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SUMMARY

of the

ALTERNATIVE REPORT

on Assessing Efficiency
of Implementation of the State
Anti-Corruption Policy

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Alternative Report on Assessing Efficiency of Implementation of the State Anti-Corruption Policy / [O. Kalitenko, O. Liemienov, B. Malyshev et al.]; under general editorship of M. Khavroniuk. – K., 2021. – 45 p.

The report presents civil society assessment of the situation with the anti-corruption reform implementation in Ukraine, which is a continuation of the previous three reports for the period from 2013 to 2018 (*Alternative Report on Assessment of Efficiency of the State Anti-Corruption Policy* / R.H. Riaboshapka, O.S. Khmara, A.V. Kukharuk, M.I. Khavroniuk, O.V. Kalitenko; under general editorship of A.V. Voloshyna. K. 2015. 268 p.; *Alternative Report on Assessment of Efficiency of Implementation of the State Anti-Corruption Policy* / M.I. Khavroniuk, I.B. Koliushko, V.P. Tymoshchuk et al.; under general editorship of M.I. Khavroniuk. K., 2017. 317 p.; *Alternative Report on Assessment of Efficiency of Implementation of the State Anti-Corruption Policy* / O. Kalitenko, D. Kalmykov, I. Koliushko, O. Liemienov, B. Malyshev, A. Marchuk, R. Sivers, V. Tymoshchuk, M. Khavroniuk; under general editorship of M. I. Khavroniuk. K. 2019. 366 p.). The present assessment was carried out partly by the same and partly by new experts, and it covers the period of 2019 and 2020, as well as some developments of 2021.

The present Report was prepared on the basis of a specially developed methodology for compressive internal assessment of the country's progress in the anti-corruption sphere that was first use for preparation of a similar report in 2015 in four areas: 1) anti-corruption policy; 2) prevention of corruption; 3) criminalization of corruption and law enforcement activities; and 4) international cooperation.

This publication offers not only an analysis of the situation, statistics and other information, but also specific conclusions and recommendations for legislators and law enforcement agencies. It will be useful for officers and official of the state authorities, local self-government bodies, civil society activities, journalists, researchers and others dealing with the problems related to prevention of corruption.



This publication was prepared with support of the International Renaissance Foundation within the framework of the Project Preparation of Alternative Report on Assessment of Efficiency of Implementation of the State Anti-Corruption Policy in 2020.

The material presents the position of its authors and does not necessarily coincide with the position of the International Renaissance Foundation.

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LIST OF KEY ABBREVIATIONS

CUAO	– Code of Ukraine on Administrative Offenses
CrEC	– Criminal Enforcement Code of Ukraine
CC	– Criminal Code of Ukraine
CPC	– Criminal Procedure Code of Ukraine
ARC	– Autonomous Republic of Crimea
AMCU	– Anti-Monopoly Committee of Ukraine
HQCJU	– High Qualification Commission of Judges of Ukraine
VR	– Verkhovna Rada of Ukraine
SC	– Supreme Court
PGO	– Prosecutor General’s Office
SAS	– State Audit Service
SBI	– State Bureau of Investigations
SJA	– State Judicial Administration of Ukraine
USRD	– Unified State Register of Declarations of Persons Authorized to Perform Functions of the State or Local Self-Government
ECHR	– Convention for the Protection of Human Rights and Fundamental Freedoms
USRCD	– Unified State Register of Court Decisions
URPI	– Unified Register of Pre-Trial Investigations
ECtHR	– European Court of Human Rights
Media	– Mass media
AF	– Armed Forces of Ukraine
CM	– Cabinet of Ministers of Ukraine
CCU	– Constitutional Court of Ukraine
MoI	– Ministry of Interior of Ukraine
MFA	– Ministry of Foreign Affairs of Ukraine
MoH	– Ministry of Health of Ukraine
MoE	– Ministry of Education and Science of Ukraine
MoJ	– Ministry of Justice of Ukraine
ARMA	– National Agency of Ukraine for Detection, Investigation and Management of Assets Obtained from Corruption and Other Crimes
NACS	– National Agency of Ukraine for Civil Service

NACP	– National Agency on Corruption Prevention
NABU	– National Anti-Corruption Bureau of Ukraine
NLA	– Normative legal act / Normative legal acts
SA and LSG	– State authorities and local self-government bodies
OECD	– Organization for Economic Co-operation and Development
CIS	– Criminal intelligence and surveillance operations
UN	– United Nations
PACE	– Parliamentary Assembly of the Council of Europe
PSC	– Plenum of the Supreme Court
NSDC	– National Security and Defense Council of Ukraine
AC	– Accounting Chamber of Ukraine
RPR	– Reanimation Package of Reform
CoE	– Council of Europe
SAPO	– Specialized Anti-Corruption Prosecutor’s Office
SSU	– Security Service of Ukraine
SPFU	– State Property Fund of Ukraine
CEC	– Central Election Commission of Ukraine
ceb	– Central executive body
NMIC	– Non-taxable minimum income of citizens

SUMMARY

This Alternative Report on Assessing Efficiency of Implementation of the State Anti-Corruption Policy is the outcome of evaluation carried out by the Center for Political and Legal Reforms involving experts from other civil society organizations, as well as independent experts.

The present evaluation covers mostly the period of 2019–2020.

The purpose of the Report is to provide comprehensive internal independent assessment of the actual situation with corruption in Ukraine as well as of the measures taken by the state to combat it, to draw conclusions on the basis thereof as to the efficiency of these measures, and to suggest recommendations.

Conclusions and recommendations are provided after each section of the Report.

Assessment was carried out according to the specially developed methodology by civil society experts who have extensive experience in the sphere of prevention of corruption: O. Kalitenko, O. Liemienov, B. Malyshev, A. Marchuk, R. Sivers, K. Serdiuk, M.I. Khavroniuk, and V. Chumak.

The text of this Report was discussed:

- during expert discussion held on September 14, 2021 (online);

- on Facebook: <https://www.facebook.com/pravo.org.ua/photos/a.481659308526739/6920515491307723/> ; <https://www.facebook.com/UkrainianPlan/photos/a.205031373656193/1094814934677828/> ; <https://www.facebook.com/nikolaj.havronuk/>

- on the web-page of the Center for Political and Legal Reforms: <https://pravo.org.ua/alternatyvnyj-zvit-z-otsinky-efektyvnosti-vprovadzhennya-derzhavnoyi-antykorupsiinoi-polityky-2/> ; <https://www.slideshare.net/CentrePravo/alternatyvnyj-zvit-2021>

- on the web-page of the Ukrainian Public Law and Administration Network, UPLAN: <https://uplan.org.ua/news/opublikovano-proiekt-alternatyvnoho-zvitu-z-otsinky-efektyvnosti-vprovadzhennia-derzhavnoi-antykorupsiinoi-polityky/>

The Report materials were mentioned and discussed during various public events (such as forums, conferences, and round tables) attended by the contributors, as well as by M.I. Khavroniuk at lectures and seminars of the normative course, Fundamental Legal Principles and Institutional Mechanisms of Preventing Corruption, within the framework of the Master's program on Anti-Corruption Interdisciplinary studies (Anti-Corruption Research and Education Centre of the National University of Kyiv-Mohyla Academy (ACREC NaUKMA) with support of the Embassy of Sweden in Ukraine and the International Renaissance Foundation).

Discussion results as well as the proposals received from the National Agency for Corruption Prevention, the Agency for Legislative Initiatives NGO, and other stakeholders

were taken into account in the process of the Report finalization in October-November 2021.

The target audience of the Report includes the entire population of Ukraine, yet its beneficiaries are primarily the Verkhovna Rada, the President and the Cabinet of Ministers of Ukraine, the Verkhovna Rada Committee on Anti-Corruption Policy, the National Agency for Corruption Prevention, the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor's Office, State Bureau of Investigations, National Police, National Agency of Ukraine for Detection, Investigation and Management of Assets Obtained from Corruption and Other Crimes, High Anti-Corruption Court, and other courts.

