstitutional.³ Consequently, the autumn and winter of 2020 marked the closing of more than 100 corruption cases being investigated or considered in courts at the time when this decision was made.⁴

And although it is no longer possible to resume these cases, the anti-corruption infrastructure, with the support of the public and international partners, managed to relatively quickly and almost completely overcome this crisis and restore everything.⁵ However, the crisis stressed the need for a complete re-start of the CCU with safeguards (quorum) to prevent arbitrary actions.⁶

In 2021, the NACP launched the POLITDATA Register of Political Parties' Reports, which was a big step forward for the transparency of political party financing.⁷ Also the same year, amendments were made to the Law on Prevention of Corruption, which provided for the creation of a Unified Whistleblower Reporting Portal.⁸ The portal was launched in September 2023.

Despite the development and promotion of the whistleblower institution, Ukraine does not yet feature a separate law protecting whistleblowers of the public interest information (e.g. abuse of power, food, transport or environmental safety violations, torture or other human rights violations) in the so called 'broad definition'. Ukraine is working to develop such a law and implement the standards for

3 *Рішення Конституційного Суду України (КСУ) від 27 жовтня 2020 року [Decision of the Constitutional Court of Ukraine of October 27, 2020]*, https://ccu.gov.ua/sites/default/files/docs/13_p_2020.pdf.

4 *Лігалайз корупції. Антикоруційне «16 січня» від Конституційного Суду [Legalising Corruption. An Anti-Corruption January 16 from the Constitutional Court]*, Transparency International Ukraine, October 27, 2020, <https://ti-ukraine.org/blogs/ligalajz-koruptsiyi-antykoruptsiijne-16-sichnya-vid-konstytutsijnogo-sudu/>.

5 *Великий вибух конституційного судочинства. Рік потому [Big Explosion of Constitutional Proceedings. One Year After]*, Transparency International Ukraine, October 28, 2021, <https://ti-ukraine.org/blogs/velykyj-vybuch-konstytutsijnogo-sudochynstva-rik-potomu/>.

6 *Конституційна криза: як вирішувати проблему [The Constitutional Crisis: How the Issue Can Be Resolved]*, Transparency International Ukraine, November 2, 2020, <https://ti-ukraine.org/blogs/konstytutsijna-kryza-yak-vyrishuvaty-problemu/>.

7 *НАЗК відкриває Реєстр звітності політпартій POLITDATA [NACP Launches the POLITDATA Register of the Political Parties' Reports]*, October 10, 2023, <https://nazk.gov.ua/uk/novyny/nazk-vidkryvaye-reyestr-zvitnosti-politpartij-politdata/>.

8 *Закон України: Про внесення змін до Закону України «Про запобігання корупції» щодо упорядкування окремих питань захисту викривачів [The Law of Ukraine: On Amendments to the Law of Ukraine n Prevention of Corruption to Regulate Certain Issues of Whistleblower Protection]*, <https://zakon.rada.gov.ua/laws/show/1502-IX#Text>.

whistleblower protection set out in Directive 2019/1937 of the European Parliament and the Council of 23 October 2019.⁹

After the full-scale Russian invasion in 2022, the anti-corruption reform of Ukraine faced new challenges: some employees of anti-corruption agencies joined the Armed Forces of Ukraine, some core functions of the institutions were suspended for an indefinite period of time and the registers were closed.¹⁰ More information about this is provided in the section on Operational Capability and Digitalisation.

The restart of anti-corruption reform and its strengthening was incentivised by granting Ukraine the EU membership candidate status in June 2022. Thus, on the eve of the European Commission summit in Brussels, where the issue of candidacy was decided, the Ukrainian parliament adopted the long-awaited Anti-Corruption Strategy of Ukraine for 2021–2025¹¹ and immediately after the adoption of the strategy, the NACP started working on the development of the State Anti-Corruption Programme (SACP). Based on the results of public discussions and agreement with all the stakeholders, the Cabinet of Ministers adopted the SACP in March 2023.¹²

Also, in line with the requirements of the European Commission (EC), another extremely acute problem was resolved: the **lack of leadership in 4 out of 5 anti-corruption institutions**. In 2022, on the basis of the competition results the following people were elected and appointed to the leadership positions: Head of SAPO – Oleksandr Klymenko,¹³ Director of NABU – Semen Kryvonis, Head of ARMA – Olena Duma, and in February 2022, the High Anti-Corruption Court announced that it had elected a new head – Vera Mykhailenko.

It should be mentioned that the competitions for these anti-corruption institutions were not held without delay. For example, the appointment of Oleksandr Klymenko as the head of the SAPO was delayed for six months due to the stalling of this process by individual members of the selection commission.¹⁴ The ARMA competition also received a lot of criticism from the public due to the fact that the new head did not meet the requirements of the law.¹⁵

In February 2024, the government also appointed a new head of the NACP. Viktor Pavlushchuk was elected by the Commission of National and International Experts, with the selection itself taking place

9 Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1937>.

10 Антиторупційні органи під час війни: чим займається НАЗК? [Anti-Corruption Bodies During Wartime: What Does NACP Do?], Transparency International Ukraine, May 12, 2022, <https://ti-ukraine.org/news/antikoruptsijni-organy-pid-chas-vijny-chym-zajmayetsya-nazk/>.

11 Закон України: Про засади державної антикорупційної політики на 2021–2025 року [The Law of Ukraine on the Principles of State Anti-Corruption Policy for 2021–2025], <https://zakon.rada.gov.ua/laws/show/2322-20#Text>.

12 Кабмін прийняв Державну антикорупційну програму – про що йдеться в документі? [The Cabinet of Ministers adopted the State Anti-Corruption Programme – what is the document about?], Transparency International Fund, March 27, 2023, <https://ti-ukraine.org/news/kabmin-pryjnyav-derzhavnu-antikoruptsijnu-programu-pro-shho-jdetsya-v-dokument/>.

13 Клименко – головний антикорупційний прокурор [Klymenko – Chief Anti-Corruption Prosecutor], Transparency International Ukraine, July 28, 2022, <https://ti-ukraine.org/news/klymenko-golovnyj-antikoruptsijnyj-prokuror-shho-vidomo-pro-peremozhtsya-konkursu-sap/>.

14 Завершити конкурс САП: на кону – членство в ЄС [To complete the SAPO selection procedure – EU membership is at stake], Transparency International Ukraine, June 21, 2022, <https://ti-ukraine.org/blogs/zavershyty-konkurs-sap-na-konu-chlenstvo-v-yes/>.

15 Призначення Олени Думи може поставити хрест на АРМА [Appointment of Olena Duma may put an end to ARMA], Transparency International Ukraine, June 28, 2023, <https://ti-ukraine.org/news/pryznachennya-oleny-dumy-mozhe-postavyty-hrest-na-arma/>.

in three stages.¹⁶ In general, unlike the competitions for the head of NABU, SAPO and ARMA, this competition was held without delay and in an exemplary transparent manner, which deserves a positive assessment.

It is important to continue improving the methodology and criteria for competitions for the positions of heads of anti-corruption institutions, taking into account previous experience. A positive example of such an improvement is the changes in the selection of the SAPO leadership, which were introduced in 2023 alongside with the changes to the profile law in accordance with the requirements of the European Commission.¹⁷ The problems of the previous competition regarding the formation of the selection commission and the terms of its work were taken into account. Also, the law now provides the details of the content of the integrity criteria and professional competence. However, what is still problematic is the discretion of the political leadership to choose a specific candidate as the head of a body out of three (in the case of NABU) or two (in the case of SAPO) candidates proposed by the selection commissions.

Currently, Ukraine has already implemented most of the European Commission recommendations to start negotiations on the EU accession: apart from the appointment of the heads of the SAPO and NABU, 2023 also saw the launch of a new High Council of Justice and the High Qualifications Commission of Judges, introduction of new measures to prevent and combat money laundering, update of the legislation on national minorities and the Law on the Media.¹⁸

The requirements of the EC regarding the effective restoration of the e-declaration system, the provision of NABU with its own forensic institution and holding the external audits of the agencies have still not been fully implemented in the anti-corruption sphere.¹⁹ In addition, it is important to fulfil the requirement for an effective restart of the Constitutional Court of Ukraine, the competition for which began in March 2024 and is currently ongoing. There are also significant delays with the anti-oligarchic reform, as the Venice Commission in its opinion criticised the Law on the Prevention of Threats to National Security Related To the Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs).²⁰ In the opinion of the Venice Commission, which is shared by civil society, this law does not offer effective ways to solve the oligarchic problem in Ukraine, while the anti-oligarchic reform requires the development of new complex changes in the existing bodies, such as the Anti-Monopoly Committee of Ukraine, the National Bank, etc.

Thus, despite the significant challenges associated with active hostilities and some internal political resistance, Ukraine has taken significant steps in anti-corruption reform and the development

16 Віктор Павлушчик став переможцем конкурсу на Голову НАЗК [Viktor Pavlushchuk is the winner of the competition for the position of the NACP head], Transparency International Ukraine, February 25, 2024, <https://ti-ukraine.org/news/viktor-pavlushchik-stav-peremozhtsem-konkursu-na-golovu-nazk/>.

17 Як планують посилити самостійність САП: юридичний аналіз [Plans to strengthen SAPO legal independence: a legal analysis], Transparency International Ukraine, September 22, 2023, <https://ti-ukraine.org/news/yak-planuyut-posylyty-samostijnist-sap-yurydychnyj-analiz/>.

18 Сергій Сидоренко, Саміт на половині шляху: як Україна виконує 7 вимог до кандидата у члени ЄС [Halfway to the Summit: How Ukraine Fulfils 7 Requirements for EU Membership], European Pravda, February 1, 2023, <https://www.eurointegration.com.ua/articles/2023/02/1/7155269/>.

19 Висновки Єврокомісії про ефективність боротьби з корупцією в Україні [The Opinions of the European Commission on the Efficiency of Fighting Corruption], Transparency International Ukraine, November 10, 2023, <https://ti-ukraine.org/news/vysnovky-yevrokomisiji-pro-efektyvnist-borotby-z-koruptsiyeyu-v-ukrayini/>.

