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Centre of Policy and
Legal Reform



TRANSPARENCY
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UKRAINE



EXECUTIVE SUMMARY

Shadow Report

on Evaluating the Effectiveness
of State Anti-Corruption Policy
Implementation

Kyiv 2019



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EXECUTIVE SUMMARY

of the

SHADOW REPORT

on Evaluating the Effectiveness of
State Anti-corruption
Policy Implementation

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Executive Summary of the Shadow Report on evaluating the effectiveness of state anti-corruption policy implementation / [O. V. Kalitenko, D. O. Kalmykov, I. B. Koliushko, et al.] general editor – M. I. Khavronyuk. – K., 2019. – 44 p.

The Summary presents the main conclusions and recommendations, based on the results of public evaluation of the effectiveness of implementing state anti-corruption policy. This is the continuation of the previous report for 2013–2016 (*The Shadow Report on evaluating the effectiveness of state anti-corruption policy implementation* / [M. I. Khavronyuk, I. B. Koliushko, V. P. Tymoshchuk, et al.] general editor – M. I. Khavronyuk. – K., 2017. – 317 p.). This evaluation covers 2017 and 2018.

The Shadow Report on evaluating the effectiveness of state anti-corruption policy implementation (basic analytical document) was prepared on the basis of specially elaborated methodology of comprehensive internal evaluation of the country’s progress in the anti-corruption area, which was first applied during the preparation of a similar report in 2015, and covers the following four areas: 1) anti-corruption policy; 2) prevention of corruption; 3) criminalization of corruption and law enforcement activity; 4) international cooperation.



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LIST OF ABBREVIATIONS AND ACRONYMS

CAO	– Code of Ukraine of Administrative Offenses dated December 7, 1984
CC	– Criminal Code of Ukraine dated April 5, 2001
CPC	– Criminal Procedure Code of Ukraine dated April 13, 2012
ARC	– Autonomous Republic of Crimea
GPO	– Prosecutor General's Office of Ukraine
SAS	– State Audit Service of Ukraine
SBI	– State Bureau of Investigations
CMU	– Cabinet of Ministers of Ukraine
MEDT	– Ministry of Economic Development and Trade of Ukraine
MOJ	– Ministry of Justice of Ukraine
ARMA	– Asset Recovery and Management Agency of Ukraine (National Agency of Ukraine for finding, tracing, and management of assets derived from corruption and other crimes)
NACS	– National Agency of Ukraine for Civil Service
NACP	– National Agency for Corruption Prevention
NABU	– National Anti-Corruption Bureau of Ukraine
OECD	– Organization for Economic Cooperation and Development
UN	– United Nations Organization
SAPO	– Specialized Anti-Corruption Prosecutor's Office
CEB	– Central Executive Body

SUMMARY

The Shadow Report on evaluating the effectiveness of state anti-corruption policy implementation is the result of the evaluation, conducted by the Centre of Policy and Legal Reform in cooperation with the experts of the coalition of non-governmental organizations – the Reanimation Package of Reforms, and independent experts.

The evaluation mainly covers 2017–2018.

The goal of the Report is to conduct the comprehensive internal independent evaluation of the actual state of affairs with corruption in Ukraine and the actions, taken by the state to combat corruption, and based on this evaluation, to draw conclusions on the effectiveness of the mentioned actions, and to propose its own recommendations.

The conclusions and recommendations are presented after each section of the Report.

The evaluation was conducted on the basis of the methodology, specially elaborated by independent civil experts with long-term specialization in the issues of corruption prevention: O. V. Kalitenko, D. O. Kalmykov, I. B. Koliushko, O. V. Lemenov, B. V. Malyshev, A. Ya. Marchuk, R. V. Sivers, V. P. Tymoshchuk, M. I. Khavronyuk. Two experts, including the team leader, M. I. Khavronyuk, participated in the preparation of the first report in these series in 2015.

The text of the Report was discussed

- during the experts' discussion "State anti-corruption policy: does it exist?" (February 6, 2019, Kyiv, Khreshchatyk Hotel);

- on Facebook: <https://cutt.ly/C0wXG>;

- on the webpage of the Centre of Policy and Legal Reform, section "Combatting Corruption": <https://cutt.ly/O0w3T>;

- on the webpage of Transparency International Ukraine: <https://cutt.ly/Z0ey5>.

The results of the discussion were taken into consideration during the finalization of the Report in February-March 2019.

The target audience of the Report is the entire population of Ukraine, but its primary beneficiaries include the Parliament of Ukraine, the President of Ukraine and the Cabinet of Ministers of Ukraine, the Committee of the Parliament on Preventing and Combatting Corruption, the National Agency for Corruption Prevention, the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor's Office, the State Bureau of Investigations, the National Agency for Detection, Search, and Management of Assets Derived from Corruption and other Crimes, the National Police of Ukraine, courts, and other state bodies.

Section 1.

ANTI-CORRUPTION POLICY

1.1. POLITICAL WILL TO COMBAT CORRUPTION

(D. Kalmykov, I. Koliushko)

1.1.1. Priority for issues of combatting corruption in policy documents of the President of Ukraine and the Cabinet of Ministers of Ukraine

1. The current Action Program of the Government dated April 14, 2016 is rather a quality policy document, in general correctly identifying a considerable number of measures (directions) which should be taken within the immediate term. However, the priorities, declared therein, are not in full compliance with the commitments, placed on the Government by the Anti-Corruption Strategy for 2014–2017 and the State program for its implementation.

2. The Plan of Government's Priority Actions for 2016 dated May 27, 2016 does not take into consideration most provisions of the Anti-Corruption Strategy for 2014–2017 and the State program for its implementation, does not comply with anti-corruption provisions of the Government's Action Program, identifies the place of describing anti-corruption measures in the overall structure of the Government's Plan of Priority Actions for 2016 incorrectly, and does not contain any initiative of the Government itself.

3. The midterm Plan of Government's Priority Actions till 2020 in the context of combatting corruption does not take into consideration the current situation in the anti-corruption area to the full extent, has insufficient compliance with the Anti-Corruption Strategy for 2014–2017 and the State program for its implementation and is in partial agreement with the anti-corruption provisions of the Government's Action Program, adopted by the former in 2016. The envisaged priorities and directions of activity are too vague to talk about controlling the status of their implementation. Moreover, this document identifies neither specialized bodies, responsible for implementation of anti-corruption initiatives/priorities, nor deadlines of their implementation.

4. Although the Government's Plans of Priority Actions for 2017–2018 comply with the medium-term Government's Plan of Priority Actions till 2020 in general, they are not based on the Anti-Corruption Strategy for 2014–2017 and the State program for its implementation, are in partial agreement with the anti-corruption provisions of the Government's Action Program, do not include a considerable number of challenges in this area, and thus are not the policy documents, capable of improving the functioning of the whole system of corruption prevention significantly.

5. Within the shortest possible period (in the first quarter of 2019), the inter-department task force (NACP – Government – Parliament) should be established to develop a new Anti-Corruption Strategy for 2019–2023, including: the NACP specialists (including its Director); representatives of the Government and all ministries; representatives of anti-

corruption institutions of Ukraine; representatives of the Parliament's Committee on Corruption Prevention and Counteraction; international and domestic experts on the issues of developing and implementing the anti-corruption policy of the state; members of the public.

6. The draft Anti-Corruption Strategy for 2019–2023, different in its concept from the one, currently available in the Parliament, should be elaborated within the first six months of 2019. This document should result from the comprehensive analysis of the current state of affairs with corruption, be based on the fundamental analysis of previous efforts, undertaken in this area, be in good agreement with overall European tendencies in the area of combatting corruption and incorporate positive anti-corruption practices of foreign countries. It would be reasonable to incorporate the remarks and proposals of domestic and international experts, which have already been given.

Immediately after completing the preparation of the draft Anti-Corruption Strategy for 2019–2023, the latter should be published on all the possible resources (at the NACP website, first of all), ensuring maximal public discussion and international assessment of the project.

Prior to the parliamentary elections of 2019, this draft project should be coordinated with the Government, introduced to the Parliament as a document to be adopted by the resolution of the Parliament (instead of a special law) and be adopted.

7. While developing the anti-corruption provisions of the future Action Program of the subsequent Government, the representatives of the CMU should take into consideration both the provisions of the Anti-Corruption Strategy and the State program for its implementation, in force at that time, and correctly specified obligations of the state authorities, set forth in the Coalition Agreement.

While preparing medium-term and annual action plans of the Government, it should be kept in mind that they should be aimed at implementing the priorities (including the ones, related to anti-corruption), set forth in the Government's Action Program.

1.1.2. Placement and significance of anti-corruption issues in program documents of political parties and in the Agreement Creating the Coalition of Deputy Factions in the Parliament of Ukraine

1. While designing/updating anti-corruption priorities (including the preparation to the parliamentary elections in 2019), the representatives of the parties should proceed from the current situation in the country, international commitments of Ukraine in the anti-corruption area and the recommendations, provided by the international institutions, and the content of current Anti-Corruption Strategy and the State program for its implementation.

2. While identifying the anti-corruption priorities in the future coalition agreement, the representatives of political forces should be guided by the requirements of current Anti-Corruption Strategy and the State program for its implementation rather than by their intuition. If these documents are not available at the moment of executing the coalition agreement, it is necessary to use the results of recent studies, highlighting the main problems, impeding further implementation of the anti-corruption reform (including the reports of international institutions), to take into consideration international commitments

of Ukraine in the anti-corruption area and the recommendations, given to Ukraine by renowned international institutions.

On the one hand, the Coalition Agreement should be a kind of coordinated (joint) action plan of the new government (it should reflect the ideas, identified in the programs of the corresponding parties), and on the other hand, it should reflect clear understanding of the measures to be taken at this particular stage in each sphere (including anti-corruption area).

1.1.3. Consistency between actions of key political will carriers and the priorities, declared in program documents

1. As of February 20, 2019 none of the problems, mentioned in the Anti-Corruption Strategy for 2014–2017, has been full resolved, and none of the objectives has been achieved. The overall level of implementing the State program for the implementation of the Anti-Corruption Strategy for 2015–2017 is 80% (160 out of 207 planned activities), although this document should have been implemented 100% more than one year ago.

2. Clauses 1–5 of Section III of the Coalition Agreement identify five most relevant anti-corruption measures (as of the end of 2014). Among these, only one has been implemented in a timely and quality manner: a law aimed at ensuring the transparency of financing for political parties and election campaigns in line with GRECO recommendations has been adopted. The second measure (ensuring the functionality of the NABU) has been implemented with some delay, and the remaining three are yet to be implemented (60%).

3. The Government's Action Program as of April 14, 2016 envisaged the need to take 15 anti-corruption measures, of which only 9 (60%) were implemented as of February 20, 2019.

The Government's Plan of Priority Actions for 2016 as of May 27, 2016 defined three anti-corruption objectives (creating and ensuring the full operation of the NACP, ARMA and SBI). None of these objectives has been implemented in full in the mentioned year.

The Government's Plan of Priority Actions for 2017 envisaged five objectives to be implemented by the Government. The Government managed to partially implement only three of them. No anti-corruption measures, aimed at implementing the remaining two objectives, were taken in 2017. As of February 20, 2019, 12 more anti-corruption measures are yet to be taken.