Section 1.

ANTI-CORRUPTION POLICY

1.1. POLITICAL WILL FOR COMBATING CORRUPTION

1.1.1. Priority of anti-corruption issues in programmatic policy documents of the President of Ukraine, and the Cabinet of Ministers of Ukraine

1. The electoral program of a candidate for the President of Ukraine, V. Zelenskyy, is not an in-depth document, yet it is in line with the principal demands of civil society anti-corruption organizations presented in 2019, and it reflects the key problems in the anti-corruption policy sphere, some of which remain relevant even in the end of 2021, i.e. the third calendar year of V. Zelenskyy's tenure as the President.

2. The 2019 Program of Action of the Cabinet of Ministers approved by the VR Resolution №188-IX as of October 4, 2019 (formally, it is still valid today since it was developed for five years, and its implementation has not been completed) is a high-quality policy document, which in general correctly identifies a significant part of activities (areas) that should be implemented in the future. However, most of them do not have a clear focus on anti-corruption policy, and hence implementation of the Program would rather have an overall positive impact on the key areas of public administration.

3. The 2020 Program of Action of the Cabinet of Ministers is a medium-quality document that, although it contains a separate section on anti-corruption policy, still is too abstract for enabling monitoring and control of the status of its implementation. The Program does not take into account the current situation in the anti-corruption sphere, nor does it define clear mechanisms for implementation of the tasks that, in their turn, do not correspond to the results and indicators specified in the same document.

4. The Government's Priority Action Plans for 2020 and 2021 correspond only partially to anti-corruption provisions of the 2020 Program of Action of the Government, while the measures identified in in are generally correct but mostly reflect the current activities of only two agencies belonging to the anti-corruption infrastructure – the NACP and the ARMA.

5. In the absence of a new Anti-Corruption Strategy, none of the abovementioned documents is programmatic to the extent of significantly increasing the efficiency of the entire system of preventing and combating corruption.

6. The VR has to adopt the Anti-Corruption Strategy for the following period as soon as possible.

7. Immediately after adoption of the Anti-Corruption Strategy, the NACP and the Government should develop and adopt a new State Anti-Corruption Program for its implementation.

8. In the future, in the process of drafting anti-corruption provisions of the new

Program of Action for the Government, one should proceed from the provisions of the Anti-Corruption Strategy and the State Program for its implementation in force at the given time.

9. During preparation of the annual plans of priority actions for the Government, attention should be paid to the fact that they should be aimed at ensuring implementation of priorities (including anti-corruption) set forth in the Anti-Corruption Strategy and the State Anti-Corruption Program.

1.1.2. Place and significance of combating corruption in programmatic documents of political parties and in the agreement on establishing a coalition of parliamentary factions in the Verkhovna Rada of Ukraine

1. Practically none of the parliamentary parties uses a systematic approach when formulating their policy documents in general and anti-corruption measures included in them, and neither do they specify the mechanisms of their implementation.

2. When formulating/revising their programmatic anti-corruption priorities, parties should proceed from the current situation with corruption in the country, Ukraine's international obligations in the anti-corruption sphere, and recommendations provided by international organizations.

3. Absence of the Coalition Agreement and the Anti-Corruption Strategy had a negative impact on distinctness of anti-corruption initiatives and respectively commitment of parliamentary political parties to implement them.

4. There is a need to approve the Anti-Corruption Strategy immediately, as well as to ensure adoption and enactment of the State Program for its implementation.

1.1.3. Correspondence of actions of the key bearers of political will (President of Ukraine, Cabinet of Ministers of Ukraine, coalition of parliamentary factions, and other political forces) to the actions stated in policy documents

1. The dictionary of political science terms suggests that *political will* should be interpreted as an ability of political actors (individuals, social groups, parties, etc.) to persevere in choosing motives for action in order to achieve the identified goal. It is not a one-time response to the challenge posed by time, but a constant impulsion, a stimulus for action. Efficiency of volitional actions and their nature depend on organization, unity, psychological attitudes and resilience of the actor, and the presence of strong leaders able to provide proper navigation in political situations¹.

It can be argued that the political will of the President of Ukraine, the Government and the parliamentary majority involved in the political decision-making process in the sphere of development and implementation of anti-corruption policy has signs of permanence and chaotic actions, absence of clear strategic goals and movement toward them.

2. The political class of Ukraine in general is not satisfied with the strict restrictions imposed by anti-corruption legislation on public political players and civil servants.

3. It can be argued that implementation of anti-corruption policy will be continued in

¹ <http://politics.ellib.org.ua/encyclopedia-term-284.html>

the conditions of fierce confrontation and sabotage by political and professional groups whose personal interests will be affected by anti-corruption restrictions.

4. Some provisions of both the presidential and parliamentary election programs were implemented in full or in part, while other are still in the process of being implemented. The laws submitted by the President and adopted by the VR of the IX convocation made it possible to unblock activities of the newly created High Anti-Corruption Court, restart the NACP, announce a new competition for the position of its head, return criminal liability for illicit enrichment, introduce a new procedure for civil forfeiture of unjustified assets of public servants, strengthen protection of whistleblowers, and eliminate some restrictions for efficient pre-trial investigation of criminal offenses. However, competition for the position of the SAPO head is still blocked, and the SSU reform is still in the process of implementation.

5. Following their commitments undertaken during the election campaign as well as to the international partners, the President, the Government, and the parliamentary majority should continue implementation of programs in the part related to anti-corruption policy. First of all, there is a need to adopt the Anti-Corruption Strategy, to appoint a new head of the SAPO, and adopt a law on the SSU as a whole that would prevent exercising pressure on business and investigation of corruption crimes by the SSU.

6. For civil society: given that implementation of anti-corruption policy is synchronized with the election cycles, there is a need to present initiatives and form coalitions around them already today in order to formulate and promote the agenda for the next parliament and president.

7. International partners should keep in mind that the Ukrainian Government states that there is no need to keep them on the ‘reform hook’¹ for moving toward the European and Euro-Atlantic integration, it is precisely this hook and the ‘more for more’ formula that prevents the Ukrainian political class from evading reforms, while detailed expert revision together with clear specific criteria of reform success from international partners are exactly what the Ukrainian society needs.

1.2. ANTI-CORRUPTION STRATEGY AND ACTION PROGRAM/PLAN

1. Absence of an approved Anti-Corruption Strategy and a program for its implementation is one of the factors that has a negative impact on the progress in reducing the level of corruption in Ukraine. These policy documents could serve as a kind of incentive for state authorities to make greater efforts to implement reforms that would improve the quality of governance and reduce corruption. Therefore, adoption of the Anti-Corruption Strategy in the second reading is a priority. The NACP demonstrated in general a high quality of this document and the process of its preparation. After that, the State Anti-Corruption Program for implementation of the Anti-Corruption Strategy should be developed and approved as soon as possible. The process of development of this policy document should be as inclusive as the process of development of the draft Anti-Corruption Strategy in 2020.

¹ <https://news.liga.net/ua/politics/news/kuleba-es-ne-nujno-derjat-ukrainu-na-kryuchke-reform-a-chestno-govorit-o-perspektivah>

2. Although the draft Anti-Corruption Strategy is based on available qualitative and quantitative data on the situation with corruption and governance, there is a clear lack of relevant data and indicators that could strengthen these policy documents significantly. Thus, for the purposes of formulation and implementation of the anti-corruption policy, the capacity of the NACP and other state authorities should be strengthened with regard to creating, collecting, and analyzing qualitative and quantitative data necessary for respective purposes. It would be recommended to expand the NACP's cooperation with other stakeholders – research and development institutions, civil society, and donors on quantitative and qualitative research of the situation with corruption and implementation as well as efficiency of anti-corruption measures that need to be taken into account during policy formulation and implementation. The practice of publishing research and reports introduced by the NACP¹ should be supported.