20 CDL-AD(2023)018-eUkraine – Opinion on the law on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs), adopted by the Venice Commission at its 135th Plenary Session (Venice, June 9–10, 2023), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)018-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)018-e).

of anti-corruption infrastructure. The EC requirements served as a major incentive in achieving this progress, while it is important to fully complete their implementation.

What else should be done in this area?

- The authorities need to complete the implementation of all the recommendations of the European Commission on the anti-corruption reform of Ukraine in terms of effective restoration of the e-declaration system, providing NABU with its own forensic institution and conducting external audits of the agencies.
- The requirements of the European Commission for a transparent competitive selection of the CCU judges and anti-oligarchic reform need to be fulfilled, which should be based on a set of measures aimed at improving existing institutions (the Anti-Monopoly Committee of Ukraine, the National Bank, the judicial system, etc.).
- The parliament and the government should improve the competition procedures for the heads of anti-corruption institutions. In particular, it is important to change the approach of the political leadership's discretion regarding the appointment of the head of the agency out of three (in the case of NABU) or two (in the case of SAPO) candidates proposed by the selection commissions.

Procurement Reform

After the Revolution of Dignity at the end of February 2014, the Verkhovna Rada appointed Pavlo Sheremeta Minister of Economy of Ukraine. The new head identified the reform of public procurement as one of his priorities. A group of volunteers who took an active part in the Revolution of Dignity on the Maidan decided to help the new minister.

The reform required changes to the legislation, which at that time was outdated and provided for procurement in paper form. Therefore, the team of reform experts saw that the creation of an electronic procurement system would help to increase the transparency of procurement and simplify access for business. Transparency International Ukraine became its co-creator. **In early 2015, the new IT system called Prozorro was officially introduced and launched.**

The key event for the reform was the adoption of the Law of Ukraine on Public Procurement.²¹ It established the main principles and rules of procurement.

Due to the new law and the introduction of the Prozorro system, public procurement has become open and competitive. The field almost did not undergo drastic changes 2017–2021 and before the full-scale invasion of Ukraine by the Russian Federation.

The main method of public procurement under the law is open bidding – a competitive procedure for determining the supplier (contractor). It is conducted openly in the Prozorro system, with all interested business entities participating through electronic platforms. Open bidding is mandatory for the purchase of goods and services over UAH 200,000 and works over UAH 1.5 million.

²¹ Закон України: Про публічні закупівлі [The Law of Ukraine on Public Procurement], <https://zakon.rada.gov.ua/laws/show/922-19#Text>.

Information about all open tenders is published in the Prozorro system. Each announced procurement features its own web page, which can be viewed from anywhere in the world without special requirements and registration. Each web page includes the following information:

- What exactly the buyer plans to purchase,
- What requirements they set to the product, work or service, as well as to the future counterparty,
- What documents are required to participate in the tender,
- Which draft agreement will be signed, etc.

During the tender, all decisions of the buyer, documents of bidders' proposals, all materials of appeals, monitoring of state auditors, etc. are attached.

Exceptions to competition rules are clearly regulated by the law, with reporting requirements available in the system. Therefore, each user can see what and from whom the state purchases starting from UAH 50,000.

The Prozorro system received the World Procurement Award 2016, the largest international recognition in the field of procurement. It was also granted the show-case status as an exceptional example of public procurement electronisation from EBRD and Open Contracting Partnership.²² In 2020, Prozorro was on top of Transparent Public Procurement Rating, while in 2021, the system along with the monitoring project Dozorro, administered by TI Ukraine, was cited by the US as an example in its strategy to combat corruption in the world.

In addition, the Law of Ukraine on the Openness of the Use of Public Funds has been in force for almost nine years.²³ This law allowed creating the platform E-data,²⁴ which combines such key resources as Spending.gov.ua,²⁵ Openbudget.gov.ua,²⁶ etc. They include information about transactions conducted by budget managers and contracts they conclude. Thus, compliance with the principle of transparency and openness at all stages of procurement can be assessed quite highly.

The **Anti-Monopoly Committee of Ukraine (AMC) works** to prevent discrimination in tenders. Every business entity wishing to participate in the procurement has the right to challenge discriminatory or non-transparent terms of the tender documentation. And each participant can file a complaint against the decision to reject their proposal, to determine their competitor as the winner or to cancel the tender.

All complaints are submitted through the Prozorro system, published on the procurement page and automatically suspend the tender process. Similarly, all the materials of the appeal, the decisions of the Anti-Monopoly Committee are available for viewing from any corner of the world. The appeal lasts up to 2–3 weeks, with all the meetings of the commission being public. In general, the appeal procedure has become a quick and effective tool for protecting the rights of bidders and persons wishing

22 Олександр Стародубцев, *Історія реформи публічних закупівель* [History of the Public Procurement Reform], Prozorro, September 20, 2016, <https://prozorro.gov.ua/uk/news/istoriya-reformy-publichnyh-zakupivel>.

23 Закон України: Про відкритість використання публічних коштів [The Law of Ukraine on the Openness of the Use of Public Funds], <https://zakon.rada.gov.ua/laws/show/183-19#Text>.

24 Інформаційно-аналітична система «Прозорий бюджет» [Information and analytical system Transparent Budget], <https://edata.gov.ua/>.

25 Єдиний веб-портал використання публічних коштів [The unified web-portal on the spending of public funds], <https://spending.gov.ua/new/>.

26 Державний веб-портал бюджету для громадян [The state budget web-portal for citizens], <https://openbudget.gov.ua/>.

to participate in it: for example, in 2023, the appeal body processed 10,500 complaints, of which approximately 70% were successful.

State financial control has been initiated **in order to avoid abuse, violations of the law as well as inefficient spending of budget and donor funds**. First of all, it is conducted by the State Audit Service of Ukraine and its territorial bodies. In addition, the Accounting Chamber exercises control over the receipt of funds to the State Budget and their use on behalf of the Verkhovna Rada of Ukraine.

According to the reports of the State Audit Service for 2023,²⁷ the Chamber conducted 713 audits and 395 procurement audits. This resulted in compensating financial violations in the amount of over UAH 6.4 billion. Furthermore, 12,200 procurement monitors have been carried out, which prevented violations amounting to almost UAH 7.4 billion by cancelling tenders and approximately UAH 12.4 billion by terminating contracts.

Civil society in Ukraine is also actively involved in public procurement monitoring. For example, Dozorro project analysts verify the terms of tenders, bid offers, the terms of concluded contracts for overpricing, violations of the law, as well as the principles of non-discrimination and transparency. If such cases are detected, the activists send appeals to regulatory and law enforcement agencies. In response to the appeal, the State Audit Service initiates procurement monitoring, while law enforcement agencies initiate criminal proceedings.

In 2023 alone, Dozorro verified more than 2,000 procurements. Following our appeals, procuring entities corrected problems in procurement on their own or cancelled procurement if it was too late to fix them, for a total over UAH 500 million. Our appeals also led to 41 criminal proceedings on procurement violations.

For several months **in 2022**, in connection with the full-scale invasion of the Russian Federation in Ukraine, defence and public procurement of goods, works and services was carried out without regular procedures.²⁸ However, the government gradually brought most of the procurement expenditures back into a competitive and open area.

A key event in procurement regulation was the approval by the government of special procurement rules for the period of martial law in October 2022.²⁹ The main method of procurement was again a modified version of open bidding. Owing to this, it was possible to ensure maximum coverage of procurement through competitive procedures. Alternatively, the buyer can purchase goods through the ProzorroMarket electronic catalogue, which operates on the principle of an online store. And for the exceptions where a direct contract can be concluded for an over-threshold amount, one should apply detailed reporting requirements in the Prozorro system.

27 Результати діяльності Держаудитслужби, її міжрегіональних територіальних органів [The results of the activity of the State Audit Service and its Interregional Territorial Bodies], <https://dasu.gov.ua/ua/plugins/userPages/3517>.

28 Кабінет Міністрів України: Постанова від 28 лютого 2022 р. № 169, Деякі питання здійснення оборонних закупівель товарів, робіт і послуг в умовах воєнного стану [The Cabinet of Ministers of Ukraine: Resolution of February 28, 2022, No. 169, Some issues of defense procurement of goods, works and services under martial law], <https://zakon.rada.gov.ua/laws/show/169-2022-%D0%BF#Text>.

29 Кабінет Міністрів України: Постанова від 12 жовтня 2022 р. № 1178 Про затвердження особливостей здійснення публічних закупівель товарів, робіт і послуг для замовників, передбачених Законом України «Про публічні закупівлі», на період дії правового режиму воєнного стану в Україні та протягом 90 днів з дня його припинення або скасування [The Cabinet of Ministers of Ukraine: Resolution of October 12, 2022 No. 1178 On Approval of Peculiarities of Public Procurement of Goods, Works and Services for Buyers Provided for 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 termination or cancellation], <https://zakon.rada.gov.ua/laws/show/1178-2022-%D0%BF#Text>.

Thus, according to Prozorro, in 2023, competitive procedures accounted for procurement with an expected value of UAH 892.8 billion, which is 72.6% of the total amount.

Clearly regulated mechanisms for appealing and monitoring procurement through the Prozorro system are in place despite the martial law.

Procurement during martial law has slightly shorter terms, allows to determine a winner if there is only one bidder, and features a number of other errors. However, in part the legislation on wartime procurement is even more effective than the previous one, and the field continues to develop. For example, a tender participant has had the opportunity to correct a wider range of errors, state auditors have received more leverage to control direct contracts, and criminal liability has been introduced for obstructing their activities, the AMCU has created new commissions to consider complaints, etc.

In 2023, the World Bank approved the use of the Prozorro electronic system for all projects it funds in Ukraine.³⁰ In addition, according to the Ministry of Economy, the Council of Europe Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank and the World Bank have agreed to use Prozorro for small tenders that do not exceed the thresholds of EUR 130,000 for goods and services and EUR 5 million for projects financed by these organisations.³¹

For the Prozorro electronic system to be used by donor organisations, the state-owned enterprise Prozorro has developed a special procedure. It allows flexibility in adjusting procurement in accordance with the rules of international organisations and donors. According to the Ministry of Economy, USAID and UKaid TAPAS project Transparency and Accountability in Public Administration and Services are already conducting their tenders in the Prozorro system.³²

What else should be done?