While developing the Plan of Priority Actions for 2018, the Government defined five objectives to be implemented. As of February 20, 2019, all the planned activities were implemented only for one of these objectives. The Government managed to take only some of the planned anti-corruption measures for three directions, and no anti-corruption measures were taken for one objective.

4. In the second half of 2014 – first half of 2016, the Parliament distinguished itself as rather a productive body in the area of developing anti-corruption policy of the country, as all the basic anti-corruption laws and most anti-corruption laws that were submitted for its consideration had been adopted.

Starting from the second half of 2016 and till the present moment, the Parliament

ceased being the moving force of developing quality anti-corruption policy, and even took to efforts of “hollowing out” the anti-corruption laws, that had already been adopted.

The anti-corruption policy of the Parliament was not based on the assessment of the previous anti-corruption policy and the comprehensive analysis of the current situation in the corresponding sphere, thus its effectiveness in some cases was insufficient.

5. In general, the Government managed its role in the processes of forming and implementing the anti-corruption policy quite well, having approved the quality State program for the implementation of the Anti-Corruption Strategy for 2015–2017. At the same time, the CMU recused itself from the responsibility of taking the planned measures, and did not envisage any mechanism of its control over their implementation by other bodies. Notwithstanding the requirements of sect. 5 Art. 18 of the Law “On Prevention of Corruption”, the State program for the implementation of the Anti-Corruption Strategy for 2015–2017 has never been revised.

6. In 2016–2018 the President of Ukraine played a relevant part in the context of forming the anti-corruption policy, the rate and directions of its implementation, but he did so using the possibilities, conditioned by the composition of the Parliament, personal relations with the persons, heading some state institutions, rather than using legal instruments of the institution of the President.

7. The Parliament, Government and President of Ukraine should ensure gradual transition from situational decisions to the decisions, resulting from the implementation of quality anti-corruption policy. Therefore, the main drafter of the corresponding draft laws (and the generator of ideas) should be the NACP, rather than the members of the Parliament, the Government or the President.

Furthermore, the Government should ensure control over the implementation of measures envisaged by the subsequent programs on implementation of the Anti-Corruption Strategy (at least with respect to those entities whose activities are directed and coordinated by the Government directly or through relevant ministers), while the President should ensure proper functioning of the National Council on Anti-Corruption Policy, organize effective cooperation between this Council and the NACP, and use the results of its activities to introduce legislative initiatives to the Parliament, aimed at improving anti-corruption legislation.

8. The activity of the NACP in 2016–2018 should be considered unsatisfactory. At present, one of the main objectives of the NACP is to ensure the process of developing the draft of a profoundly (conceptually) different Anti-Corruption Strategy and to advocate the approval of this basic policy document on the issues of combatting corruption.

In its current activity, the NACP should ensure proper fulfillment of *all* the obligations, the NACP is charged with under the Law “On Prevention of Corruption” and 100% implementation of measures, the NACP is charged with pursuant to the Anti-Corruption Strategy for 2014–2017, and the State program for its implementation and will be charged with by subsequent policy documents in this area.

9. In 2016–2018 the MOJ demonstrated low efficiency in the context of implementing anti-corruption measures. The mentioned ministry has not developed even half of the draft laws it was supposed to develop which resulted in the following outcomes: a) some of them

had to be developed by other institutions or individual entities which also had to promote the process of advocating them on their own; b) some of them have not been developed at all or the process of their development or initiation in the Parliament was blocked due to the failure of the MOJ to act properly.

In 2019 the MOJ should develop and promote the adoption of all the outstanding laws, the development of which was envisaged in the Anti-Corruption Strategy for 2014–2017 and the State program for its implementation.

1.2. ANTI-CORRUPTION STRATEGY AND PROGRAM/ACTION PLAN

(I. Koliushko, A. Marchuk)

1. The absence of actual Anti-Corruption Strategy and the State program for its implementation has an overall negative impact on the implementation of the state anti-corruption policy, does not promote proper coordination of the activity of state institutions on corruption prevention, does not define the content of these measures, extent and terms of their implementation. Therefore, it is relevant to develop the draft of a new and more quality Anti-Corruption Strategy within the shortest possible period and to submit it to the Parliament for further consideration. The previously submitted draft law should be taken off the consideration by the decision of the Parliament.

2. The best global practices demand that the Anti-Corruption Strategy be adapted to the local context, the current state of affairs with corruption in the country and consider serious risks, occurring during the implementation of the anti-corruption policy, in particular, due to the decrease in the political will to implement anti-corruption measures. In these conditions, it would be reasonable to additionally analyze whether all the recommendations of international organizations are relevant at this stage and which consequences they may lead to. In addition, the Anti-Corruption Strategy should contain clearly defined priorities of the state policy in this area. The essential conditions of conducting the monitoring and assessment of implementation should be defined in the Anti-corruption strategy and ensure proper involvement of civil society in these processes.

3. The approved strategy should be used for immediate elaboration and subsequent approval of the State program for the implementation of the state anti-corruption policy, which would contain the comprehensive list of measures, the terms of their implementation, entities responsible for the implementation, implementation indicators, and the sources of financing their implementation. In addition, more precise indicators should be defined at the level of the State program to evaluate policy implementation along with overall expected outcomes, precise procedures of monitoring, assessment of implementation, and revision of the State program.

4. It is unacceptable for the Parliament to ignore its obligation of approving the national reports on the status of anti-corruption policy implementation. In addition, the content of national reports, prepared by the NACP, is of concern, as they seem to be lopsided and incomplete, and contain insufficient data. It is necessary to considerably enhance the ability of the NACP to evaluate policy implementation. It is also necessary to ensure proper disclosure of the draft national reports and to facilitate the citizens' search for them.

An additional recommendation may be to submit at least some information from these

reports in the short form, easy for wide public to understand. It would be reasonable to consider the possibility of more frequent periodic distribution of the information about the status of anti-corruption policy implementation, its particular directions or specific, most relevant measures.

5. At present, civil society and international partners enjoy considerably higher confidence of wide public in the aspect of implementing anti-corruption measures compared to state institutions.

Therefore, the involvement of members of the public and international organizations in the processes of developing, implementing, monitoring and evaluating the implementation of the Anti-Corruption Strategy may enhance the effectiveness of the anti-corruption policy, help avoid mere formal implementation of the planned measures and create the conditions for higher public confidence in the implementation process. Thus, state institutions should ensure wide involvement of the public and international partners in the processes of forming and implementing the anti-corruption policy via different mechanisms.

1.3. RESEARCH ON CORRUPTION STATE OF AFFAIRS

(O. Kalitenko)

1. In 2017–2018 there was an increase in the number and frequency of different studies on corruption. This result has become possible due to the efforts of non-governmental and international organizations, donors, sociologists, and business environment. The official state study on the state of affairs with corruption, conducted by the NACP, looks rather pale against this colorful background. The methodology of standard polling on the corruption level in Ukraine was not followed properly, and the required information about verifying the results and establishing confidence level was partially concealed. It is recommended to follow the methodology in future to draw reliable conclusions.

2. It is recommended to take into consideration the studies of other stakeholders while developing the revised Anti-Corruption Strategy for 2019 and subsequent years along with the State program for its implementation. The NACP should update the relevant sections on its website to create a comprehensive list of Ukrainian and international studies on corruption.

3. The current level of confidence in the NACP does not provide for eager support of the idea of state financing for independent analytical studies, but it is reasonable to continue studying the possibilities of ensuring the transparency of this process.

4. In the experience of the citizens, there has become less corruption in the spheres of providing services: in the Administration Service Centers, in the sphere of health care, business management, enrollment to schools and kindergartens, in tax reporting, etc. However, in general there is a low level of confidence in new anti-corruption authorities from wide public. The population has ambivalent attitude to the phenomenon of corruption, condemning and justifying it at the same time. State authorities and officials should adhere to more prudent presentation of their own opinion.

5. The studies demonstrate the devaluation of the corruption problem in mass media, which is presented frequently, but in a superficial manner and detached from real life. The number of specialists, who talk about corruption in the professional way, is limited. Even

successful stories of defeating corruption do not highlight the contribution of NGOs, it is often mere fulfillment of duties by relevant state authorities. Mass media should be more consistent and balanced while highlighting corruption.

1.4. PARTICIPATION OF CIVIL SOCIETY AND BUSINESS IN THE DEVELOPMENT AND MONITORING OF ANTI-CORRUPTION POLICY IMPLEMENTATION

(O. Kalitenko)

1. The authorities have come to view the members of civil society as their full-fledged enemies rather than dangerous opponents. Public reprisal of anti-corruption fighters is growing in its intensity. This level of “interaction” between the authorities and civil society is inadmissible, completely repeating the methods of the previous regime. The authorities should stop using force and discrimination legislative methods and intimidating the civil sector. The provisions about electronic declarations of the civil participants of anti-corruption programs should be abolished immediately.

2. Law enforcement bodies should activate the investigation of cases of pressure and assaults on activists and journalists, establish the guilty party and submit proper case materials to the court. The outcome of the work of the Temporary investigative commission of the Parliament for investigation of the attack on Kateryna Handziuk and other civil activists should be the disclosure of the surnames of persons, involved in murders and attacks on civil activists. Therefore, the Parliament should prolong the period of its work from three months to a longer period.

3. The working format of the Civil Oversight Council of the NABU, which has the longest history among anti-corruption civil councils, has been proving its effectiveness. Other civil councils are recommended to study the experience of the Civil Oversight Council of the NABU and its interaction with the NABU itself. The persecution of the members of the Civil Oversight Council of the NABU for their active anti-corruption position should be stopped.

It is necessary to develop regional civil organizations and to teach them how to build coalitions and interact with the authorities in the context of solving proper problems for higher protection from persecution.

4. The latest trends in the cooperation between the authorities and civil society are capable of radicalizing an already wide-spread idea of the advantage of repressive methods of combatting corruption. This trend is promoted by an almost absent probability of any punishment for corruption in the mind of average Ukrainians. It is reasonable to return to highlighting the relevance of systemic decisions, even more so as the mechanisms of civil control are positively perceived by citizens. It is especially necessary to work at the possibilities of digitalization of providing state services for actual involvement of citizens in the anti-corruption measures. The authorities should refrain from using the dialogue with the civil society to clean up its ambiguous adopted decisions.

5. The persons, providing their assistance in combatting and preventing corruption (whistleblowers), are still deprived of protection, which would correspond to the best global practices. Current state guarantees are rather declarative in their nature, not envisaging

any response mechanism to all the challenges, faced by whistleblowers in real life. The protection of these people and their family members should be ensured via the adoption of the corresponding law which would comply with the international standards.

1.5. BUILDING A CLIMATE OF CORRUPTION NON-ACCEPTANCE

(O. Kalitenko)

1. In 2017–2018 there was a considerable increase in informational and educational campaigns. The absence of information about the effectiveness of the measures, taken by the state, remains a weak link. There should be monitoring and assessment of the events to avoid their organization for “mere formality”.

2. However, the objective of implementing anti-corruption measures has not been achieved yet. A great number of citizens are still not completely aware of the anti-corruption reform and their own rights, and even justify corruption. The involvement of non-governmental sector in state information campaigns is a fine practice which should be applied frequently, especially to search for novel formats of their implementation.