3. As demonstrated by the practice of implementation of previous programmatic documents on anti-corruption policy, ensuring proper implementation of policy measures continues to be a key challenge. The draft Anti-Corruption Strategy and related legislative amendments strengthen the mechanisms of coordination, monitoring, and evaluation of efficiency of anti-corruption policy. It should be mentioned positively that there is an intention to introduce an IT system for online monitoring of the status of implementation of policy measures. At the same time, it is important to ensure practical implementation of the new mechanisms – their success will depend to a large extent on the NACP's actions.

4. Several legislative amendments that were reviewed by the lead committee during preparation of Draft Law 4135 for discussion in the second reading should be either rejected during the voting in the second reading at the plenary session or amended at a later stage. It is necessary to:

- grant the right to the NACP to issue warrants in the event of improper implementation of anti-corruption policy measures, and to initiate disciplinary action in respective cases;

- to provide a possibility for the NACP to evaluate efficiency of policy measures during the years following completion of implementation of the previous Anti-Corruption Strategy, and not during the last year when implementation is still in progress and not yet completed;

- revise membership of the coordination working group on anti-corruption policy and the personnel appointment entity leaving the respective powers and authorities with the NACP and ensuring mandatory inclusiveness of such entity, which means allowing full involvement of the private sector, public, donors, and international partners. Otherwise, when appointing the first membership of the coordination working group the NACP could invite these individuals as observers with the right to an advisory vote. It is also important to ensure stability of its functioning unlike other coordination bodies which exist mostly formalistically (see Subsection 1.6 of this Report). Activities of the new coordination working group should be open and public (draft agendas of the group meetings, meeting minutes, adopted decisions, etc. should be published in advance).

5. In the course of implementation of the measures envisaged in the Anti-Corruption Strategy, it is important that the implementers of relevant measures enjoy proper support

¹ Corruption Study (NACP, 2021): <https://bit.ly/3gN7WTs>.

from the NACP, receive methodological support and, if necessary, training. Each agency that will be responsible for implementation of measures should appoint a focal point on implementation of the policy measures; the best choice would be authorized units (persons) on prevention and detection of corruption, and in their absence the head of a respective agency should identify an individual who will be authorized to provide information on the status of implementation of policy measures by the respective agency.

6. Publicity of information on the status of implementation of policy measures will serve as a significant incentive for agencies to take a more responsible approach to implementation of the Anti-Corruption Strategy. Therefore, full-fledged functioning of the online system for monitoring of implementation of the Anti-Corruption Strategy should be launched as soon as possible, and publication of all studies, reports, information materials related to the status of implementation of policy measures and their efficiency (including those prepared by other stakeholders) should be ensured. Whenever possible, it would be recommended to carry out alternative assessment of the status of implementation and efficiency of anti-corruption policy documents. Such assessments should be focused more on evaluating the impact of anti-corruption measures on the situation with corruption in Ukraine.

1.3. STUDIES ON THE SITUATION WITH CORRUPTION

1. Since early 2020, official state survey on the situation with corruption carried out by the NACP in compliance with the respective Standard Survey Methodology on the level of corruption in Ukraine was resumed. It is recommended that such surveys should be conducted more frequently – at least annually because anti-corruption policy needs an evidence base. It is also recommended that the NACP should consider improving the Methodology in the future.

2. Updating of the NACP database of sociological and some analytical studies on the situation with corruption in Ukraine should be hailed. It is recommended that the NACP should update respective libraries on its website to compile a complete list of useful Ukrainian and international studies on corruption.

3. Although the number and diversity of studies carried out by other entities remains high (except for regional), recently there has been a lack of authorities' attention to the conclusions and recommendations contained in them. A clear exception can be seen in the NACP's activities related to development of a new Anti-Corruption Strategy that was accepted positively. It would be good practice to take into account the results of relevant research during drafting and before submitting other draft laws. Otherwise, the state's disregard for analytical work of external experts can lead to a decrease of its intensity.

4. The state funding for CSOs in Ukraine is formalistic and non-transparent, and only a small number of anti-corruption CSOs use the possibility to submit their projects for receiving it. The government has to develop a strategy on providing sustainable transparent state support for research on anti-corruption issues, for instance, through involving private funds as well in the third sector (by providing tax benefits, etc.).

5. Citizens continue to demonstrate a low level of trust in anti-corruption agencies, and at the same time an increasingly lower amount of people hear about them and about

corruption from the media. It is recommended that the research on the corruption-related problems should be more covered and discussed in order to increase their visibility, and stimulate respective public discussion.

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

1. Despite the fact that submission of electronic declarations was cancelled for anti-corruption actors, and the authorities made formal statements on cooperation with the civil society sector, violence and pressure on activists intensified notably, and it spread from a regional to the national level, and now it is spread even to members of their families, which is particularly threatening. Law enforcement agencies should be required to investigate such cases properly in order to prevent perpetrators from committing new crimes.

2. Although the legislation on whistleblowers has been significantly improved in early 2020, individuals who disclose socially essential information still cannot expect adequate protection to be provided by the state. It is recommended that protection for such people and members of their families should be ensured by adopting a respective draft law that would be in line with the international standards as stated in the NACP National Report on implementation of the fundamental principles of anti-corruption policy in 2019.

3. The format of rotation/selection of members of public councils used to elect the NACP Public Council and the NABU Public Oversight Council (POC) continues to prove its efficiency since abuses were identified during the online voting for two members of the previous convocation of the NABU POC, which resulted in their exclusion. It is recommended that this mechanism should be extended to other public councils attached to the state authorities.

1.5. DEVELOPMENT OF THE ATMOSPHERE OF ZERO-TOLERANCE TO CORRUPTION

1. Since early 2020, intensity of information campaigns aimed at developing zero tolerance to corruption weakened. The NACP should implement measurable anti-corruption campaigns based on opinion polls with clearly identified target audiences. It is recommended to improve integration of anti-corruption training initiatives in the entire education system. Future initiatives and campaigns should also be coordinated with the expected strategic results in the sphere of development of negative attitudes to corruption as set forth in Subsection 2.2 of the new Anti-Corruption Strategy, adoption of which is still pending.

2. The goal of implementation of anti-corruption activities has not been achieved yet. Many citizens still do not understand the content of anti-corruption reform and the perniciousness of corruption – from everyday to the political level. Involving non-governmental sector in information campaigns can be a good practice and should be practiced more often, especially to find innovative formats for their implementation. For the future, it is recommended that more information campaigns should be implemented that are aimed at highlighting the cost of everyday corruption and developing personal responsibility for combating it.

3. In order to prevent positioning corruption as a social norm, it is recommended that formalistic presentation of information about the prevalence of corruption should be avoided, but attention of the media and the Internet audience should be focused on explaining harmful effects of corruption for every citizen of Ukraine, as well as successful cases of preventing and combating corruption, restoring violated rights, and other successful elimination of the consequences of corruption offenses.

1.6. SPECIAL AUTHORIZED INSTITUTIONS ON ANTI-CORRUPTION POLICY

Activities of the National Agency on Corruption Prevention

1. The NACP remains the key agency that ensures formulation and implementation of the state anti-corruption policy. Whereas in the previous years this status existed only formally and was not supported by respective activities, since 2020 the NACP's work in this area was significantly intensified.

2. The National Agency created a structural unit responsible for implementation of the agency's tasks in the anti-corruption sphere, but the number of staff members of this unit and the actual staffing level complicate proper implementation of respective objectives. It can be recommended that the number of training events on state policy analysis, innovative approaches to its development and implementation should be increased. This will further improve both the quality of the NACP's tasks and efficiency of the work of relevant department, which is especially important in the conditions of limited human resources.

