

MONITORING REPORT

on implementation of the Law

**“On Amending Certain Legislative Acts of Ukraine Relating
to Preventing and Countering Political Corruption”
of October 8, 2015 #731-VIII**

on December 5, 2016

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INTRODUCTION

The Centre of Policy and Legal Reform (hereinafter “CPLR”) is a non-governmental think-tank established in November 1996 after the adoption of the Constitution of Ukraine. The organization’s activities are associated with its general mission to promote the implementation of institutional reforms that could strengthen democracy, the rule of law, and good governance in Ukraine. The CPLR is a non-profit NGO working at the national level in the capital and the regions of Ukraine. The CPLR’s headquarters are located in Kyiv. There is also a CPLR branch in Lviv.

One of the CPLR’s activity areas is combatting corruption.

As part of this activity area, the CPLR experts are implementing the project “Monitoring the Implementation and Raising Awareness of the New Rules for Political Parties Financing” in October-December 2016.

Monitoring the implementation of the Law of Ukraine “On Amending Certain Legislative Acts of Ukraine Relating to Preventing and Countering Political Corruption” (hereinafter “the Law”) of 8 October 2015 No 731-VIII is carried out. Activities within the project are intended to monitor the implementation of the Law, as well as to publish and discuss the monitoring results. The methodological basis for monitoring of the implementation of the Law has been drafted by the Council of Europe in July 2016 (by the expert Daria Paprocka).

The monitoring involves evaluation of political parties’ statutes and reports, information obtained during meetings with representatives of the National Agency for Prevention of Corruption (hereinafter “the NAPC”), the Accounting Chamber, the Central Elections Commission, other state authorities, and political parties, results of surveys among these persons, and other materials and information.

All mentioned data have become the basis for further conclusions contained in the report.

The report highlights the issues on the political parties willingness to implement a new law on the political parties financing; comprehensiveness of relevant legislation; the political parties statements on property, income, expenses and financial obligations for the first, second and third quarters of

2016; the reports form and quality; powers of the NAPC and other supervisory bodies and their interactions concerning the political party financing; applying sanctions for violations of the law on the political parties financing.

The CPLR experts expresses gratitude to the political parties, authorized state bodies, and their representatives which were open to cooperation.

Chapter 1.

LEVEL OF POLITICAL PARTIES READINESS FOR IMPLEMENTING OF THE NEW LEGISLATION ON THE POLITICAL PARTIES FINANCING

1.1. The majority of political parties registered in Ukraine¹ have shown an extremely low level of preparedness for implementing new legislation on the political parties financing. This is despite the fact that more than a year has passed since the majority of provisions of the Law “On Amending Certain Legislative Acts of Ukraine Relating to Preventing and Countering Political Corruption” of October 8, 2015 have entered into force².

1) The majority of the political parties has not led their statutes into compliance with the new legislation.

In particular, the statutes have not defined:

a) sources of material and financial support of the party and its local bodies, procedure for the political parties spending;

b) procedure of an internal financial party control (audit) for revenue and expenditure of the party and its local bodies, procedure of formation (appointment and dismissal), powers and term of the bodies or officials responsible for implementing such control (audit);

c) procedure to attract the audit firm to conduct an independent external audit of the financial statements of income, assets, expenses and financial obligations of the political party, its local bodies.

Meanwhile, these changes to such statutes are required according to a new version of the Article 8 of the Law “On Political Parties in Ukraine”.

In such circumstances, it is even inappropriate to talk about the “reality”

¹ According to information provided by the Ministry of Justice of Ukraine on the CPLR’s request, as of November 25, 2016 in Ukraine 351 party were registered.

² On November 26, 2015 this Law entered into force.

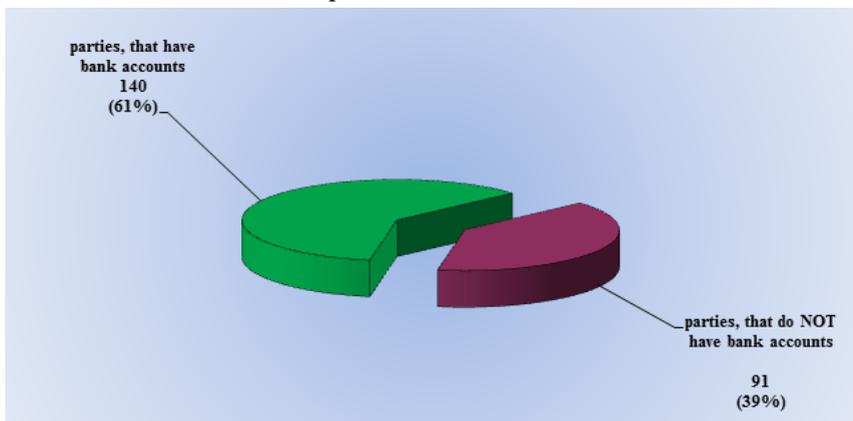
of body or official responsible for the internal party control (audit), structure of financial management and control of the political parties and specific procedures for implementation of the internal party audit, etc.

2) Not all political parties have set up separate accounts for private contributions to support the political parties’ activities and compensate party costs, as required by the Article 14 of the Law “On Political Parties in Ukraine”.

According to information, containing in the political parties’ reports on property, income, expenses and financial obligations for the third quarter of 2016 (currently, the most urgent information) only 140 political parties of 231, have a bank accounts to receive contributions to support the political parties’ activities and compensate the party costs, representing **61%** of all the parties that submitted reports.

Similar calculations, based on the reports’ analysis results for the second quarter of 2016, showed that as of June 30, 2016 this indicator was 49% (only 98 of 200, who submitted such reports, had bank accounts for contributions). Therefore, there are grounds to believe that the parties gradually bring their activities in accordance with the legal requirements in this area.

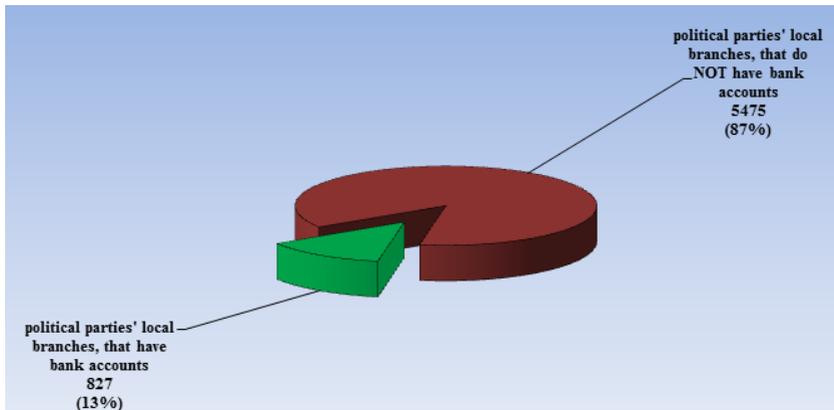
Diagram 1. Political parties’ opening of separate accounts for private contributions



3) The vast majority of the political parties local branches, which have not acquired legal personality after registration, has no separate bank accounts.

Thus, a detailed analysis of the reports from 231 political parties on property, income, expenses and financial obligations for the third quarter of 2016 has taken up the position that only these parties have created 6302 local organizations as of September 30, 2016. Such bodies have acquired legal entity status after registration. Moreover, only 827 of such local organizations have separate bank account, representing only **11%** of the total number of the political parties’ local branches.

Diagram 2. Political parties’ opening of separate accounts for private contributions



However, as of June 30, 2016, this indicator was even lower (11%), so there are a slight, but positive dynamics in this area.

1.2. The aforementioned information does not apply to **parliamentary parties** because they:

First of all, they *have brought their statutes in line with the new legislation* on political parties and have identified:

1) sources of material and financial support to a particular political party, its local bodies.

For example, under the section 6.2. of the All-Ukrainian “Batkivshchyna” Alliance Statute, the funds and property of the party are formed by:

1) contribution to the party; 2) public funding of the political party’s statute activities according to the procedure prescribed by the laws of Ukraine. The section 9.2 of the “Samopomich” political party Statute highlights that the sources of material and financial support to the party and its structural subdivisions are the following: 1) contributions in support of the party; 2) property acquired without charging; 3) public funding of statutory party activity. However, the list of such sources contained in the section 10.7 of the Petro Poroshenko’s Bloc “Solidarnist” Statute is large and inexhaustible (“other revenues not prohibited by the legislation of Ukraine” are classified as such sources);

2) the political party expenditure procedure.

For example, under the section 9.4. of the “Samopomich” political party Statute, the property and assets of the party are used to ensure statutory activities of the party, keeping the staff, providing material assistance to the party members and for other purposes that do not contradict the current legislation of Ukraine, the Statute and other documents of the party. Furthermore, usage of funds and other property of the party is indicated as established by the Executive Committee of the Party and controlled by the Party Control Committee (according to the section 9.8. of the “Samopomich” political party Statute).

However, under the section 6.3. of the All-Ukrainian “Batkivshchyna” Alliance Statute, payment procedure and using membership fees, donations and other funds of the party is governed by special provisions approved by the Presidium of the Political Council of the party. The section 6.5. of the Statute alleges that the Presidium of the Political Council administers the property and the party funds on behalf of the party leaders within the approved budget and expenditure. Moreover, the same section stipulates that regional and local party bodies cannot dispose of property which they own, without the consent of the Presidium of the Political Council of the party or managers;

3) formation procedure (appointment and dismissal), powers and term of the bodies or officials responsible for the internal party control (audit).

For example, the Petro Poroshenko’s Bloc “Solidarnist” body empowered to exercise internal financial control (audit) is the Monitoring Audit Committee of the party. The number of its members is determined and personal structure is chosen by the party Congress for the 5-year period, renewably, without limiting the number of terms (according to the sections 7.1., 7.3. the Petro Poroshenko’s Bloc “Solidarnist” Statute).

The All-Ukrainian “Batkivshchyna” Alliance body empowered to exercise

internal financial control (audit) is the Central Audit Committee of the party elected by the party Congress for up to 5 years, controlled and accountable to the Congress (according to the section 5.5. of the “Samopomich” political party Statute).

The appropriate body of the “Samopomich” political party is the Party Control Commission, whose chairman and members are elected by the party Congress for a period of 3 years;

4) procedure of the intra-party internal financial control (audit) for the revenue and expenditure of the party and its local bodies.

Under the sections 4.5.5. and 9.11.1. of the “Samopomich” political party Statute, the internal financial control (audit) for the revenue and expenditure of the party and its party bodies is conducted by: 1) the Party Control Commission – on the activities all the party; 2) the Regional Control Commission of the Party – on the activities of the regional body of the Party; 3) the Control Commission (Controller) of the local party – on activities of the relevant body.

According to the section 9.11.2., the purposes of the internal financial audit of the party are to provide the Party Political Council with the party independent and objective reports, opinions and assessments regarding: 1) compliance of the party and its structural subdivisions with the legislation of Ukraine; 2) adequacy and effectiveness of the party and its structural subdivisions management; 3) ongoing compliance of the party and its structural formations with the requirements of internal party documents; 4) efficient use of existing party and its structural subdivisions resources; 5) adequacy and effectiveness of measures to address deficiencies identified by government agencies, external auditors or internal financial auditors and more.

In most other parliamentary parties determined by the body responsible for carrying out internal party audit (audit) for the revenue and expenditure of political parties and their local bodies, but is not defined procedure for its implementation;

5) audit firm acquisition procedure to conduct an independent external audit of the financial statements of income, assets, expenses and financial obligations of the political party and its local bodies.

For example, this procedure at the “Samopomich” political party involves two stages. First of all, the Party Control Commission is studying the issue and *recommends* several audit firms to the Executive Committee of the Party for the independent external audit of the financial statements of assets, revenues, expenses and financial obligations of the political party and its local bodies

(according to the sections 4.5.5., 9.12. of the “Samopomich” political party Statute). Then, this issue is examined by the Party Executive Committee *to decide on acquisition* of one audit firm from ones recommended by the Party Control Commission for such external independent financial audit (under the section 4.4.6 of the “Samopomich” political party Statute).

According to the section 10.11. of the Petro Poroshenko’s Bloc “Solidarnist” Statute, acquisition of the audit firm to conduct an independent external audit of the financial statements of assets, revenues, expenses and financial obligations of the party is carried out by the instruction of the Secretariat Head of the party.

In addition, the section 6.7. of the All-Ukrainian “Batkivshchyna” Alliance Statute simply determines that the Presidium of the Political Council or on behalf of the party Head in certain cases takes a decision to conduct an independent external financial audit reports of property, income, expenses and financial obligations and involve the auditor in accordance with the law.

Secondly, they all *have separate accounts for private contributions to support the political parties and party costs* (under the Article 14 of the Law “On Political Parties in Ukraine”).

Thirdly, all of these parties (except the “Opposition Bloc” political party, which refused from public funding of its statutory activities) *opened separate accounts for public financing of their statutory activities* (according to the Article 17-3 of the Law “On Political Parties in Ukraine”).

The level of the parliamentary political parties’ readiness to the implementation of the new law on financing of political parties is fundamentally different due to two main factors:

- their “real” and national political operation;
- the fact that most of them (5 of 6 ones) wish to receive annual government funding of statutory activities requiring them to submit valid statements of assets, revenues, expenses and financial obligations for the first and second quarters of 2016, make appropriate amendments to their statutes and to open separate accounts for such funds.

However, even parliamentary parties were not fully prepared for the implementation of such innovations.

Thus, according to the section 6 of the Article 14 of the Law “On Political Parties in Ukraine”, all the local bodies of political parties, which have the legal entity status, are to open accounts in Ukrainian banks to transfer there all the money in the form of cash gained by the political party or its local body.

Despite this, 16 of 73 (22%) of the local bodies of the “Samopomich” political party, which have the legal entity status, have separate accounts in Ukrainian banks³. That indicator is still constant for over 6 months. In other words, the party does not even try to bring its activity in full compliance with the legislation and its own statute.

This indicator has shown 36% in the “Opposition Bloc” political party (28 out of 77 local bodies of the party, which have acquired the legal entity status, have bank accounts). This party, as well as the “Samopomich” political party, does not show willingness to change the situation in this area, since as of September 30, 2016, the indicators specified above remained unchanged compared to June 30, 2016 (based on the information provided in the reports for the second and third quarters of 2016).

The all-Ukrainian “Batktivshchyna” Alliance has only 125 of 634 (20%) local bodies that have the legal entity status, separate accounts in the banks of Ukraine (the rest is 80% of the party local bodies which do not have such accounts). This party is gradually improving mentioned indicator (as of June 30, 2016 it was equal to 16%)⁴.

The parliamentary political parties were unprepared to the fact that, on the one hand, listed in their account funds can be used only for statutory activities of the party (including the target destination of budget funds⁵), and, on the other hand, legal regulations do not contain a legal definition of the “statutory activities of political parties” term.

This problem could be solved by the NAPC via drafting corresponding normative and legal acts (for example, the Procedure of using budget funds by the political parties allocated for financing of their statutory activities) or

³ Noywithstanding the fact that the section 9.5. of the “Samopomich” political party Statute states: “The Party, as well as its regional and local bodies, which received the legal entity status in due course, open accounts in Bank institutions of Ukraine... to which all the funds gained by the Party or its regional, local bodies will be transferred”.

⁴ The only parliamentary party that has fully complied with this requirement of the law is the Petro Poroshenko’s Bloc “Solidarnist”. At the time of drafting this interim report, the “Narodnyi Front” political party and the “Radical Party of Oleh Liashko” did not have local bodies that gained the legal entity status. This party is gradually improving mentioned indicator (as of June 30, 2016 it was equal to 16%).

⁵ Please see the appropriate addition to the Law “On State Budget of Ukraine for 2016” and the section 1.6 of the Ministry of Finance of Ukraine order “On Approval of Instruction on Application of Economic Classification of Budget Expenditures and Instruction on Application of Classification of Budget Crediting” of 12 March 2012 No 333.

through official NAPC pronouncements on this issue. Nevertheless, the Law is to grant appropriate NAPC authority.