3. Most citizens do not view proposing a bribe at the individual level as corruption. Petty corruption is viewed by the population as much less harm for society. In future there should be more informational campaigns, aimed at highlighting the price of petty corruption.

4. Business also started getting involved in awareness campaigns related to corruption. Both the state and the non-governmental sector should support this willingness and assist in their organization within available resources and experience. There should be ongoing positive practice of non-governmental organizations and business developing textbooks on different anti-corruption topics which would supplement available state products and work at the synergy of efforts for the sake of the common goal.

1.6. SPECIALLY AUTHORIZED INSTITUTIONS OF ANTI-CORRUPTION POLICY

(A. Marchuk)

1. In 2017–2018 there was some chaotic and uncoordinated activity, observed in the context of specially authorized institutions of anti-corruption policy. In addition, some entities did not use the authority, vested upon them, properly.

The activity of the NACP as an institution in general, and as the means of forming and implementing state anti-corruption policy was disappointing. Despite significant guarantees of independence (probably even excessive), this entity is still subject to political influence, thus, in reality it does not seem to be completely independent. The conflicts with the CMU and MOJ complicated the situation with the NACP even further at the time, when the NACP needed the highest support – at the stage of its institutional establishment.

The failure of the NACP to prepare a quality draft of updated foundations of the state anti-corruption policy raises the question of the compliance of this entity with the criteria of specialization and expertise. Recent two years demonstrate that the NACP needs restoring its reputation and confidence in this entity, as well as considerable institutional

reinforcement, in particular, in the part of developing the ability of the Agency to implement the objectives, required for each stage of the policy analysis cycle.

2. In 2017–2018 the National Council on Anti-Corruption Policy practically ceased its activity. Despite the fact that the authority of this body was rather nominal, still it played a relevant role of coordination between many stakeholders and ensured communication at rather a high political level. In addition, the activity of this council would be rather pertinent during recent two years with the consideration of the scope of problems and challenges, facing the implementation of the anti-corruption policy. One of the possible solutions may be the re-formatting of the council into the coordination body, which would include the entities, involved in the formation and implementation of anti-corruption policy, representatives of civil society and international partners. This authority should become the platform for communication and coordination of actions of the mentioned entities. Therefore, the activity of the National Council on Anti-Corruption Policy may be activated, and it should be provided with more powerful secretariat – it seems reasonable to follow the recommendation of the OECD experts to delegate the functions of the Council secretariat to the NACP which would provide the former with information, materials, data, etc. It is evident that up to the moment of delegating these functions the independence and capability of the NACP should be practically ensured in a proper way. There should also be clear differentiation between the competence of the NACP and the National Council of Anti-Corruption Policy with the limitation of the authorities of the latter to fulfilling coordination functions between different entities in the sphere of anti-corruption policy.

3. The activity of the Parliament and the Parliament's Committee on Corruption Prevention and Counteraction receives contradictory evaluations as well. In the first half of 2017 at least some objectives in this sphere were implemented to some extent (for example, Parliament hearings were conducted regarding the status of anti-corruption policy implementation), but all the subsequent months were noted for considerable aggravation of the situation: the national reports on the status of anti-corruption policy implementation were not approved; the Parliament hearings were not performed in 2018; the final decision regarding the draft Law "On Anti-Corruption Strategy for 2018–2020" was not adopted (due to low quality of this document) and the foundations of the state anti-corruption policy have not been approved yet. The activity of the relevant Parliament committee became the hostage of the political situation, and its effectiveness decreased considerably in 2017–2018.

Within recent two years the legislative activity of the Parliament in terms of the laws, related to corruption prevention, decreased considerably, and the laws on establishing the Supreme Anti-Corruption Court and its activity, adopted in 2018, resulted from uncompromising demands of the key international partners of the country, the IMF and the European Union, first and foremost.

Among the submitted draft laws there is an increasing number of those, which are aimed at hollowing out the content of some anti-corruption instruments, undermining the guarantees of independence for specialized anti-corruption bodies, establishing excessive requirements for the reports from the representatives of anti-corruption civil organizations, etc. A combination of all the abovementioned demonstrates the absence of political will

among most representatives of these entities to continue the implementation of a functional anti-corruption policy in Ukraine.

4. In general, the Cabinet of Ministers of Ukraine implements all the measures, envisaged in the Law “On Prevention of Corruption”, but the fact of the Government’s submitting an extremely poor draft Law “On Anti-Corruption Strategy for 2018–2020” to the Parliament, and no revision of the State program for the implementation of the foundations of state anti-corruption policy for 2015–2017 raises some concerns.

Section 2.

PREVENTION OF CORRUPTION

2.1. SPECIALIZED AGENCY FOR CORRUPTION PREVENTION

(R. Sivers)

2.1.1. Availability of a separate specialized agency for corruption prevention and the compliance with international standards in terms of specialization and independence

1. In 2017–2018 the Government ensured formal implementation of the recommendation about completing the membership of the NACP. At the same time, the manner and, even more relevantly, the results of this work led to increased lack of confidence in the work of the Commission, and, as a result, to discrediting a newly-formed key entity in the sphere of corruption prevention – the NACP – in the eyes of both non-governmental organizations and the society, and the international partners of Ukraine

This situation may be corrected only on condition of complete rebooting of the NACP, starting with legislative changes regarding the rules of establishing and the work of the Commission of selecting the management of the NACP and finishing with practical steps of ensuring effective public monitoring and expert evaluation of the results of activity of both the Commission and the NACP itself.

2. It is necessary to update the staff of the Commission of selecting the NACP members, ensuring the revision of principles and rules of forming the Commission as follows:

- setting up the professional criterion – the Commission members must have legal education and experience in anti-corruption area;

- eliminating the possibility for state officials or political leaders of the state authorities to participate in the Commission;

- removing a particular person – the head of a specially authorized central executive body on the issues of civil service according to the position;

- substituting the representatives of non-governmental organizations according to the proposals of international anti-corruption organizations;

- establishing the personal responsibility of the Commission members at the legislative level;

- establishing clear criteria of selecting the NACP staff members and requirements regarding the substantiation of the Commission decisions at the legislative level.

3. Complete transparency of the Commission documents, including the minutes of its meetings, should be envisaged along with the elaboration and approval of the procedure of auditing the work of the Commission.

4. It is necessary to reboot this entity (select new staff members and re-evaluate all the employees and/or conduct new competitions to all the structural divisions of the NACP)

and to introduce the procedure of regular audit of the NACP activity at least once in two years, involving international experts.

5. In 2017–2018 the NACP:

- did not arrange for the elaboration of any document which would define the strategy of its staffing policy;
- did not define the criteria (conditions) for the NACP leadership's decision-taking process of announcing the competition for open vacancies;
- did not ensure the preservation of its own workforce capacity.

As a result, during these two years the flow of specialists from the NACP exceeded the threshold index of personnel turnover, defined by this very entity.

At the same time, a number of facts of alleged violations of the laws “On Prevention of Corruption” and “On Civil Service” by the NACP leadership were revealed which require corresponding response from the CMU and the NACS.

6. The Cabinet of Ministers of Ukraine and the National Agency of Ukraine for Civil Service should take actions on verifying the facts of alleged violations by the NACP leadership while conducting the competition procedures and transfers during 2017–2018, and on holding the guilty persons responsible if the violations have indeed occurred.

7. It is necessary to amend the Structure of the NACP organization, having restored the sector on preventing and revealing corruption, and the position of the deputy head of the NACP with subsequent competition to staff the relevant positions and to ensure that the competition for the vacant position of the NACP head is announced and conducted.

8. It is necessary to develop the staffing policy of the NACP, defining the criteria (conditions) regarding the following issues: the process of the NACP management's taking decisions on announcing the competition for vacant positions; applying the procedure of employee transfer within the NACP and other state authorities.

9. At the background of active educational, methodological and informational work of the NACP in 2017, one must acknowledge a considerable decrease in the level of the corresponding activity in 2018. There is a growing concern about the unsatisfactory activity management of the education department, which did not complete its tasks of conducting the scheduled events, analyzing their efficiency and publishing the corresponding information.

The individual plans for employees' qualification upgrade and their personal accountability while holding the activities have not been ensured yet. In general, the NACP management seems to lack strategic vision of the directions of developing the corresponding activity of the entity.

10. It is necessary to develop (update) the Concept of organizing and holding the activities of educating and upgrading qualifications (trainings, seminars, lectures) for the NACP employees and specialists of other state authorities, using it as a basis to ensure the following:

- preparing the individual plans of upgrading the qualification of the NACP employees with the consideration of the specifics of their work directions;
- defining the criteria of selecting the NACP employees for participation in the educational events, held abroad;

- introducing personal accountability of the NACP employees, participating in the events;

- developing the system of evaluating the efficiency of holding the events (evaluating lecturers/employees);

- preparing, publishing and implementing the schedules/plans of holding the events for the staff of the NACP management bodies and specialists of other state authorities.

11. It is necessary to analyze work results of the Education department and to take measures on enhancing its efficiency, to ensure complete and timely informing about the educational activities and posting educational, methodological and other additional materials in the corresponding section at the official website of the NACP.

12. The Government complied with the provisions of the State budget in 2017–2018, having financed the NACP activity in the main directions of its work. During recent three years there has been a gradual increase in financing the NACP activity, including the part of remuneration for its employees. This fact gives grounds to asserting that the state ensures the proper level of implementing the guarantees of financial independence of the NACP, stipulated in the Law “On Prevention of Corruption.”

At the same time, there is a remaining negative fact of the yet unsolved issue of financing the formation of local NACP bodies. Financing for the mentioned objectives has not been envisaged in 2019 either.

13. In terms of ensuring the NACP activity it is necessary:

- to ensure full and timely financing of the NACP activity in the subsequent years;

- after rebooting the NACP, to solve the issue about establishing local bodies of the NACP and providing proper financing, materials and technical support.

14. There is a concern regarding the unsatisfactory work of the NACP in the part of cooperating with the Public Council which is the main instrument of public control over its activity. The work in ensuring transparency via informing wide public is still at an extremely low level and occasional. The activity of the Public Council at the NACP is also unsatisfactory; it requires rebooting and defining some aspects of legislative support for its activity (terms of staff’s work period, requirements to its members and procedure of forming the council, etc.).

It should be particularly noted that the NACP employees, responsible for providing public information, fail to fulfill their duties properly.

15. In terms of the NACP’s cooperation with the Public Council it is necessary:

- to restore the cooperation with the Public Council at the NACP and to promote its fulfilling its tasks;

- to ensure the elaboration and approval of amendments to the Law “On Prevention of Corruption” in the part of improving and guaranteeing the work of the Public Council at the NACP (including the procedure of its formation and the period of activity);

- to analyze the structure, completeness and relevance of the information, posted at the official website of the NACP, and to take measures on eliminating the revealed drawbacks based on the analysis results;

- to conduct the work in technical modernization of the official website, aimed at facilitating the users’ work with its content;

- to analyze the activity of the Sector on the issues of access to public information, having published the results of its work, and to take measures on ensuring unconditional compliance of the requirements of the Law “On Access to Public Information” by its employees.