3. Actual activities of the NACP on anti-corruption policy carried out in 2020-2021 is commendable since the National Agency was able to ensure overall high quality of development of the key policy document in this sphere – the draft Anti-Corruption Strategy with wide stakeholder involvement. The NACP furthermore launched systematic analysis of legislative initiatives regarding their compliance with the objectives and principles of international standards on anti-corruption policy, etc.

4. In the future, the priority should be further development of the capacity of relevant structural units of the NACP to perform its functions in the sphere of anti-corruption policy, and in the nearest future – to ensure efficient and effective coordination, monitoring, and evaluation of implementation of the state anti-corruption policy. Implementation of these functions will be a challenge for the NACP and the extent, to which they will be performed successfully, will have a significant impact on the success of implementation of the Anti-Corruption Policy after its adoption.

5. The NACP should strengthen its participation in development and examination of legislative initiatives in the anti-corruption policy sphere, including those that are not directly related to implementation of the NACP's functions. However, the agency's positions must always be balanced and properly substantiated.

Activities of the National Council on Anti-Corruption Policy under the President

6. Despite an attempt to intensify activities of the Council in 2019, this coordination body did not demonstrate noticeable activities in 2020-2021. It performs a ceremonial role rather than being an effective platform with high-level representation for coordinating efforts of various stakeholders.

7. Although such a coordination mechanism has high potential and can be really

efficient, it depends to a large extent on the level of priority of anti-corruption policy issues on the political agenda of the President and his office, as well as on the level of seriousness of their perception of the Council and understanding of its role.

8. Given that the activities of the National Council on Anti-Corruption Policy are not sufficient at the moment, and its efficiency is questionable, it would be appropriate at this stage to focus on trying to build a more effective coordination mechanism with a slightly lower level of representation – for instance, it can be based on a coordination working group on anti-corruption policy envisaged in the draft Anti-Corruption Strategy for 2021-2025 (however, recommendations set forth in Subsection 1.2 of this Report regarding it should be taken into consideration). If such a coordination mechanism proves to be more successful and efficient in practice, it would be appropriate to stop activities of the National Council on Anti-Corruption Policy.

9. At present, the work of the Council should be activated so that it can play its coordinating role at least with regard to the key issues on the agenda.

VR activities

10. As in the previous years, the Verkhovna Rada's activities in the anti-corruption policy sphere were unsatisfactory. Achievements in adoption of priority anti-corruption laws in the end of 2019 were replaced quickly with systematic attempts to weaken anti-corruption legislation, some of which were successful although not properly justified. Appropriate legislative initiatives are sometimes weakened in the Parliament or get distorted to such an extent that, in principle, they become a threat for functioning of anti-corruption institutions. At present, success can be seen in the fact that there is a possibility to adopt some individual targeted amendments to improve anti-corruption legislation. The following tests for the political will of the Verkhovna Rada to combat corruption efficiently will be examination of the draft Anti-Corruption Strategy for the second reading and discussion of legislative changes related to the NABU activities.

CM activities

11. In general, the Cabinet of Ministers exercised the powers and authorities vested in it by law – it submitted draft Anti-Corruption Strategies and draft national reports on implementation of the fundamental principles of the state anti-corruption policy to the Verkhovna Rada for consideration. In other respects, the Government was not active in terms of development and implementation of the state policy, except for the situation when there was a need for legislative amendments related to the NABU activities in view of two decisions of the CCU. In that situation, the Government made several different decisions that contradicted each other, which fact demonstrated politicization of the process of their adoption.

Section 2.

PREVENTION OF CORRUPTION

2.1. SPECIALIZED AGENCY FOR PREVENTION OF CORRUPTION

(A. Marchuk)

Legislation regulating the NACP activities

1. Adoption of the Law *On Preventing Corruption* in 2019 regarding the fundamental principles of the NACP activities and improvement of the competitive selection procedures for appointment of the NACP Chair created conditions for ensuring independence of this agency in practice and for restoring the public and international partners' trust to it. The adopted amendments were assessed positively by the stakeholders. However, there is a need to amend the Law *On Preventing Corruption* in the future in order to define clearly the boundaries for directing and coordinating activities of the NACP by the Cabinet of Ministers, which will further facilitate the agency's independence.

2. Practical implementation of legislative amendments also started in 2019 with termination of the powers and authorities of the previous NACP leadership and competitive selection of the NACP Chair according to a new procedure. The competition was held without improper outside influences, and there are grounds to claim that the selection commission acted autonomously and independently.

3. In practice, there were repeated attempts to limit the powers and authorities of the NACP or to undermine the guarantees of its independence. Such initiatives should be avoided, especially when legislative amendments concerning revision of the NACP's powers are an answer to the agency's performance of its tasks¹. Legislative changes concerning the NACP's activities should be subject to wide-ranging discussions with stakeholders while the National Agency itself should be able to express its position regard the amendments.

4. During the reporting period, powers and authorities of the NACP were limited significantly only once – as a result of recognition of individual provisions of the Law *On Preventing Corruption* as unconstitutional by the CCU decision 13-p/2020, which was not properly justified and could be caused by a personal reaction of the CCU judge to the NACP actions². The CCU decision had an extremely negative impact not only on activities of the NACP, but also on functioning of the institutional mechanism for preventing and combating corruption in general.

5. In practice, situation with independence and impartially of the NACP improved significantly, and one can say that Law 140-IX ensured achievement of the identified goals.

On structure of the NACP, number of employees, their qualifications and experience

¹ Parliament has to reject Draft Law №5253. It destroys oversight of party funds – CSO statement (Chesno Movement, 2021): <https://bit.ly/3zLfjCx>.

² Publication by the Anti-Corruption Action Center (FB-page of the Anti-Corruption Action Center, 2021): <https://bit.ly/2WQzIIa>.

6. The maximum number of the NACP employees remained unchanged during the reporting period; it enables the agency to perform the tasks vested in it at this stage, although in the nearest future the need to increase the staff size will arise – both for the central apparatus and for creation of territorial offices of the NACP. However, it already looks that there is a need to increase the number of employees in some structural units in order to maintain the quality of task performance. The NACP should also continue its efforts to increase its productivity with the available human resources by improving internal organizational and managerial processes.

7. The NACP structure allows to perform all tasks vested into it. At the same time, it should be improved in some aspects, in particular, it terms of distribution of responsibilities among the Deputy Chairs of the NACP related to coordination of functional structural units, division of the functions of the NACP Internal Oversight Department, clarification of the names and functions of the units that carry out complete verification of declarations, etc.

8. The NACP remains understaffed. Due to the legislative restrictions imposed because of COVID-19, the NACP forms its staff on a permanent basis only in 2021. At present, it is too early to draw conclusions as to the results of competitions, and at the same time it is necessary to increase transparency of the competitive selection processes through ensuring disclosure of the data on the membership of selection commissions as well as publication of the results at various stages of selection. Furthermore, it is necessary to clarify some provisions of the Regulation on open competition for the NACP offices in order to eliminate unjustified discretion.

9. Regarding qualifications and experience of the NACP staff, employees of the agency typically have complete higher education. Although the NACP does not provide information about experience of its employees, it is known that at least some of them did not have precious experience of anti-corruption activities, which makes it necessary to pay more attention to developing their competencies and professionalism. The NACP should also pay proper attention to integrity of its staff and avoid employing persons whose integrity caused reasonable doubts.

10. The *de facto* absence of permanent heads of some structural units of the NACP and indefinite assignment of managerial responsibilities to other staff members is not good practice – competitions to fill respective vacancies should be held without delay.

Advanced professional training for the NACP staff

11. In 2020-2021, training was conducted in the form of various educational programs, courses, activities, etc. Training covered both general and special topics, and in 2020 the majority of the NACP employees took part in it. According to the National Agency, individual professional development programs were introduced, and the Human Resources Department carried out assessment of the NACP training needs. However, the agency has to:

- publish general training plans and accompanying materials justifying respective training needs of its employees, reports on the delivered training indicating the trainers, lecturers, and the number of people who participated in respective activities;

- ensure the balance of training and advanced training on general topics and on special topics related to immediate implementation of the NACP's functions;
- pay more attention to delivering training on new legislative provisions and the practice of application of legislation, best practices and latest approaches, and discuss complex issues related to law enforcement practice;
 - conduct tests to determine the level of knowledge and skills after training, take the results into count when developing further training plans.