- The parliament should continue its work on adapting the procurement legislation to the EU legislation, in particular, introduce new procedures, ensure greater centralisation of procurement and further improvement of legislation.
- The State Audit Service, with the assistance of the Ministry of Economy, which establishes the peculiarities of the procurement legislation application during the martial law, should make state financial control more preventive, update risk indicators in the system and improve the procurement monitoring process.
- The Ministry of Economy and State Audit Service of Ukraine should create preconditions that will prevent overpricing in procurement and excessive spending of public funds.
- The Ministry of Economy, the Prozorro platform and e-platforms should improve the professional level of buyers and attract more companies to participate in procurement.

30 Усі закупівлі за кошти Світового банку тепер можуть проходити в Prozorro [All procurement funded by the World Bank now can take place in Prozorro], Prozorro, October 10, 2023, <https://prozorro.gov.ua/uk/news/usi-zakupivli-za-koshty-svitovogo-banku-teper-mozhut-prohodyty-v-prozorro>.

31 Наш пріоритет – аби всі закупівлі за кошти іноземних донорів обов'язково відбувалися через Prozorro [Our priority is to ensure that all procurement for foreign donors' funds is carried out through Prozorro], Yulia Svyrydenko, Ministry of Economy of Ukraine, November 1, 2023, <https://www.kmu.gov.ua/news/nash-priorytet-aby-vsi-zakupivli-za-koshty-inozemnykh-donoriv-oboviazkovo-vidbuvalysia-cherez-prozorro-iuliia-svyrydenko/>.

32 Усі закупівлі за кошти Світового банку тепер можуть проходити в Prozorro [All procurement funded by the World Bank now can take place in Prozorro], Prozorro, October 10, 2023, <https://prozorro.gov.ua/news/usi-zakupivli-za-koshty-svitovogo-banku-teper-mozhut-prohodyty-v-prozorro>.

- Prozorro should be further improved technically by integrating with the systems and registers of other countries and automating more procurement processes.

Digitalisation (databases, registers, openness of information)

Since 2014, Ukraine has continued to steadily move towards digitalisation of public processes, administrative services and openness of information. In addition to the world-famous electronic systems – Prozorro and Prozorro.Sale, which raised the bar in international standards of public procurement and sales transparency, a number of important portals, registers and databases have been developed and launched since the Revolution of Dignity.

In 2019, the **portal of public services Diia**,³³ was developed, and in 2020 it was officially launched, granting access to 27 public services online. Now, through **Diia** the users have access to 72 services and 15 digital documents, including a certificate of an internally displaced person.

Furthermore, persons whose property was destroyed or damaged due to Russia's aggression after February 24, 2022 can submit and register their application in Diia. This application is then entered in the International Register of Damage for further assessment of compensation.³⁴

In March 2021, the Verkhovna Rada passed a law equating electronic passports in Diia with paper documents. The legislation came into force on August 23, 2021.³⁵ **Thus, Ukraine has become the first state in the world where digital IDs are legitimate equivalents of ordinary documents.**

In 2021, Ukraine ranked first among European countries with regards to open data development.³⁶ However, at the beginning of the full-scale invasion most state registers and databases were closed for security reasons. Currently access to many of them has been restored on condition of certain security restrictions.

In particular, **on December 10, 2023 the NACP reopened the Central Register of Officials' Statements.** This was achieved after a fierce political struggle with the parliament which strongly opposed the idea. The long-awaited provisions of Law 9534 were adopted by MPs in September with amendments by the president, who first vetoed it.³⁷ The open register provides for exceptions related to martial law. For example, declarations of officials involved in the war effort will remain classified. Also noteworthy are the NACP initiatives to integrate various databases into the register of declarations at the stage of filling in a new declaration, including databases of the declarant's family members.

Also in September 2023, the NACP opened access to **the Central Register of Corruption.**³⁸

33 Дія. Відкриті дані [Diia. Open Data], <https://diia.data.gov.ua/>.

34 Заява до міжнародного Реєстру збитків [The application to the International Register of Damage], Diia, <https://diia.gov.ua/services/RD4U>.

35 Президент України підписав закон, який прирівнює е-паспорти у Дії до звичайних [President of Ukraine signs law equating e-passports in Diia to regular ones], Ministry of Digital Transformation of Ukraine, April 15, 2021, <https://www.kmu.gov.ua/news/prezident-ukrayini-pidpisav-zakon-yakij-pririvnyuye-e-pasporti-u-diyi-do-zvichajnih>.

36 Open Data Maturity Report 2021, https://data.europa.eu/sites/default/files/landscaping_insight_report_n7_2021_0.pdf.

37 Чому Президенту варто ветоувати підриєв е-декларування [Why should the president veto the undermining of e-declarations], Transparency International Ukraine, September 5, 2023, <https://ti-ukraine.org/news/chomu-prezydentu-varto-vetuvaty-pidryv-e-deklaruvannya/>.

38 НАЗК відкрило доступ до Реєстру осіб, які вчинили корупційні та пов'язані з корупцією правопорушення, із врахуванням безпекових аспектів [The NACP has opened access to the Register of Persons Who Have Committed Acts of Corruption or Corruption-Related Offenses, taking into account security aspects], Head of the NACP, September 4, 2023, <https://nazk.gov.ua/uk/povyny/nazk-vidkrylo-dostup-do-reyestru-osib-yaki-vchynyly-koruptsijni-ta-pov-yazani-z-koruptsiyeyu-pravoporushennya-iz-vrahuvannyam-bezpekovyh-aspektiv-golova-nazk/>.

In August 2023, the NACP presented **an information portal for monitoring the implementation of the State Anti-Corruption Programme**.³⁹ It provides information on the state of implementation of the anti-corruption measures taken by the SACP, since public authorities are obliged to publicly report on this issue. This information is updated quarterly.

Also at the end of August 2023, the Head of ARMA reported that **access to the Unified State Register of Assets Seized in Criminal Proceedings had finally been opened**. Currently the register is incomplete and contains numerous shortcomings regarding the quality of the information that was made public, so it needs to be improved.

In addition, in February 2024, the **State Sanctions Register was launched**,⁴⁰ administered by the National Security and Defense Council of Ukraine (NSDC). This is the only information database that allows searching for entities under sanctions in Ukraine – both people and companies. The register also contains information on the imposition, changes and cancellation of sanctions, the terms of their application and the relevant decisions of the National Security and Defense Council. Such a register is extremely useful for Ukraine's foreign policy, as well as for citizens and businesses. However, it is necessary to adapt it to international standards, providing for the possibility and procedure for the sanctioned person to apply to the National Security and Defense Council with the request to remove information about them, as well as to establish time limits for storing information in the register.

What else should be done?

- In the future, all state registers and databases that have been closed due to martial law should be available. However, strict exceptions can be made for war-related confidential data.
- Keepers of some registers need to improve the quality of their content, in particular the register of seized assets administered by ARMA.
- It is important for the NSDC to regulate the maintenance of the State Sanctions Register in accordance with international standards on the right to privacy.

Public engagement

Ukrainian legislation includes norms that provide civil society with the possibility of monitoring the activities of the authorities (the activities of public councils under a given agency), as well as to participate in the development and monitoring of state policy at both the central and local levels (conducting public expertise).

In May 2019, the Cabinet of Ministers updated the method and principle of forming public councils under state bodies.⁴¹ It became possible to elect the composition of a public council through online voting, which significantly enhanced the transparency of the process itself. However, not all the bodies use this format.

39 *Інформаційна система моніторингу реалізації державної антикорупційної політики [The information portal for monitoring the implementation of the State Anti-Corruption Programme]*, <https://dap.nazk.gov.ua/>.

40 *Державний реєстр санкцій [State Sanctions Register]*, <https://drs.nsd.gov.ua/>.

41 *Кабінет Міністрів України: Постанова від 3 листопада 2010 р. № 996 Про забезпечення участі громадськості у формуванні та реалізації державної політики [The Cabinet of Ministers of Ukraine: Resolution of November 3, 2010, No. 996, On Ensuring Public Participation in the Formation and Implementation of State Policy]*, <https://zakon.rada.gov.ua/laws/show/996-2010-%D0%BF#Text>.

Specific requirements were also identified for persons who can become members of public councils. Such requirements were introduced also for organisations that delegate a representative to a public council, and for the candidates themselves to submit motivation letters describing the vision of their future activities.

For certain state bodies, in particular anti-corruption institutions, the formation and activities of public councils are regulated by the relevant law. The first social council at this type of institution (Public Control Council) was established at the NABU in 2015, with its members elected by online voting. At present, public councils are in place and perform their functions under all anti-corruption bodies.

The format of selecting public councils through online voting has proven to be effective, since in 2020, an artificial overstatement of votes for two members of the last convocation of the PCC under the NABU was revealed, and therefore they were expelled from the council.⁴² Therefore, we recommend that this mechanism be extended to other public councils under state bodies.

The work of the NACP on a new anti-corruption strategy in 2020 can serve as a paragon of public involvement in the development of public policy. The Agency ensured maximum cooperation with representatives of business and civil society. In June–July 2020, the NACP held 8 public consultations, which resulted in a report.⁴³ The preparation and publication by the NACP of a 676-page comparative table⁴⁴ with the initial provisions of the strategy, comments and proposals received by them also deserves a separate positive evaluation. This approach to involving civil society and business institutions should become a model for future formats of interaction between the public and the authorities.

The NACP's annual report on its activities for 2023 also provides statistics on public engagement in the development of the State Anti-Corruption Programme. It states that 11 public consultations were held, with 300 registered participants and over 9,000 viewers.⁴⁵

Also, one of the most notable examples of cooperation between the government, the public and business was the **government-public initiative Together Against Corruption**, founded in 2016.⁴⁶ The initiative involves the Reanimation Package of Reforms (RPR), NGO Together Against Corruption, Transparency International Ukraine, the Project Office of the National Reform Council, such organisations as International Development Law Organization, Deloitte, EBA, ACC, public councils under ministries and more than 30 public associations.

42 *Альтернативний звіт з оцінки ефективності впровадження державної антикорупційної політики [Alternative report on the assessment of the effectiveness of the state anti-corruption policy implementation]*, 2021, https://pravo.org.ua/wp-content/uploads/2021/11/Alternative_Report_2021.pdf.