2.2. CIVIL SERVICE INTEGRITY

2.2.1. Compliance of civil service legislation with international standards

(D. Kalmykov, V. Tymoshchuk)

1. The Law “On Civil Service” dated December 10, 2015 is based on European civil service standards. The Government approved the Strategy of public administration reform for the period up to 2021, the Plan of its implementation, and the Concept Paper on introducing the positions of experts on reforms. The Government and the NACS approved all the subordinate legislative acts, required for successful implementation of the provisions of the Law “On Civil Service”. The direction of reforming civil service is viewed as one of the most successful directions in the public administration reform.

2. Despite a considerable “break-through” in the sphere of reforming civil service, in 2019–2020 the public administration reform faces a number of new challenges, first and foremost related to the need for efficient implementation of the legislation and program documents, which have already been approved, as well as the need of further introducing some selective amendments to them.

3. It is necessary to ensure efficient introduction of changes in the activity of ministries, conditioned by the appointment of state secretaries and other specialists on the issues of reforms. First of all, it concerns the need of amending the Law “On Civil Service” which should ensure clear differentiation between the functions of the minister and the state secretary.

It is necessary to develop professional standards of the activity of state secretaries, to evaluate the results of the work of state secretaries with regard to the key indicators of efficiency and, if needed, to take the corresponding staffing decisions (including dismissal). It is necessary to ensure increasing the level of knowledge of the state secretaries and other representatives of the senior civil service, specialists on the issues of reforms, their acquisition of the required skills, to form good practices of state secretaries, expert and consultative support of their activity (comprehensive assistance).

5. It is necessary to reorganize all the ministry secretariats, not only the ones participating in the pilot project. In particular, it is relevant to complete the creation of directorates of policy and strategic planning and European integration in all the ministries; to introduce transparent procedures of preparing and adopting government decisions based on policy analysis, with proper public consultations, to ensure deconcentration and rationalization of functions of officials within the ministries. It is necessary to separate the functions of directorates which form and implement state policy and the functions of the departments (administrative services, inspection authorities, etc.).

6. The practice of analyzing the police and strategic planning should be introduced in all the ministries.

7. It is necessary to activate the work of the Coordinating Council and the working

groups by the directions of implementing the Strategy of public administration reform for the period up to 2021, the ministries and other entities, responsible for its implementation.

8. It is relevant to ensure the most immediate implementation of the measures on public administration reform, defined by the Strategy of public administration reform for the period up till 2021, with the consideration of SIGMA program experts, formulated in the report on baseline measurements of the implementation of the principles of public administration in Ukraine (Baseline Measurement Report: The Principles of Public Administration. Ukraine. June 2018), in particular:

- to develop and approve the comprehensive Law “On Cabinet of Ministers of Ukraine and Central Executive Bodies” which would envisage the conditions and possibilities of further reforms in the organization and activity of the CMU and CEB;

- to organize a highly qualified and competent group of specialists on the issues of public administration reform;

- to ensure transparent and fair competition for the vacancies of specialists on the issues of reforming (and to set more realistic terms of holding these competitions);

- to correlate the activity of reform specialists and key indicators of effectiveness, to develop typical tasks for these specialists and to ensure periodic evaluation of their work in terms of these indicators and tasks;

- to ensure the increase in the level of independence, professionalism and integrity in the activity of the Commission on the issues of senior civil service. In particular, there should be a revision of the participation of the heads of state authorities in its work with their substitution by the representatives of these authorities with obligatory testing for the ability to fulfill the duties of the Commission member;

- to delegate the implementation of some organizational matters, which are within the scope of the state secretary of the ministry (for instance, taking a decision on a state official’s vacation), to the lower level management, having defined this possibility and the list of issues in the Government’s act;

- to reform the civil servants’ remuneration system with the purpose of increasing the level of their salaries on condition of ensuring the stability of state financing (to develop and submit for the consideration of the Coordinating Council the proposals on remuneration for civil servants, which would be based on the classification of work/positions and comply with the Principles of Public Administration);

- to determine the optimal number of civil servants, taking into consideration the functions and organizational structure of state authorities and to optimize the number of state authority employees;

- to develop and approve the methodology of transparent operational monitoring of the number of civil servants at the state authority and the remuneration of their work;

- to ensure posting the information about actual number of state authority employees at the website of the CMU;

- to define that only a specialist on reforms may head the human resources service;

- to launch the informational system of human resources management in civil service (on the basis of the NACS) with gradual introduction of the corresponding modules;

- to modernize the methodology of analyzing the educational needs of civil servants;

- to approve the methodology of developing the typical individual program of upgrading the level of professional competence of a civil servant;
- to develop new Regulations on the system of professional training;
- to reform the National Academy for Public Administration, delegating its functions of professional training for civil servants to the professional training centers, which should be established at the NACS;
- to complete staffing the directorates, to streamline the internal paperwork, to improve the communication and working conditions, to ensure the possibility of professional development and training;
- to increase the level of institutional capability of the NACS to ensure effective implementation of the Law “On Civil Service” and full-fledged reforming of civil service.

2.2.2. Conflict of interests, ethical standards, declaration of income and expenses of public servants (*R. Sivers*).

1. In 2017–2018 the NACP continued its active methodological and educational work. For instance, the Methodological recommendations were updated and two online courses – “Conflict of Interests: Need to Know!” and “Conflict of Interests: Need to Know! From Theory to Practice” were developed. The ongoing practice of holding informational-educational campaigns was ensured.

At the same time, there are serious problems observed in the law enforcement practice of the NACP which need to be addressed immediately.

2. In the area of regulating and preventing the conflict of interests, it is necessary:

- to continue internal and external educational-methodological work and posting the corresponding information in the relevant sections at the official website of the NACP;
- to analyze the reasons for the NACP’s poor fulfilling its function of control over the direction of preventing and resolving the conflict of interests in 2017–2018;
- to develop and approve the procedure of inspections with clear definition of the rights and obligations of the NACP’s officials during the inspection, the deadlines for the inspection, the reasons and measures of the responsibility in case of a failure to fulfill the obligations properly, etc.;
- to consider the issue of the NACP’s work results for 2018 in this area with the assistance of the Public Council and the NACP;
- to identify corruption risks which may cause poor effectiveness of the NACP’s activity in the mentioned area, and to include them along with the measures to address them, into the Anti-corruption program of the NACP;
- to ensure timely and full publications of statistical information, including the data about the results of court proceedings of the minutes, made by the NACP’s employees;
- to initiate joint discussion between the NACP, the National Police, and the Supreme Court on law enforcement practices regarding the relevant category of cases with further preparation of the corresponding summarization of judicial practice.

3. During 2017–2018 almost all the entities of state power concentrated their activity on inhibiting the development of the declaration system. As a result, most problems, the roots of which date back to the launch of the system in 2016, are present nowadays.

Open revenge on the representatives of no-governmental anti-corruption organizations, which were discriminated by the requirement of presenting their declarations, demonstrated the efforts to remove wide public from controlling the activity of the NACP in terms of inspecting the declarations or at least decreasing the activity of civil representatives.

The launch of automatic inspection does not have any credibility, since the way, in which the requirements of Ukraine's international partners have finally been implemented, raises questions about its transparency and reliability.

The leadership of the NACP lost public confidence due to the disclosed facts of alleged non-integrity and also due to the publication of a number of contradictory explanations, which were approved by its current staff.

4. Due to the abovementioned about the declaration system, it is necessary:

- to immediately remove technical inconsistencies between the actual electronic template of the declaration and regulatory and other legal acts of the NACP on approving the template and technical requirements thereto;

- to take measures of ensuring the access of the NACP to all the registers, needed for efficient verification of electronic declarations;

- to ensure continuous work of the Register;

- to conduct efficient verification of annual declarations of senior civil servants, first of all, submitted by the latter in 2016–2018;

- to continue providing the entities, subject to declaration, with methodological explanations and assistance in technical issues regarding the work of the Register, with timely updating of the relevant explanation;

- to remove clause 5 sect. 1 Art. 3 of the Law “On Prevention of Corruption”;

- to introduce periodic (once in two years) independent audit at the legislative level, which would include auditing the hardware and software complex of the register (recognized by international experts or renowned auditing company) in terms of the state of affairs with the Unified state register of declarations of persons authorized to perform functions of the state or local governments;

- to delegate the register administration from the state enterprise “Ukrainian Special Systems” to the NACP;

- to ensure fast completion of the investigations on all the facts of alleged violations during the verification of declarations, committed by the leadership and employees of the NACP and other persons involved.

5. The NACP ensured partial implementation of recommendations, submitted in the previous Shadow Report. At the same time, there is complete unavailability of information in the area of protecting whistleblowers which demonstrates improper organization of the work of the department on the issues of policy in the area of protecting whistleblowers from the leadership of the Department of organizing the work in preventing and revealing corruption and the NACP. In addition, the opinion of the NACP member, O. Skopych, who supported the proposal of eliminating the sector of preventing and revealing corruption and did not even make an attempt to protect the NACP employees, who presented their disclosures, casts doubts about his professional adequacy and raises questions about the integrity of his actions.

6. In the area of protecting whistleblowers, it is necessary:

- to analyze the work results of the NACP in 2017–2018, including the analysis with the assistance of the Public Council at the NACP;
- to ensure timely and full publications of statistical information, including the data about the results of court proceedings with the participation of NACP, at the official website of the NACP;
- to concentrate the efforts of the NACP on finalizing the draft law on protecting whistleblowers and disclosing the information about the damage or threat to public interests (regist. No. 4038a dated July 20, 2016).

2.3. INTRODUCTION OF GOOD GOVERNANCE STANDARDS

2.3.1. Anti-corruption expert evaluation of draft legal documents

(D. Kalmykov).

1. The legislation of Ukraine places the main burden (duty) of conducting anti-corruption expert evaluation of existing and draft legislation with the MOJ. However, in 2011-2013 the MOJ rather simulated such evaluations than actually conducted them, as it almost never found any corruption-related factors in the draft legislation. In 2014–2017 the MOJ stopped even simulating this work. The information on the state of affairs with anti-corruption evaluation during this period is almost publicly unavailable. The reports of the MOJ about the results of taking measures on preventing and combatting corruption were not published.

In 2018 the situation changed to some degree. At present, the website of the MOJ has available posts on both specific conclusions of anti-corruption evaluation and detailed quarterly reports on the results of conducting anti-corruption evaluation of existing and draft legislation. Unfortunately, one may not state that this evaluation has become efficient: according to the results of analyzing 3.6 thousand draft Government's acts, the MOJ did not find any corruption-related factors in any of them; the same situation is noted for several existing laws and acts of the Government under the evaluation; the MOJ managed to find one corruption-related factor only in two out of 157 draft laws. Overall, during the whole period of conducting anti-corruption evaluation of all the legislation (almost 6 years), the MOJ analyzed not more than two dozens of existing legislative acts, and among them found several acts, containing corruption-related factors. No proper measures, aimed at removing these factors, were taken by the MOJ.

2. According to the logic of Art. 55 of the Law “On Prevention of Corruption”, the Committee of the Parliament, responsible for combatting the corruption, should have been the second (after the MOJ) ranked entity in the context of preventing corruption using anti-corruption evaluation. However, compared to the MOJ, in 2013–2018 the Committee was much more active and efficient in using this instrument of preventing corruption.

Overall, from June 9, 2013 till July 31, 2018 the mentioned Committee received 10 711 draft legislative acts, and managed to analyze 9 462 of them (88.3%). Among the latter, 578 (6.1%) were deemed by the Committee to be the ones, containing corruption-related factors and not complying with the requirements of the anti-corruption legislation. Most

of these were not adopted as laws (although, objectively speaking, it was only merely due to their corruption-related nature).