However, it should be noted that on November 2, 2016 the NAPC sent out a letter “On use of budget funds by political parties” (signed by N.M. Korchak) to parties, which received budget financing. The letter stated that according to the annual allocations from the State Budget of Ukraine for 2016, approved by Minister of Finance of Ukraine on January 25, 2016, the expenses over the budget program “Financing of statutory activities of political parties” (KPKVK #6331020) are carried out under the code of economic classification of budget expenditures #2610 “Subsidies and current transfers to enterprises (institutions, organizations)”. Based on this, as well as on provisions of Instruction on the use of economic classification of budget expenditures the NAPC has made completely logical conclusion - *the funds, received from the state budget on financing the statutory activities of political parties, can be used only for current expenses*. Despite some benefit of such information (even though it commonly known) it should be mentioned that this NAPC’s clarification applies only to the situation of 2016, and does not eliminate the general problem caused by the legal “vacuum” in the context of defining the content of legal concept of “statutory activity of the party”

Conclusions to the chapter.

1. Except parliamentary parties, the majority of other political parties showed low level of readiness to implementing the new law on financing of political parties.

2. The parliamentary parties have demonstrated readiness to implementing the new law on financing of political parties, due to their relatively high level of national political operation and the desire of most of them to receive the state funding of the statutory activities.

Parliamentary parties:

- brought their statutes into compliance with the new legislation;
- opened separate accounts for the private contributions to support of parties’ activities and expenses;
- opened separate accounts for state funding of their statutory activities (except “The oppositional block” party, which refused state funding of its statutory activities).

3. However, parliamentary parties were not appreciated certain provisions of the new legislation. In particular:

- not all local organizations of all political parties that have legal entity status, have separate accounts in Ukrainian banks, or even try to open it;

- “Narodny Front” political party and “Oleg Lyashko Radical Party” do not have any local organizations that have the legal entity status;

- there is no assurance that all political parties will spend budget funds exclusively for their statutory activities, primarily because the law does not contain legal definition of the concept of “statutory activity of political party”.

4. The majority of other political parties have either ignored the requirements of the new law on the political parties financing or fulfilled these requirements “formally” or in a fragmentary manner:

- the majority of these political parties has not brought their statutes into compliance with the new legislation;

- the majority of these political parties’ local bodies, which after registration entered status of legal entity, has no separate bank accounts;

- not all of these political parties have opened separate accounts for the private contributions.

Chapter 2.

COMPREHENSIVENESS OF CURRENT LEGISLATIVE PROVISIONS ON POLITICAL PARTIES FINANCING

2.1. Situation analysis of drafting, approval, consent, registration of the NACP regulations and quality of already adopted documents.

Under the section 5 of the Final and Transitional Provisions of the Law “On Amending Certain Legislative Acts of Ukraine Relating to Preventing and Countering Political Corruption” (hereinafter “the Law”), the National Agency for Prevention of Corruption (hereinafter “the NACP”) within 60 days from the date of activities commencing shall ensure the adoption of legal acts emerging from the Law.

Given the fact that on 14 August 2016, the NACP announced the launch of its work in full value as a public authority in all areas of anti-corruption activities, the 15 August 2016 has been set as the start date of its operations. It is obvious that all regulations arising from the provisions of the Law are taken to **14 October 2016** inclusive.

It is primarily about the following administrative ordinances.

1) The political party report form of property, income, expenses and financial obligations.

On 9 June 2016, the NACP has adopted the decision “On Approval of Political Party Report on Property, Income, Expenses and Financial Obligations” No 3 under the Articles 8, 12 of the Law “On Prevention of Corruption”, the Article 17 section 8 of the Law “On Political Parties in Ukraine” on the political party report form on property, income, expenses and financial obligations.

The decision No 904/29034 was registered in the Ministry of Justice of Ukraine on 30 June 2016.

The political parties’ representatives and the public have participated in drafting the form. According to them, the NACP have acted only nominal part in that process.

However, the political parties’ representatives have pointed out major shortcomings of the report form and issues that arose during its filling:

- 1) the form is too bulky and inconvenient to fill;
- 2) information requested in the report is to be adapted to the terminology of the legislation on accounting;
- 3) information is required to be provided as not provided under the Article 9 section 9 of the Law “On Political Parties in Ukraine”. In particular, it concerns financial issues, number of elected members and others. The NAPC can independently collect necessary data, as the information is available in the public registers;
- 4) the report form is to be most consistent with the reports filed by the party as legal entities to fiscal services;
- 5) the political parties’ representatives resent the NAPC requirement to confirm the location by the party agreement. There are cases when managers give their apartment free for the needs of the party. Thus, there is no documentary proof of using the premises;
- 6) the report form is to have online format that will facilitate the process of filing. Personal electronic key is required;
- 7) the political parties point out the inadequacy of current reporting requirements.

In particular, the report form should not include the territorial party branches reporting: “The political party has to report on property, funds, etc. not only private, but also of local bodies. However, each of these bodies is a separate legal entity. Furthermore, the Ukrainian People’s Party Statute states: “6.4. The UNP is not responsible for the obligations of the UNP economic structural parts, which are legal entities, and the latter are not responsible for the UNP property obligations...”. Therefore, it would be logical if district, city and regional political parties’ branches shall accountable at the local level and the political party, i.e. at the central level. In addition, bank statements and payment orders reporting are required to be submitted as copies. The bank statement copy contains information on payments made so far. Thus, it is not clear why it is to be duplicated via providing copies of payment orders”;

8) The NAPC shall disclose terms (columns, graphs) in the notes to the report, the Procedure of the political party reporting on property, income, expenses and financial obligations or exclude them. Thus:

- meaning of the column “Intangible Assets” is not clear (page 4 of the Report) (to be considered in the context of the Commercial Code or the Tax Code);

- information to be included in the column “Registration Data Property” is not certain (pages 9, 33, 34 of the Report).

The NAPC has access to respective registers. Therefore, such information is unnecessary and complicates reporting (for example, if the person completes a report and make a mistake when filling in this column, it immediately gives rise to a finding of the political parties’ violations and the possibility of the state funding denial);

- separate sections are to be allocated for easy forms filling, including:
1.1. Cash on the political party account, 1.2. Cash on the political party accounts of election funds, 1.3. Cash on the account for compensation costs related to the election campaign financing, 1.4. Cash on the account for funds from the State Budget of Ukraine to finance the statutory activities (last two items are filled in when the political party gets such funds);

- information to be indicated in the column “Account Type” and the purpose of such information collecting are unclear (page 27 of the Report);

- information to be included in the column “Property Object” and “Total Return” is not clear, i.e. about data on return and transfer of real estate fees to the State Budget of Ukraine received in violation of the law (page 34 of the Report). It seems that the party shall sell a property, and then report on it. However, the party cannot dispose of the property as it is refundable. Filling of this graph is inappropriate.

In this situation, there is inconsistency with the provisions of the Article 15 section 7 of the Law “On Political Parties in Ukraine”, as the procedure to return contribution in the form of real estate is not regulated;

- paragraph 6 “Information on Sponsorship Donations to Political Parties, Including Abroad” shall draw a clear gradation and refine the types of sponsorship (page 50 of the Report).

2) Regulation on procedure for submitting the political party Report on property, income, expenses and financial obligations.

The NAPC has adopted the Regulation on Procedure for Submitting Political Party Report on Property, Income, Expenses and Financial Obligations (hereinafter “the Regulation”) by the decision No 2 of 28 July 2016 pursuant to the Articles 8, 12 of the Law “On Prevention of Corruption”, the Article 17 section 8 of the Law “On Political Parties in Ukraine”.

The decision No 1185/29315 was registered in the Ministry of Justice of Ukraine on 25 August 2016.

Analysis of this document gives reason to talk about the following disadvantages:

a) the Chapter II paragraph 1 of the Regulation provides that “The political parties quarterly, not later than on the fortieth day after the end of the quarter, shall submit the report to the National Agency (signed by the head of the party and the chief accountant (person responsible for accounting), certified with the political party seal) in paper form and in electronic form”.

Similarly, the paragraph 13 of the Regulation stipulates that the report accuracy is confirmed by the handwritten signature of the head (authorized person) and chief accountant (person responsible for accounting) on the last page of the report, certified with the political party seal.

This provision comes into conflict with the Article 17 section 7 of the Law “On Political Parties in Ukraine”. Legal provisions of the Law point out only the signature, certified with the seal of the political party head.

According to the Chapter II section 1 paragraph 5 of the Regulation, in case of non-compliance with the aforementioned requirements (e.g. signature of the manager and accountant or the person responsible for accounting), the report is considered as violating the Law and leading to appropriate consequences.

Collisions between the Law and the Regulation create problems when determining the person’s responsibility for the accuracy of filling data in the report.

A special problem for small parties and parties that have just started the activities and are not engaged in financial transactions is a requirement of doing accounting in the prescribed manner (under the Article 17 section 1 of the Law “On Political Parties in Ukraine”). In fact, the accountant is an obligatory figure now, creating additional burdens for parties that do not receive public funding of statutory activities and do not have much support in the form of contributions;

b) the Chapter II paragraph 1 of the Regulation provides that the report submitted **for the IV quarter and for the year** up to 9 February following the reporting month, inclusive. Thus, a consolidated report for the year is required to be submitted. The paragraph 11 of the Regulation stipulates that the annual report of the political party and its local bodies, which have acquired the legal entity status in an established order, add: 1) findings of the annual internal audit of financial activities; 2) conclusions of an independent external financial audit.

However, the Article 17 section 11 of the Law requires the political parties to report on property, income, expenses and financial obligations **for the fourth quarter of the reporting year**, adding the findings of the annual internal audit and independent external financial audit of the political party (if being required under the Law) which are integral parts of the report.

The law has not stipulated duty on filing consolidated report for the year, and these legal provisions are contrary to the law. Thus, the provisions in this paragraph might be appealed by the political parties to the administrative court;

c) under the Chapter I paragraph 1, the Regulation defines the procedure for drafting and submission of the party report and disclosure requirements of the report elements. Therefore, the issues, controversial and unclear in completing the report (please see paragraph 1), could be clarified in the Regulation.

3) the banking or a postal office application forms accompanying the payment document for making a financial contribution to support a political party.

The NAPC has adopted two application forms by the decision “On Approving the banking or a postal office application forms accompanying the payment document for making a financial contribution to support a political party”: of 2 June 2016 #7:

a) Statement on the absence of circumstances defined by the Article 15 sections 1-3 of the Law “On Political Parties in Ukraine”, which can be grounds for refusal to accept the payment instrument for conducting monetary contribution (from citizen of Ukraine);

b) Declaration of absence of circumstances stipulated by the Article 15 sections 1-3 of the Law “On Political Parties in Ukraine”, which can be grounds for refusal to accept the payment instrument for conducting monetary contribution (by the legal entity). The decision No 902/29032 was registered in the Ministry of Justice on 30 June 2016.

Applications contain all the necessary information to make monetary contributions to support political parties.

4) The NAPC acts which regulate the procedure for public funds allocation by the political parties.

In accordance with the paragraph 2 of Final and Transitional Provisions of the Law “On Amending Certain Legislative Acts of Ukraine Relating to

Preventing and Countering Political Corruption”, public funding political parties statutory activities has begun since the third quarter of 2016.

The NACP official website deals with only news on approval of the funds distribution allocated from the state budget to finance the political parties statutory activities in 2016 (25% of public funding of statutory activities was provided to four political parties in the third quarter of 2016, and to five political parties in the fourth quarter).

As of December 5, 2016, the NACP has not revealed the decisions concerning allocation of funds between political parties to finance their statutory activities on official websites of the NACP or the Verkhovna Rada (although, according to the political parties’ representatives, costs for the third quarter have already been received on accounts of parties).

According to the NACP’s response of November 25, 2016 №75-01/6046 on the CPLR’s request, on August 30, 2016 the NACP adopt decision №13 “On the distribution of funds allocated from the state budget to finance the statutory activities of political parties in 2016, between political parties which electoral lists were supported by at least 5% of valid votes during the last early Ukraine’s parliamentary elections of 2014 in a statewide multimandate electoral district”.

In this context, the NACP, as the administrator of such information, violated its duty to publish specified information, as established in Article 15 section 1 paragraph 2 of the Law “On Access to Public Information”: “administrators of information are required to publicize ... legislative and regulatory acts, as well as individual acts (except those relating to internal organization) adopted by the administrator, as well as drafts of the decision subject to discussion and information on the legislative basis for their activity”.

5) Assessment methodology of the parties’ quarterly reports on property, income, expenses and financial obligations.

The NACP has adopted the Regulation on Analysis of Political Party Report on Property, Income, Expenses and Financial Obligations (hereinafter “the Regulation on analysis”) by the decision No 26 of 8 September 2016 pursuant to the Articles 8, 12 of the Law “On Prevention of Corruption”, the Article 17 section 14, 15 of the Law “On Political Parties in Ukraine”.

The decision No 1264/29394 was registered in the Ministry of Justice of Ukraine on 19 September 2016.

The Chapter II section 2 paragraph 3 of the Regulation on analysis

stipulates that a flagrant violation of the requirements are: the report submission without the signature of the head (authorized person) and chief accountant (person responsible for accounting) at the back and not being certified with the seal of the political party, its local bodies.

Thus, the Chapter II section 2 paragraph 3 of the Regulation on analysis, similarly to the Chapter II section 5 paragraph 1 of the Procedure for filing the report, comes into conflict with the Article 17 section 7 of the Law “On Political Parties in Ukraine” which deals with the signature certified with the seal of the political party head, when submitting the report.

6) Assessment methodology of contributions in the form of works, goods or services.

The Article 17 section 5 of the Law “On Political Parties in Ukraine” stipulates that the contribution size (amount) in the form of works, goods or services is based on the market value of identical or similar works, goods and services in the relevant market according to the methodology developed and adopted by the NAPC regarding the agreement with central executive body that ensures formation of state financial policy.

As of December 5, 2016, the NAPC not adopted any appropriate methodology. Before the approval:

1) the possibility of bringing to administrative responsibility under the Article 212-15 of the Code of Ukraine on Administrative Offences is excluded in case of breaching the procedure for giving or receiving contributions in support of the political party, i.e. if such a contribution was in the form of works, goods or services;

2) the possibility of criminal prosecution of individuals is excluded for violating the Article 159-1 of the Criminal Code of Ukraine in terms of a contribution to support the political party on a large scale, i.e. if a contribution was in the form of works, goods or services.

7) The NAPC acts for interpretation of the most important terms required for the successful implementation of the Law “On Prevention of Corruption” in the context of the political parties financing.

The Article 14 section 5, the Article 15 section 4 of the Law “On Political Parties in Ukraine” have determined that the NAPC establishes definitions of “affiliated parties”, “sponsorship”, “third parties”, “decisive influence” and

“ultimate beneficial owner (controller)” applied in this Law and legislation of Ukraine on elections.

The NAPC has given the definition of these terms in the decision of 11 August 2016 No 11 “On Defining Terms Used in Law of Ukraine “On Political Parties in Ukraine” and Legislation on Elections”.

The decision No 1226/29356 was registered in the Ministry of Justice of Ukraine on 8 September 2016.

The draft had been previously made public for discussion on 26 July 2016 at the NAPC Facebook-page. On the other hand, only two days had been granted to provide suggestions (until 28 July 2016). Lack of time did not allow the lawyers and the public to adequately respond to weaknesses in the proposed definitions. Meanwhile, there are drawbacks. E.g.:

1) the term “*decisive influence*” has been disclosed as a possibility of one or more related businesses and / or individuals to take **crucial decisions** on management of economic activity by the legal entity either directly or by proxy.

This wording is incorrect in terms of both philology and jurisprudence:

- interpretation of “decisive influence” through “decisive decision” leads to a tautology and ambiguity of language (meaning of words is unclear and allows to interpret it arbitrarily) that does not comply with the principle of legal certainty. Using this definition in terms of the Law “On Political Parties in Ukraine” and the election legislation can distort the content of its provisions;

- the phrase “decisive decision” allows to treat it as if there are also indecisive decision. Keeping this logic, decisions are to be specified as decisive and non-decisive. However, this course would be wrong, as the terms “decisive” and “decision” are cognate words (i.e. tautology is available). The semantic meaning of the word “decision” provides a solution so far to anything, occurrence or non-occurrence of certain effects (under certain circumstances).

Current legislation “does not know” the phrase “decisive decision”.

In case of using the interpretation of “decisive decision” given by the NAPC, as amended in the Article 15 section 4 of the Law “On Political Parties in Ukraine”, you get the following: “If a natural person or legal entity exercises or can exercise **a decisive decision** (possibility of one or more related businesses and / or individuals to take **crucial decisions** on the management of economic activity by legal person directly or by proxy) on the activities of one or more legal entities (in particular, the ultimate beneficial owner (controller) of the legal entity), the contributions of such person or entity and

its subordinate entities are deemed by the contribution of one person and are limited to a total size (amount) of contributions, established by this Article”.