43 *Звіт за результатами громадського обговорення проекту Закону України Про засади державної антикорупційної політики на 2020–2024 роки [Report on the results of the public discussion of the draft Law of Ukraine on the Principles of the State Anti-Corruption Policy for 2020–2024]*, <https://nazk.gov.ua/wp-content/uploads/2021/02/23.-Zvit-za-rezultatamy-gromadskogo-obgovorennya-proektu-Zakon.pdf>.

44 *Порівняльна таблиця до проекту антикорупційної стратегії на 2020–2024 роки [Comparative Table to the draft Anti-Corruption Policy for 2020–2024]*, <https://nazk.gov.ua/wp-content/uploads/2020/09/NAZK-Porivnyalna-tablytsya-do-proektu-Antykoruptsijnoyi-strategiyi-na-2020-2024-roky.pdf>.

45 *Звіт 2023 щодо діяльності Національного агентства з питань запобігання корупції [2023 Report on the performance of the National Agency on Corruption Prevention]*, <https://drive.google.com/file/d/1gOEkDfh5Y3L2R48wc2s0hgDbN6qUhVXT/view>

46 *Урядово-громадська ініціатива «Разом проти корупції» [The government-public initiative Together Against Corruption]*, <https://www.kmu.gov.ua/diyalnist/antikorupciyna-diyalnist/uryadovo-gromadska-iniciativa-razom-proti-korupcii>.

Cooperation between government, civil society and business helped to create the e-procurement system Prozorro. In particular, the business sector contributed to its development and supported it financially, while the non-governmental organisation Transparency International Ukraine administered the creation of the system. Subsequently, TI Ukraine transferred managing Prozorro to the state, and founded the public procurement control project Dozorro. The project gave rise to a portal bearing the same name that offers the opportunity to leave feedback on procurement. Additionally, the project team created a network of citizen experts in the various regions of Ukraine to monitor public procurement and expose violations of procurement procedures. Prozorro and Dozorro were cited by the US as an example in the global strategy to combat corruption in the world, while the electronic procurement system has received a number of international awards and prizes.

After the full-scale invasion it is particularly important that the authorities involve civil society in all the current and future recovery processes. This will only strengthen the effectiveness of these processes and allow for sharing responsibility.

What else should be done?

- It is worth spreading the practice of selecting public councils under state and local self-government bodies through Internet voting.
- The authorities should deepen cooperation between the state and civil society by involving the latter in the formation of state policy at the central and local levels.

Anti-corruption policies and institutions after the full-scale invasion

Operational capacity of institutions

The war with Russia has affected the proper functioning of the anti-corruption infrastructure of Ukraine. Part of its resources at the beginning of the full-scale invasion and until now is directed at approaching victory. In the conditions of martial law, the application of certain anti-corruption requirements and procedures was limited by law. For example, mandatory submission of asset declarations by public officials and their verification by the NACP was resumed by the Ukrainian parliament only in September 2023 with significant shortcomings.⁴⁷

In December 2023, the parliament amended the Law on Prevention of Corruption and brought some of its provisions in line with the guidelines of the European Commission for Ukraine.⁴⁸ Thus, the Verkhovna Rada addressed and fully implemented two requirements of the European Commission, correcting the most acute problems in the restored electronic declaration, which deserves approval. **However, some provisions in the law still need to be amended.** These include a provision stating that MPs are allowed not to indicate in the declarations rented real estate up to 75 square metres, if

47 Які зміни в новому законі ускладнюють систему е-декларування [What changes in the new law make the system of e-declarations more complicated], Transparency International Ukraine, September 20, 2023, <https://ti-ukraine.org/news/yaki-zminy-v-novomu-zakoni-uskladnyuyut-systemu-e-deklaruvannya/>.

48 Закон України: Про внесення змін до Закону України «Про запобігання корупції» щодо приведення окремих положень у відповідність до висновків Європейської комісії щодо України [The Law of Ukraine on Amendments to the Law of Ukraine on Prevention of Corruption to bring certain provisions in line with the conclusions of the European Commission on Ukraine], <https://zakon.rada.gov.ua/laws/show/3503-20#Text>.

they are compensated by the state for the cost of renting such a property, which poses an unjustified threat to the completeness of declarations in the open register and is an example of corporatism.

Summer 2023 marked **the first independent audit of the NACP**, with recommendations to increase the efficiency of the agency performance.⁴⁹ However, they have not yet been systematically implemented through a plan, which is yet to be developed and presented by the Agency.⁵⁰

It is also critical to conduct an audit of other anti-corruption bodies – NABU, SAPO and ARMA – in order to objectively assess their performance and improve their efficiency. Such audits should be implemented drawing on the experience of the NACP audit.

Another important component of the anti-corruption institutions' operational capacity is human resources. Unfortunately, while experiencing staffing shortage in peacetime, the problem was exacerbated by the additional burden due to the full-scale war.

From these considerations, it should be positively noted that in December 2023, the parliament passed a draft law aimed at strengthening SAPO independence, as well as improving the procedure for competitive selection for administrative positions and positions of SAPO prosecutors.⁵¹

Also at the end of 2023, the Verkhovna Rada passed a law that increased the staff of NABU from 700 to 1,000 employees, which should happen in three waves: 100 vacancies will be closed in 2024, 2025 and 2026. This law, like the previous one, was developed and passed by MPs in accordance with the requirements of the European Commission regarding the candidate status of Ukraine.⁵²

However, according to national and international experts, even an increase in the NABU staff and the redeployment of human resources from auxiliary to the main detective units will not solve the problem of the workload. NABU should optimise the use of available resources – focusing on high-ranking corruption cases and those related to systemic corruption.⁵³ Such a prioritisation policy should be properly developed and discussed with competent experts in the field of criminal justice.

The NACP faces a similar situation. After the resumption of mandatory declarations of property for public officials, reporting on the financing of political parties, as well as the adoption of the SACP, the agency's workload has increased, so it should strengthen its capacity with additional human resources by creating territorial units. Apart from this, the NACP should carry out a comprehensive evaluation of the entire system of its functions, identify procedures where there may be duplications, conflicts or

49 Наталія Січевлюк, *Перший зовнішній аудит НАЗК закінчено! Як оцінили роботу Агентства?* [The first external audit of the NACP is over! How was the agency's work assessed?], Transparency International Ukraine, August 2, 2023, <https://ti-ukraine.org/blogs/pershyj-zovnishnij-audit-nazk-zakincheno-yak-otsinyly-robotu-agentstva/>.

50 Команда НАЗК досягла більшості критеріїв ефективності за всіма об'єктами оцінювання – звіт оціночної комісії [The NACP team has achieved most of the performance criteria for all items of evaluation – report of the evaluation commission], NACP, July 26, 2023, <https://nazk.gov.ua/uk/komanda-nazk-dosyagla-bilshosti-kryteriyiv-efektyvnosti-za-vsima-ob-yektamy-otsinyuvannya-zvit-otsinochnoyi-komisiyi/>.

51 Павло Демчук, *Як планують посилити самостійність САП: юридичний аналіз* [The plans to strengthen SAPO independence: a legal analysis], Transparency International Ukraine, September 22, 2023, <https://ti-ukraine.org/news/yak-planuyut-posylyty-samostijnist-sap-yurydychnyj-analiz/>.

52 Верховна Рада підтримала збільшення штату НАБУ, посилення незалежності САП зміни до системи е-декларування [The Verkhovna Rada supported increase in NABU staff, strengthening SAPO independence, changes to e-declaration system], Transparency International Ukraine, November 21, 2023, <https://ti-ukraine.org/news/verhovna-rada-pidtrymala-zbilshennya-shtatu-nabu-posylennya-nezalezhnosti-sap-zminy-do-systemy-e-deklaruvannya/>.

53 Технічна оцінка Національного Антикорупційного Бюро України: 2023 рік [Technical assessment of the National Anti-Corruption Bureau of Ukraine: 2023], https://nabu.gov.ua/site/assets/files/47003/tekhnichna_otcinka_nabu_2023_ua-1.pdf.

discrepancies between by-laws and the concept of the law, as well as perform a systematic review of such procedures and regulations.

In April 2024, a single-person consideration of criminal proceedings in the HACC was also introduced, albeit with some exceptions. This will partially reduce the load on the Anti-Corruption Court.⁵⁴

Also, effective anti-corruption justice is currently hampered by procedural problems, for example, issues with the violation of the jurisdictions of NABU, SAPO and HACC.⁵⁵ It is crucially important that the HACC considers high-ranking corruption cases, and not other courts, whose independence is questionable. It is also necessary to ensure that, with the long-awaited resumption of mandatory reporting by political parties, matters of illegal party contributions and unreliable reporting are brought under the remit of NABU.

What else should be done?

- The NACP should develop and present a plan for implementing the recommendations arising from the first external audit. It is also important to conduct effective and independent external audits of the ARMA, NABU and SAPO, taking into account the experience of conducting the NACP audit.
- It is critically important to provide all anti-corruption infrastructure bodies with sufficient human resources for the quality performance of their functions, as well as to comprehensively evaluate and prioritise their areas of work.
- Law enforcement agencies and prosecutors should ensure compliance with the NABU's investigative jurisdiction and the HACC's jurisdiction in cases of high-ranking corruption. NABU should also be empowered to deal with cases of illegal contributions and unreliable reporting by political parties.

Anti-Corruption Policy and Corruption Prevention

On March 4, 2023, the Cabinet of Ministers of Ukraine approved the State Anti-Corruption Program (SACP).⁵⁶ Prior to that, the National Agency held a number of public discussions and approvals of the SACP with 140 interested authorities.

The SACP is a comprehensive document that covers key corruption sectoral problems through a description of these problems and a set of measures to address them. Apart from the very content of anti-corruption measures (exceeding 1,000 in number), the document also defines the institutions to implement them (state bodies, local self-government bodies, courts, etc.), deadlines and performance indicators, as well as the sources and amounts of financial resources necessary for the implementation of measures.