The Committee productively cooperates with public representatives both through the Public expert council and the Council for public expert evaluations that were established by it, and through cooperation with some NGOs focused on conducting civil anti-corruption evaluations (Centre for Policy and Legal Reforms, Ukrainian Institute for Public Policy, Center “Eidos”, etc.).

3. As of February 20, 2019, the NACP only starts carrying out its authorities in part of conducting anti-corruption evaluations. On December 29, 2018, the NACP approved its own Methodology of conducting the anti-corruption evaluation of draft legislation and the Methodological recommendations on conducting evaluations. During the whole previous period (2016–2018) the NACP analyzed only 15 draft laws, the results of analyzing which were not mere conclusions of anti-corruption evaluation.

4. The institutions of civil society were found to be the most active in the issues of conducting anti-corruption evaluation. Here the results of public anti-corruption evaluation were used to maximally promote the state authorities in their conducting the obligatory anti-corruption evaluation of existing and draft laws rather than to criticize their activity. The Committee of the Parliament, vested with resolving the issue of combatting corruption, managed to ensure quality analysis of all the draft laws, submitted for its cooperation, which became possible due to its successful cooperation with the experts of the Public expert council and the Council for public expert evaluations.

5. Notwithstanding the requirements of sect. 8 Art. 55 of the Law “On Prevention of Corruption”, the results of the anti-corruption evaluation (especially public evaluation) either are not reviewed by the approving entity (exception – the Committee of the Parliament, responsible for combatting corruption), or are reviewed merely in a formal way without any subsequent response to them (let alone taking the provided recommendations into consideration).

6. In the nearest term (in 2019) it will be necessary to ensure 100% implementation of legislation on anti-corruption expert evaluations, including

1) ensuring the fulfillment of the MOJ’s obligation relating to development, approval, and implementation of the annual plan for conducting anti-corruption expert evaluations of effective laws, acts of the President and the Government in areas identified in sect. 4 Art. 55 of the Law “On Prevention of Corruption”;

2) ensuring the MOJ’s conducting quality anti-corruption expert evaluations of draft legislation introduced for the consideration of the Government, as well as of existing legislation;

3) developing its own methodology of conducting anti-corruption expert evaluations by the Parliament’s Committee charged with corruption prevention, ensuring the same approach in the process of examination by all experts of the Committee;

4) the NACP should:

- develop and adopt the procedure of the NACP’s conducting the periodic revision (monitoring) of existing legislative acts in terms of the presence of corruption-related provisions therein, and the plan for such monitoring in 2019;

- to start conducting anti-corruption expert evaluation of all the draft legislative acts

with potentially high level of corruption factor, submitted for the consideration of the Parliament or the Government;

- to ensure periodic revision (monitoring) of the legislation in terms of the presence of corruption factors, and provide the MOJ with proposals on including the respective legal acts into the Plan for conducting anti-corruption expert evaluation of existing legislation.

7. In somewhat distant term (2019–2020), it is necessary to develop amendments to the legislation (or to adopt a specific law), that will

1) vest the NACP with wide authorities to conduct anti-corruption expert evaluations of all legislative drafts introduced for the consideration of the Parliament by the Government or the President; of all legislative drafts pending before the Cabinet of Ministers and the President, as well as the acts of legislation related to the most dangerous areas (from the point of potential corruption factors);

2) eliminate the MOJ's duty for conducting mandatory anti-corruption expert evaluation of legislative drafts that are being introduced for the consideration of the Parliament by the Government or the President, as well as of the effective legislation, which will allow preventing a conflict of interests in matters of anti-corruption expertise of legislative drafts introduced for the consideration of the Parliament by the Government, as well as efficiently using the NACP's special status and its relative independence in matters of anti-corruption expert evaluation of legislative drafts being introduced for the consideration of the Parliament by the President, and of the effective legislation;

3) define general principles and special features of legal regulation of conducting anti-corruption expert evaluations (clearly define the entities and objects of anti-corruption expert evaluation, as well as the unified list of corruption factors);

4) identify general requirements for the methodology of conducting anti-corruption expert evaluations (which will apply to all entities), presentation, publication, and, most importantly, revision of anti-corruption expert evaluation outcomes and taking them into consideration.

2.3.2. Anti-corruption programs

(D. Kalmykov)

1. As of February 20, 2019, all the draft legislative acts, required for successful elaboration and implementation of anti-corruption programs by all the abovementioned institutions, have been elaborated and adopted. Almost all the entities, required by the law to approve anti-corruption program, complied with this requirement. Only two CEB (the State Archival Service of Ukraine and the Ukrainian Institute of National Remembrance) and five regional councils (Vinnytsia, Dnipropetrovsk, Zaporizhzhia, Lviv and Mykolayiv regional councils) did not submit their anti-corruption programs for approval, though the information about preparation and/or approval of anti-corruption programs of these authorities was posted at their official websites.

2. The introduction of the institution of anti-corruption programs of state agencies, local self-governance institutions and other public law legal entities does not meet the expectations, laid upon it by the creators of new anti-corruption legislation. This institution is aimed only at its "self-cleansing", but in current Ukrainian conditions these programs

turn into complete simulation of uncompromising struggle with non-existing manifestations of corruption.

3. The selective analysis of the anti-corruption programs of different ministries, other CEBs and some other institutions led the CPLR experts to the conclusion that at present state institutions are not ready for “self-cleansing” via the institution of internal anti-corruption programs. The programs are of extremely low quality and are not aimed at removing real corruption factors or overcoming corruption manifestations, e.g., in these programs corruption risks and measures to overcome them are defined generally and superficially, therefore, they are aimed not at the fight against corruption but to enable the formal reporting about successful implementation of any measures).

4. The methodology of evaluating corruption risks in the activity of state authorities is imperfect (for instance, it is unclear and not so convenient for implementation).

NACP provides several steps to improve the capacity of officials from state agencies, local self-governance institutions and other public law legal entities in terms of corruption risk assessment, preparation of high-quality anti-corruption programs and their implementation (NACP provides trainings, methodological support, consultations etc.), but they are too slowly converting into the concrete results - high-quality anti-corruption programs that could lead to the decrease of corruption risks.

Participation of the civil society in the process of preparation of the anti-corruption programs is quite rare due to the passivity of CSOs as well as reluctance of public institutions to take into account proposals and recommendations of civil society.

5. The anti-corruption program of a legal entity is obligatorily approved only by the heads of:

1) state, public utility enterprises, business partnerships (in which a state or communal share exceeds 50%), where the average number of registered employees in the reporting (fiscal) year exceeds 50 persons, and the amount of gross revenue from the sale of products (work, services) for this period exceeds 70 million hryvnia;

2) legal entities, which participated in the previous qualification, and in the procurement procedure pursuant to the Law “On Public Procurement”, if the cost of procurement of an item (goods), a service (services), works equals or exceeds 20 million hryvnia.

As of February 20, 2019, these anti-corruption programs were approved for an insignificant number of legal entities. However, even the NACP has no summarized information about these entities (these programs are not subject to approval).

6. The control over the status of implementing obligatory anti-corruption programs (for legal entities of both public and private law) is vested upon the NACP. However, it does not deprive the institutions of civil society from the possibility of public control over these processes using common instruments.

7. In the context of anti-corruption programs of public law legal entities during 2019–2020 and in subsequent years, the NACP should:

- consider the report “Corruption risk assessment in Ukraine: current state”, prepared by the independent experts with the support of the EU Anti-corruption Initiative in Ukraine, and implement proposals and recommendations, expressed by the experts, which could improve the effectiveness of the anti-corruption programs in Ukraine;

- consider all the shortcomings of the Methodology for the corruption risk assessment in

public institutions, collect and provide analysis of all the difficulties of the implementation of this Methodology, collect and provide analysis of all the proposals and recommendations for the refinement of the Methodology and to amend this by-law;

- continue coordination and provision of methodological assistance to state authorities, state authorities of ARC and local authorities regarding the most efficient ways of revealing corruption-related risks in their activity and their taking measures to eliminate them, including the context of preparing and implementing anti-corruption programs;

- provide analysis of the anti-corruption programs of state authorities and local authorities and provide proposals to them, which are obligatory for consideration;

- conduct inspections of the preparation of anti-corruption programs procedures;

- coordinate the process of the implementation of the anti-corruption programs of public institutions;

- conduct inspections of organization of the activity in implementing anti-corruption programs, promote improvement of their implementation and, if needed, initiate holding the guilty persons disciplinarily liable for their failure to fulfill or improper fulfillment of these programs.

8. In the context of anti-corruption programs of private law legal entities during 2019–2020 and in subsequent years, the NACP should:

- hold campaigns, aimed at awareness raising of business representatives about the requirements of anti-corruption legislation and practice of its application;

- conduct trainings for persons, responsible for anti-corruption programs;

- submit proposals on applying so called “integrity pacts” (in particular, in infrastructure projects or other projects, which envisage considerable budget expenses);

- ensure periodic monitoring of the implementation of the Law “On amending certain legislative acts regarding the determination of final beneficiaries of legal entities and public figures” and, if necessary, develop proposals for refinement of legislation in this area.

2.3.3. Legislation on administrative procedures

(V. Tymoshchuk)

1. As of February 20, 2019, most procedural elements of the relationships between state authorities and citizens in Ukraine are either not governed by legislation at all or are governed only by regulations. The exception may be found only in the segment of such relationships that is currently governed by the effective Laws “On Citizens’ Petitions” and “On Administrative Services”.

2. The quality draft Law on the administrative procedure has already been elaborated and approved by the Government. When it is adopted as a law, it will facilitate solving the abovementioned problems. Therefore, during March-April 2019, the draft Law “On Administrative Procedure” should be adopted in the first reading. It is reasonable to create a working group in the specialized Parliament’s committee to prepare the draft law for the second reading and to finalize it at the Parliament’s level.

3. Simultaneously with adopting the Law “On Administrative Procedure”, it is necessary:

- to assist the MOJ in improving its institutional capacity in terms of general

administrative procedure, by conducting trainings (including study visits) for the ministry's staff, members of the relevant working group, Cabinet of Ministers Secretariat staff (including the ones at the political level), etc. (for instance, such assistance could be provided by international organizations);

- to start preparing training programs on general administrative procedure for all civil servants and the officials of local authorities (MOJ, NACS);

- to secure organizational and financial support from international organizations for the development, testing, and implementation of training programs and activities on the topic of general administrative procedure for a wide range of future users (public officials, law professors, institutions that provide training and advanced training education for public officials, judges, etc.).

During the Parliament's consideration of this draft law, it is necessary to ensure adequate informational and advocacy campaigns aimed at creating a steady conviction (both among the public and Parliament representatives) about the need of adopting the Law "On Administrative Procedure" (MOJ, Government, scholars and NGOs).

2.3.4. State financial control and audit

(D. Kalmykov)

1. Both external and internal state financial control and audit have been introduced in Ukraine. The external financial control and audit are currently provided for primarily by the Parliament and the Government, whereas the internal control is exercised by the very administrators of budget funds.