Using the word “possibility” is obviously incorrect in this context because the opportunity may exist or not. Thus, the word “right” would fit better, being implemented in its sole discretion and being granted by the letter of the law;

2) the NAPC interpretation of the term “*ultimate beneficial owner (controller)*” fully reflects the content of the same term stipulated in the Article 1 paragraph 20 of the Law “On Prevention and Counteraction to Legalization (Laundering) of Proceeds from Crime, Terrorism and Financing of Proliferation of Mass Destruction Weapons” of 14 October 2014 No 1702-VII.

That is, it is not the definition;

3) The term “*affiliated parties*” is defined as the legal entity, the management and the economic activity via which the party exercises a decisive decision, directly or by proxy, including the implementation of the ownership or using all assets or a significant share, the right of decisive decision on the formation of, election results, and any transactions that provide the possibility to determine the conditions of economic activity, to give binding instructions or serve as the governing body, or being able to influence directly or indirectly (by another natural person or legal entity) ownership by one person or together with related individuals and / or entities which share 25 or more percent of the share capital or voting rights in the legal entity. The affiliated parties are also candidates in the elections put forward by the party or its local bodies.

The definition is illogical regarding the affiliated parties as legal entities with minor clarifying that they may be candidates for election, nominated by the party or its local bodies.

The paragraph 14.1.159 of the Tax Code of Ukraine is to be applied, stating that the “affiliated parties are legal entities and / or individuals, the relationship between which might affect the conditions or economic results of their activities or the activities of the persons they represent, with taking into account the following criteria:...”.

According to the Regulations (standard) for accounting 23 (paragraph 4), the affiliated parties are those that determine the possibility of one party to control the other or exercise significant influence on making financial and operational decisions of the other party.

Similarly, to the aforementioned definitions, the affiliated parties are evidently the ones relationships between which might be put on the performance of the party activities;

4) the definition of “*sponsorship*” (providing material, financial, organizational and other support by natural person or legal entity for events or other activities of the political party) is inaccurate. Sponsorship is inherently always pursuing a goal.

According to the Article 1 section 19 of the Law “On Advertising”, sponsorship is a voluntary material, financial, logistical and other support to individuals and legal entities for any activities **with the aim of** popularizing exclusively personal name, title, trademark for goods and services.

The definition provided by the NAPC does not take a specific interest and purpose of such assistance into account, which contradicts to the essence of the “sponsorship” concept and is close to the “charity” concept in the essence (voluntary personal and / or property assistance to achieve the goals stated by this Law, that does not involve obtaining a benefactor of profit and payment of any remuneration or compensation to the benefactor by or on behalf of the beneficiary (under the section 1 paragraph 2 of the Law “On Charity and Charitable Organizations”).

Sponsorship is not selfless by nature, and there are doubts about the appropriateness and accuracy of using the word “sponsorship” in the context of the political parties;

5) within the NAPC interpretation, the term “*third parties*” means any natural persons or legal entities that at their own name, at their own expense, and regardless of presence or absence of the political party consent to provide voluntary material, financial, organizational or other support to the political party and its local bodies.

However, the Article 15 section 6 of the Law “On Political Parties in Ukraine” states that “In addition to the payment document on the implementation of monetary contribution to support the political party, a written statement is to be submitted to the bank or post office in Ukraine concerning absence of the circumstances stipulated by sections 1-3 of this Article, presence of which is grounds for refusal to accept the payment instrument for conducting monetary contribution. Such declaration shall be approved by the NAPC. Without such an application, the payment document for conducting monetary contribution is not taken”. Thus, not **any** physical person and legal entity might support the political parties, their local bodies, but only those without any restrictions in making contributions to support the parties (under the Article 15 of the Law “On Political Parties in Ukraine”).

The Article 50 section 3 of the Law “On Elections of People’s Deputies of Ukraine” forbids to perform voluntary contributions to the election fund to

persons under the Law “On Political Parties in Ukraine” who have no rights to make donations in support of the parties. According to the Article 15 section 1 of the Law “On Political Parties in Ukraine”, donations shall not be made to support the political parties by state and local authorities; state and municipal enterprises, institutions and organizations and legal entities, in which at least ten percent of the share capital or voting rights are directly or indirectly owned by the state, local authorities, or residents or final ultimate shareholders (controllers) of which are persons authorized to perform functions of the state or local authorities according to the Law “On Prevention of Corruption”; foreign states, foreign legal entities, foreigners and stateless persons and entities, or entities ultimate shareholders (controllers) of which are foreigners or stateless persons; unregistered public associations, charities and religious organizations; citizens of Ukraine who are under 18 years of age, citizens of Ukraine whom the court declared incompetent and anonymous persons or under a pseudonym; other political parties; natural persons and legal entities with a contract for purchase of works, goods or services to meet the needs of the state or territorial communities pursuant to the Law “On Public Procurement” during the term of this agreement and for one year after termination thereof, unless the total amount of funds received under such contract during the term of the contract and for two years after its termination, shall not exceed 10 percent of total income of the person or entity for the relevant period; natural persons and legal entities with outstanding tax debt.

2.2. Situation analysis of bringing the ordinances of the Central Election Commission in compliance with the law.

The paragraph 4 of the Final and Transitional Provisions of the Law provides that the Central Election Commission (hereinafter “the CEC”) within three months from the date of this Law enactment shall:

- bring its regulations into conformity with this Law;
- ensure the adoption of legal regulation arising from this Law.

Given the fact that the law came into force on 26 November 2015, the deadline for the CEC to bring these legal regulations into conformity with the Law is **26 February 2016**.

The CEC has adopted the following regulations:

1) Regulation “On Forms of Financial Statements on Receipt and Use of Election Funds of Political Parties, Candidates for People’s Deputies of Ukraine from Which Are Registered in Multi-mandate Constituency and

Candidates for People’s Deputies of Ukraine in Single-member Constituencies, Procedure for Drafting, Sending and Carrying Out Analysis” of 10 June 2016 No 200.

Pursuant to the Article 30 paragraph 7 of, the Article 49 sections 5-10, the Article 50 of the Law “On Elections of People’s Deputies of Ukraine”, taking into account the NAPC decision of 2 June 2016 # 6, the Articles 11-13, the Article 17 para. 4, the Article 19 para. 1, 5, 8, the Article 23 sec. 5, the Article 27 of the Law “On Central election commission”, the CEC has established the following forms:

- Report on flow of funds to the current account of the election fund of the political party, candidates for People’s Deputies of Ukraine registered in the multi-mandate constituency, and their use (form No 1);

- Decrypt to report revenues in the current account of the election fund of the political party, candidates for People’s Deputies of Ukraine registered in the multi-mandate constituency, and their use (Annex 2);

- Report on formation of the election funds of the political parties, candidates for People’s Deputies of Ukraine registered the multi-member constituency (form No 2);

- Decrypt to report on formation of the election fund of the political party, candidates for People’s Deputies of Ukraine registered in the multi-mandate constituency;

- Consolidated statement of receipts on current account of the election fund of the political party, candidates for People’s Deputies of Ukraine registered in the multi-mandate constituency, and their use (form No 3);

- Decrypt to consolidated statements of receipts on current account of the election fund of the political party, candidates for People’s Deputies of Ukraine registered in the multi-mandate constituency, and their use;

- Report on receipt and use of election funds of candidates for People’s Deputies of Ukraine in the single-mandate constituency No ___ (form No 4);

- Decrypt to the Report on receipt and use of election funds of candidates for People’s Deputies of Ukraine in the single-mandate constituency No ___;

- Analysis of the financial report on receipt and use of campaign funds.

In the same resolution, the **CEC has adopted:**

- Procedure for drafting the financial statements on the receipt and use of election funds of the political parties, candidates for People’s Deputies of Ukraine registered in the multi-mandate constituency and candidates for People’s Deputies of Ukraine in the single-mandate constituencies;

- Procedure for submitting financial statements on the receipt and use of election funds of candidates for People’s Deputies of Ukraine in the single-member constituencies;

- Procedure for analyzing financial statements on the receipt and use of election funds of the political parties, candidates for People’s Deputies of Ukraine registered in the multi-mandate constituency and candidates for People’s Deputies of Ukraine in the single-mandate constituencies;

2) Resolution “On Amendments to Procedure for Control of Flow, Accounting and Use of Election Funds of Political Parties, Candidates for People’s Deputies of Ukraine Registered in Multi-mandate Constituency and Candidates for People’s Deputies of Ukraine in Single-mandate Constituencies” of 24 June 2016 No 237 pursuant to the Article 30 section 2 paragraphs 1, 2, the Article 50 section 9 of the Law “On Elections of People’s Deputies of Ukraine”, and in conformity with the Articles 11-13, the Article 19 paragraphs 1, 2, 5, the Article 27 section 2 of the Law “On Central election commission”.

Thus, the CEC has brought the regulations into line with the law, but not complied with the terms stipulated by the paragraph 4 of Final and Transitional Provisions of the Law.

Obviously, violation of terms is due to delays in the NAPC launch.

2.3. Situation analysis of bringing the ordinances by the Cabinet of Ministers of Ukraine in compliance with the law.

The paragraph 6 of Final and Transitional Provisions of the Law stipulates that the Cabinet of Ministers of Ukraine (hereinafter “the CM”) shall bring its ordinances into conformity with this Law within three months from the date of enactment of this Law.

The deadline of this process is **26 February 2016**.

According to the Annex No 3 to the Law “On State Budget of Ukraine for 2016”, the code of program classification of expenditures and crediting of the state budget No 6331020 and the code of functional classification of expenditures and crediting of budget No 0111 to finance the political parties statutory activities, 391 032.3 USD are provided fully covering the financing of measures envisaged in 2016.

Since the funding of the political parties’ statutory activities in 2016 began in the third quarter, the total amount to be distributed to four parliamentary parties is 141 647, 55 thousand USD.

The funds provided to political parties have a certain code of economic classification of expenditures, i.e. current expenditures. According to the Order of the Ministry of Finance of Ukraine “On Approval of Regulations on Using Economic Classification of Expenditures and Instruction on Using Credit Classification of Budget” of 12 March 2012 No 333 (under the section 3 paragraph 1.6), *operating costs* are costs allocated to implementation of budget programs and to provide ongoing operation of budgetary institutions, research, development, management and provision of current transfers to households and enterprises (institutions, organizations).

All current expenditures are aimed at solving the so-called “small”, “household” issues of the party functioning. The political party cannot spend public funds, such as purchase of real estate, because a different type for expenditure is to be provided, i.e. capital.

Under these conditions, doubtful is the possibility of achieving goals of the new legislation on preventing and countering of political corruption. The reason of this situation is the first phase of legislation implementation facing obstacles in the form of unfounded uncertainties and limitations in using public funds by the political parties.

Resolving this issue is directly dependent on the willingness of the authorities (the Ministry of Finance, the Accounting Chamber (under the Article 7 section 1 paragraphs 1-3 of the Law “On Accounting Chamber”), the NAPC (under the Article 11 section 1 paragraph 4 of the Law “On Prevention of Corruption”) to change the situation of political corruption in the country.

2.4. The political parties attitude to the new legislation on the political parties financing.

During the monitoring of the implementation of the Law “On Amending Certain Legislative Acts of Ukraine Relating to Preventing and Countering Political Corruption”, survey of the political parties was conducted in terms of knowledge of the new legislation on political financing and implementation of their activities within it with full awareness of obligations assigned to them by the legislation.

Questionnaires were sent to more than a hundred political parties emails obtained from reports published on the NAPC website and the sites of the parties. Reports were filed in the first quarter by 195 parties, and in the second quarter by 200 parties. However, the email addresses were indicated by less than half of the parties. The location was indicated by even smaller quantity of the parties.

In addition, personal and telephone interviews were conducted.

Communication with the political parties’ representatives has demonstrated the difficulties caused by:

a) negative attitude to reform and open reluctance to cooperate with NGOs;

b) lack of a clear position of the party leadership to reform the political parties financing;

c) involving all human resources of the parties to prepare reports for the III-IV quarters and lack of time to respond;

d) other (without explanation).

Representatives of the parliamentary party “Opposition Bloc” refused to answer the questionnaire because of absence of obligation for them to cooperate with NGO. The “Radical Party of Oleh Liashko” office explained that all the answers to the questions were reports submitted to the NAPC.

The “Control. Order. Justice” Party considers the political parties financing of from the budget a “complete absurdity and cynicism” and advocates abolition of “senseless rules”.

The “Strong Ukraine” Party refused to respond because, in their opinion, such information is confidential.

Representatives of the “Narodnyi Front” are ready to cooperate, but the answer was not provided.

The other three parliamentary parties (the Petro Poroshenko’s Bloc “Solidarnist”, the All-Ukrainian “Batkivshchyna” Alliance, the “Samopomich” political party) and representatives of the parties did not reach 2% of the vote. New political forces actively assisted in monitoring of the Law implementation.

The survey results showed the following:

- all responded parties have amended their statutes. They are aware of the legislation novels on the political parties financing and express the need to clarify and improve some of its provisions (in particular, they highlight the shortcomings of the report form, absence of methodology for evaluating contributions in the form of works, goods or services);

- most parties have expressed expediency of responsibility in the form of cancellation of the political party registration by the constant failure of financial statements, however, some representatives have indicated on the unconstitutionality of such procedures;

- all respondents have unanimously declared the existence of difficulties

in preparing the financial statement of assets, revenues, expenses and financial obligations;

- estimated representatives of a political party have stated that 117 thousand UAH are to be spent to supply a full report (excluding the cost of paper, ink, electricity, depreciation, etc.);

- need to involve human resources is noted for drafting the reports, but most parties have difficulties to specify the exact figures;

- representatives of a political party have calculated that 540 resource days are necessary to prepare a full report: “one accountant for each legal entity for reporting by local entities, i.e. 450 resource days and approximately 90 resource days for reports to be collected, put together, scanned, preset”;

- the main problems created by the reform of the political parties financing include: lack of personnel training to draft reports, lack of clear guidelines and recommendations elaborated; large expenditure of human resources and time, lack of a clear legal definition of many concepts (such as “statutory activities”), absence of guidelines and clarifications, financial burden that rests with the party members, lack of culture of accountability and security guarantees for disclosure of personal data, etc.;

- The NAPC openness and willingness to cooperate has been generally outlined concerning clarification, advice, etc. to the political parties’ representatives.

Conclusions to the chapter.

The quality of the NAPC’s regulations on the financing of political parties is poor.

1. Analysis of the situation with drafting of the NAPC regulations has revealed incomplete, and partially inconsistent, adopted legislation. The main problems are as follows:

- deficiencies in the template of the report on property, income, expenses, and financial obligations of political party, lack of electronic report form;

- deficiencies in the Regulation on the Procedure for Submitting the Political Party Report on Property, Income, Expenses, and Financial Obligations and the Regulation on the Analysis of the Political Party Report on Property, Income, Expenses, and Financial Obligations;

- lack of methodology for evaluation of contributions made in the form of works, goods, or services, along with numerous deficiencies in the already adopted acts;

- failure to achieve the interpretation goal of the NAPC-provided

definitions of “affiliated parties”, “sponsorship”, “third parties”, “decisive influence”, and “ultimate beneficiary (controller)”, which does not promote disclosure and establishing their exact content and value, accuracy, uniformity, and efficiency of application of the relevant terms in the implementation of legislation;

- lack of transparency in the NAPC activity, caused by non-disclosure on its website of decisions concerning the allocation between political parties of funds for financing of their statutory activities.

2. The CEC has brought its legal acts into compliance with the law. However, the terms set out in item 4 of Final and Transitional Provisions of the Law were not complied with. This situation is a result of delays in the launching of the NAPC activity.

3. The Cabinet of Ministers of Ukraine has not solved the problem with existing restrictions on the political parties’ usage of state funds. Therefore, the authorities (the Ministry of Finance, the Accounting Chamber, and the NAPC) need to address this issue soon.

4. The survey of political party representatives demonstrated the deficiencies in the format of the report on property, income, expenses, and financial obligations, as well as significant financial burden which is imposed on party members during the filing of the report and its submission to NAPC.

Chapter 3.