54 *Закликаємо депутатів не приймати законопроект 11130 щодо «полегшення» роботи ВАКС [We call on MPs not to adopt draft law 11130 to facilitate the work of the HACC]*, Transparency International Ukraine, April 23, 2024, <https://ti-ukraine.org/news/zaklykayemo-deputativ-ne-prijmaty-zakonoprojekt-11130-shhodo-polegshennya-roboty-vaks/>.

55 *Спроможні, ефективні й незалежні: аналіз антикорорганів [Capable, effective and independent: the analysis of the anti-corruption institutions]*, Transparency International Ukraine, October 12, 2023, <https://ti-ukraine.org/research/spromozhni-efektyvni-j-nezalezhni-analiz-antykorpustsijnyh-organiv/>.

56 *Кабінет Міністрів України: Постанова від 4 березня 2023 р. № 220 Про затвердження Державної антикорупційної програми на 2023–2025 роки [The Cabinet of Ministers of Ukraine: Resolution of March 4, 2023, No. 220, On Adopting the State Anti-Corruption Programme for 2023–2025]*, <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text>.

Subsequently, after approving the SACP, the NACP also launched an official monitoring system for its implementation. According to the monitoring data, as of April 18, 2024, only 12.6% of the SACP measures were implemented, and 6.1% of the measures were partially implemented.⁵⁷ Demonstrably, the NACP lacks the ability to issue an order against the head of the SACP implementing body if such a body or official does not implement or improperly implements the anti-corruption measures of the programme. Non-compliance with the agency's order results in administrative liability.

After February 24, 2022 it became clear that the SACP did not cover some of the issues. For example, the problems of the transport industry (sea, air, rail and road transport), which in terms of export-import operations during the full-scale invasion of the Russian Federation is crucially important for the economy of Ukraine. The existing SACP provisions, for example, on roadside vehicle inspections, do not fully reflect the problems and risks associated with corruption in the transport sector. Therefore, **it is advisable to finalise the document taking into account new challenges.**

As mentioned earlier, a law came into force in October 2023 that reinstated the obligation for officials to declare their assets and the NACP's right to financial control. In this regard, the NACP has made significant efforts to provide exhaustive explanations on declarants' various life circumstances. Furthermore, some civil servants are required to submit declarations for the last three years when they have not submitted them.⁵⁸ However, such scope of information can also have the opposite effect, when it is difficult for an official to find the necessary information, so it is advisable to review and optimise the explanations on the agency's website.

Lifestyle monitoring (LSM) during the suspension of e-declaration audits remained the only relevant type of financial control that the NACP could exercise. According to the agency, at the end of 2023, 552 lifestyle inspections were carried out, according to which 31 materials on the establishment of signs of unexplained asset origin were submitted to the SAPO, and 13 to other anti-corruption entities. The materials contain signs of a criminal corruption crime (illicit enrichment).⁵⁹ It shows that a very small proportion of the monitoring materials can be used in the future, without the need for revision.

Thus, this measure of financial control has yet to demonstrate its potential after the final decision of the court in criminal or civil proceedings, notification of suspicion or even the initiation of proceedings or its referral to the court.

After almost four-year delay, in the autumn of 2023, the NACP approved the procedure for holding the LSM and registered this document with the Ministry of Justice,⁶⁰ which is a positive step. However, the

57 *Результати моніторингу та оцінки ефективності виконання державної антикорупційної програми на 2023–2025 роки* [Results of monitoring and evaluation of the effectiveness of the State Anti-Corruption Programme for 2023–2025], https://dap.nazk.gov.ua/module/?a%5Bstatus%5D=&a%5Bmain_organ%5D=&a%5Bid%5D=&a%5Bbydate%5D=

58 *Декларування НАЗК* [NACP declarations], NACP, <https://wiki.nazk.gov.ua/category/deklaruvannya/>.

59 *Розбудова доброчесної влади та справедливого суспільства – ключ до перемоги і процвітання України: Робота НАЗК 2020–2023* [Building a virtuous government and a just society is the key to Ukraine's victory and prosperity: NACP's work 2020–2023], https://drive.google.com/drive/folders/1JUSgAaVSnmxqdW1WOP7sbCvms08u_XTQ.

60 *Національне агентство з питань запобігання корупції: НАКАЗ 26.10.2023 № 236/23 Про затвердження Порядку здійснення моніторингу способу життя суб'єктів декларування* [National Agency on Corruption Prevention: Order 26.10.2023 No. 236/23 On Approval of the Procedure for Monitoring the Lifestyle of Declaring Entities], <https://zakon.rada.gov.ua/laws/show/z1873-23#Text>.

content of this regulation, despite public criticism, has not undergone conceptual changes.⁶¹ The biggest reservation to the adopted procedure is the excessive interference of this means of control in the private life of declarants, as the document does not regulate the specific terms of the LSM, does not provide for mandatory auto-distribution of monitoring between NACP employees, while the agency's powers themselves are defined in a too general way and should be narrowed.

It is also worth noting that, in addition to approving the LSM procedure, the NACP also abandoned the recommendatory nature of selecting declarations for complete verification, approving the relevant procedure in December 2023.⁶² It was met with widespread support of the experts, as the problem of replacing the mandatory procedures of the NACP with recommendations was also indicated in the report on the results of the first independent audit of the effectiveness of the agency's performance.⁶³

What else should be done?

- The Cabinet of Ministers and the NACP should make changes to the SACP considering the new challenges related to the full-scale war.
- It is advisable to review the relevance and optimise the array of explanations currently provided on the NACP website.
- The sublegislative regulation of the NACP of the new lifestyle monitoring procedure should be revised in order to avoid excessive interference in the declarants' private life.

Criminal and Other Liabilities for Corruption

Ukraine fulfils its international obligations to criminalise corruption. Thus, criminal liability is established for active and passive bribery, abuse of office, misappropriation of property, abuse of influence, false asset declaration and illicit enrichment.

Dedicated bodies – the NABU and the SAPO – are responsible for holding high-ranking corruption accountable. They have proven highly efficient even after the full-scale invasion of the Russian Federation. In the second half of 2023, these bodies served 120 persons with notices of suspected crimes and 86 persons were referred to court.⁶⁴

For example, in July 2023, according to investigation efforts, MP Liudmyla Marchenko, together with her assistant, offered citizens a 'service' to ensure a positive decision of a regional military administration

61 Олександр Калітенко, *НАЗК впорядкувало моніторинг способу життя декларантів. Це гепі-енд чи чергова профанація?* [The NACP has regulated the monitoring of declarants' lifestyles. Is it a happy end or another profanation?], Transparency International Ukraine, March 5, 2024, <https://ti-ukraine.org/news/nazk-vporядkuvalo-monitoryng-sposobu-zhyttya-deklarativ-tse-gepi-end-chy-cherгова-profanatsiya/>.

62 *Національне агентство з питань запобігання корупції: Наказ 07.12.2023 № 284/23 Про затвердження Порядку відбору декларацій осіб, уповноважених на виконання функцій держави або місцевого самоврядування, для проведення повної перевірки та черговості такої перевірки на підставі оцінки ризиків* [National Agency on Corruption Prevention: Order of 07.12.2023 No. 284/23 On Approval of the Procedure for Selecting Declarations of Persons Authorised to Perform State or Local Government Functions for the Complete Verification and the Priority of Such Verification Based on Risk Assessment], <https://zakon.rada.gov.ua/rada/show/z2146-23#Text>.

63 *Зовнішня незалежна оцінка ефективності діяльності Національного агентства з питань запобігання корупції: Звіт оцінки, затверджено Комісією з проведення незалежної оцінки ефективності діяльності Національного агентства з питань запобігання корупції 24 липня 2023 року* [External Independent Evaluation of the Performance of the National Agency on Corruption Prevention: Evaluation Report, approved by the Commission for Independent Evaluation of the National Agency on Corruption Prevention on July 24, 2023], <https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/zvit-komisiyi-z-provedennia-nezalezhnoi-otsinky-efektyvnosti-diiialnosti-nazk.pdf>.

64 *Звіт: друге півріччя 2023 року* [Report: second half of 2023], NABU, <https://nabu.gov.ua/activity/reports/report-zvit-druge-pivrichchya-2023-roku/>.

to grant permission to travel outside Ukraine and enter the relevant information into the Path information system. The cost of the former favour amounted to USD 6,000, the latter USD 5,300.⁶⁵

In September 2023, the former ultimate beneficial owner of the financial institution, the ex-head of the Dnipropetrovsk Regional State Administration Ihor Kolomoiskyi, together with other managers of the bank, were served notices of suspected crimes from the NABU and the SAPO. The scheme of the crime, which in 2015 was organised by the then beneficiary, involved the preparation of a false undertaking by the bank to pay more than UAH 9.2 billion to one of its controlled companies for the alleged redemption of its own bonds at an inflated value.⁶⁶

Also in April 2024, individuals were exposed for seizing UAH 160 million from state and international funds allocated for the restoration of Kharkiv. One of the influential businessmen, in collusion with the first deputy general director of UC Kharkiv Heat Networks, secured the conclusion of direct contracts with companies controlled by him for the supply of pipe products, windows and technical salt. Later the 'winner of the tender', through a number of shell companies, purchased products from the manufacturer and resold them to the UC at over double the price.⁶⁷

In a large number of cases, NABU detectives commission economic analyses. This is due to the fact that the subjects use complex schemes of property acquisition, in particular, due to the overestimation of its value in procurement procedures. However, the existing expert institutions are often overloaded, with experts subjected to undue influence. **Therefore, it is necessary to improve the mechanisms for involving experts in top-corruption proceedings by creating a separate specialised institution.**

In addition, secret investigative methods are used in NABU cases, for example, wiretapping, which can currently be technically carried out only by the National Police and the Security Service. **The existence of an additional link in the performance of this covert investigative action negatively affects the secrecy of the investigation.**

The High Anti-Corruption Court also shows an increase in the consideration of criminal cases. Thus, the percentage of cases considered (out of the total number of pending cases) increased from 20.9% (in 2021) to 24.7% (in 2023).⁶⁸

The number of HACC sentences also increased from 21 (in 2020) to 54 (in 2023).⁶⁹

For example, in April 2024 the HACC found ex-MP Oleksandr Onyshchenko guilty in absentia of seizing UAH 740 million during the production and sale of natural gas by Ukrgazvydobuvannya and sentenced him to 15 years in prison and confiscation of property.⁷⁰

65 *НАБУ і САП демонструють потужні результати у другому півріччі 2023 року [NABU and SAPO show strong results in the second half of 2023]*, NABU, <https://reports.nabu.gov.ua/investigations/>.