2. Despite many years of international experts' complaining about the unacceptable situation in terms of monitoring public finances of local authorities, the situation in this sphere remains unchanged. At present this monitoring is conducted by the SAS, which cannot be fair in the relevant issues, since it is a CEB, whose activity is directly coordinated by the Government.

Therefore, it is desirable to develop a raft of legislation, aimed at implementing GRECO proposals in this sphere in the nearest future. The most efficient way of implementing these recommendations goes through systemic changes to Art. 98 of the Constitution of Ukraine, the provisions of the Law "On the Accounting Chamber", the Regulation "On State Audit Service of Ukraine", etc. The alternative way of solving this problem is to create a separate independent entity, which would be endowed with the function of monitoring public finances of local authorities. This requires the adoption of a special law (on CEB with a special status), the introduction of relevant amendments to the budget legislation and the statement (including the Resolution of the Government "On Optimizing the System of Central Executive Bodies" dated September 10, 2014 No. 442) that neither the CMU nor any other state authority has the right of directing and coordinating its activity.

3. The analysis of the activity of the Accounting Chamber in 2014–2018 demonstrates that despite gradual decrease in the number of conducted controlling, analytic, expert events and objects of inspection, the total amount of violations of budget legislation and inefficient use of the State Budget finances is increasing. This situation is of considerable concern, since it demonstrates no significant improvement in this sphere.

4. Most violations of the budget legislation and incidents of poor management and use of state budget funds are of systemic nature and repeat each year. This fact demonstrates low efficiency of the actions, taken by the Accounting Chamber.

One of the reasons behind poor efficiency of the Accounting Chamber work may also involve the fact that, having uncovered thousands of different violations over recent four years (2014-2018), only about one hundred case files were transferred to law enforcement agencies (including the Prosecutor General's Office). However, since 2014 the situation in this sphere began improving gradually (each year the number of transferred case files increased almost twice).

5. In the nearest future, it is desirable for the Accounting Chamber:

- to increase the annual number of control, analytical, and expert measures, as well as the number of entities subject to inspection;

- to analyze the efficiency of measures undertaken in previous years, and provide for more effective measures in the future based on this analysis;

- to establish more precisely all circumstances of the offense, identify guilty persons, and, if there are grounds to do so, to transfer relevant materials to law enforcement agencies to bring guilty persons to legal (including criminal) responsibility.

6. Starting with 2013, the number of control measures carried out by the SFI/SAS and the annual scope of inspection coverage of the controlled institutions has been constantly decreasing. As of the end of 2018, these numbers went down almost 10 times. The volume of the use of funds covered by such inspections has similarly been gradually decreasing.

The number of financial offenses detected by the SFI/SAS is decreasing each year, which causes a decline in all other related indicators (e.g., the number of audit case files transferred to law enforcement bodies, the number of initiated pre-trial investigations, the number of court claims, the number of persons brought to administrative and disciplinary responsibility, etc.). However, some indicators of the SFI/SAS activity have been declining regardless of the overall reduction in the scope of state financial control coverage. For instance, in 2016 the ratio of the number of initiated pre-trial investigations to the number of audit case files transferred to law enforcement agencies decreased to a shamefully low level of 46.1%.

7. In the context of the SAS's activity, in the nearest future it is necessary:

- to eliminate its authority to exercise state financial control over the receipt and use of the funds of the state and local budgets;

- to significantly intensify the activity of this entity (in terms of the number of entities and undertaken control measures);

- to ensure high level of quality and implementation of auditing and other materials of financial control.

2.3.5. State procurement

(O. Lemenov)

1. No considerable changes have been made in the context of institutional control over spending of budget funds during the almost 5-year-long period of reforming the system of state procurement. Relevant experts and a specialized institution established a fantastic

electronic procurement system ProZorro, which allows tracing the trading procedures in real time mode.

However, unprecedented transparency did not create the platform for reducing corruption in this area, it may have promoted the decrease in the corruption “margin” for dishonest officials and businessmen. Still it was not the objective of the MEDT or the state enterprise “Prozorro”, rather it was a problem of insufficient work of law enforcement bodies, which should have created the grounds for imminent punishment for corrupt officials.

Uncontrolled expenses at the local level due to pre-threshold trading remains the second problem. As usual, the activation of clients is observed at the end of the year (November–December). This proves the insufficiency of the established limits (UAH 200 thousand – for goods and services, UAH 1.5 million – for works). Currently the MEDT is working to improve the legislation on decreasing the mentioned limits.

The third problem is a low level of suppliers’ participation in electronic trading: it is hardly possible to deem the number of offers satisfactory, when it was 2.45 participants per one trading in the report for 2017, and has gone down to 2.33 at present.

2. In the future, it is necessary:

1) to continue reforming the public procurement system on the basis of regular assessment of the application of the new Law “On Public Procurement”, while minimizing the use of non-competitive procedures. At the same time, it should be ensured that any amendments to this Law are subject to the consideration in the Parliament following the consultations with the public and international experts;

2) to cover all procurement procedures available under the Law “On Public Procurement” using the electronic public procurement system ProZorro;

3) to enhance the anti-corruption effect by introducing the following procedures:

- providing business with a possibility of improving technical errors in tender offers within 24 hours;

- allowing the submission of a complaint via online systems;

- defining the responsibility for unjustified application of the negotiation procedure of procurements, groundless disqualification of a participant, unsubstantiated decision about a winning participant;

- maintaining electronic catalogues.

2.3.6. Access to information

(O. Lemenov)

1. During recent eight years the national legislation on access to public information has been resolutely moving toward the European practices. After all, each citizen has a possibility of addressing the public authorities (information distributors) regarding the access to information. Undoubtedly, since Euromaidan there are more possibilities of exercising the rights, but it has become possible due to the adoption of new legislative acts rather than due to enhancing the action of the Law “On Access to Public Information”. Higher awareness of the population increases the responsibility of public authorities and provides journalists with new possibilities of controlling the officials.

2. In the future, it is necessary:

- to define whether it is relevant to establish another state authority of monitoring the compliance with the legislative requirements about the access to public information;
- to continue filling the Unified State Open Data Portal with new content;
- to ensure the verification of information regarding the final beneficiaries of legal entities, specified in the state register;
- to ensure adequate access to the State Registry of Real Property Rights, filling it with the data from the local technical inventory bureaus.

2.3.7. Preventing corruption in the private sector

(O. Lemenov)

1. Prevention of corruption in the private sector is gradually becoming a trend which ensures not only reputation-related bonuses for companies, introducing the corresponding policies, but sometimes is even a functional mechanism in the context of counteracting the negative phenomena of misconduct. During recent two years the state has made only some attempts to regulate the corresponding processes. For instance, the NACP took a decision on approving the Methodological recommendations on preparing and implementing the anti-corruption programs. This work may hardly be considered large-scale, but with proper assistance of the public and the application of practices in private companies there is a chance of upscaling this process to wider extents.

The institution of business ombudsman promotes the implementation of anti-corruption processes in the business environment.

At present preventing corruption in the private sector has slightly evolved from the embryonic state, but private companies and the public should be the main progress drivers rather than the state.

2. In the future, it is necessary:

- to adopt the Law “On Business Ombudsman” and to ensure the development of the business ombudsman institution, engaging this entity in addressing the current problems faced by business that are directly related to corruption;
- to formulate an anti-corruption compliance “agenda” for business representatives;
- to develop novel approaches to the formulation of anti-corruption agenda for private sphere, since global trends change from year to year, improving their practices.

Section 3.

CRIMINALIZATION OF CORRUPTION AND LAW ENFORCEMENT ACTIVITY

3.1. CRIMINALIZATION OF CORRUPTION IN LINE WITH INTERNATIONAL STANDARDS (M. Khavronyuk)

1. The criminalization of corruption in line with international standards and creation of specialized law enforcement bodies accountable to the state and the society provide theoretical opportunities to ensure the principle of inevitability of punishment for corruption, and as such, they should be a mandatory condition of successful corruption counteraction, including transnational corruption.

2. The state of implementing the provisions of anti-corruption conventions establishing criminal responsibility in the Criminal Code can be considered satisfactory. However, there are instances both of excessive criminalization (Art. 364-1, 365-2 of the CC), resulting in difficulties in criminal qualification, and of non-recognition of the acts, the criminalization of which is directly provided for by relevant international conventions, as criminally punishable ones (specifically, certain financial crimes).

3. The list of corruption crimes, based on the elements of corruption and an corruption-related offense, as identified in the Law “On Prevention of Corruption”, has not been formed yet. Bribery is perceived as corruption most frequently, though the most wide-scale and dangerous corruption is stealing budget funds, state and communal property and natural resources.

The list of corruption-related offenses, identified in Art. 45 of the CC is imperfect, since it contradicts the elements of a corruption-related offense, as defined in Art. 1 of the Law “On Prevention of Corruption”. All the crimes, committed by a person authorized to perform state or local government functions or by a person in an equivalent role, using the power, official authorities, status or related possibilities and with the intent of obtaining illicit benefit should be deemed as corruption crimes.

On the contrary, the crime, stipulated in Article 320 of the CC should be removed from the mentioned list, and there should be amendments to Art. 210 of the CC (to define the intent of obtaining an illicit benefit as a qualifying element of the crime).

All corruption crimes should be brought under the special jurisdiction of anti-corruption investigation bodies, the activity of which should not be duplicated.

4. Over the recent years, following numerous amendments to the Criminal Code, it was possible to succeed *in generally* bringing all the elements of anti-corruption crimes in line with international standards, in particular those regarding *actus reus*, *mens rea* and the perpetrator of the crime.

Some inconsistency still remains in some cases. This includes some provisions of Art.

14, 15, 354, 357, 368-2, 368-3, 368-4, 369, 370, 410 of the CC, and especially – Art. 364 of the CC.

5. As part of implementing the corresponding convention provisions, in 2013 the Criminal Code was added Section XIV-1 “Measure of Criminal Law Nature for Legal Entities” (Art. 96-3–96-11). It established quasi-criminal responsibility of legal entities for certain corruption crimes, particularly those related to legalization of property, and with promising, offering, and providing an illicit benefit (Art. 209 and 306, section 1-2 of Articles 368-3 and 368-4, Art. 369 and 369-2 of the CC).

Evidently, these provisions should be extended to Art. 159-1 of the Criminal Code, as well as to all crimes committed with the intent of obtaining an illicit benefit.

It is also necessary to consider the possibility of introducing such debarment of certain participants or participants in preliminary qualification rounds from participating in procurement procedures or in preliminary qualification rounds as one of the criminal law measures that can be imposed on legal entities, if the information on a legal entity participating in procurement or in preliminary qualification round is listed in the Unified State Register of Persons Who Committed Corruption or Corruption-Related Offenses.

The list of sanctions that can be imposed on legal entities as part of criminal law provisions should also be expanded, in particular by including the following measures:

- prohibiting certain activities;
- prohibiting the advertisement of its own activity, goods, services, etc.;
- removing from the position of the director and appointing of a trustee;
- withdrawing the license;
- prohibiting the use of grants, subsidies, and other forms of publicly funded financial assistance;
- prohibiting the use of aid from international organizations;
- closing certain business units of the enterprise;
- terminating the activity of the enterprise;
- publishing the court decision.

6. The convention requirements concerning the application of criminal sanctions that take into account the gravity of corruption crimes have been implemented in an inconsistent manner in Ukraine.