Funding of the NACP activities

12. The law contains guarantees of the appropriate amount of expenditure for the NACP activities that are observed in practice. The amount of funding of the agency's activities was sufficient in general, although some activities continue to be funded at the expense of international technical assistance. Timely funding of the agency's activities needs to be ensured for the upcoming years in accordance with the request submitted by the NACP. It is also recommended that the practice of reducing salaries of the NACP employees and re-allocating the NACP expenditures to other purposes without making appropriate changes to the State Budget should be avoided.

On accountability and transparency of NACP activities

13. Taking into account the agency's previous experience, Law 140-IX strengthened the mechanisms for ensuring the NACP's accountability and transparency significantly. They are in line with best practices and do not undermine the independence of the body. However, their application in practice should be further strengthened.

14. Introduction of external independent procedure of the NACP's performance appraisal (audit) should be mentioned on a positive note. The methodology and evaluation criteria approved by the Government are not overstated and will serve as a good basis for the first audit, which is scheduled to begin in January 2022. It is important to preserve the existing approaches to forming an audit committee with involvement of international experts. In this regards, it is necessary to:

- eliminate discrepancies between laws and the audit criteria that have existed since the end of 2020;
- ensure transparent appointment of members of the audit committee, which will be able to ensure professional and impartial audit with due regard to the views of all stakeholders, including the public;
- after the first audit, ensure revision of the audit criteria and methodology, first of all, for identifying the minimum criteria, achievement of which is absolutely mandatory; carry out consultations with all stakeholders on the audit criteria, also involving the public and the NACP (however, without the possibility of this agency to exert a decisive influence on the content of the criteria);
- consider introducing legislative amendments that would enable identification of the audit criteria and methods by the audit committee after consultations with the Government.

15. Law 140-IX specifies the requirements for mandatory indication of certain information about the NACP activities in annual reports of the agency – primarily, regarding efficiency of reviewing the NACP's protocols on administrative offences and materials on the detected offenses forwarded to law enforcement bodies. The NACP did not provide this information in the last two annual report, which makes it difficult to assess

effectiveness and impact of the agency's work. Furthermore, other information required by the law is also absent, and some provided data are too general. The NACP should disclose complete information about its activities and their efficiency in its annual reports at least to the extent that is expressly required by the law.

16. With regard to provision of general information to the public about the NACP activities, the agency updated its website, introduced more user-friendly publication of methodological and explanatory materials, introduced announcement on the trials following the reports drawn up by the NACP, etc. These practices should be hailed and developed for ensuring relevance of the information posted on the NACP website and its completeness, further simplifying the use of the website, and making it more intuitively understandable.

17. Law 140-IX introduced new approached to appointment of the NACP Public Council and expanded its powers and authorities primarily related to participation in activities of the selection and disciplinary commission, and analysis of the situation with the NACP independence. Government's by-laws on relevant issues are consistent with the requirements of the law. New members of the Public Council were appointed in 2020 based on the results of an open and transparent competition, which did not cause anyone's concerns.

18. The incumbent NACP Public Council is much more active compared to its previous composition. However, the majority of its conclusions are not published on the NACP website. This shortcoming should be eliminated. The NACP Public Council should also pay more attention to the problematic aspects of the agency's activities that are also described in this alternative report, and it should also substantiate its positions properly, e.g. concerning the debatable draft regulatory documents proposed by the NACP. Evaluation of the NACP's performance in various functional areas should be comprehensive and balanced.

19. Despite the fact that the NACP responds to the majority of requests for access to information about the agency's activities, there are cases of unjustified refusal to provide certain documents or information contrary to the *Law On Access to Public Information*. Also in violation of this Law, the NACP does not publish its draft regulatory documents. Such negative practice should be eliminated. The NACP employees involved in reviewing and processing the requests for access to public information, preparation and provision of responses to them, and responsible for disclosure of public information should have better knowledge of the requirements of the said Law. It would be appropriate to organize a series of training events on relevant issues involving recognized experts on access to public information.

20. Contrary to the requirements set forth in Government's documents, the NACP does not organize discussions of draft normative legal documents even when their public discussion is mandatory. Given the important role played by civil society in preventing and combating corruption that is recognized both in domestic legislation and in the international treaties of Ukraine¹, the NACP should go even beyond the minimum requirements for mandatory discussion of draft documents and discuss as many of them as possible because, as practice has demonstrated, public participation often makes it possible to correct

¹ E.g., Article 21 of the Law On Prevention of Corruption, Article 13 of the UN Convention against Corruption

mistakes made by the NACP when drafting respective documents. Based on the results of such discussions, the NACP should publish information about the results of examination of collected proposals, their consideration or justification of rejection. Introduction of such practices would have a positive impact on the level of trust to the agency.

2.2. INTEGRITY OF CIVIL SERVICE

1. After the new *Law On Civil Service* came in force, the process of amending it and respective by-laws has continued. In 2019-2020, amendments to the legislation on civil service were used as a mechanism for rapid and radical personnel changes in state authorities. At the same time, as a result of these changes the state guarantees of the rights of civil servants were significantly restricted for a lone time. However, in March 2021 a law came in force that restored the previously narrowed rights of civil servants – this gives us grounds to conclude that the process of rebooting the government related to the change of political leadership was completed.

2. The system of competitive procedures for filling vacant positions in civil service demonstrated the lack of preparedness to work effectively under the quarantine restrictions. The simplified system for selection of civil servants did not provide the necessary level of transparency of selection of candidates and appropriate level of examination of their professional competencies. Currently, the civil service system faces the problem related to development and introduction of digital competitive selection processes, i.e. creating possibilities for competitive selection of civil servants remotely with the help of digital technologies. It can be recommended to use the experience of the banking system that implements multi-stage authentication mechanisms for granting access to a personal account and for making payments in the Internet. Furthermore, even before the coronavirus pandemic outbreak abroad, mostly the business sphere (first, IT and consulting, and later – large food corporations) developed competitive selection methods using digital technologies that allow controlling identity of a person taking the remote test. For the civil service system, in particular for the NAPS, it would be recommended to learn more about such methods and their implementation in Ukraine to ensure organization of competitive selection of civil servants.

3. The constitutional crisis of October 2020 demonstrated vulnerability of the state system to internal challenges. Assertion of the special status by individual executive bodies leads to imbalance between of the political system and the system of public administration. Potential centers of political instability are the state authorities with a status determined by special legislation. Such bodies have special functions aimed to combat crime and to ensure state sovereignty. At the same time, for efficient performance of their functions, certain guarantees of independence of their activities are granted to these bodies. Functioning of the bodies with a special status outside the branches of government provides these bodies with self-governing powers and the right act at the discretion of their leaders thus expanding the boundaries of political arbitrariness. Regulating the status of such bodies through clear definition of their place in the system of the state power, namely executive, is an extremely important task and the priority for 2021-2022. Solving this problem will help

to create effective safeguards against the next political crises caused by self-determination attempts of some agencies and their heads, among others in the political arena.

4. Since 2016, the process of reforming the system of salaries for civil servants was carried out. In 2020, the identified task envisaged not only reduction of the share of a variable component, establishment of limited amounts of bonuses and premiums, as well as an efficient system of control over their calculation, but also bringing the wages of civil servants to an average market level. Introduction of a system of grading and equalization of wages in accordance with the average market level will facilitate increase of the prestige value of civil service. At the same time, it is necessary to take into account the key tasks of business and public administration, and therefore the positions should be graded with regard to the highest demand for respective specialists for the Ukrainian public administration.