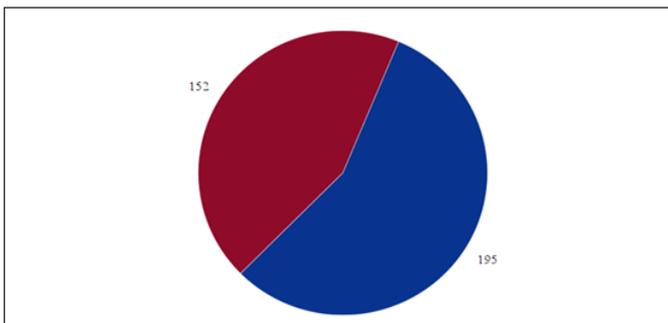
REPORTING ON THE POLITICAL PARTIES' PROPERTY, INCOME, EXPENSES, AND FINANCIAL OBLIGATIONS FOR THE I, II AND III QUARTERS OF 2016

3.1. The Law of Ukraine “On Amending Certain Legislative Acts of Ukraine to Preventing and Countering Political Corruption” establishes the duty of political parties to report on property, income, expenses and financial obligations. According to information published on the official website of the NAPC, regarding the reports of political parties for the first, second and third quarters, the following statistics are generated:

As of December 5, 2016, **351** political parties have been registered in Ukraine.

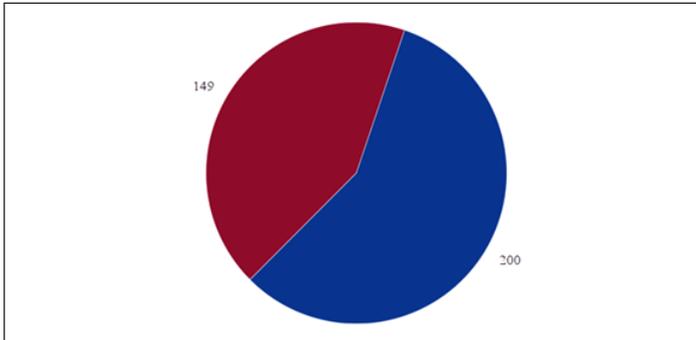
In the first quarter, 195 reports have been submitted (by *347 political parties, that have been registered*). It means that **56%** of the political parties have submitted reports.

Diagram 3. Submission of reports by political parties for the first quarter



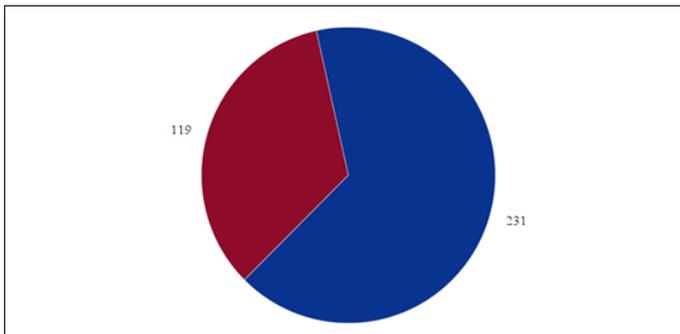
For the second quarter, 200 reports have been filed (of 349 registered political parties), representing 57% of registered political parties.

Diagram 4. Submission of reports by political parties for the second quarter



231 reports were submitted for the third quarter (of 350 registered political parties), representing 66% of all registered political parties.

Diagram 5. Submission of reports by political parties for the third quarter

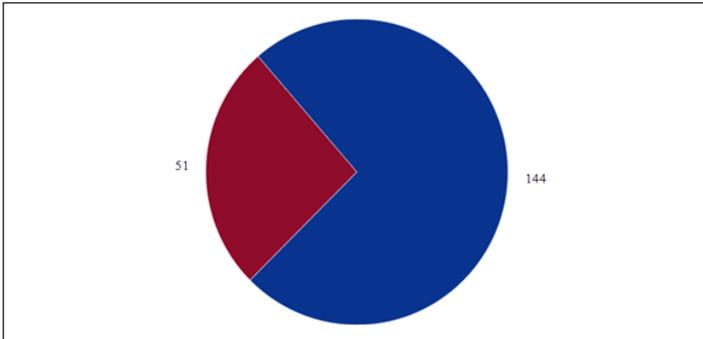


There is a small increase in the number of parties which have reporting every next quarter. In the third quarter, compared to the first quarter, 10% more political parties submitted reports. Less than half of the parties, that had not submitted the reports are those, who exists only “on paper” and do not conduct actual activities.

3.2. According to the NAPC’s political parties reports analysis for the first and second quarter, the following statistics are formed:

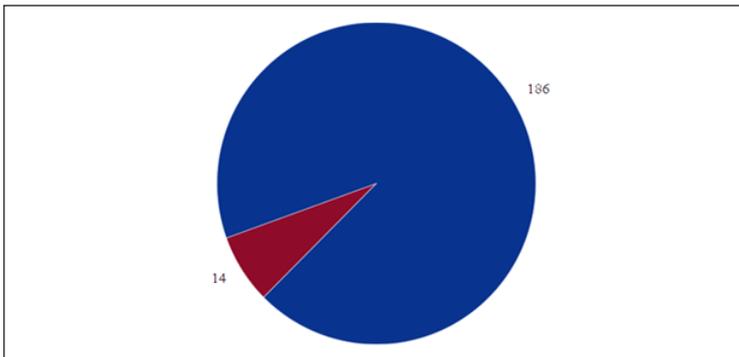
- in the first quarter, the 51 reports were submitted untimely, representing **26%** of all submitted reports for the first quarter;

Diagram 6. Timeliness of political parties’ reporting in the first quarter



- in second quarter, 14 reports were submitted untimely, representing only **7%** of all submitted reports for the second quarter.

Diagram 7. Timeliness of political parties’ reporting in the second quarter



It is impossible to analyze timeliness of political parties’ reporting in the third quarter, since such information is not available on the NAPC’s website as of December 5, 2016.

Untimely reporting by more than a quarter of the political parties, which have submitted the reports for the first quarter, is primarily due to short deadlines, set by the law for submission of relevant reports, new procedure, as well as complicated and long quarterly report template. During the second quarter, the percentage of reporting deadlines offenders has decreased significantly due to the increase in time for familiarization with the new reporting procedure for the political parties.

3.3. The problems, faced by political parties, were the complexity of the form, a large extent of a given form and obligation to report on specified information not prescribed by the legislation.

To solve these problems, the NAPC has created a working group that is drafting a new form for reporting.

All *six parliamentary political parties* have timely filed reports for the first and second quarters of 2016.

Political parties, which during parliamentary elections in 2014 *gained more than 2% of the vote* and therefore have the potential to gain more than 2% of the vote in the next parliamentary elections and get right to public funding, have also timely submitted reports for the first and second quarters of 2016. An exception is the “Communist Party of Ukraine” that has untimely filed a report for the first quarter. Nevertheless, its activities, name and symbols fall under the prohibition according to the Law of Ukraine “On Conviction of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibiting Propaganda of Their Symbols”.

For the other 17 participants of 2014 early parliamentary elections have generated the following statistics:

- for the first quarter **5** political parties have not submitted reports, **4** political parties have filed untimely reports.
- for the second quarter, **5** political parties have not submitted reports, **1** political party have filed a report untimely.

3.4. The Law “On political parties in Ukraine” provided the political parties duty of reporting on property, income, expenses and financial obligations. Further, according to the article 70 of the Law “On local elections”, parties’ local branches, which participate in local elections and their candidates can open accounts for of their own election funds and, therefore, must submit reports on income and expenditure of funds from the election fund savings account to territorial election commissions. The political parties’ local

branches are required to keep records of their income, financial distribution of the election fund between current accounts, and reporting to the territorial election commissions through their managers. Thus, during the election period, political parties have a dual reporting obligation: they must submit reports to the NACP and to the election commissions. This can be interpreted as excessive burden imposed on political parties, but the double reporting has certain positive moments. In particular, allows comparing both data from reports, submitted to the territorial electoral commissions and to the NACP.

On August 28, 2016 elections in unified territorial communities in were conducted. In particular, these elections were held in the villages and settlements unified territorial communities and in one city unified territorial communities (Illintsi city of Vinnitcka region). Eight political parties decided to delegate their representatives to participate in local elections of August 28, 2016: «Nova Derzjava», «Radical Party of Oleh Liashko», All-Ukrainian “Batkivshchyna” Alliance, Petro Poroshenko’s Bloc “Solidarnist”, «Gromadyanska pozicia», All-Ukrainian “Svoboda” alliance, «Ukrainian Union of Patriots – UKROP», «European Party of Ukraine». Based on the election results, it was necessary to analyze the reports, submitted to the NACP and to the territorial election commissions. According to the information, obtained from the Illinetsk city’s territorial election commission, none of political parties’ local branches, which were participated in mentioned election, have not opened current accounts of election funds.

As reported by local residents, pre-election campaign advertising did take place. Thus, there are grounds to believe that there was a violation of the manner for financing of pre-election campaign advertising by political parties. However, the local elections commission did not apply to law enforcement authorities.

According to cl. 2 para. 1. art. 18 of the Law of Ukraine “On Political Parties in Ukraine”, in the course of local elections, district elections commissions and local elections commission exercise state control over the political parties’ compliance with the established procedures for participation in the electoral process, as well as, subject to their authority as set forth by law, over the timeliness of submission to the relevant elections commission of intermediate and final financial reports on the receipt and use of electoral funds in the course of election, the compliance of such reports with the established requirements, and the veracity of data included in them. The capacity of district and local elections commissions to control the veracity of data in financial reports on the receipt and use of electoral funds is doubtful.

Failure to submit the reports to territorial election commissions are

common, that indicates the actual inability of implementation of para. 2 sec. 1 article 18 of the Law “On Political Parties in Ukraine” regarding the exercise of powers by territorial and district election commissions.

On July 2016, the parliament members’ midterm elections were conducted. Based on the elections results, the representatives of district electoral commissions stated that the majority of candidates for parliaments’ members did not opened accounts and did not submitted reports. This shows the ignoring of legal requirements and, consequently, the impossibility of conducting complete political parties’ financial analysis.

We also would like to draw attention to the avoidance of responsibility for violations of rules for financing of campaign advertising in the course of intermediate elections for members of Parliament of Ukraine.

As of today, the NAPC’s cooperation with the territorial and district election commissions still needs adjustment. The fact that the reports on the July’s 2016 elections, received by four (out of seven) district election commissions were published on the NAPC’s official website, may indicate the beginning of cooperation between mentioned bodies.

The inconsistency of the Law “On Political Parties in Ukraine” and the Law “On Local Elections” is also noted. In particular, regarding the obligation to publish the reports and contributions to election funds and party accounts.

According to para. 10 of article 71 of the Law “On Local Elections” the territorial election commission publish in local newspapers or in a different specified manner, the information, contained in the interim and final financial reports within two days after its receiving. According to information contained in the report on local 2015 elections’ monitoring results, prepared by the Committee of Voters of Ukraine, the majority of territorial electoral commissions has not published information on the opening of accounts. The candidates also do not publish such reports. Based on the results of local elections of 2016, it could be noted, that such reports are also were not published.

3.5. On the basis of the information obtained from the results of the survey and meetings with the political parties’ representatives, the following **conclusions** can be made on the political parties financial management and reform of the political funding for the first, second and third quarters of 2016:

- the political parties have power to control political finances endowed with executive bodies of the parties, and the power to control by control and audit bodies;

- the political parties, that have the right to state funding of statutory activities, have opened accounts for such funding

- the majority of the political parties’ local branches, who have a legal entity status, have not opened bank accounts;

- the main political parties’ expenses during the specified period are: office rent, event management, utilities and telecommunication services;

the political parties’ representatives have pointed on difficulties, which they are faced during the filling the reports for the first, second and third quarters, namely: lack of their own personnel training, a large number of involved human resources and time, overall complexity of the mechanism for reporting and lack of appropriate recommendations, instructions and clarification regarding filling the reports, inability of electronic reporting and consequently necessity for providing a large volume of paper documents;

- all interviewed political parties representatives have indicated that the trainings on filling reports will be useful.

Conclusions to the chapter.

The slight increase in the number of parties that reports in every next quarter is observed. Thus, in the third quarter 10% more political parties reported than in the first quarter.

1. In connection with the beginning of publication on the NAPC website of the district election commissions’ reports, it would be more useful to publish them only in electronic format (remove the possibility of publishing reports in the print media) and set a duty for all territorial election commissions to provide the reports to the NAPC for their obligatory publication.

2. Current reporting mechanism recognized by political parties as complicated. This is explained by the fact that reporting procedure is new, it requires the involvement a lot of resources and has not been fully clarified by the NAPC. Another drawback of the reporting is technical: the electronic reporting format has not introduced. Moreover, during the election period political parties are burdened with the obligation of double reporting.

The interviewed representatives of the parties emphasize the need for trainings on the report completion.

There is also necessary to bring the Law “On Local Elections” in compliance with the law “On political parties in Ukraine” regarding to the obligation to publish the reports and the information on contributions to election funds.

Chapter 4.

THE ADEQUATE FORMAT AND QUALITY OF POLITICAL PARTIES' REPORTS

4.1 As of December 5, 2016, **350** political parties have been registered in Ukraine. They differ not only in their ideology, beliefs, specificity of internal organization, building a network of field offices, etc., but also in the efficiency of national political operation and the level of public support.

Research shows that the last two indicators significantly influence the choice of political parties in the manner of their conduct of implementing a new law on financing of political parties and determine the level of their desire to meet the new requirements of the law. Therefore, having analyzed the situation with the form and quality of reports of political parties, it was decided to divide them into three main groups:

- 1) parliamentary parties⁶;
- 2) the parties that passed the 2% threshold in the last parliamentary elections⁷;
- 3) all other political parties⁸.

⁶ Singling out a group of political parties is justified by the fact that they are the most active and have already received a state fund of its statutory activity this year.

⁷ Singling out a group of political parties is justified by the fact that they have a high level of activity and passed the 2% threshold in the last parliamentary elections. Thus, according to the results of the next parliamentary elections they might receive state funding of its statutory activities. The Communist Party of Ukraine is not analyzed as its activity is prohibited.

⁸ Singling out a group of political parties is justified by their low level of activity (many of them between elections are generally inactive); they do not have enough public support in order to claim the public funding of its statutory activity (at least, according to the results of the last parliamentary elections); do not show much activity in the implementation of the new legal requirements in terms of amendments to their statutes, opening bank accounts, proper reporting, etc. (see the first section of the Report).

Moreover, in order to provide the most complete and up-to-date information below we present a general conclusion of the analysis reports on property, revenue, expenses and financial obligations submitted by the parties for I - III quarters of 2016.

4.2. Analysis of reports for I- III quarters of 2016 on property, revenue, expenses and financial obligations of **parliamentary parties**⁹ shows the following:

1) all parliamentary parties filled their reports for I-II quarters of 2016 on time.

According to official information NACP (letter dated 25 November 2016 №75-01 / 6046 at the CPLR request), found only 5 delays in reporting for the III quarter (non-parliamentary political parties). However, as of November 21, 2016 (the deadline when the NACP had to publish the submitted reports for the third quarter), among all the reports of parliamentary parties, only the “Narodnyi Front” political party has published a report and the reports of other parliamentary parties were published after that date;

2) due to some technical problems with the official website of NACP reports of parliamentary parties for the first and second quarters of 2016 were released with a slight delay. Permanent monitoring of the content filling of NACP website, which should have included reports on property, revenue, expenses and financial obligations for the third quarter of 2016 suggests (the precise date of filling these reports yet unknown) that most of these reports were published with a delay¹⁰;

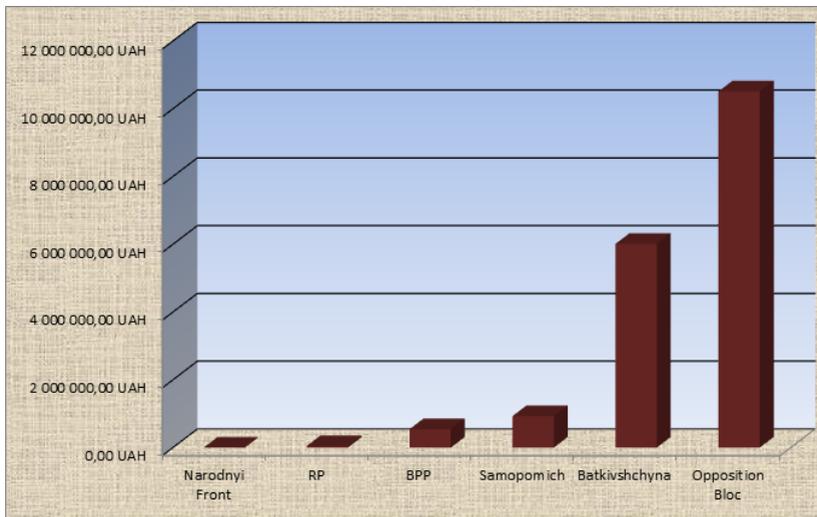
3) all parliamentary parties report on contributions in their favor. Usually it is a fund contribution. However, the content of the analyzed reports shows that the size of the parliamentary parties’ financial contributions is significantly different. For example, the “Narodnyi Front” political party claims that it did not receive a penny of contributions for I-III quarters of 2016. The “Radical Party of Oleh Liashko” usually provides information that such fees take place, but their volume (compared with information provided by other parliamentary

⁹ It is about the following political parties: 1) “Narodnyi Front” 2) Petro Poroshenko’s Bloc “Solidarnist” ; 3) “Samopomich”; 4) “Opposition Bloc”; 5) “Radical Party of Oleh Liashko” 6) All-Ukrainian “Batkivshchyna” Alliance ”.