For instance, these sanctions do not always take into account the severity of these crimes, i.e. they are not proportional, while the amounts and durations of fines, community service, correctional labor, arrest, restriction of liberty, and deprivation of liberty, as set forth under these sanctions, are inconsistent among themselves.

To correct this drawback in the Criminal Code, it is necessary to unify all sanctions in a manner, by which specific amounts and durations of each primary type of punishment correspond to specific amounts and durations of other primary types of punishment. For example, if a certain crime is punishable by imprisonment

- for a term of up to two years, its alternative could be a fine in the range from 500 to 1,000 non-taxable minimum incomes;
- for a term of two to five years – a fine in the range from 1,000 to 2,000 non-taxable minimum incomes;

- imprisonment is not envisaged – a fine could be in the amount of up to 500 non-taxable minimum incomes.

The same approach should also be used in setting the ratio regarding other types of punishment.

7. Contrary to the requirements of Art. 30 of UNCAC, in many cases the Criminal Code does not envisage the deprivation of the right to hold government office or occupy a position in any enterprise wholly or partially owned by the state for a certain period as a mandatory punishment for individuals convicted of professional misconduct, committed with the intent of obtaining an illicit benefit (i.e. for corruption crimes).

8. Contrary to the requirements of Art. 30 of UNCAC, in many cases the Criminal Code does not take into account the gravity of respective crimes while reviewing the possibility of early release or parole for individuals convicted for such crimes.

The legislation still leaves a lot of open options for individuals who committed corruption crimes to avoid criminal responsibility or punishment, as well as opportunities for obtaining unfairly mild sentences as compared to the gravity of their corruption crimes.

In such circumstances, there is the possibility for judges to yield to pressure or bribery, and continue rendering mild sentences, sometimes in violation of the law, but often without a clear violation of the law. According to court statistics, such judicial practice has become a rule rather than an exception.

To remedy this situation, it is necessary:

- to make disciplinary responsibility of judges for violation of the law more effective;
- to narrow the limits of punishment, envisaged by the sanctions in the relevant articles;
- to envisage the obligatory application of additional punishment in some cases in the form of depriving of the right to hold some positions or be involved in some activity and confiscation of property;

- to eliminate all still existing possibilities for unjustified mitigation of the sentence and for relief from punishment for corruption crimes, both those directly mentioned in the footnote to Art. 45 of the CC and all others.

9. Ukraine has fulfilled its international obligations regarding the implementation of common measures that may be necessary to ensure possible confiscation of: a) income from corruption crimes, or property the value of which corresponds to the amount of such income; b) property, equipment, and other means used or intended for use in committing corruption crimes.

However, the experience suggests that the measures that have been implemented are insufficient in terms of ensuring the detection, tracing, freezing, or seizure of the mentioned income or property with the view of subsequent confiscation, as well as for management of frozen, seized, or confiscated property.

Moreover, generally with respect to those articles of the Criminal Code that establish responsibility for corruption and some corruption-related crimes, some of them do not provide for the possibility of confiscating property (due to the rules set forth in Art. 59 of the CC – this applies to crimes, described in sections 1–3, Art. 159-1, section 2 Art. 191, Art. 354, Art. 357, sect. 1 Art. 364, sect. 1 Art. 364-1, sect. 1 Art. 368, sections 1 and 2 of Art. 365-2, sections 1–3 of Art. 368-3 and 368-4, sect. 1 Art. 369, sections 1 and 2 of Art.

369-2, sections 1-3 of Art. 369-3) or special confiscation (due to the rules, set forth in Art. 96-1 of the CC – this applies to crimes, described in sect. 1 Art. 159-1, sect. 1 Art. 357).

At the same time, property confiscation was mentioned in the sanction for a crime, described in section 1 Art. 368-2 of the CC, which is neither a grave crime nor a crime against the principles of national security or public safety – and which, therefore, directly contradicts the rule set forth in Art. 59 of the CC, which has no exceptions.

3.2. APPLICATION OF CRIMINAL LAW, AVAILABILITY OF EFFECTIVE PROCEDURES FOR INVESTIGATION AND TRIAL OF CRIMINAL CASES ON CORRUPTION CRIMES (*M. Khavronyuk*)

1. Generally, the Criminal Procedure Code provides for effective procedures of investigation and trial in criminal cases on corruption crimes. However, the improvement of its particular provisions to make them even more suitable for investigation of corruption crimes creates risks of violation of human rights in general.

At the same time, some legislative proposals, purposefully introduced for the Parliament's consideration are directed at making the investigation of corruption crimes more difficult. During recent two or three years, some of the mentioned proposals have been realized i.e. introduced to the Criminal Procedure Code.

2. Criminal investigation of corruption crimes is rather often conducted with the violation of the jurisdiction rules. This creates a risk of acquittal of the accused. Therefore, this practice should be strictly terminated.

3. A practical problem has arisen due to some collision between the provisions of the CPC and the Law "On Prevention of Corruption", since the latter envisages a procedure of notifying law enforcement agencies, in the form of the NACP opinion, and the violation of this procedure is deemed to be a violation of a legally established manner of proving a person's guilt in committing a crime.

4. It is necessary to gradually narrow the content and scope of Parliament members' immunity, at least to the extent not expressly provided for by the Constitution of Ukraine. First and foremost, this means authorizing the conduct of covert investigative (intelligence) activities into the actions of a Parliament member without having to first obtain Parliament's consent (exception to section 2 Art. 27 of the Law "On Status of the People's Deputy of Ukraine").

5. It is necessary to immediately provide the NABU with the authority to independently intercept (wiretap) information from communication channels and to conduct investigation actions undercover.

6. The courts should refrain from unsubstantiated practice of using court decisions of other jurisdictions in the criminal investigation, since they are prejudicial.

3.3. SPECIALLY AUTHORIZED INSTITUTIONS FOR DETECTION AND INVESTIGATION OF CORRUPTION CRIMES (*M. Khavronyuk*)

1. At present the independence of the activity of the NABU, SAPO, and SBI is properly guaranteed by the legislation. At the same time, ensuring such independence in practice is much more difficult due to the influence of individuals who abuse their immunity.

There are persistent attempts to use the NABU and SAPO in party, group, or personal interests, to put them under illegal control of other state bodies and their officials, in particular through failure to provide the NABU detectives with appropriate capacity for conducting all possible undercover investigation actions, and the threat of removing the NABU Director from office through a mechanism of appointing auditors controlled by certain political forces, and through other means.

2. The procedure for selection of the NABU Director and the SBI Director, specified in the Law “On the National Anti-Corruption Bureau of Ukraine” (Art. 6 and 7) and in the Law “On the State Bureau of Investigations” (Art. 11) respectively, are consistent with democratic standards.

However, there are problems with constitutionality of appointment of the NABU and the SBI leadership.

3. The Law sets forth the requirements for the structure of the NABU, SAPO, and SBI, as well as their personnel number, education and experience requirements, mandatory trainings for staff, overall budget and the procedure of its formation, accountability and transparency, including mandatory periodic reporting to the public, etc.

These legal requirements are followed in practice. However, the NABU and the SAPO, and especially the SBI, remain only partially staffed, and there is a problem of impossibility of appointing field agents for positions in the SBI.

The State Budget of Ukraine envisaged appropriate expenditures to ensure the operation of these bodies.

4. Accountability and transparency of the NABU and the SBI, including mandatory periodic reporting to the public, are provided for by law and actually exist in practice, although there are some deficiencies, including the fact that the audit of the NABU’s effectiveness and its operational and institutional independence has never been conducted during two years of its existence.

The accountability and transparency of the SAPO, including mandatory periodic reporting to the public, are not clearly envisaged by the legislation and are actually absent in practice, but for the framework of the legal requirements to accountability and transparency, specified for the prosecutor general’s office in general.

5. Organizational, personnel, scientific, methodological, criminalistic and other provisions for the investigation of corruption crimes are not ensured properly. There are contradictions in the jurisdiction of corruption crimes, i.e. their being assigned to particular bodies of pre-trial investigations. The Tax police has been disestablished, and the Financial police has not been established yet. The investigation departments of the National Police are still at the reforming stage.

As for the NABU, created specifically for combatting corruption, as of the beginning of 2019 its detectives have submitted only 176 criminal case materials to the court (and the courts have passed 25 sentences). When this number is compared against the total number of criminal proceedings, submitted to the courts with charging documents in 2016–2018 (during the activity period of the NABU), it is less than 0.05% which is an extremely small number. Out of 227 persons, accused in the NABU cases: 7 are state officials, “A” category local authority officials, 3 – people’s deputies of regional, Kyiv and Sevastopol

city councils, 2 – senior civil servants (ministers and their deputies, people’s deputies of Ukraine, etc.), 205 – the rest.

In other words, the NABU has not become the main body of corruption counteraction among the officials, who hold especially relevant positions (see sect. 3 of Note to Art. 368 of the CC) and actually “create corruption environment” in the country.

3.4. STATISTICAL INFORMATION ON THE APPLICATION OF ANTI-CORRUPTION CRIMINAL LEGISLATION

(A. Marchuk)

1. One of urgent problems of statistical data analysis on the application of criminal legislation on combatting corruption is its low quality and poor systematization, incompleteness and insufficient standardization. Due to this fact, there are still urgent issues of elaborating and approving required legislative changes regarding the criminal statistics.

In the long-term perspective, the most optimal solution seems to be the automatic collection of statistical data out of the data of the electronic system of criminal case management (e-Case Management). The first Ukrainian system of this type is being elaborated for the NABU and the SAPO, and it may become a pilot version to test the updated model of collecting and disclosing statistical data in criminal proceedings.

It is reasonable to envisage the collection and disclosure of criminal statistics in the open data format. This information may be collected at the unified open public online portal, as in these conditions there is a possibility of considerable enhancing in the quality and volume of the analytic processing of these data, in particular, using modern devices (for instance, BI-module).

Since these instruments do not function yet, any statistical information should be presented in the maximally understandable way and contain mandatory methodological explanation. Report templates should be improved so that they would contain all the information, required to analyze the state of affairs in terms of holding persons, who have committed corruption or corruption-related crimes, responsible. The information on the main page of the official website of the Prosecutor General’s Office should contain at least a summarized description of the method, used to determine the indices of the registered corruption facts, case materials, submitted to the court and the number of convicted persons.

2. The legislators should finally identify clearly which criminal offenses are considered to be corruption crimes, which ones are corruption-related crimes, and coordinate the note to Art. 45 of the CC with the definitions of “corruption crime”, “corruption-related crime”, specified in Art. 1 of the Law “On Prevention of Corruption”. This will ensure further avoiding the inconsistencies in understanding of the fact which criminal offenses are corruption crimes, and avoiding the questions of whether the information about punishment for corruption, presented by top-level officials, is accurate.

3. It is doubtful that the statistical indices on the results of activity in terms of holding persons responsible for corruption crimes, in particular, the ones, mentioned in the speeches of the Prosecutor General and the Minister of Justice, are accurate. Taking into consideration current problems with defining the category of “corruption crime”, “corruption offense”,

“corruption-related offense” (see the previous clause), it is impossible to state univocally that the presentation of doubtful indices is aimed at misinforming the society, but this motive cannot be rejected in view of political positions of the mentioned persons, the desire to receive political dividends, and the absence of an independent criminal statistics body.