66 *Ibid.*

67 *На Харківщині викрито 7 осіб, які заволоділи 160 млн грн, виділених на відновлення інфраструктури [7 people who embezzled UAH 160 million allocated for infrastructure restoration were exposed in Kharkiv region]*, САП, April 11, 2024, https://t.me/sap_gov_ua/2150.

68 *Путівник антикорупційною статистикою [The Guidebook on Anti-Corruption Statistics]*, NACP, <https://nazk.gov.ua/uk/koruptsiyna-statystyka/>.

69 *Ibid.*

70 *Оксана Копійчук, Вже не на коні: ВАКС засудив Онищенка до 15 років тюрми [No longer on a high horse: HACC sentences Onishchenko to 15 years in prison]*, Transparency International Ukraine, April 5, 2024, <https://ti-ukraine.org/news/vzhe-ne-na-koni-vaks-zasudyv-onyshhenka-do-15-rokiv-tyurmy/>.

The HACC judges also found former judge of the commercial court Volodymyr Bulka guilty of obtaining an improper advantage of EUR 5,000. NABU detectives exposed him back in 2018.⁷¹

Long duration of corruption trials is often explained by the delay on the part of the defence.

The criminal procedural legislation of Ukraine obliges the court to discontinue criminal proceedings if the legal time limit for consideration of the case has expired. Therefore, sometimes the court discontinues cases that are received 10 days after the deadline. This negates the task of criminal proceedings and renders in vain the work done in the investigation to gather evidence.⁷²

Most of the acquittals in 2022 and 2023 concerned criminal proceedings in which the defendants were charged with committing criminal offences under Art. 191 (misappropriation of property) and Art. 364 (abuse of office) of the Criminal Code of Ukraine. Therefore, it is necessary to monitor the problems that are related to gathering evidence and legal assessment of such acts.

As for administrative liability for corruption, between 2020 to 2023, the NACP issued and sent to court 237 indictments on crimes related to corruption of high-ranking officials.⁷³ However, only 22 high-ranking officials were brought to justice under these indictments.

This disappointing statistic is explained by the fact that currently the administrative process is marred by a number of serious shortcomings that prevent the effective consideration of indictments and holding the offenders accountable. What is particularly important is that such indictments are presented in court not by NACP employees, but by prosecutors. In addition, only the offender has the right to challenge the decision of the court of first instance, unlike a representative of the prosecutor's office or NACP employee.

Despite these shortcomings, the NACP continues to actively work to prosecute officials who violated anti-corruption legislation. Recently, the agency issued an indictment against the deputy head of the Office of the President Rostyslav Shurma for violating requirements for the prevention and resolution of conflicts of interest.⁷⁴

Also, due to the violation of restrictions on the receipt of gifts by civil servants, the NACP brought an indictment against the former deputy head of the National Police of Ukraine.⁷⁵

71 ВАКС оголосив обвинувальний вирок судді Госпсуду у відставці [HACC announces guilty verdict against a retired Commercial Court judge], Слово і діло, March 13, 2024, <https://www.slovovidilo.ua/2024/03/13/novyna/polityka/vaks-oholosyv-obvynuvalnyj-vyrok-suddi-hospssudu-vidstavci>.

72 Павло Демчук, 5 запитань про «поправки Лозового»: в чому суть проблеми? [5 questions about Lozovyi's amendments: what is the essence of the problem?], Transparency International Ukraine, December 8, 2023, <https://ti-ukraine.org/blogs/5-zapytan-pro-poravky-lozovogo-v-chomu-sut-problemy/>.

73 Розбудова доброчесної влади та справедливого суспільства – ключ до перемоги і процвітання України: Робота НАЗК 2020–2023 [Building a virtuous government and a just society is the key to Ukraine's victory and prosperity: NACP's work 2020–2023], https://drive.google.com/drive/folders/1JUSgAaVSnmxqdW1W0P7sbCvms08u_XTQ.

74 НАЗК склало протокол про адміністративні правопорушення стосовно заступника керівника Офісу Президента України Ростислава Шурми [The NACP draws up an indictment on administrative crimes against the deputy head of the Office of the President of Ukraine Rostyslav Shurma], NACP, February 23, 2024, <https://nazk.gov.ua/uk/novyny/nazk-sklalo-protokol-pro-administratyvni-pravoporushennya-stosovno-zastupnyka-kerivnyka-ofisu-prezydenta-ukrainy-rostyslava-shurmy/>.

75 НАЗК склало протокол про адміністративні порушення стосовно екззаступника голови Нацполіції [The NACP draws up an indictment on administrative crimes against the ex-deputy head of the National Police], NACP, March 14, 2024, <https://nazk.gov.ua/uk/nazk-sklalo-protokol-pro-administratyvni-porushennya-stosovno-ekszastupnyka-golovy-natspolitsii/>.

Disciplinary action is also worth mentioning. For the effective implementation of the Anti-Corruption Strategy in the SACP, it is important to provide the NACP with the right to make orders for their improper implementation with the initiation of disciplinary liability. Unfortunately, the agency was deprived of such a means of influence at the stage of developing these documents.

What else should be done?

- The parliament and the government should strengthen the expert support of the NABU by regulating the access of NABU employees to expert analysis, as well as creating a dedicated expert institution. At the same time, it will be necessary to ensure independence of experts and management both from the NABU and from third-party participants.
- The SSU should ensure that NABU is able to conduct wiretapping without the mediation of the SSU.
- The parliament should amend the CPC of Ukraine removing the obligation of the court to discontinue criminal proceedings due to the expiry of the pre-trial investigation period (Art. 284, section 1, paragraph 10 of the Criminal Procedure Code of Ukraine), and to grant the court the right to perform such actions in case the rights of the defendant to consider criminal proceedings within a reasonable time are violated.
- The Plenum of the Supreme Court should provide explanations of advisory nature on the application of legislation when courts pass judgements in cases of criminal prosecution of persons guilty of corruption and other related crimes.
- The NACP should be given the opportunity to participate in the judicial consideration of indictments on administrative crimes and appeal court decisions in such cases, as well as to make orders for improper implementation of the anti-corruption strategy and the SACP with the initiation of disciplinary liability.

Recovery and Reconstruction

Reducing Corruption Risks

2023 marked significant progress in the recovery of Ukraine from the consequences of the war, when the Fund for the Elimination of the Consequences of Armed Aggression was launched. This is a dedicated state budget fund, which covers the following areas:

- Construction and reconstruction of public buildings, structures and shelters,
- Restoration of destroyed settlements,
- Construction and reconstruction of critical infrastructure facilities and their protection,
- Compensation for owners of destroyed and damaged residential buildings and others.

At that time, the fund was financed from two sources:

- Forcibly seized and confiscated Russian assets subject to sanctions,
- 50% of the National Bank of Ukraine contributions to the state budget.

A total of UAH 61.7 billion (approximately USD 1.6 billion) has been transferred to the fund in 2023, of which more than 420 reconstruction and other projects have been approved for funding, totalling UAH 58.2 billion.

Since the number of submitted projects will certainly exceed the available financial resources, accountable and transparent prioritisation remains a decisive factor to ensure protection from political or subjective influence in the decision-making process.

The methodological recommendations approved by the government in October 2023 and developed with the broad participation of civil society meet these requirements.⁷⁶ An important next step would be to make this methodology mandatory and enshrine it in law.

However, at the end of January 2024, the Cabinet of Ministers granted itself the authority to allocate funds from the Elimination Fund for urgent financing of any projects related to overcoming the consequences of armed aggression, solely at the request of the applicant. **This is a significant step backwards in ensuring transparent and high-quality prioritisation of recovery projects.** Exceptions to the rules may be valid in emergency situations, for instance, overcoming the consequences of Kakhovka Hydroelectric Power Plant destruction, but most financial resources should be allocated according to clear rules.

In the state budget for 2024, the budget expenditures for the restoration of the country from the consequences of the full-scale invasion were significantly reduced and, consequently, the Elimination Fund did not receive additional funding from the state budget. Once the funds ran out in 2023, it will have only one source of financing – forcibly seized and confiscated Russian assets subject to sanctions.

For a long time, the sale of assets subject to sanctions was limited due to imperfect legislative regulation.⁷⁷ However, in February the parliament adopted amendments and unblocked the possibility of selling more than 700 confiscated facilities managed by the State Property Fund of Ukraine.⁷⁸ **These funds can and must work for the needs of the restoration of Ukraine.**

It is also important to ensure the flow of funds directly to the Elimination Fund, as considerable efforts have been made to eliminate its vulnerability to corruption. Alternative funding mechanisms have not yet achieved the same level of transparency and reliable reporting.

Recommendations

- The government should adopt a mandatory methodology for prioritising projects financed from the state budget, with exceptions to the established procedures, provided that such projects are fully transparent and comprehensively justified.
- The parliament should enshrine in law the requirements for prioritising restoration projects, while the methodology for their implementation should be articulated in a by-law approved by the government.

⁷⁶ *Наказ Міністерства розвитку громад, територій та інфраструктури України: Про затвердження методичних рекомендацій щодо пріоритизації проектів ліквідації наслідків, спричинених збройною агресією Російської Федерації проти України № 964 [Order of the Ministry for Communities, Territories and Infrastructure Development of Ukraine: On Approval of Methodological Recommendations for Prioritising Projects to Eliminate Consequences Caused by the Armed Aggression of the Russian Federation against Ukraine No. 964], <https://mtu.gov.ua/documents/2355.html>.*

⁷⁷ Андрій Швадчак, *Реалізація підсанкційних активів під загрозою [Sale of sanctioned assets is under threat]*, Transparency International Ukraine, June 29, 2023, <https://ti-ukraine.org/news/realizatsiya-pidsanktsijnyh-ob-yektiv-pid-zagrozoju/>.