¹⁰ As of November 10, 2016 (when all such reports must be submitted) NACP published only 16 of them. As of November 21, 2016 (the deadline when the NACP could publish the reports submitted on time) the NACP website contained only 125 reports. And now 231 quarterly financial reports are published, and the average number of reports which were filled with a delay for prior periods does not exceed 10%.

parties) is meager (from the information provided by this party in quarterly reports follows that in the first quarter of 2016 it received such contributions totally in the amount of 1528 UAH, in the second quarter of 2016 - 43 500 UAH and in the third quarter of 2016 - 1624 UAH). Political party Petro Poroshenko’s Bloc “Solidarnist” and “Samopomich” political party report on getting several hundred thousand contributions for the quarter. But the “Opposition Bloc” political party and the All-Ukrainian “Batkivshchyna” Alliance in their reports for 2016 noted, that they receive from 1 to 5 million UAH per quarter.

Diagram 8. Total contributions received by parliamentary political parties for the first three quarters of 2016



4) all parliamentary parties separate individual contributions from legal entities contributions that were received in the first - third quarter of 2016. Proportion of contributions in the various parties is fundamentally different. Thus, the “Narodnyi Front” political party reports that over three quarters of 2016 has not received any contributions from either natural or legal persons. “Samopomich” political party and the “Radical Party of Oleh Liashko” note the receipt of certain contributions from individuals, but also claim that they do not receive it from legal entities or obtain this contributions in small amounts (for example, the reports of the “Radical Party of Oleh Liashko” say that for the

first half of 2016 they received 678 103 UAH from individuals and from legal entities they got nothing). In the “Opposition Bloc” political party situation is opposite: according to its report for the first three quarters of 2016, it received significant contributions from legal entities (in total 10,515,200 UAH), but has not received any contributions from individuals. The political party Petro Poroshenko’s Bloc “Solidarnist” and the All-Ukrainian “Batkivshchyna” Alliance¹¹ generally¹² report on permanent receiving contributions either from individuals or legal entities;

5) all parliamentary parties separated membership dues from individuals and legal entities contribution. However, nearly always the parliamentary parties report that they receive no membership dues or they receive it in meager amounts. For example, the results of the analysis reports of the political parties show that for the second quarter of 2016 none of the parliamentary parties (apart from the political party Petro Poroshenko’s Bloc “Solidarnist”) in the reporting period did not receive any membership dues. The report of Petro Poroshenko’s Bloc “Solidarnist” reveals the following: the total amount of membership fees in favor of the party in the second quarter of 2016 is 220 UAH. But from the reports for the third quarter of 2016, we can conclude that the only parliamentary party that received membership fees is “Samopomich” political party (240 100 UAH);

6) all parliamentary parties report on their property. However, only half of them note that they have either the property right and the right of use (political party "Petro Poroshenko’s Bloc" Solidarnist", “Samopomich” political party and All-Ukrainian “Batkivshchyna” Alliance). According to the “Opposition Bloc” political party and the “Radical Party of Oleh Liashko” such property is in their use. But the “Narodnyi Front” political party informs that they have the property rights¹³;

7) all parliamentary parties reported about their expenses and financial obligations. However, the amount of such expenses and financial obligations

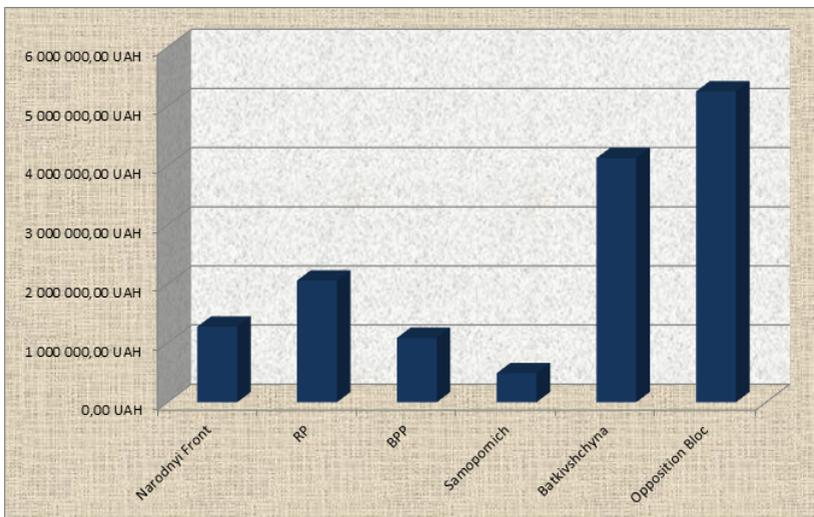
¹¹ For example, as reported in the second quarter of 2016 the political party Petro Poroshenko’s Bloc “Solidarnist” received funds from individuals 173720 UAH in total and from legal entities - in the amount of 153841 UAH, and the political party the All-Ukrainian “Batkivshchyna” Alliance - 2239083 UAH from individuals and 170 000 UAH from legal entities.

¹² Thus, according to the report for the third quarter of 2016 the political party Petro Poroshenko’s Bloc “Solidarnist” has not received any contribution from individuals for the reporting period.

¹³ However, it assets valued at 16 249 UAH.

(according to reports) and their distribution are radically different. In particular, in the third quarter of 2016 (up-to-date information) the amount of such expenses of parliamentary parties differed in several dozen times: from 490000 UAH (“Samopomich” political party) to more than 5 million UAH (the “Opposition Bloc” political party). The volume of financial commitments of the parliamentary political parties differ in hundreds of times (for example, in the third quarter of 2016 the volume of financial obligations of the “Narodnyi Front” political party was 5 950 UAH, and the “Opposition Bloc” political party – 4 517 001 UAH);

Diagram 9. The amount of expenses of parliamentary parties in the third quarter of 2016



8) The current form of the reporting of property, revenues, expenses and financial obligations makes it impossible to determine which statutory activity of parliamentary parties was financed by the state budget. However, nowadays (the third quarter of 2016) the state funds work out from 87.4% to 99.6% of the revenue of these parties, so the general information on spending for statutory activities of the party is quite informative in this issue.

Table 1. The total amount and the part of state funding in general "portfolio" of revenue of political parties, which received government funding in the third quarter of 2016

Parties which received government funding for their statutory activity in the third quarter of 2016	The amount of funds received from the state budget in the third quarter of 2016 (UAH).	Part of public financing in the general "portfolio" of revenue of these political parties in the third quarter of 2016
“Narodnyi Front”	25 136 400	89%
"Petro Poroshenko’s Bloc" Solidarnist",	24 771 800	96,8%
“Samopomich”	12 461 650	99,6%
“Radical Party of Oleh Liashko”	8 453 925	87,4%

From the reports of parliamentary parties for the third quarter of 2016 we can conclude that the majority of funds of parties (including budget) is spent on the rent payment for use of premises (offices, houses, flats, etc.). For example, from the total expenses for statutory activities of the “Narodnyi Front” political party rent expenses are nearly 99%.

For three (of four) parliamentary parties that received government funding in the third quarter of 2016, there are indicative so-called "material expenses and expenses for different services." Two of them have significant expenses for communication services. Thus, “Samopomich” political party spends for communication service more than 128 000 UAH for the quarter - nearly 56% of all expenses for statutory activities that were made in the third quarter of 2016.

Political party "Petro Poroshenko Bloc’s "Solidarnist" and the “Radical Party of Oleh Liashko” inform that they have expenses for the taxes and fees payment. Political party "Petro Poroshenko Bloc’s "Solidarnist" was the only party (among those which received public funding in the third quarter of 2016), which had some expenses for staff payment and the “Radical Party of Oleh Liashko” - for vehicles rent. Other categories of expenses of the parties are inherent to any one party and relatively insignificant (it is about the costs for meetings, party conferences, general meetings, for advertising in print media, as well as "other unprohibited activities").

Diagram 10. Sharing costs of a political party "Narodnyi Front" for statutory activities (in the third quarter of 2016)

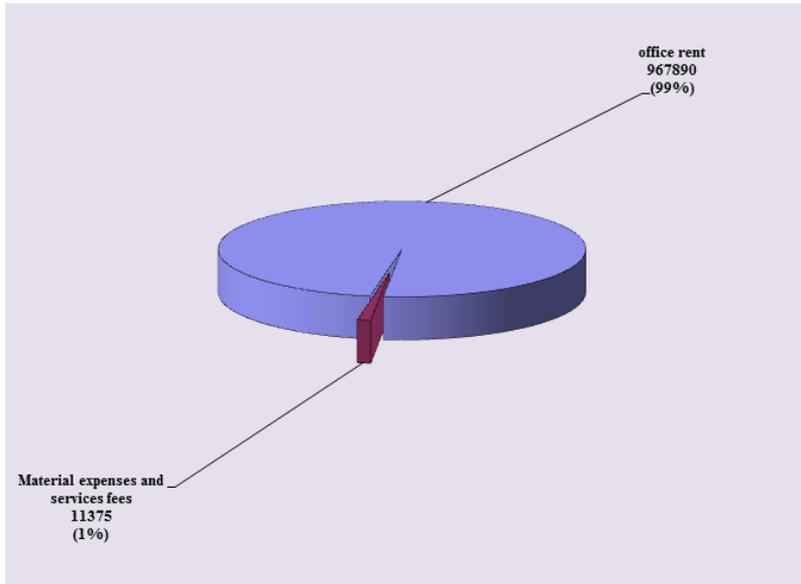


Diagram 11. Sharing costs of a political party "Petro Poroshenko Bloc's "Solidarnist" for statutory activities (in the third quarter of 2016)

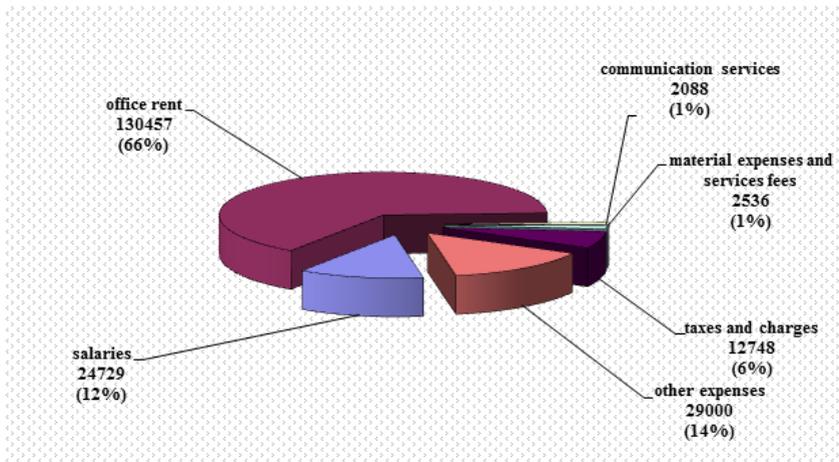


Diagram 12. Sharing costs of a political party “Samopomich” for statutory activities (in the third quarter of 2016)

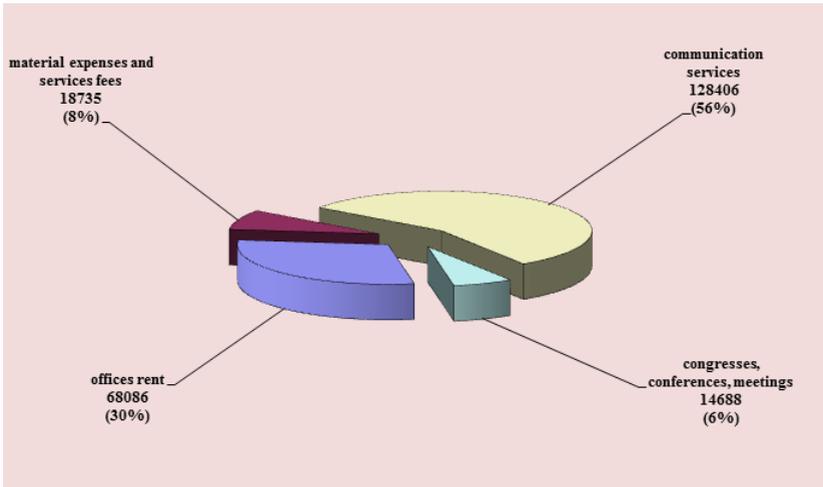
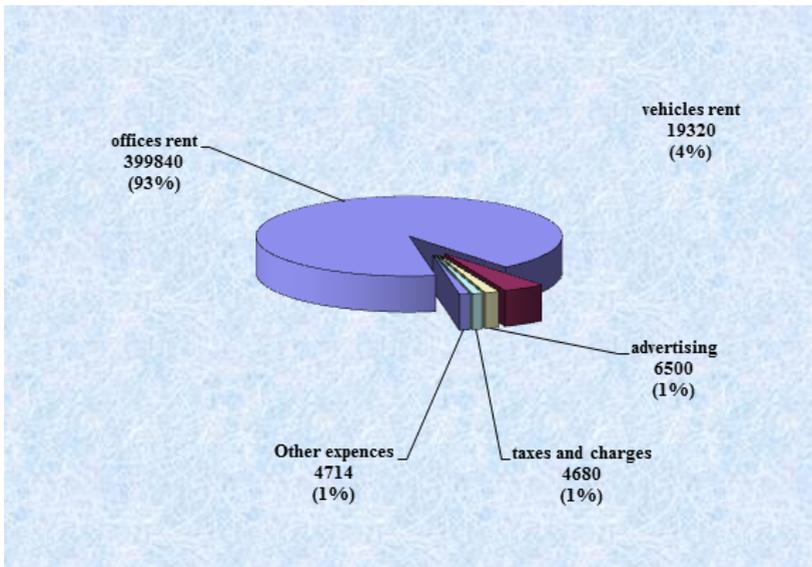


Diagram 13. Sharing costs of the “Radical Party of Oleh Liashko” for statutory activities (in the third quarter of 2016)



Considering that in the third quarter of 2016 four parliamentary parties first received public funds to finance its statutory activity, it should be noted that the variety of financed by the state budget statutory activities of the parties is already wide enough, within the same party, this range is from 2 to 5 categories of costs and in general all four parties used the budget funds from 9 different categories of expenditure.

From the information provided by the political parties, which in the third quarter of 2016 received state funds to finance its statutory activity, it follows that political parties correctly interpret the concept of "statutory activities of the party"¹⁴, and take into account the limitations imposed by the Law "On the State Budget of Ukraine for 2016" through the assigning to this state budget expenditures the category of "current expenditure (consumption expenditure)."

Meanwhile, numerous speeches of the political parties' representatives demonstrate (at forums, round tables, meetings, etc.) that it is still difficult to understand which activity is considered to be "statutory" and which is not. They constantly refer to NACP to accept a document that would define the legal order of budget spending or, at least, explain the concept of "statutory activities of political parties." However, representatives of the NACP say they do not have proper authorization provided by law;

9) the reports of parliamentary parties show that there are few employees and they work for free or for a scanty earnest. Thus, 4 of 6 parliamentary parties (the "Narodnyi Front", "Samopomich", the "Opposition Bloc" and "Radical Party of Oleh Liashko") noted in a report for the first - third quarter of 2016, that they have no any employee in the party apparatus and have not spent a penny on wages. The reports of the party "Petro Poroshenko Bloc's "Solidarnist" for the I - III quarters of 2016 show that 2 people are working in the party apparatus who for all the period (9 months 2016) received a salary in the amount of 86 000 UAH, i.e. an average of 4800 UAH per month. Only the political party All-Ukrainian "Batkivshchyna" Alliance reported that they employ more than 60 people (in particular, 65 people in the third quarter of 2016) and they spent nearly 585 000 UAH on wages for the second and third quarters of 2016¹⁵ (on average 3000 UAH per month per employee).