5. In 2019 – first half of 2021, the issue of empowering the head of civil service and respective officials in the state authorities with a special status whose activities are regulated by special legislation was settled.

6. Due to the need to observe the nationwide restrictions introduced to prevent the spread of coronavirus disease, the system of professional training for civil servants was adapted successfully to ensure its operation in a remote mode – some governmental agencies (NACS, NACP, Ministry of Digital Transformation, MoE and others) developed thematic certified training courses with support from international partners, which are provided on various online learning platforms (Prometheus, EdEra, Diya.Digital Education).

2.2.2. Conflict of interest, ethical standards, declaration of incomes and expenses by civil servants (A. Marchuk)

Conflict of interest prevention and regulation

1. Although the national legislation on prevention and regulation of conflict of interest in general complies with the basic provisions of international standards and best practices (except for regulating the perceived conflict of interest, complete implementation of which looks premature and too ambitious taking the context into consideration), it still has inconsistencies among various laws and some editorial mistakes, while the practice of its application in many instances is flawed and needs to be corrected. The adoption of a comprehensive law on conflicts of interests seems to be the optimal solution. It is also necessary to extend the rules related to conflicts of interest to employees of executive support services holding political offices.

2. The NACP continues to carry out methodological and explanatory work regarding conflicts of interest. Drafting an updated version of methodological recommendations on respective issues is a step in the right direction although they require finalization with due regard to the aforementioned comments. Educational activities on conflicts of interest should be continued also using online formats. The NACP should also explore innovative approaches to raising awareness of civil servants about conflict of interest, and apply the most relevant of them in practice.

3. The practice of applying legislation on conflicts of interest and controlling compliance remains a challenge. Despite the progress achieved with regard to the NACP's activities

in this area and some positive examples of work related to identification and collection of evidence on conflicts of interest, it is still necessary to:

- introduce an automated distribution of responsibilities for conducting inspections falling within the scope of competencies of the NACP Department on Ensuring Compliance with Legislation on Conflicts of Interest and Prevention of Corruption;

- develop and, after public consultations with all stakeholders, approve the procedure for examining alleged violations of requirements regarding conflict of interest and related restrictions, which would specify the rights and responsibilities of authorized persons of the NACP in the course of inspection, timelines of inspection, the list of mandatory actions within the framework of inspection, the grounds and scope of liability for improper performance of duties, etc.;

- focus effort on detecting offences committed by the top officials, and use the available NACP resources primarily for such inspections;

- define clearly and publish the criteria, according to which authorized persons of the NACP will decide on issuing an order or forwarding “requirements (letters) on detection and/or regulation of the conflict of interest”.

4. The National Agency should ensure compliance with the direct requirement of the law on including in its annual reports information on the results of examination of the protocols on administrative offenses. It would be advisable to analyze the practice of examination of the cases on corruption-related administrative violations following the protocols drawn up by the NACP, and to publish a report based on the results of such analysis outline the main problems that were identified and their causes. The agency should also introduce the practice of providing information about justified decisions made on the basis of the results of examination of public statements on alleged violations of the requirements regarding conflicts of interest or related restrictions.

On declarations of civil servants

5. Despite numerous attempts to weaken the declaration regime at the legislative level, its scope remains in line with international standards and best practices. Some individual on-the-spot changes could be recommended concerning extension of the obligation to declare at least to employees of executive support services holding political offices; and clarification of the category of officials of legal entities belonging to the public law sphere.

6. The long-awaited step was the transfer of the declaration register hardware and software directly to the NACP. The next step should be NACP’s capacity building to ensure its independent administration of the register without involvement of the state-owned company, *Ukrainian Special Systems*. Full compliance of the declaration form with requirements of the law should also be ensured.

7. Regarding control and verification of declarations, the NACP demonstrated progress by addressing all key shortcomings in the procedure for conducting complete verifications of declarations and in some cases applying new approaches to detecting undeclared assets. At the same time, attention needs to be paid to completeness of such verifications and unification of approaches used by various authorized persons. The NACP should follow such recommendations:

- excluding from the procedure for selecting declarations for complete verification and

the order of inspection (including the appendix thereto) the provisions that make it look like a recommendatory document;

- finalizing the procedure substantially for automated distribution of responsibilities related to conducting inspections among authorized persons of the NACP in order to eliminate any risks of improper impact on such automated distribution and to ensure that it happens in a random manner;

- eliminating the existing gaps and inconsistencies in legal regulation of the procedure of logical and arithmetic control, control of correctness and completeness of the declaration, conducting consultations with stakeholders on the procedure of these two types of control, and ensuring public access to such rules;

- focusing effort on improving efficiency of complete verification of declarations as the main comprehensive procedure and abstaining from introducing of new duplicating procedures having questionable compliance with the law (such as separating “control of completeness of declarations” into an individual autonomous procedure, which does not lead to complete verification of declarations);

- ensuring verification of approaches used by authorized persons of the NACP to conducting complete verification of declarations, actions taken during verification, and assessment of classification of the detected circumstances;

- expanding cooperation with private expert institutions for asset valuation purposes;

- analyzing the reasons of not taking into account the publicly known information about potential declaration of inaccurate information during at least one complete verification of a declaration, and ensuring avoidance of such situations in the future;

- conducting regular analysis of efficiency of conducted complete verifications, also with involvement of stakeholders, improving selection of declarations for complete verification and the order of conducting it taking this rule into account;

- in accordance with the requirements of the law, including in the annual reports on the NACP activities information on the results of examination of protocols on administrative offenses, substantiated conclusions on detection of the signs of corruption or corruption-related offenses drawn up as a result of conducted complete verification of declarations;

- introducing collection and regular publication of statistics in accordance with the OECD pilot monitoring indicators for assessing efficiency of the system of declarations for civil servants.

9. Despite the beginning of monitoring the lifestyle of the declarants, this procedure remains inadequately regulated. The NACP should determine the procedure for lifestyle monitoring by approving a respective legal document and ensuring its state registration. Such draft document should be made public in advance and duly discussed with stakeholders. The NACP should follow the recommendations provided in the *TI Ukraine* study as to the aforementioned procedure.

10. Progress was also demonstrated with regard to implementation of special procedures for implementing financial control measures for certain categories of civil servants. The following steps should be taken to eliminate the existing shortcomings:

- to revise the decision on complete restriction of access to the procedures regulating implementation of financial control measures for employees of intelligence and

counterintelligence agencies or operative and search units according to the Law *On Access to Public Information*;

- to transfer the powers and authorities for exercising control and verification of declarations of the specified persons from the NACP Internal Oversight Department to other structural units that conduct complete verification of declarations of all other persons, and to transfer, if necessary, employees to these units who have access to the state secret; to ensure that related amendments are introduced to the procedure for automated distribution of powers and authorities related to verification;

- to cancel the separate procedure for selecting declarations for complete verification and the order of verification by changing the general procedure for such selection;

- to analyze whether all public servants subject to the special procedure of financial control measures really belong to the staff of intelligence agencies and/or hold offices directly related to intelligence, counterintelligence or operative and search activities, to respond to the detected abuses (if any).

11. The NACP continues to control and verify declarations as well as to monitor the lifestyle of judges and CCU judges. The specific features of respective procedures that were introduced should not be an obstacle for implementation of respective measures. However, if difficulties or weakening of such measures are encountered in practice, respective legislative amendments should be initiated.

Protection of whistleblowers

12. As a result of adoption of legislative amendments in October 2019 aimed at strengthening protection of whistleblowers, legal guarantees of protection for whistleblowers were provided in full scope. However, difficulties remain with proper implementation of such guarantees, and when it comes to ensuring safety of whistleblowers, competent agencies face the problem of obsolescence and low effectiveness of the law. Therefore, it is recommended that a more relevant and applicable Law *On Ensuring Protection For Individuals Participating in Criminal Proceedings* should be adopted.

13. The priority of the whistleblowers protection policy should be ensuring proper implementation of the current legislation on protection of whistleblowers.