⁷⁸ *Рада розблокувала реалізацію конфіскованих підсанкційних активів [The parliament unblocked the sale of confiscated assets under sanctions]*, Transparency International Ukraine, March 18, 2024, <https://ti-ukraine.org/news/rada-rozblokuvala-realizatsiyu-konfiskovanyh-pidsanktsijnyh-aktyviv/>.

- An independent anti-corruption assessment of any new recovery financing mechanisms should be ensured, with mandatory implementation of measures to mitigate the identified risks.

Transparency of Recovery and Strategic Planning

Since 2023, the DREAM system (Digital Restoration Ecosystem for Accountable Management) has been used to submit recovery projects for public funding.⁷⁹

The DREAM Ecosystem is an innovative digital tool designed to ensure transparency and accountability of recovery processes in Ukraine. DREAM acts on the principle of ‘everyone sees everything’, collecting, organising and publishing open data at all the stages of project implementation – from planning and approval to financing, procurement, construction and reporting.

Currently the system registered more than 3,300 projects with a confirmed amount of funding, including donor funding, amounting to UAH 81 billion.

Although any initiator of the recovery project can already use the system, it is – in accordance with a government decree – currently being implemented only as a pilot project. Therefore, in order to make sure that the use of the system is mandatory for all initiators of recovery projects, the need for its use must be enshrined in law.

In 2023, public funding was mostly allocated to individual projects for the restoration of critical social and public infrastructure. But, as soon as the process begins to move from emergency repairs to the implementation of the principle ‘rebuild better than it was’, Ukraine would benefit from a national-level strategy that would outline the goals and approaches to recovery.

The absence of such a document can lead to uncoordinated and therefore inefficient allocation of scarce resources and corruption.

Such a document should be developed in close cooperation with communities throughout the country, especially those who suffered the most damage from Russian aggression.

Ukraine has already started discussions on the synchronisation of strategic planning and recovery policies related to the update of urban development plans initiated by the government.⁸⁰

What else should be done?

- The parliament should legislate the mandatory use of the DREAM system, regardless of the source of funding used by the government.
- The government needs to determine the minimum requirements for the completeness of project information entered into the system, and the parliament needs to establish responsibility for non-compliance with these requirements.

⁷⁹ Цифрова екосистема для підзвітнього управління відновленням DREAM [DREAM Digital Restoration Ecosystem for Accountable Management], <https://dream.gov.ua/ua>.

⁸⁰ Проєкт концептуальної записки оновлення архітектури планувальних документів [Draft concept note for updating the architecture of planning documents], https://docs.google.com/document/d/1BfBwflQeJeBmoRNuHPcK4Rd3KaK9HvHz4vbeNw5lfkI/edit?fbclid=IwAR1_IUve3Gn2DzsE2nXoDd6Wo0KnjbtqIGNBeH4EoTw_m1GgaYOkef4ZOqg.

- The government and the parliament need to synchronise the existing documents on reconstruction planning at the local level, including the comprehensive restoration of the destroyed settlements.
- The government should launch the process of developing a national recovery plan in cooperation with the most affected communities.

Restoration Audit and Control

Along with the increase in budget expenditures for recovery, which come from both international and national sources, the role of audit and financial control over recovery financing is also growing. The Accounting Chamber (AC) and the State Audit Service have the key mandate in these areas.

The task of the Accounting Chamber is to audit the receipt and use of state budget funds. **Unfortunately, this institution operates under constraints that do not yet allow it to play an important role in the recovery process.**

First of all, this is due to the significant political influence on the Accounting Chamber by the parliament, which is manifested at the stage of appointing AC members. The current procedure does not meet the standards established for the selection of candidates for anti-corruption bodies in Ukraine.

Another problem is the lack of a clear delineation of powers between the Accounting Chamber and the State Audit Service in terms of financial audits. Such duplication of functions leads to inefficiency and inconsistency in the implementation of control over the use of funds.

In addition to these limitations, what needs further improvement is the quality of audit reports, as well as the implementation of the Accounting Chamber's recommendations by the entities it controls.

Among the measures of state financial control carried out by the State Audit Service, only one – procurement monitoring – is of preventive character. It is carried out publicly in the Prozorro system, quickly (up to 15 working days), refers to one specific procurement, and is aimed at eliminating violations at the early stages and not holding the buyer accountable if violations are eliminated.

In practice, contrary to the preventive goal, 70% of monitoring begins after the conclusion of a procurement contract. This entails risks of embezzlement of funds and renders the performance of the contract unpredictable.

Since procurement is one of the key recovery elements, the monitoring mechanism should be improved in order to prevent irregularities in this area. Among other issues, it is necessary to perform the monitoring procedure mainly before the conclusion of a procurement contract. Also, high-value tenders need to be monitored, with an updated, effective system of risk indicators for selecting a supplier implemented for small contracts.

What else should be done?

- The parliament should:
 - ◊ Improve the procedure for selecting Accounting Chamber members, bringing it in line with the successful model used in anti-corruption bodies (in particular, by creating a committee with the involvement of international experts for transparent evaluation of candidates for integrity and competence),

- ◇ Consolidate the legal status of state auditors, regulate their funding, while also setting out rules for competitions for their positions, requirements for their certification, professional development and rules for holding them liable to disciplinary action,
- ◇ Separate the functions of the Accounting Chamber and the State Audit Service.
- The Accounting Chamber should:
 - ◇ Implement a risk-based approach to audit planning,
 - ◇ Standardise the rotation of audit areas between the members of the body,
 - ◇ Strengthen monitoring of the implementation of recommendations by the controlled entities.
- The State Audit Service should focus on prevention at the expense of post-control activities by improving the monitoring mechanism for public procurement.

Forfeiture of Corruption-Related and Russian Assets

The Ukrainian model of asset forfeiture in criminal proceedings meets the requirements of the UN Convention against Corruption.⁸¹ Despite ongoing discussion in Ukrainian society on the adequacy of various forms of asset forfeiture, it still constitutes one of the key indicators of the efficiency of anti-corruption bodies.

Since 2014, Ukraine has used forfeiture in corruption cases as a means of punishing perpetrators and depriving them of the use of criminal assets. To this end, in 2016 forfeiture in criminal proceedings was clearly divided into asset forfeiture as a punitive measure and special forfeiture.⁸²

Most of the articles of the Criminal Code of Ukraine concerning corruption crimes provide for confiscation as a punitive measure. Therefore, in almost a third of the judgements of the High Anti-Corruption Court, the punishment imposed is the forfeiture of the offender's assets.⁸³

At the same time, special forfeiture, introduced in 2016, has recently undergone significant changes, with the courts applying it in corruption cases. Special forfeiture is actively used to confiscate assets of criminal origin.

The NABU and the SAPO, as key law enforcement agencies in the fight against high-ranking corruption, declare that owing to their work, since 2015, they have managed to recover about UAH 9 billion.⁸⁴ And in 2023 alone, assets worth almost UAH 12 billion,⁸⁵ were seized as collateral, part of which were transferred to the effective management of ARMA and entered into the Unified Register of Seized Assets.

81 Конвенція Організації об'єднаних націй проти корупції [United Nations Convention against Corruption], https://zakon.rada.gov.ua/laws/show/995_c16#Text.

82 Павло Демчук, *Що таке конфіскація майна і як її не переплутати з чимось іншим? [What is forfeiture of property and how not to confuse it with something else?]*, Transparency International Ukraine, January 31, 2023, <https://ti-ukraine.org/news/shho-take-konfiskatsiya-majna-i-yak-yiyi-ne-pereplutaty-z-chymos-inshym/>.

83 *Як ефективно конфіскувати майно в топкорупціонерів [How to effectively forfeit property from corrupt high-ranking officials]*, Transparency International Ukraine, March 25, 2024, <https://ti-ukraine.org/research/yak-efektyvno-konfiskuvaty-majno-v-topkoruptsioneriv/>.

84 *Звіт за II півріччя 2023 року [Report for the second half of 2023]*, NABU, <https://nabu.gov.ua/site/assets/files/47192/zvit2023p.pdf>.

85 *Про зареєстровані кримінальні правопорушення та результати їх досудового розслідування [On registered criminal offences and the results of their pre-trial investigation]*, Office of the Prosecutor General, <https://gp.gov.ua/ua/posts/pro-zareystrovani-kriminalni-pravoporusshennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>.

From 2019 to 2023, the High Anti-Corruption Court alone, which hears the most high-profile corruption cases, has ruled on special forfeiture in 22 sentences. During this time, the court managed to recover criminal funds amounting to UAH 370 million,⁸⁶ out of which UAH 330 million in 2023. This demonstrates a huge increase in the effectiveness of special forfeiture.

Despite such a rapid growth, the authorities are not using the full potential of this criminal measure, as the process of proving the illicit origin of assets is very complicated and it is not always carried out in due way. For its part, the State Enforcement Service is not empowered to search for and prove the illicit origin of such assets.⁸⁷

Asset confiscation abroad also remains a problem. Since Ukraine's independence, out of 19 requests for international legal assistance in this area, only 2 were satisfied.⁸⁸ Most foreign states do not use asset forfeiture as a punishment in their legislation, so they do not have the right to enforce it on their territory.

At the same time, it does not limit the courts in issuing appropriate sentences with the further prospect of their execution on foreign territory. A recent example with the conviction of former MP Oleksandr Onyshchenko, who has significant assets outside Ukraine, proves serious progress in the search, arrest and forfeiture of assets abroad.⁸⁹

In this regard Ukraine strengthens the work of joint investigative teams to combat cross-border corruption, however, neglects a number of tools, in particular asset-sharing agreements.

One of the new lines of action of the Ukrainian anti-corruption authorities is the forfeiture of unjustified assets of officials (the so-called 'civil forfeiture'). It applies to relatively small assets, the legal origin of which public officials are unable to explain.

Civil forfeiture cases are heard by the HACC, and the SAPO must prove in a civil trial that the person is unable to document the origin of the assets. Since 2019, the HACC has ruled in 10 cases of this type.⁹⁰

The issue of confiscating Russian assets after the full-scale invasion has become a new challenge for Ukraine. To this end two new forfeiture mechanisms were created in the spring of 2022.