¹⁴ See: Khavronyuk M. For the "Mercedes" or leaflets for voters? Where do the party spend the budget [electronic resource] / M. Khavronyuk // Ukrainian Pravda. - Access: <http://www.pravda.com.ua/articles/2016/12/1/7127820/>.

¹⁵ The report of this party for the first quarter of 2016 indicates that in this period 64 people worked in the office of this party and did not receive any fee for their work.

4.3. Analysis of reports for the I-III quarters of 2016 on property, revenue, expenses and financial obligations of **political parties that passed the 2% threshold in the last parliamentary elections**¹⁶, reveals the following:

1) reports for the first and second quarters of 2016 of these parties were filled on time. It is impossible to define whether the reports for the third quarter of 2016 were filled on time (see above);

2) as well as the reports of parliamentary parties, they were released with a slight delay;

3) all parties that passed the 2% threshold in the last parliamentary elections provided information of contributions in their favor. The total amount of financial contributions in favor of such parties is different, but unlike the information provided by the parliamentary parties, among these parties there is no significant difference in the amounts of such contributions. Thus, the political party "All-Ukrainian agrarian "Zastup" alliance in its report noted that in the second quarter of 2016 they received funds in the amount of 34 280 UAH; the political party "Gromadyanska pozicia" – the amount of 70 865 UAH; the party "Sylna Ukraina" - the amount of 136 000 UAH; and the All-Ukrainian "Svoboda" alliance - the amount of 590 162 UAH. This situation is quite logical as it turns out that the more support the party has the more fees it receives;

4) all parties that passed the 2% threshold in the last parliamentary elections separated contributions of individuals from the contributions of legal entities that were received in party favor during the reporting period. The proportion of these amounts in various parties is different. For example, the political party "Sylna Ukraina" and "All-Ukrainian agrarian "Zastup" alliance in their reports for the second quarter of 2016 noted that during this period they did not receive contributions from legal entities (all contribution they had from individuals). Instead, the political party "Gromadyanska pozicia" noted that during this period it received only 10 177 UAH from the individuals and 60 688 UAH from legal entities. The political party "All-Ukrainian "Svoboda" alliance" has a certain balance in the issues of its revenue as in accordance with its reporting documentation for the second quarter of 2016 it received 384 305 UAH from individuals and 205 857 UAH from legal entities;

5) all parties that passed the 2% threshold in the last parliamentary

¹⁶ These parties include: 1) the All-Ukrainian "Svoboda" alliance; 2) Party "Sylna Ukraina"; 3) Political party "Gromadyanska pozicia"; 4) political party "All-Ukrainian agrarian "Zastup" alliance

elections separated the membership dues from the contributions of individuals and legal entities. The All-Ukrainian "Svoboda" alliance and "All-Ukrainian agrarian "Zastup" alliance reported that they did not receive the membership dues in the second quarter 2016. Political party "Gromadyanska pozycja" during the same period received only 3 985 UAH of membership dues. According to the report of the All-Ukrainian "Svoboda" alliance in the second quarter of 2016 it received membership fees in the total amount of 378 400 UAH;

6) all parties that passed the 2% threshold in the last parliamentary elections reported about their property. Moreover, all these parties noted that they do not have any property. Only the Party “Sylna Ukraina” notes in its reports for the first - third quarters of 2016 that it has some property in use;

7) all parties that passed the 2% threshold in the last parliamentary elections reported about their expenses and financial obligations. The amount of these expenses nearly 100% corresponds to the amount of contributions received in the same period;

8) all parties that passed the 2% threshold in the last parliamentary elections reported about their labor costs. The All-Ukrainian "Svoboda" alliance which has 5 people in its apparatus in the third quarter 2016 reported on paying the wages in the amount of 182 731 UAH.

It means that on average each employee receives more than 12 000 UAH per month, it is 3-4 times higher than employees of parliamentary parties. The apparatus of the political party "All-Ukrainian agrarian "Zastup" alliance has 20 people, but it has no official costs for their work.

4.4. Analysis of reports for the I-III quarters of 2016 on property, revenue, expenses and financial obligations of **all other parties** reveals the following:

1) more than 40% of these parties do not submit reports to the NAPC. However, every quarter this index is improving (see the previous chapter). Just over 10% of these parties submit quarterly reports with a delay. However, taking into account an analysis of reports for the I - II quarters of 2016, we can see that this index is gradually improving (in the first quarter of 2016 it was 26%, and in the second quarter of 2016 - only 7%) . In general nearly half of the reports are promptly submitted by these parties;

2) reports of these parties (as well as mentioned above) are also revealed by NAPC with a slight delay;

3) all the parties have provided information on their contributions in their favor, separated individual contributions from contributions of legal entities and separated contribution of legal entities from the membership dues, reported

about their property, expenses and financial obligations and labour costs, but only 1/3 of these reports included information of any property, revenue and expenses. In most cases these political parties submitted to the NAPC actually blank reports (no property, no revenue, no expenses).

Conclusions to the chapter:

The quality of the political parties’ quarterly reports is directly dependent on the efficiency of nationwide political functioning and the party’s support level among the citizens.

1. Parliamentary parties and parties that passed the 2% threshold in the last parliamentary elections submit their reports on time. These parties attempt to address all information required by the law and the NAPC in their reports. However, the reliability of such information is a cause for serious concern.

2. The share of state budget funds in the general, income of parties that received such funding for their statutory activities has ranged from 87.4% to 99.6%. The majority of these funds are spent on facilities rent. Other line items, such as material expenses and expenses on different services, communication services, taxes and fees, staff salaries, and vehicles rent, are significantly lower. Other statutory activity expenses are insignificant.

The range of statutory activities of parties financed from the state budget is already broad (from 2 to 5 categories of expenses for each party, while all four parties combined used the budget funds for 9 different categories of expenses). However, their amounts are minor and usually do not exceed 5% of the total funds received.

3. Political parties that have received state funds for financing of their statutory activity in the third quarter of 2016 interpreted the meaning of the term “statutory activities of political parties” in light of the restrictions imposed by the Law “On the State Budget of Ukraine for 2016”.

4. The majority of other parties (except parliamentary parties and parties that passed the 2% threshold in the last parliamentary elections) do not engage in any active work (in fact, they are exist only "on paper"), which is why almost half of them are unable to submit even “blank” reports to the NAPC.

Chapter 5.

CAPACITIES OF SUPERVISORY AUTHORITIES, WITH A FOCUS ON THE NAPC

5.1. The analysis of the NAPC activity of in the context of duties performance.

1) As of October 23, 2016, on the NAPC website were not published the reports:

- from ten political parties, i.e. the Petro Poroshenko's Bloc "Solidarnist", "Vazhlyvyi Kozhen" ("Everybody Is Important"), "Vidrodzhennia" ("Revival"), "Volia" ("Will"), the All-Ukrainian Union "Revival of Ukraine", the "People's Control" public movement, "Hromadianska Pozytsia" ("Citizenship Position"), "Democratic Alliance", "Party of Peace and Prosperity", "Serhii Kaplin's Party of Ordinary People" - for the first quarter,

- from five political parties, i.e. "Vidrodzhennia" ("Revival"), "Internet Party of Ukraine", "New Faces", "New Life", "Third Force" - for the second quarter,

As of November 6, 2016, parties reports for I and II quarters were published on the NAPC website.

As of December 5, 2016 on the NAPC web-site has not been published:

- reports of 120 political parties for the III quarter - (only 231 of 351 reports were published). Although within the terms provided by the law (10 days from receiving, that is, before November 21, 2016), only 125 political parties reports of 351 were published on the NAPC website..

The NAPC has not filed any reports on administrative offenses in connection with untimely submission of reports for the first and second quarter of 2016; purportedly, according to a statement by the NAPC Chair during one of the meetings, this was a result of insufficient time available for review of new legislative requirements, as well as extremely complicated and detailed format for preparation of reports.

In this regard, it should be emphasized that, under cl. 12-1 art. 12 of the Law “On Prevention of Corruption”, the filing of reports on administrative offenses that fall within the NAPC’s competency area and the imposition of legally available precautionary security measures in connection with such administrative offenses is defined as the NAPC’s right rather than its duty. This provision in itself represents a corruption risk factor, as it allows the NAPC’s officials to treat their responsibilities as optional, which means that they may or may not be carried out depending on the officials’ willingness.

2) Conclusions on financial statements analysis for the first and second quarters were made up on 26 September 2016 and approved by the NAPC on 30 September 2016.

Based on two-month period specified by law, according to the reports analysis, the latter were to be prepared and adopted by the first quarter by 29 September 2016 and for the second quarter by 10 October 2016.

The NAPC has actually violated a one day term to approve the conclusions of the I quarter.

Conclusions for the III quarter should be prepared and approved before January 9, 2017 and published on the website before January 16, 2017.

3) The conclusions are to be published on the official NAPC website no later than the fifth day after approval of the conclusion on the report analysis.

On 4 October 2016, the NAPC has published the news on the site of 395 political parties reports analysis for the first and second quarters. However, the reports have not been published on the site.

The conclusions appeared online after October 4, 2016.

The problems with the website technical maintenance are obvious. As of November 6, 2016, was not available for review the conclusions concerning the political parties “Party of Harmonious Development”, “Ridnyi Dim” (for the second quarter).

It is too soon to speak of the NAPC’s continuous and efficient work. This is shown by problems with web-page content and the NAPC’s officials rapidness in decision-making.

5.2. Analysis of the NAPC findings content, drafted according to the parties financial reports analysis on property, income, expenses and financial obligations.

Research of the NAPC conclusions has been prepared according to the

parties financial reports analysis on property, income, expenses and financial obligations¹⁷.

For the first quarter, the NAPC has prepared 195 conclusions (according to the reports submitted during the first quarter), including:

- timely filed reports by 144 political parties (74%); untimely filed by 51 parties (26%);

- reports design matching, as well included in his report data with the legislation in force at the report time from 148 political parties (76%); reports design discrepancy, as well included in his report data with the legislation in force at the time of the report from 47 political parties (24%);

- completeness of the information displayed in the report not complying with the Article 17 of the Law “On Political Parties in Ukraine” by 7 political parties (4%); incompleteness of displayed in the report information not complying with the Article 17 of the Law “On Political Parties in Ukraine” by 188 political parties (96%);

- reliability of information displayed in the report by 189 political parties (97%); inaccuracy in the statement of information by 6 political parties (3%).

During the second quarter, the NAPC has prepared 200 conclusions (according to the reports submitted during the quarter), including:

- timely filed reports by 183 political parties (93%); untimely filed by 13 political parties (7%);

- reports design matching, as well included in his report data with the legislation in force at the report time from 148 parties (76%); reports design discrepancy, as well included in his report data with the legislation in force at the time of the report from 48 parties (24%);

- completeness of the information displayed in the report not complying with the Article 17 of the Law “On Political Parties in Ukraine” by 7 parties (4%); incompleteness of displayed in the report information not complying with the Article 17 of the Law “On Political Parties in Ukraine” by 189 parties (96%);

- reliability of information displayed in the report by 193 parties (98%); inaccuracy in the statement of information by 3 parties (2%).

Research of the NAPC conclusions under the reports analysis for the

¹⁷ The information on receipt and use of election funds for national and local elections, complete report on external independent financial audit of the parties, and their design matching with the requirements have been set available.

first and second quarters has indicated violations by the political parties in the design of reports on property, income, expenses and financial obligations.

Currently, any political parties’ leaders are not liable for violation of order or timing of the political parties reporting, submission of knowingly false information in the political parties’ reports, breach of giving or receiving contributions, breach of giving or receiving public funding of the political parties’ statutory activities established in the reports for the first and second quarters.

The NAPC conclusions are unclear regarding breach in completing the report by the political parties because of stating a fact without specifying particular circumstances. Obviously, this is due to the fact that according to the Chapter III paragraphs 1-2 of the Regulation on Procedure for Submitting Political Party Report on Property, Income, Expenses and Financial Obligations, the NAPC independent structural unit during official reports analysis has the authority to conduct the political parties reports analysis, to fills in the act of analyzing the political party report on property, income, expenses and financial obligations.

The Act has set specified in the analysis report facts about presence or absence of violations, taken measures according to inspection (including referral letters, queries) and summarized results analysis.

According to to the Chapter III paragraph 8 of the same Regulation, all detected violations of legal requirements shall be specified in the Conclusion on reference to relevant legal provision (s) of the violated legal regulation.

Since the Act on the report analysis did provide mandatory disclosure procedure on the NAPC website, essence of the very drawbacks of submitted by the parties’ reports has not been known neither by the parties nor by the public.

The Regulation states the conclusion separately specifies revealed gross violation of the rules when writing the report and inaccurate information about the the political party property, costs or expenses of more than twenty minimum wages established on 1 January of the calendar year (under the Chapter III paragraph 8 section 2).

Nine conclusions published on the NAPC website for the first and second have found unreliable information, but have not revealed display and are factual circumstances (please see e.g. conclusions for the first quarter on the political parties “Narodnyi Parliament” (“People’s Parliament”), “New Democracy”, “Serhii Kaplin’s Party of Ordinary People”, “Patriot”, “Solidarity of Women in Ukraine”, etc.).

In the process of communication with the political parties’ representatives, the NAPC has provided regulations on the reports analysis for the first and second quarters. At the same time, such regulations have been stressed to be further available to the political parties for review, because such an obligation is not granted to the NAPC.

Therefore, the NAPC conclusions for I and II quarter should be marked as middle-level: they do not contain all the necessary information regarding violations, committed by political parties during filling of reports, but just stating a fact.

All necessary information regarding violations established during the analysis of reports are contained in the analysis acts. However, the Law does not envisage their existence and they should not replace the conclusions.

5.3. The situation with calculation and distribution of funds allocated from the state budget to finance statutory activities of the political parties.

According to the “Transitional Provisions” (Chapter II paragraph 2) of the Law of October 8, 2015 No 731-VIII, in the third quarter 4 parliamentary parties have completed the requirements for obtaining state funding of their statutory activities, and 5 parties in fourth quarter.

1) In the third quarter of 2016, 70823.775 thousand UAH have been allocated from the state budget to finance the political parties’ statutory activities. In particular, 25136.4 thousand UAH will be granted to the “Narodnyi Front”, 24771.8 thousand UAH to the Petro Poroshenko’s Bloc “Solidarnist”, 12461.65 thousand UAH to the “Samopomich” political party, 8453.925 thousand UAH to the “Radical Party of Oleh Liashko”.

According to the Article 17-5 sections 5, 6 of the Law “On Political Parties in Ukraine”, the NAPC provides quarterly transfer of funds allocated from the state budget to finance the political parties’ statutory activities. The funds come at the beginning of each quarter to individual accounts of respective political parties referred to in the Article 173 of the Law.

2) In the fourth quarter of 2016, 70823.775 thousand UAH have been allocated from the state budget to finance the political parties’ statutory activities. That is 25 percent of total annual public funding for the political parties provided for in the Article 17-5 section 2 of the Law “On Political Parties in Ukraine”, In particular, 25 million 136 thousand 400 UAH will be granted to the “Narodnyi Front”, 24 million 771 thousand 800 UAH to the Petro Poroshenko’s Bloc “Solidarnist”, 12 million 461 thousand 650 UAH to

the “Samopomich” political party, 8 million 453 thousand 925 UAH to the “Radical Party of Oleh Liashko”.

On 28 October 2016, the NAPC has decided to grant 25% of annual state funding, i.e. 6 million 448 thousand 475 UAH, to the All-Ukrainian “Batktivshchyna” Alliance for public funding of statutory activities in the fourth quarter of 2016.

Overall, for two quarters five parliamentary parties will get 148 096, 025 UAH.

According to the Article 17-5 section 1 paragraph 1 of the Law, the political parties receive an additional 10% of the annual amount of state funding for the political parties’ statutory activity, which is equally allocated between the political parties in the event that the number of representatives of the same gender among duly elected Parliament members representing respective political parties does not exceed two thirds of the total number of Parliament members elected from the respective political party.

The NAPC Decision of November 11, 2016 has additionally allocated 19 551 615 UAH of state funding for the “Samopomich” political party’s statutory activity. All other political parties did not comply the gender balance.