14. Practical implementation of revised legislation on protection of whistleblowers has not been fully ensured. Even central executive bodies fail to meet the requirements concerning creation of channels for whistleblowers messages, their delimitation, and approval of internal documents on respective issues. In order to ensure further implementation of legislation on protection of whistleblowers, it is necessary to:

- create a single portal for whistleblower messages and ensure its functioning;

- build capacity of all institutions and persons involved in examination of information received from whistleblowers and ensuring protection for whistleblowers, organize training and distribution of information and explanatory training materials;

- organize a discussion involving a wide circle of stakeholders on debatable issues related to implementation of legislation on protection of whistleblowers, take the results of such discussions into account when preparing explanations and recommendations of the NACP on respective issues;

- carry out awareness raising work on the ways to report corruption, guarantees of protection for whistleblowers, and ways to implement them;
- ensure proper communication of successful examples of protection of whistleblowers' rights and the cases of prosecution based on information received from whistleblowers.

2.3. IMPLEMENTATION OF GOOD GOVERNANCE STANDARDS

1. Given the amount of normative legal documents that are developed and enforced in Ukraine, the highest burden related to conducting anti-corruption expert analysis in 2019-2021 was carried by the Ministry of Justice of Ukraine. Quantitative indicators characterizing the conducted analysis remain high, yet there is a fact that raises doubts, namely that among the analyzed applicable normative legal documents corruption factors were found only in 0.24% documents, and recommendations were proposed to eliminate them. Since this situation remains unchanged for almost ten years, the issue of adequacy of the institutional capacity of the Ministry should be analyzed, as well as the political will of its leadership to ensure implementation of the legislative requirements in this sphere.

2. During the previous reporting period (2013–2018), the most active and efficient actor carrying out mandatory anti-corruption expert analysis was the VR committee on combating corruption. The committee cooperated actively with civil society organizations and provided high-quality results of expert analysis to the Verkhovna Rada.

The results of expert analyses conducted by the Ministry of Justice are impressive in terms of the number of examined documents and draft documents, but it is very difficult to make any conclusions on the quality and efficiency of such expert analyses. Thus, the situation with mandatory anti-corruption expert analysis by this actor did not change over the last three years, primarily due to the fact that the methodology remains unchanged regardless of the range of corruption-inducing factors, approaches to rulemaking of the authors of normative legal documents, and a significant increase of the number of such documents. Given the scope of the mandate of the Ministry of Justice, the question arises as to whether it is appropriate to leave part of this examination within the scope of its competence or whether transferring these powers to another entity should be considered.

Since the beginning of 2020, the NACP has been actively implementing new standards of anti-corruption expert analysis and taking necessary measures to ensure that decision-makers take its results into consideration.

3. Whereas during the period analyzed in the previous Alternative Report (2013–2018), civil society institutions were carrying the major burden of conducting high-quality and in-depth anti-corruption expert analyses, in 2020–2021 the situation began to change, and the NACP was increasingly more involved in the process of studying draft normative legal documents and applicable normative legal documents. This can be explained by two factors:

a) NACP rebooting in early 2020 that facilitated “revival” of the function of conducting anti-corruption expert analysis. At present, the NACP leadership supports performance of all functions envisaged in the agency’s mandate, and therefore anti-corruption expert analysis is carried out to the maximum extent possible in accordance with its institutional capacity;

b) as a result of the constitutional crisis caused by the decision of the Constitution Court of Ukraine №13-p/2020 as of October 27, the focus of many civil society organizations shifted to finding solutions aimed at minimizing negative consequences of the CCU decision and, respectively, the amount of anti-corruption expert analyses of normative legal documents and draft documents decreased.

However, some civil society organizations, such as the Institute of Legislative Ideas, the Center for Political and Legal Reforms, and others, continue to carry out anti-corruption expert analyses, the results of which are forwarded to the NACP and the VR committee on anti-corruption policy to be used in their work. For its part, the NACP also involves civil society representatives actively for conducting expert analysis – both upon requests and through involvement of the NACP Public Council in anti-corruption expert examination.

4. Thanks to active cooperation between the NACP and the Government, in particular in view of amendments to the Rules of Procedure of the latter (§ 37-2 of the Rules of Procedure of the Cabinet of Ministers of Ukraine *Anti-Corruption Expert Analysis by the National Agency for Corruption Prevention*), the NACP was able to achieve complete (100%) consideration of conclusions of anti-corruption expert analysis of draft normative legal documents by the CM. Active effort of the NACP leadership also contributed to the fact that the level of consideration of recommendations of the anti-corruption expert analysis by the VR increased to 85%.

Efficiency of anti-corruption expert analysis carried out by civil society institutions is monitored by them independently, and therefore, due to the lack of resources, activities in this area are mostly insufficient. CSO *Institute of Legislative Ideas* should be mentioned separately since performance of anti-corruption expert analysis forms the basis of its program activities. The level of consideration by the VR committee on anti-corruption policy of the results of anti-corruption expert analysis carried out by the Institute's specialists totals 60–84%.

5. The following step in conducting anti-corruption expert analysis (2022–2023) should be improvement of its mechanisms, in particular through introducing respective amendments to normative legal documents that regulate these activities, and further implementing legislative requirements in full, namely:

1) obligations of the Ministry of Justice to comply with the requirements of legislation on access to public information, in particular, to publish and ensure 100% continuous access to annual plans and reports on anti-corruption expert analyses, as well as conclusions on the results of anti-corruption expert analysis;

2) improvement of the methodology of the Ministry of Justice for conducting anti-corruption expert analysis, namely by identifying and ensuring implementation of indicators of efficiency of anti-corruption expert analysis, ensuring monitoring of consideration of the results of anti-corruption expert analysis by decision-makers;

3) change of the approach of the VR committee on anti-corruption policy to conducting anti-corruption expert analysis. It is necessary not only to regulate the procedure for carrying out expert analysis in the committee's Rules of Procedure, but also to develop the committee's own methodology taking into account the legal force of the examined draft documents and the specific nature of committee's activities. At the same time, the methodological aspect is relevant for unification of approaches of all relevant actors to

expert analysis and standardization of conclusions. It is also necessary to ensure publication of the conclusions of expert analysis carried out by the committee in a separate section on the committee's official page on the VR website;

4) increase of the level of consideration by the VR of the results of anti-corruption expert analysis carried out by the NACP to 100%;

5) ensure introduction by the NACP of annual plans for conducting anti-corruption expert analysis and ensuring their publication on the official website; at the same time, a separate plan should be developed for revision of the current normative legal documents, anti-corruption expert analysis of which can be carried out by the NACP, and the plan for anti-corruption expert analysis of draft normative legal documents.

6. Among the issues related to conducting anti-corruption expert analysis that need to be studied and addressed, the following should be singled out:

- ensuring a uniform approach to conducting anti-corruption expert analysis and formal presentation of its results. At present, the diversity of methodologies and methods of presentation of expert analysis results leads to the situation when in the process of development of draft normative legal documents for examination and adoption, additional delays occur that are caused by the need to study the expert analysis results and sometimes the methodology that was used to conduct it. This is one of the factors leading to the low level of consideration of the results of public anti-corruption expert analysis;

- introducing automatic examination of draft normative legal documents for analogy in order to reduce the time spent by specialists on examining documents and draft documents similar to those that have already been examined and subject to expert analysis;

- ensuring delimitation of powers and authorities of actors involved in carrying out anti-corruption expert analysis in order to avoid duplication of powers regarding the same types of normative legal documents and draft normative legal documents.

2.3.2. Anti-corruption programs

1. As of August 1, 2021 the NACP uses the regulatory and methodological framework adapted to the new form of organization of its work in the sphere of development and implementation of anti-corruption programs of the state authorities, and finalizes the methodological framework for working with anti-corruption programs of legal entities – prepares the standardized anti-corruption program of a legal entity for approval. Based on the results of inspections of organization of activities and examination of anti-corruption programs submitted to the NACP for approval, typical mistakes and shortcomings are studied, and methodological materials and explanations are developed for their elimination that are published on the official web-portal of the NACP.