The first one concerns the assets of Russia as a state and its legal entities (residents). It is regulated by the Law on the Main Principles of Forcible Seizure in Ukraine of Objects of Property Rights of the Russian Federation and its Residents.⁹¹ The seizure of property begins with the preparation by the

86 *Статистичні звіти ВАКС про здійснення правосуддя [HACC statistical reports on the administration of justice]*, High Anti-Corruption Court, <https://hcac.court.gov.ua/hcac/gromadyanam/reports/>.

87 *Як ефективно конфіскувати майно в топкорупціонерів [How to effectively forfeit property from corrupt high-ranking officials]*, Transparency International Ukraine, March 25, 2024, <https://ti-ukraine.org/research/yak-efektyvno-konfiskuvaty-majno-v-topkoruptsioneriv/>.

88 *Як повертати злочинні активи з-за кордону: що треба змінити в українському законодавстві [How to recover criminal assets from abroad: what should be changed in the Ukrainian legislation]*, Transparency International Ukraine, November 23, 2023, <https://ti-ukraine.org/research/yak-povertaty-zlochynni-aktyvy-z-za-kordonu/>.

89 *Ibid.*

90 *Вищий антикорупційний суд [High Anti-Corruption Court]*, <https://first.vaks.gov.ua/>.

91 *Закон України: Про основні засади примусового вилучення в Україні об'єктів права власності Російської Федерації та її резидентів [The Law of Ukraine on the Basic Principles of Forcible Seizure in Ukraine of Property of the Russian Federation and its Residents]*, <https://zakon.rada.gov.ua/laws/show/2116-20#Text>.

Cabinet of Ministers of a draft decision with a list of assets, after which this decision must be adopted by the National Security and Defense Council and put into effect by presidential decree.

Through this mechanism Ukraine seized the assets of two subsidiaries of Russian banks. Out of these assets more than UAH 8.8 billion was transferred to the Fund for the Elimination of the Consequences of Armed Aggression of the Russian Federation in 2022 and more than UAH 17 billion in 2023.⁹²

The main danger lies in the fact that the procedure does not provide for any mechanism protecting the rights of persons (for example, through a lawsuit) whose property will be seized. This can potentially be recognised as a violation of Art. 13 of the European Convention on Human Rights, which guarantees the right to an effective remedy.

The second mechanism is the forfeiture of assets through the imposition of sanctions on their owners in accordance with the Law on Amendments to Certain Laws of Ukraine on Improving the Effectiveness of Sanctions Related to the Assets of Individuals.⁹³ This forfeiture is aimed at individuals and legal entities that assist Russia in carrying out aggression against Ukraine without reference to their citizenship or residence.

Such confiscation is possible only if the assets of the sanctioned person are blocked in advance. Subsequently, the Ministry of Justice prepares and submits a statement of claim to the HACC on the application of a sanction to a person in the form of asset forfeiture. The case is to be considered within a 30-day period from the date the claim was received. Five days are given for filing a response, as well as for filing an appeal to the HACC Appeals Chamber. The appeal period starts from the date of the announcement of the ruling or the publication of the decision on the official website of the HACC. After forfeiture the assets are transferred to the State Property Fund for management and disposal.

Currently, most of the assets are confiscated under this mechanism – more than 1,000 assets, including real estate, funds, transport, corporate rights and other valuables. It allowed the forfeiture of the assets of former President of Ukraine Viktor Yanukovich, Russian oligarchs Oleh Deripaska, Volodymyr Yevtushenkov, Mikhail Shelkov and others.⁹⁴

Despite the judicial procedure specified in the law that precedes asset forfeiture, this mechanism also includes some risks. Thus, the statutory deadline for filing a response to the claim and appealing the decision of the first instance is too short. And this may become the basis for recognising the trial as inconsistent with Art. 6 (Right to a Fair Court) and Art. 14 (Right to an Effective Remedy) of the European Convention on Human Rights.

Another important element in the issue of confiscating Russian assets in favour of the Ukrainian state is potential forfeiture through criminal proceedings. This way is the least risky in terms of potential appeal, as it has been used in national and world practice for a long time. But the problem is

92 Як конфіскувати російські активи в Україні? [How can Russian assets be confiscated in Ukraine?], Transparency International Ukraine, https://russian_assets.pravda.com.ua/.

93 Пропозиції Президента України до Закону «Про внесення змін до деяких законів України щодо підвищення ефективності санкцій, пов'язаних з активами окремих осіб» [Proposals of the President of Ukraine to the Law on Amendments to Certain Laws of Ukraine on Improving the Effectiveness of Sanctions Related to Assets of Individuals], <https://itd.rada.gov.ua/billInfo/Bills/Card/39275>.

94 Як конфіскувати російські активи в Україні? [How can Russian assets be confiscated in Ukraine?], Transparency International Ukraine, https://russian_assets.pravda.com.ua/.

that Ukraine, unlike the United States, has not yet criminalised the circumvention of sanctions, which would allow confiscating the assets of perpetrators, which is already done by allies.⁹⁵

What else should be done?

- Law enforcement agencies and prosecutors should intensify their efforts to trace and prove the criminal origin of the property to enable special forfeiture.
- The government should increase the transparency of the work and the capacity of the State Enforcement Service to carry out asset forfeiture.
- Law enforcement agencies and prosecutors should intensify the activities of joint investigative teams and use asset-sharing agreements in this context.
- The parliament needs to align with international legal standards the regulations on the mechanism for the forcible seizure of property of the Russian Federation and its residents, as well as the sanction mechanism for the forfeiture of Russian assets.
- The parliament should criminalise the circumvention of sanctions by sanctioned persons, envisaging assets forfeiture as a punishment for this crime.

Conclusions and Key Steps

It can be summarised that since the Revolution of Dignity Ukraine has managed to achieve significant success in the development of anti-corruption infrastructure and institutions. The driving force behind the changes in 2014 was the desire of Ukrainian society to embrace European values and, in particular, the desire to conclude an association agreement with the European Union.

Taking into account European standards, anti-corruption bodies were created and the most successful public procurement reform to date was launched, administrative services were digitalised, as well as collection and disclosure of information. Also, the cooperation of the public with state bodies through public councils and expert examinations has significantly improved.

From 2014 until the full-scale Russian invasion, Ukraine moved at its own pace in the processes of democratisation, considering the needs of society and international partners. However, the attack of a terrorist country on the entire territory of Ukraine led to a short-term suspension of the progress in many reforms: many registers and databases were closed due to security reasons, state and local authorities were forced to repurpose and adapt to the challenges of the war.

Once again, what the Ukrainians were fighting for in 2014 – the desire to become part of the European Community – spurred the restart of the reforms. The requirements that the European Commission put forward to Ukraine helped accelerate the activities: after more than three years of delay, the 2021–2025 Anti-Corruption Strategy was adopted, protracted competitions for the positions of heads of anti-corruption bodies were finalised, the parliament strengthened the independence and capacity of the NABU and the SAPO, which had long been called for by national experts, etc.

Thus, Ukraine's desire for EU membership only intensified after Russia's aggression, and this period should be perceived as a window of opportunity for anti-corruption and other reforms.

⁹⁵ European Pravda, <https://www.eurointegration.com.ua/eng/>.

Key steps

Anti-corruption infrastructure

- The authorities need to complete the implementation of all the recommendations of the European Commission on the anti-corruption reform of Ukraine in terms of effective restoration of the e-declaration system, providing NABU with its own forensic institution and conducting external audits of the agencies.
- The authorities need to fulfil the requirements of the European Commission for a transparent competitive selection of the CCU judges and anti-oligarchic reform, which should be based on a set of measures aimed at improving existing institutions (the Antimonopoly Committee of Ukraine, the National Bank, the judicial system, etc.).

Procurement reform

- The parliament should continue working on harmonising procurement legislation with EU legislation, in particular, introduce new procedures, centralise procurement and further improvement of legislation.
- The State Audit Service, with the assistance of the Ministry of Economy, which establishes the specifics of the application of procurement legislation during martial law should make state financial control more preventive and needs to update risk indicators in the system as well as improve the procurement monitoring process.

Digitalisation

- In the future, all state registers and databases that have been closed due to martial law should become publicly accessible. However, strictly defined exceptions may apply to confidential war-related data.

Public Engagement

- The authorities should deepen cooperation between the state and civil society by involving the latter in the formation of state policy at the central and local levels.

Operational Capacity

- It is critically important to provide all anti-corruption infrastructure bodies with sufficient human resources for the quality performance of their functions, as well as to comprehensively assess and prioritise their areas of work.
- Law enforcement agencies and prosecutors should ensure compliance with the NABU's investigative jurisdiction and the HACC's jurisdiction in cases of high-ranking corruption. The NABU should also be empowered to deal with cases of illegal contributions and unreliable reporting by political parties.

Anti-Corruption Policy and Prevention of Corruption

- The Cabinet of Ministers and the NACP should amend the SACP to meet the new challenges related to the full-scale war.

Criminal and Other Liabilities for Corruption

- The parliament and the government should strengthen the expert support of the NABU through the regulation of access of NABU employees to expert analysis and by creating a dedicated expert institution. At the same time, it will be necessary to ensure independence of the experts and the management both from the NABU and from third-party participants.

- The SSU should ensure that NABU is able to conduct wiretapping without the mediation of the SSU.

Reducing Corruption Risks in Recovery and Reconstruction

- The government should adopt a mandatory methodology for prioritising projects financed from the state budget, with exceptions to the established procedures, subject to full transparency and detailed justification for such projects.

Transparency of Recovery and Strategic Planning

- The parliament should legislate the mandatory use of the DREAM system, regardless of the source of funding used by the government.
- The government should launch the process of developing a national recovery plan in cooperation with the most affected communities.

Recovery Audit and Control

- The parliament should improve the procedure for selecting Accounting Chamber members, bringing it in line with the successful model used in anti-corruption bodies.
- The State Audit Service should shift the focus from post-control to prevention through the improvement of the procurement monitoring mechanism.

Forfeiture of Corruption-Related and russian Assets

- Law enforcement agencies and prosecutors should intensify their efforts to trace and prove the criminal origin of assets to enable special forfeiture.
- The parliament should criminalise the circumvention of sanctions by sanctioned persons, envisaging asset forfeiture as a punishment for this crime.

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