The NAPC carried out the calculation and allocation of funds allocated from the state budget to finance the statutory activities of political parties, within the requirements of the Law.

5.4. The NAPC’s authorized representatives survey

The results of questionnaire poll of the authorized representatives of the NAPC demonstrated the following:

- The methodology for contributions evaluation in the form of works, goods or services is currently developing. All other subordinate legislation arising from the provisions of the Law “On Amending Certain Legislative Acts of Ukraine Relating to Preventing and Countering Political Corruption” are already adopted;

- number of employees of the Department of Prevention of Corruption, specified in the NAPC’s staff schedule for 2016, is sufficient to control the financing of political parties and analyzing of reports;

- provided in Article 17 of the Law "On Political Parties in Ukraine" a two-months period for analyzing reports of political parties is sufficient;

regarding extra support to control the political parties funding (trainings, technical support, etc.): the NAPC’s activity is constantly aimed at increasing the level of employees’ qualification (particularly in preventing political

corruption, monitoring the political party financing and reports analyzing, etc.) through conducting relevant trainings, including with the participation of NGOs. To improve the professional level of Department for the Prevention of political corruption employees the working foreign visits on experience exchange in preventing political corruption area are systematically organized;

- within the framework of cooperation between the NBU and the NAPC, the NAPC approved the banking or a postal office application forms accompanying the payment document for making a financial contribution to support a political party, which the NBU brought to the attention of all Ukrainian banks (the NAPC’s decision of June 2, 2016 #7 “On Approving the banking or a postal office application forms accompanying the payment document for making a financial contribution to support a political party” according to the article 15 of the Law “On political parties in Ukraine”, registered by #902/29032 in the Ministry of Justice of Ukraine on June 30, 2016). The NAPC, in its decision of July 14, 2016 #5 approved the NBU’s draft resolution on the establishment of notification procedure to the Accounting Chamber and the NAPC regarding opening / closing the accounts of political parties in Ukrainian banks (the NBU decree of July 26, 2016 #367);

- cooperation between the NAPC and the Accounting Chamber of Ukraine, as well as segregation the state control function over political parties’ legal and intended use of the funds allocated from the state budget to finance their statutory activity, carried out within the competence defined by the Ukrainian legislation.

5.5. The Ministry of Justice authorized representatives’ survey.

The results of questionnaire poll of the authorized representatives of the Ministry of Justice demonstrated the following:

- considering issues regarding the introduction of responsibility in the form of cancellation of registration of a political party that has consistently failed to submit financial reports to NAPC, do not fall under the Ministry of Justice authority;

- as of November 25, 2016 the 351 political parties are registered in Ukraine;

- regarding the number of political parties, formed after October 1, 2016
- The Ministry of Justice is not empowered to conduct statistical records of newly formed political parties;

- regarding the number of political parties that have registered changes in their statutes - the Ministry of Justice does not keep statistics on the number

of parties that have made changes to their statutes, including due to adopting of the new legislation;

- regarding the number of certificates that should be or were cancelled in accordance with Article 24 of the Law “On Political Parties in Ukraine” - the Ministry of Justice continuously monitors implementation / failure to meet requirements of Article 24 of the Law. As of November 25, 2016, based on these requirements any registration certificate of political parties had not been cancelled.

Conclusions to the chapter.

The NAPC’s performance of its duties demonstrates certain limitations with respect to logistical and intellectual resources.

1. The authorized representatives of the NAPC who were interviewed found no difficulties with the quantity of human resources available for providing accounting control and supervision of political parties. It seems that the NAPC has all the necessary resources to work effectively. However, the practice demonstrates that:

- there are problems with the logistical and technical support which have resulted in delays with publication of data on the NAPC website, as well as the lack of access to some of the data;

- the NAPC still has not developed the methodology for evaluation of contributions made in the form of works, goods, or services;

- the content of the regulations adopted by the NAPC has substantial deficiencies.

2. With that purpose, in order to eliminate the possibility of ignoring their duties by the NAPC officials or treating them as optional, the title of Article 12 of the Law "On Prevention of Corruption" should be changed as follows: “The Authority of the National Agency”, while the first paragraph of this article should read as follows:

“To carry out its functions, the National Agency empowered to:”.

At the same time, the title of Article 11 of this law should be changed as follows: “The Functions of the National Agency”, while the first paragraph of section 1 of this article should read as follows:

“The National Agency’s functions are:”

Chapter 6.

COOPERATION IN THE AREA OF SUPERVISION AND CONTROL OF THE POLITICAL PARTIES FUNDING

6.1. According to the Article 18 of the Law “On Political Parties in Ukraine”, state control over the political parties’ activities is conducted by the NAPC, CEC, the Accounting Chamber and the Ministry of Justice. The NAPC has leading role as a central executive body with special status. The authority of the Ministry of Justice includes monitoring of the political parties’ compliance with the law and the statute of the party in part attributed to the powers of other bodies. The CEC responsible for control over established participating election process order by the political parties participating in the electoral process.

According to para. 2 sec. 1 of article 18 of the Law “On Political Parties in Ukraine”, in the respective local election the Central Election Commission, district election commissions and territorial election commissions are performing state control over compliance by the political parties with established participation electoral process, as well as, over the timely submission to the relevant election commissions of the interim and final financial reports on the receipt of funds and use of election funds during election, their appropriate forming in compliance with the established requirements, reliability of provided information.

Controlling and supervisory functions of the NAPC and the Accounting Chamber. The NAPC is a central executive body with special status which provides development and implementation of the national anti-corruption policy. In particular, under the Article 11 section 1 paragraphs 8¹, 8² of the Law “On Prevention of Corruption” has authority for implementation of oversight functions of government funding and the political parties accountability. These powers deal with particularly state control, i.e. observance of statutory restrictions on the political parties financing, legal and intended use by the political parties of funds allocated from the state budget to finance the statutory activities, timely reporting of the parties assets, revenues, expenses

and financial obligations, reporting on the receipt and use of election funds for national and local elections, completeness of reporting, compliance of the form to the requirements, reliability of information included in them.

During the questionnaire poll in NAPC it was found that the number of employees of the Department for the Prevention of political corruption is sufficient to control the political party financing and analysis reports. Such statement seems doubtful, since overall NAPC’s staff complete with an approximately 30%. As of November 24, 2016 there was 14 employees in the Department for the Prevention of political corruption. In our view, the number of Department’s employees are insufficient for the timely and effective performance of its duties and does not allow to manage with the challenges, which the NAPC facing in the context of preventing and countering of political corruption. For example, in Georgia, where the population is 10 times less than in Ukraine, and the reporting system and public control over parties finances adjusted better, reporting approximately 70 parties, but the number of employees of similar Department are 10. Therefore, the number of employees in the Department for the Prevention of political corruption of the NAPC must be increased.

According to the Article 7 section 1 paragraph 1 of the Law of Ukraine “On Accounting Chamber”, the authority **of the Accounting Chamber** is related to conduct auditing of the state budget expenses, and accordingly, the state budget for expenditures concerning state funding of the parties. The Chamber is also authorized to conduct financial audit of the state budget expenditures, to inform law enforcement authorities about signs of criminal or administrative offense, other powers provided by the law.

As a result of the joint meeting of the NAPC, the Accounting Chamber, the National Bank representatives with representatives of parliamentary political parties on 13 October 2016, the following problems have been highlighted in the oversight functions of government funding and the political parties’ accountability:

1) lack of coordination concerning oversight functions of the NAPC and the Accounting Chamber on public funding and the political parties’ accountability;

2) lack of clarity in the concept of “the political parties’ statutory activities” in terms of spending the costs provided from the state budget by the political parties.

Government officials have come to understand the need of coordination

and have agreed on the joint meetings in the area of state control over the political parties’ activities.

Within the framework of already mentioned questionnaire poll, the NAPC underlines that cooperation between the NAPC and the Accounting Chamber carried out within the competence defined by the Ukrainian legislation.

Absence of a “the political parties’ statutory activities” definition significantly complicates the process of such monitoring. It is not clear which use of the target will be considered in accordance with statutory activities, and which will not be considered. After all, the legislation does not define the concept of statutory activities. The Article 8 of the Law “On Political Parties in Ukraine” contains only a list of possible types of political activity. In particular, the latter include:

- establishing, defining the powers of the statutory bodies of the party;
- drafting internal documents (on joining the party, rights and obligations of the members, etc.);
- convening and holding party conventions, conferences, meetings and other representative bodies of the party;
- implementation of the internal party control (audit) for the revenue and expenditure of the party and its local bodies, creating education authorities or officials responsible for implementing such control (audit);
- involving audit firm to conduct an independent external audit of the financial statements of income, assets, expenses and financial obligations of the party and its local bodies.

However, the Articles 12-14 of the Law “On Political Parties in Ukraine” provide for other activities that the political parties might conduct. The amount of the statutory activity remains overall unclear to which political parties spending the state budget is allowed.

The NAPC and the Accounting Chamber pursuant to the Article 17-9 of the Law “On Political Parties in Ukraine” carry out the state control over lawful and purposeful use by the political parties of funds allocated from the state budget to finance the statutory activities. However, it is unknown how the NAPC and the Accounting Chamber are dividing their oversight functions. In particular, the Accounting Chamber, exercising the state control of the legitimate and intended use by the political parties of the funds allocated from the state budget to finance the statutory activities, shall take into account special legislation in the area of the parties public funding and the Law of Ukraine “On State Budget for 2016”. The Appendix No 3 of the latter has pointed out that

revenues for the political parties from the budget within the state funding are only possible in the form of consumer spending, which effectively reduces the possibility for the political parties to use funds from the state budget. No the NAPC, nor the Accounting Chamber has *not applied to court* proceedings for the finding of the funds use from the state budget with an improper purpose. Thus, it is impossible to state the existence of such a practice.

The NAPC has clarified for political parties, that the budgetary funds received in the order of public funding are to be allocated to finance the political parties’ statutory activities not connected with their participation in elections of People’s Deputies of Ukraine, the President of Ukraine and in local elections, including wages for employees of the political party statutory bodies, its local bodies. The NAPC also notes that the funds received from the state budget to finance the statutory activities of the party can be used *only for current expenses*. According to the chapter 1.6. of the Instruction for Using Economic Classification of Expenditures and Instruction on Use of Budget Classification of Loans, approved by the Ministry of Finance of Ukraine on 12 March 2012 No 333, current expenditures are the costs allocated to the implementation of budget programs and provision of budgetary institutions ongoing operation, research and development, measures and providing current transfers to the population and enterprises (institutions, organizations).

6.2-6.3. Cooperation of the NAPC with the National Bank of Ukraine and commercial banks.

The NAPC decision “On Approving the banking or a postal office application forms accompanying the payment document for making a financial contribution to support a political party” of 2 June 2016 No 7 designed the application form accompanying the payment document for making a financial contribution to support a political party. The National Bank of Ukraine sent this form to commercial banks and institutions and has been delivered to the bank employees.

However, not all branches of commercial banks have physically available application accompanying the payment document for making a financial contribution to support a political party. Accordingly, the time required to implement financial contribution is increased in proportion to the time necessary for the bank employees to print this form. Moreover, the commercial banks have been provided with specific instructions, along with dissemination of the form.

The representatives of the “Vidrodzhennia” political party noted they also faced with problem of actual absence of relevant forms in banks.

In November 2016, the NAPC requested the NBU to re-notify the commercial banks on special application form to a payment document for carrying out monetary contribution in support of political party.

The NAPC has not been conducted any trainings or other training and educational activity for commercial banks representatives in order to familiarize them with the procedure of acceptance of individuals’ or legal entities’ contributions to political parties.

The political parties’ representatives noted, that it is not enough information in the application form to the billing document for carry out financial contribution to support of political party, for party’s further appropriate reporting in the NAPC.

6.4. Public Council of the National Agency for Prevention of Corruption.

Timeline and regulatory reasons for creation

On March 25, 2015 in accordance with the Article 14 section 2 of the Law “On Prevention of Corruption”, the Cabinet of Ministers in the Regulation No 140 has adopted the Procedure for Organizing and Conducting Competition to Establish the Public Council at the National Agency for Prevention of Corruption (hereinafter “the Procedure”).

According to the Annex No 2 “Tasks and Activities of the State Program on Implementation of State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2015-2017” of the Cabinet Regulation of 29 April 2015 No 265 “On Approving the State Program on Implementation of State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2015-2017 years”, the Public Council at the NAPC was to be created **to August 2015**.

As for today, the Public Council at the NAPC **has not been established**.

The main reason for failure by the Cabinet of Ministers to timely to establish the Public Council at the NAPC is the delay of the NAPC commencing the activities. Thus, the NAPC actually started to work only in the summer of 2016. The NAPC was formed under the Regulation of 18 March 2015 No 118 of the Cabinet of Ministers. However, because of a complex formation procedure of the first decisions, the NAPC started to function **only at the beginning of June 2016**.

On July 22, 2016, under the Order of the Cabinet No 555-p on some

competition issues with formation of the Public Council of the National Agency for the Prevention of Corruption, I. Tkachenkj (the Chief of the NACP Front Office) was determined responsible for the competition to establish the Public Council at the NACP. Pursuant to the aforementioned Order of the Cabinet, I. Tkachenko drafted and submitted to the NACP the draft decree of the Cabinet of Ministers “Issues of the Public Council at the National Agency for Prevention of Corruption”.

On September 8, 2016, under the NACP Decision No 25 a draft decree of the Cabinet on formation of the Public Council at the National Agency for Prevention of Corruption was adopted. Afterwards, the Cabinet of Ministers began the formation of the Public Council on a competitive basis. At her official Facebook page, Mrs. N. Korchak expressed her expectation that Civil Council will be formed within the next two months. According to the Head of the NACP expectations, the deadline for its creation should be **November 8, 2016**.

As of **September 28, 2016**, the Draft has been approved by the Ministry of Economic Development and Trade of Ukraine.

As of today, a process on approval by all interested bodies of the procedure for establishing the Public Council. Current formation of the Public Council at the NACP shall start after the adoption of the Cabinet of Ministers’ Order “Issues of the Public Council at the National Agency for Prevention of Corruption”.

Procedure for competition and formation of the Public Council at the National Agency for Prevention of Corruption.

According to the Procedure for Organizing and Conducting Competition to Establish the Public Council at the National Agency for Prevention of Corruption, the Government decides on the competition, determines the authorized person responsible for the competition, and approves an action plan for the implementation, which includes the competition announcement, the list of delegated associations and candidates of the Public Council, conducting the constituent assembly and the approval of the Public Council of the NACP. Composition of the Public Council (fifteen people) is formed at the founding meeting by voting of delegates associations for the candidates of the Public Council.

Members of the public pay attention to some drawbacks of the formation order of the Public Council at the NACP. In particular, the Reanimation Package of Reforms has made a proposal to change the order of selecting the

representatives to the Public Council, which shall be based on Internet voting, similar to the selection of the Public Council at the NABU.

In *May 2016*, the Center for Political Studies and Analysis “Eidos” drew attention to the importance of forming the Public Council at the NAPC and stressed that absence of such a body would lead to a lack of public control over the NAPC.

Specific terms of forming the Public Council at the NAPC are not defined. Neither the transitional provisions of the Law “On Prevention of Corruption”, nor the Procedure for Organizing and Conducting Competition state one of the possible choices for the Cabinet to put timing dependent on the creation date of the NAPC. However, on September 8 September 2016, the NAPC drafted the decision of the Cabinet which contains the Action Plan to Conduct Competition for Formation of the Public Council oat the National Agency for Prevention of Corruption with deadlines to establish the Public Council. Nevertheless, further process of creating this body depends on the approval of the Draft Decision of the Cabinet. Currently, this project is not approved. Thus, there are no deadlines for the formation of the Public Council.

Another important systemic flaw that lies in this Order is the lack of clear criteria for NGOs that subsequently form the Public Council at the NAPC.

The composition of the Public Council at the NAPC is formed at the constituent assembly. The delegated associations, meeting the requirements of the established procedure, elect composition of the Public Council at the NAPC.