4. There are specificities in statistical accounting of criminal offenses and current practice in pre-trial investigation bodies and prosecutor general’s office on collecting criminal statistics.

As it was noted by the authors of the report “The role of the prosecutor at the pre-trial stage of criminal proceedings”, the practice of artificial regulation of statistical indices by the prosecutor’s office in order to close criminal proceedings is common. The statistics of the Prosecutor General’s Office of Ukraine does not indicate all the launched criminal proceedings, it indicates the index of the number of registered criminal proceedings instead, which does not take into account the criminal proceedings, which were closed on the basis of cl. 1, 2, 4, 6 sect. 1 Art. 284 of the Criminal Procedure Code. The authors of this report also state the availability of the information about “manual” correction of statistical indices; the heads of local and regional prosecutor’s offices try to keep statistical indices at the same level from year to year to avoid any claims about the quality of their work. The quality of criminal case materials, submitted to the court, often suffers because of the need to demonstrate “nice” statistical indices. Although this report covers not only the analysis of the activity of prosecutors in criminal proceedings on corruption and corruption-related offenses, these problems should also be taken into consideration while analyzing the presented data.

Another substantial study (on the role of the SAPO prosecutors) demonstrated that the statistical accounting system does not impact the substantial activity of the procedural controller – the SAPO prosecutor. All the abovementioned facts should be taken into consideration while interpreting the presented statistical data. Unfortunately, due to these factors it is impossible to assert that the statistical data about the stage of pre-trial investigation of criminal proceedings are representative and reflect the actual state of affairs.

5. In 2017–2018 there was a sharp increase in the number of registered criminal corruption and corruption-related offenses – almost by a quarter compared to two previous reporting years. There was a similar increase in the number of criminal offenses, where formal suspicions were announced. In 2017–2018 there was a similar increase in the number of criminal offenses, in which the cases were forwarded to the court with criminal indictment: almost by a third – in 2017, and almost by 19% more – in 2018. Unfortunately, due to the remarks, stated in cl. 4 it is impossible to assert that the increase in these indices occurred due to the improved quality of work of pre-trial investigation bodies and prosecutor’s offices. The analysis of reasons of a considerable increase in these indices requires additional studies.

6. Despite the increase in the indices of the activity of pre-trial investigation and prosecutor’s offices (if statistical information may be trusted), there is still no considerable progress in ensuring imminent punishment for committing corruption and corruption-related offenses. On the contrary, negative tendencies are evident.

The number of persons, convicted for such offenses, is decreasing both in the absolute number and in percentage. There is also a decrease in the number of persons, convicted to imprisonment in the final sentences (81 person in 2017), and the share of such persons among all the convicts is still insignificant – 8% of all the convicts. A considerable number of persons were acquitted – in 2017 they were about 27.5% or 481 out of 1,012 convicted persons.

7. The statistics of taking administrative actions against persons for their committing corruption-related offenses also demonstrates urgent problems and ambiguous tendencies. Despite the overall increase in the number of the administrative offense reports, filed in 2017, the index of the number of persons, sanctioned with administrative penalties, plunges to 45.35% out of the total number of cases. It may be partially explained by the increase in the number of unconsidered cases in the reporting 2017.

There is an increase in the number of cases, returned by the court, for instance, for finalization. The cases on administrative corruption-related offenses envisage only the main penalty in the form of a fine. The additional sanction in the form of confiscating the object or money was applied to an insignificant number of persons (26). There is an increase in the number of persons, the case against whom has been closed due to the expiry of the term of imposing a sanction which is another indication of the urgency of introducing amendments to Art. 38 of the CAO on the terms of taking administrative actions against persons, who have committed corruption-related offenses.

8. The results of confiscation, special confiscation of the assets, obtained via corruption or corruption-related crimes seem to be unsatisfactory. Although in 2017 the relevant indices increased considerably due to so called “special confiscation of Yanukovych’s finances”, the legitimacy of which was questioned and doubted by civil society representatives, in 2018 the funding for the corresponding special fund of the State Budget decreased considerably again. Separate statistics on applying confiscation, special confiscation in corruption and corruption-related offenses is almost not kept.

9. At present the statistical information is insufficient to analyze the information and to prepare conclusions on the categories of positions of top-level officials and civil servants, who have been held responsible for committing corruption or corruption-related offenses; on operational search activity of specially authorized entities in the area of combatting corruption; further decisions, adopted in the proceedings, in which, as of the end of the reporting period, the decision on closing or suspending pre-trial investigation was not taken; on returning the assets, obtained in an illicit way, to Ukraine from abroad; on confiscation and special confiscation of the assets, obtained via corruption or corruption-related offenses. This should be taken into consideration and current templates of statistical documents should be improved to be able to discern the corresponding indices and to analyze them.

10. Special attention should be paid to the results of the activity of the NABU and the SAPO as entities, vested with the main role in ensuring imminent punishment for top-level officials for committing corruption crimes. During 2017-2018, the NABU and the SAPO enhanced their activity and after the initial institutional development demonstrated the first results of their work. The main concern is caused by the fact that a share of top-level officials, regarding whom the indictment acts have been executed within the proceedings

of the NABU and the SAPO, is still not high, so these institutions should concentrate their efforts on the investigations of corruption and corruption-related offenses of top-level officials of the country, people's deputies of Ukraine and other persons, and the Parliament should create proper prerequisites for it, in particular, by abolishing the restrictions for investigative actions regarding people's deputies.

A considerable problem occurred with the court hearing of the cases of the NABU and the SAPO, transferred to the court, and the hesitations about creating the Supreme Anti-Corruption Court aggravated this problem even more. This resulted in a relatively small number of judgments of conviction, which were mainly used to approve plea agreements. The judgments of conviction in the proceedings, investigated by the NABU and the SAPO, are absent.

Section 4.

INTERNATIONAL COOPERATION

(B. Malyshev)

4.1. UKRAINE'S PARTICIPATION IN INTERNATIONAL LEGAL INSTRUMENTS AGAINST CORRUPTION

1. In general, the situation with Ukraine's implementation of recommendations of international organizations in 2014–2018 can be characterized by two main trends:

- 1) legislative regulation has approached the requirements of international standards;
- 2) practical implementation of many progressive provisions of the new anti-corruption legislation is largely inhibited due to various factors, the main of which is the lack of political will on the part of executive authorities and the law enforcement bodies.

2. Starting with 2017, the recommendations of GRECO and OECD have become much more substantive and specific in their content. Only sometimes they refer to the need to adopt new laws or amendments to laws, they are mainly aimed at improving the subordinate legislation and ensuring careful law enforcement of all the provisions of anti-corruption legislation by all the authorized state authorities according to their scope of duties, at the provision of explanations by these authorities and at conducting extensive informational work among civil servants regarding the relevance of specific regulatory institutions.

The recommendations pay close attention to the description of ways and instruments for the authorized entities to achieve their objectives from the standpoint of anti-corruption legislation. The relevance of comprehensive public control over the implementation of anti-corruption policy of the state is highlighted.

3. At present both the recommendations of GRECO and OECD coincide in terms of relevance of taking measures on decreasing corruption in the activity of people's deputies of Ukraine and in the activity of the legislative body in general, and especially highlight the relevance of systemic educational work among civil servants (in particular, judges and prosecutors) regarding the conflict of interests and compliance with the norms of professional ethics. Much attention is paid to ensuring the work of NACP and ARMA.

At the same time, the recommendations fail to mention the development of the capability of the SBI, which is an important element of combatting corruption, as it is authorized to investigate all the corruption crimes, except the ones in the jurisdiction of the NABU.

4. Based on the abovementioned, it should be recommended:

- 1) to adopt the new Anti-Corruption Strategy and the State program for its implementation as soon as possible, first of all based on the abovementioned recommendations of GRECO and OECD, and taking into consideration the results of implementing the Anti-Corruption Strategy for 2014–2017 and the study of the level of corruption, based on the method, approved by the NACP. Here special attention should be paid to the measures in the sphere of further implementation of the provisions in the area of reforming civil service,

preventing corruption among the people's deputies of Ukraine, judges, prosecutors, and in the activity of state enterprises. The conditions for more effective implementation of the functions of the ARMA, NACP, SBI and the Supreme Anti-Corruption Court should be ensured;

2) the code of conduct of people's deputies of Ukraine should be developed and approved;

3) to ensure de facto processing of all draft laws by the Parliament in compliance of the corresponding level of transparency and consultations, in particular, with transparent work of the Parliament committees, including consultations with the public, hearings with the involvement of experts;

4) to complete the finalization and to approve the Administrative Procedure Code with the purpose of considerable decrease in the discretion of state executive bodies while fulfilling their regulatory and control functions and providing administrative services. To unify and specify the relevant procedures in fine detail in the legislation in order to ensure their maximal transparency and univocity, removing corruption factors out of them; to identify obligatory prerequisites for the adoption of law enforcement acts of executive bodies, the failure to comply with which may be a reason to declare these acts not valid;

5) to develop and adopt the Law "On Regulatory Legal Acts" which would address the following issues: a) defining an exhaustive list of regulatory acts; b) hierarchy of regulatory acts by their legal force; c) obligatory requirements to the structure of regulatory legal acts; d) obligatory requirements to the procedure of adopting subordinate acts; e) ways of solving all the types of typical collisions between legal norms and overcoming the gaps in legislation. This law should introduce clarity and predictability into the actions of state executive bodies in law enforcement area, decrease the possibilities of manipulating with ambiguities in legal regulation.

6) to reform state fiscal and customs bodies towards decreasing the control functions in favor of analytical and auditing ones;

7) to improve transparency and integrity in the private sector via the elaboration and adoption of the law "On Lobbying" in accordance with the best international models. This will significantly reduce the avenues for businesses to influence norm-making activity of the state authorities by corrupt means, establish equal and clear lobbying rules for all entrepreneurs, and identify the types of responsibility of politicians, civil servants, and lobbyists for violation of such rules.

4.2. INTERNATIONAL COOPERATION AND MUTUAL LEGAL ASSISTANCE

1. The effectiveness of the activity of the NABU, the Prosecutor's General Office and the MOJ in terms of involvement in international legal assistance regarding criminal proceedings on corruption crimes, committed on the territory of Ukraine, is still extremely low despite a great number of inquiries, submitted to other countries.

2. There is some improvement in the activity of a new specialized body – ARMA – in terms of searching, seizing, managing property outside of the territory of Ukraine, obtained in an alleged corrupt way. However, at present there are no reasons to talk about any actual achievements of this entity in the mentioned sphere.

3. The Prosecutor's General Office should: 1) start collecting, registering and disclosing the information about the number and content of received and submitted inquiries on international legal assistance precisely in terms of investigating corruption offenses, including extradition, as well as in terms of searching, seizing and confiscating the funds and other property outside of Ukraine/in Ukraine; 2) introduce collecting, registering and disclosing the information about the amounts of funds or the cost of assets, returned to Ukraine or returned to another country, following the results of implementing the inquiries about the international legal assistance due to investigating criminal corruption cases.

4. The NABU and ARMA should considerably enhance the effectiveness of their actions related to international legal assistance in investigating corruption crimes and searching for the corresponding assets outside of Ukraine.

5. The ARMA should discern the description and quantitative analysis of the assets, which are outside of Ukraine, in the reporting documents on its activity.