According to the paragraph 8 of the Procedure for Organizing and Conducting Competition to Establish the Public Council at the National Agency for Prevention of Corruption, constituent assembly is formed of the delegated associations, i.e. legal entities duly registered and carrying out activities in the area of preventing corruption at least for two years. This formulation, without the definition of “activities in the area of preventing corruption,” might cause problems during the selection of delegates from the NGOs to the constituent assembly for the formation of the Public Council at the NAPC. Thus, the Chief of the NAPC Front Office will at the sole discretion interpret the NGO activities in a covered area of preventing the corruption. For comparison, the Regulation on Competition for Selecting Candidates for Members of the National Agency for Prevention of Corruption, adopted by the Cabinet Resolution of 25 March 2015 No 170, the subject status has been more profoundly defined. E.g., the term “activities on prevention of corruption” for at least one year means committing by the NGO of measures in one or more

areas defined in the Article 21 para. 1 cl. 1-8 of the Law “On Prevention of Corruption”. Thus, between at least two such actions and / or measures at least 365 days has passed. These formulation requirements for the NGOs are more convenient and appropriate to be considered while conducting the competition to establish the Public Council at the NAPC.

To form the effective Public Council the NAPC should introduce changes to the Procedure for Organizing and Conducting Competition, namely:

- to specify the requirements for public associations on the right to propose candidates to the Public Council at the NAPC;

- to introduce Internet voting procedure for candidates to the Public Council at the NAPC, defined by the NGOs that meet the established requirements.

A positive feature of the procedure for the formation of the Public Council at the NAPC, established by the Order, is openness and holding constituent assembly with representatives of the media as stated under the paragraph 6 of the Order.

Absence of the Public Council of the NAPC means a **lack of control over the NAPC activities through the Public Council**, including the supervision of the political parties financing. The Government blocks the formation of the Public Council.

Civil society in general.

Despite absence of established Public Council at the NAPC, civil society representatives actively work in the field of civil control over the political parties financing and reporting.

In particular, a coalition of NGOs “Money under Control” includes the “Eidos” Center, Transparency International in Ukraine, the Centre for Democracy and Rule of Law, the International Institute of Democracies, the “Respublika” Institute, Ukrainian movement against political corruption “Under Control”, the Centre of Policy and Legal Reform and others. The representatives of these organizations at the “Parties’ Money to Be Controlled” of 11 July 2016 stated that control of spending lots of public funds were to be conducted at the state and local levels.

On September 20, 2016, the forum “Transparent Finances of Parties: Ways of Implementing the Law” was held. Its purpose was to consolidate the efforts to accelerate the implementation of the Law of Ukraine “On Amending Certain Legislative Acts of Ukraine Relating to Preventing and Countering Political

Corruption”. Furthermore, the Public TV, the Committee of Voters of Ukraine, the Public Radio and the “OPORA” Civil Network are active in this area.

On November 2, 2016 a national forum “Our money in politics. Version 2.0” have been conducted, where representatives of state authorities, foreign financial control bodies, political parties and civil society discussed the legal novelties and the state of implementation of the requirements of the new law.

On December 7, the Centre of Policy and Legal Reforms with the support of the Council of Europe, conducted a round table “Political parties: we finance, we control”, where the results of the implementation of the new legislation on reporting and financing of political parties were discussed by the members of the Parliament, leading experts and representatives of public authorities, NGOs activists and political analysts.

The NAPC cooperates with the civil society and international NGOs. However, public control to be ensured requires to create the Public Council at the NAPC.

Conclusions to the chapter.

It is necessary to clarify the controlling and supervisory functions of NAPC and the Accounting Chamber, as well as to create an effective Public Council under the NAPC.

1. At present, there is established form of cooperation between the NAPC and the NBU (similar to the existing form of cooperation between the CEC and the NBU).

2. Commercial banks are aware of the form, set forth by the NBU, that needs to be filled out when making financial contributions to political parties. However, this form is not actually available in all banks. There is insufficient information on the application form accompanying the payment document for making a financial contribution to support a political party to subsequently enable the party’s accurate reporting to the NAPC.

3. The allocation of control and supervisory functions between the NAPC and the Accounting Chamber has not yet been conducted, but representatives of these bodies are working on this.

4. The Public Council under the NAPC has not been formed.

Chapter 7.

APPLYING PENALTIES FOR VIOLATIONS OF LEGISLATION ON THE POLITICAL PARTIES FINANCING

7.1. All the parliamentary parties have been filed the reports on property, income, expenses and financial obligations for the first and second quarters of 2016 *on time* (this follows from the content of the NAPC conclusions on the relevant reports of the parliamentary parties). Currently it is impossible to determine reliably whether the parliamentary parties' reports for the third quarter of 2016 were submitted timely (see subsection 4.2. of this report for details).

In addition, the NAPC analysis of content of the parliamentary parties reports on property, income, expenses and financial obligations **for the first quarter of 2016** has shown that:

1) information presented in the statement of the *“Narodnyi Front”* party is incomplete (does not comply with the Article 17 of the Law “On Political Parties in Ukraine” and the Report Form of the political party of property, income, expenses and financial obligations, adopted by the NAPC decision of 9 June 2016 No 3);

2) the report execution by the *All-Ukrainian “Batktivshchyna” Alliance* and its local bodies as well as attached reporting data do not meet legal requirements (the requirements of the Article 17 of the Law “On Political Parties in Ukraine” and the Report Form of the political party of property, income, expenses and financial obligations, adopted by the NAPC decision of 9 June 2016 No 3).

The NAPC analysis results of content of the parliamentary parties reports on property, income, expenses and financial obligations **for the second quarter of 2016** have shown, in particular, that:

1) execution discrepancy of the *Petro Poroshenko’s Bloc “Solidarnist”* political party report and included herein data to the Report Form of the

political party of property, income, expenses and financial obligations, adopted by the NACP decision of 9 June 2016 No 3;

2) non-compliance with the legislation (the Article 17 of the Law “On Political Parties in Ukraine” and the Report Form of the political party of property, income, expenses and financial obligations, adopted by the NACP decision of 9 June 2016 No 3) of the registration statement of the *All-Ukrainian “Batktivshchyna” Alliance* and its local bodies as well as data included in the report.

However, all these violations in the reports execution on property, income, expenses and financial obligations for the first and second quarters of 2016 have been considered by the NACP as being *not severe*. Therefore, administrative measures were not applied to any of these parliamentary parties concerning *suspending funding of the political party's statutory activities* (under the Article 17-7 of the Law “On Political Parties in Ukraine”).

7.2. The NACP over the entire operating period has not ascertained any fact of breaching the procedure for giving or receiving contributions in support of the political parties, breach of giving or receiving public funding of the political parties' statute, breach of giving or receiving financial (material) support for implementation campaign. Therefore, any records have been drawn up under the Article 212-15 of the Code of Ukraine on Administrative Offences.

7.3. The reports on property, income, expenses and financial obligations have been submitted by 347 political parties, which were registered in Ukraine on March 31, 2016 (for the first quarter of 2016), by 349 political parties, which were registered in Ukraine as of June 30, 2016 (for the second quarter of 2016) and by 350 political parties, which registered in Ukraine as of September 30, 2016 (for the third quarter of 2016).

In fact, for the first quarter of 2016, the NACP has received 195 reports of the political parties on property, income, expenses and financial obligations (144 reports were received on time and 51 were received with violation of terms for submission) and 200 reports for the second quarter of 2016 (186 reports were received on time and 14 - with violation of terms for submission).

Thus, in August 2016, the NACP has found **366** cases of violation by the party the reporting procedure on property, income, expenses and financial obligations. And that does not include cases in which such reports were filled with the violation legal requirements (concerning the form of the report, the completeness of the information, its reliability, etc.). However, none of these facts has caused drawing the records up by the NACP on administrative offense

under the Article 212-21 of the Code of Ukraine on Administrative Offences. It makes impossible to bring the perpetrators to administrative responsibility for these violations

Furthermore, the NAPC position is understandable on the cases concerning the facts of untimely reporting for the first quarter 2016. N. Korchak has officially announced that the NAPC does not constitute administrative offense reports for late reporting for the first quarter of 2016, since the parties did not have enough time to look through fundamentally new legal requirements and to draft reports in a very complex and detailed form. Thus, the NAPC’s continued inaction in this area is inappropriate.

Meanwhile, if the NAPC drew up reports on administrative offenses and sent them to the court on time, the state treasury could be filled up for the at least 1 866 600 to 2 488 800 UAH.

An extremely difficult situation occurred in the context of submission of quarterly financial reports by political parties in the third quarter of 2016, and also NAPC’s reaction to violators of submission order of such reports.

In particular, if take into account the content of relevant page on NAPC’s website as of November 21, 2016 (were published quarterly financial reports of 125 political parties) and supposing that the NAPC timely performed its duties (to publish such reports within 10 days from the date of receiving), it turns out that for the third quarter of 2016 the NAPC established 225 facts of violations of the reporting procedure. Among them, according to available information as of December 5, 2016, the 119 parties have not submitted such report at all (total 350 parties should had submitted reports).

Nevertheless, the NAPC, in its letter of 25 November 2016 #75-01/6046, noted that based on the results of political parties’ quarterly financial reports submission for the third quarter of 2016 only five (!) of such facts were found, therefore five protocols on administrative offenses were drawn up under the Article 212-21 of the Code on Administrative Offences of Ukraine. However, only one of them was addressed to the Kyiv’s Pechersk District Court on 18 November 2016¹⁸.

In these circumstances, there are several questions to the NAPC:

- why there were no drawn up protocols concerning 220 leaders of other political parties who committed similar offenses?

¹⁸ As of November 25, 2016 the proceedings in this case has not been opened and the case has not put on trial.

- what caused a fundamentally different reaction to legally identical situations?

- does not such selective approach based on biased attitude toward certain political parties?

7.4. As of December 5, 2016, the NAPC has not established a single case of violating the procedure for the political parties financing (i.e. elements of a crime under the Article 159-1 of the Criminal Code of Ukraine).

This fact is alarming, combined with publicly known information about the non-transparency of almost all political parties financing in Ukraine¹⁹. If the NAPC does not find soon any effective mechanisms for implementation of state control over this area (which is a direct obligation of the NAPC) and detection of violations of the Procedure for the political parties financing, the results of started political financing reform might not satisfy the society's needs.

7.5. Since any violators of legislation on the political parties financing are not brought to responsibility, neither administrative nor criminal responsibility (partly because of inactivity and inefficiency of the NAPC), it is impossible to determine how existing envisaged measures system of administrative and criminal responsibility promotes (or does not promotes) effectiveness of the political parties funding. However, it is necessary to pay particular attention to the deficiencies of criminal law and legislation on administrative offenses that could potentially impede bringing the guilty parties to responsibility, which were found during the monitoring²⁰.

Conclusions to the chapter.

As of December 5, 2016, no one has been brought to either administrative or criminal responsible for violating the requirements of the law on political party financing (partially due to the inefficiency of the NAPC activity).

1. For the first and second quarters of 2016, the NAPC did not recognize any of the violations that took place in the drawing up of reports on property, income, expenses and financial obligations as gross violations, and therefore

¹⁹ Representatives of many parliamentary parties have informally recognized this fact during public events.

²⁰ Khavromyuk M. Regarding responsibility for violation of the financing of political parties and election campaigns // Yurydychny Visnyk Ukrainy. – December 2, 2016. - #47-48.

did not apply administrative penalty measures in the form of termination of statutory funding against any of the parliamentary parties.

2. During the entire monitoring period, the NAPC did not uncover any facts of violation of the procedure for making or receiving contributions to support the political parties, the procedure for providing or receiving state funding for statutory activities of political parties, or the procedure for providing or receiving financial (material) support for campaigning, and therefore did not draw up any reports of violations under Article 212-15 of the Code of Ukraine on Administrative Offences.

3. As of December 5, 2016, representatives of various political parties committed over 500 violations of the procedures for submission of quarterly financial reports (i.e., administrative offenses under Article 212-21 of the Code of Ukraine on Administrative Offences); however, the NAPC did not react to these occurrence, states that it has not detected any such instances. The NAPC’s reaction in the form of compiling 5 administrative reports under Article 212-21 of the Code on Administrative Offences concerning representatives of only 5 out of 220 offender parties (in the context of submission of financial reports for the third quarter of 2016) should be assessed negatively. Such a "selective approach" does not meet the principles of fairness and equality before the law, and may be perceived by the society as the NAPC’s prejudiced attitude towards specific parties and / or their leaders.

4. As of December 5, 2016, the NAPC has not found a single violation of the procedure for the political parties financing (i.e., containing the elements of a crime under Article 159-1 of the Criminal Code of Ukraine). This fact should be deserving of attention, given the well-known information on the lack of transparency in the funding of almost all political parties in Ukraine.

5. Since the violators of the legislative requirements on the political party financing are not being brought to either administrative or criminal responsibility, it is impossible to determine whether the existing system of administrative and criminal responsibility measures promotes the effectiveness of the political party financing. However, during the monitoring, some deficiencies of the criminal law and legislation on administrative offenses that could potentially impede bringing the guilty parties to responsibility were found.

The Law “On Amending Certain Legislative Acts of Ukraine Relating to Preventing and Countering Political Corruption” of October 8, 2015 established progressive and important institutions for accountability of political parties and their state financing.

CONCLUSIONS AND RECOMMENDATIONS

According to the political parties' reporting results for three quarters of 2016, it is possible to draw the following conclusions and recommendations:

Conclusion 1. In general, the adoption of the Law “On Amending Certain Legislative Acts of Ukraine Relating to Preventing and Countering Political Corruption” and the start of its enforcement, including its partial implementation, is a positive development for the political system, because new legislation enables the cleansing of Ukraine’s political field and the increase in the independence from external influences of those political parties receiving state financing.

Conclusion 2. The majority of political parties demonstrated readiness and acceptance of the new rules of political life.

Conclusion 3. Despite some problems, the reporting system is clear enough for representatives of political parties.

Conclusion 4. There are certain deficiencies in legislation providing for different types of legal responsibility for political parties and certain individuals in connection with violations of the legal requirements on political party financing. In the future, these could become an obstacle to bringing the guilty parties to responsibility, and thus have a significant influence at the conduct of all other persons.

Conclusion 5. Certain forces will not abandon their attempts to restore (at least partially) their influence on the political parties, especially the parliamentary ones.

Thus, on November 24, 2016, MPs R.P. Kniazevych, O.M. Chernenko, I.M. Suslova, and N.V. Novak introduced in Parliament a draft Law No. 5446 “On Amending the Law “On Political Parties in Ukraine” to Improve the Procedures for State Financing of Political Parties”.

This draft threatens the implementation of the newly introduced mechanism for political party financing and reporting. The draft law proposes financing for political parties’ activities connected to their participation in electoral campaigns as part of the overall state financing system, which is contrary to the idea of separating such funds, as set forth by the Law.

The draft law also limits the definition of entities required to undergo external financial audit exclusively to those parties that receive state financing.

In addition, it envisions significant reduction in the amount of state budget funds available to political parties that have complied with gender requirements, thus resulting in reducing the incentives for greater involvement of women in the political life.

The adoption of this law is a threat to the system of state financing of political parties which is aimed at establishment of financially independent political parties in Ukraine and their development on the basis of various ideologies.

Recommendation 1. At the same time, there is the need to improve the reporting templates and to introduce the electronic reporting format, to prepare clear instructions and guidance for the completion of reports.

Recommendation 2. The cleansing of political field from the “phantom” political parties, which are not engaged in political activity and are incapable of even filing a report with the NAPC is an urgent need.

Recommendation 3. There is the need for institutional strengthening of the NAPC by increasing the level of material and technical support, selection of professional staff, and increasing the number of staff in the Department for Prevention of Political Corruption.

Recommendation 4. To eliminate duplication and non-performance of functions, it is necessary to clearly segregate the control and oversight functions between the NAPC and the Accounting Chamber.

Recommendation 5. Clear definitions of the concept of «statutory activity of a political party” and some other concepts identified by the NAPC are needed.

Recommendation 6. It is important to close out the saga surrounding the establishment of the Civic Council under the NAPC.

Recommendation 7. At present, it is necessary to pay particular attention to the deficiencies of criminal law and legislation on administrative offenses, with the view of reviewing and revising the relevant provisions.

Recommendation 8. It is necessary to undertake efforts aimed at making it impossible to adopt any laws that remove any substance from the Law “On Amending Certain Legislative Acts of Ukraine Relating to Preventing and Countering Political Corruption” and contradict the European standards for budgetary financing of political parties and electoral campaigns.



Centre of Policy and
Legal Reform

The Centre of Policy and Legal Reform is a Ukrainian think tank, established in 1996.

The mission of the Centre is to support the implementation of the reforms in political and legal areas, which could provide the democracy, rule of law and good governance in Ukraine.

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