2. Given a low level of assessment of corruption risks by the authorized persons of the departments of state authorities and authorized persons of legal entities, as well as a formalistic approach to development and implementation of anti-corruption measures of the program, the NACP, relevant authorities and legal entities should establish interagency groups on identifying typical sectoral corruption risks. To some extent, this work is already being carried out by the NACP with support from international partners, in particular

corruption risks in the sphere of public procurement, urban planning and land issues have been already studied.

3. The problem of insufficient level of professional competence of anti-corruption authorized persons has a significant impact on the quality of anti-corruption programs of state authorities and legal entities. Legislation does not oblige such individuals to improve their professionalism, and therefore training activities initiated by the NACP and supported by international partners are inefficient. In the civil service sphere, such training could be used by civil servants for completing the Individual Program of Professional Development of a Civil Servant. In view of amendments to the Law *On Preventing Corruption*, it is necessary to introduce mandatory assessment of the level of professional competencies for anti-corruption authorized persons of state authorities (annually) and legal entities (every three years).

4. The NACP jointly with the National Agency for Civil Service and the Ministry of Digital Transformation should develop and implement effective methods of remote control of professional competencies of anti-corruption authorized persons.

5. In 2020-2021, state authorizes began to involve civil society organizations for development of anti-corruption programs. In some cases, conclusions and suggestions provided by members of the public are used by the development actors to certify the fact of public involvement in public discussions of anti-corruption programs to ensure formalistic compliance with a respective legislative requirement. However, collection of proposals initiated by the NACP on its official web-portal for anti-corruption programs submitted for approval ensures that public opinion is taken into account when these programs are finalized to be approved.

6. Development, approval and implementation of anti-corruption programs by legal continues to be the sphere that is not controlled by any governmental authority (the NACP checks existence and implementation of anti-corruption programs only during scheduled and unscheduled inspections carried out for detection and prevention of corruption). In other words, there is no regular control of compliance with the requirements for development and implementation of anti-corruption programs by legal entities. Therefore, it is necessary to amend the Law *On Preventing Corruption* in order to introduce registration of legal entities that have approved anti-corruption programs, and control of their implementation.

2.3.3. Legislation on administrative procedures

1. As of August 2021, most procedural elements of government relations with citizens in Ukraine are either not regulated by legislation at all or are regulated by subsidiary normative legal documents. The only exception is a segment of these relations that is regulated by the applicable general laws, such as *On Citizens' Appeals*, *On Administrative Services*, as well as by numerous individual special laws *On State Registration of Property Rights to Real Estate and Their Encumbrances*, *On State Registration of Legal Entities and Individual Entrepreneurs and Civil Formations* and others, and there are hundreds of such laws in general (with different approaches and significant gaps), while only at the level of principles it is regulated by the Code of Administrative Judicial Proceedings of Ukraine.

2. A high-quality draft Law *On Administrative Procedure* has been developed and

adopted by the Parliament in the first reading as a basis. Its adoption as a law will enable solving the aforementioned problems.

3. At the same time, complete and effective implementation of the new administrative procedure rules will also require development and amendment of about 100-150 special laws in order to harmonize them with the *Law On Administrative Procedure*.

4. Simultaneously with adoption of the *Law On Administrative Procedure* it is necessary to:

- start development of a training program on the general administrative procedure for all civil servants and local self-government officials (MoJ, NACS);

- help the MoJ to enhance the institutional capacity regarding the general administrative procedure through training activities for the staff of this ministry (including study visits);

- provide organizational and material support from international organizations and technical assistance projects in development, approbation and implementation of training programs and activities on the general administrative procedure for a wide range of would-be users (civil servants, law professors, training and re-training institutions for civil servants, judges, etc.);

- envisage in by-laws and anti-corruption programs of respective state authorities regular assessment and analysis of corruption-inducing risks related to practical implementation of administrative procedures.

2.3.4. Financial control and audit

1. At present, the situation looks paradoxical. Pursuant to the *Law On Fundamental Principles of the State Financial Control in Ukraine*, the State Audit Service (SAS) carries out financial control activities in the form of inspections (the result is an inspection report), the state financial audit (the result is an audit report) and procurement monitoring.

During these forms of control, the SAS detects violations that in some cases are criminal. However, according to Article 12 of the *Law On Fundamental Principles of the State Financial Control in Ukraine*, the SAS officers are obliged to forward only the inspection materials to law enforcement agencies in the event when abuses or violations of the current legislation are detected. No such obligation is established for criminal offenses detected during other forms of financial control. At present, such criminal offences are reported to law enforcement agencies by civil society activists who study the results of financial control activities.

Therefore, it is recommended that respective amendments should be introduced to the *Law On Fundamental Principles of the State Financial Control in Ukraine*.

2. Only SAS audit reports are subject to mandatory publication. However, a significant amount of information is found in the inspection results presented in the form of inspection reports that are provided only upon a request for provision of public information.

Therefore, it seems appropriate that respective legislative amendments should be introduced that would oblige the SAS to publish such inspection reports similar to audit reports.

3. A common problem for the SAS and the Accounting Chamber (AC) is absence of mandatory cooperation with the tax authorities. This means that when a violation is

detected, which entails liability, neither the SAS nor the AC are obliged to forward such information to the tax authorities.

Therefore, it can be recommended that such obligations should be envisaged in the respective Law *On Fundamental Principles of the State Financial Control in Ukraine* and in the Law *On Accounting Chamber*.

2.3.5. Public procurement

1. After the new wording of the Law №922 came in force on April 19, 2020, the legal principles of public procurement in Ukraine were changed significantly, first of all with regard to further harmonization of domestic legislation with the EU rules within the framework of implementation of the Association Agreement and to improvement of the public procurement procedures.

2. However, the public procurement sphere needs to be further improved, including:

- development and approval of methods for assessing the efficiency of procurement that will provide a unified approach to assessing the customer effectiveness;

- further automation of the processes of exercising control in the public procurement sphere through the wider use of functional possibilities of the electronic procurement system that will increase efficiency of control in the procurement sphere;

- development and implementation of a platform for coordination, signing, and publication of electronic contracts and reports on their implementation that will provide a possibility to have contracts in a structures form, receive additional opportunities for creating analytical tools based on the electronic procurement system data both for improving the quality of public administration in the public procurement sphere, and for exercising the state financial and public control of the use of public funds.

2.3.6. Access to information

1. Access to public information is one of the elements of civil democratic control. Citizens can exercise their powers through democratic elections. However, in order to develop their ideas about the right choice (candidate, party), citizens need complete and objective information. Responsibility for ensuring guarantees of this right is vested in the Verkhovna Rada Commissioner for Human Rights.

2. Since 2016, there has been a steady increase of the number of complaints submitted to the Verkhovna Rada Commissioner for Human Rights regarding violations of the right to access to public information. Yet, there has been no corresponding increase of the number of instances of bringing to administrative liability for such violations. The tendency toward the increase of the number of complaints indicates inefficiency of the state policy on access to public information.

3. Positive case law that can be seen in expansion of the list of public information, access to which may not be restricted, in general does not improve the overall situation with protection of the right to access to public information since judicial proceedings can take years while the requested information loses its relevance very quickly.

4. Reluctance of law enforcement agencies to provide information about high-profile

criminal cases remains a problem despite a legislative requirement for conducting a so-called three-part test before a decision is made to reject or grant a request for provision of public information in each individual case. An ambiguous position of the Secretariat of the VR Commissioner for Human Rights regarding this issue further contributes to this problem.

5. The existing registers with a list of public information need to be improved: on the one hand, it is necessary to fill them with relevant and up-to-date information, and on the other hand – to increase the level of protection of the information available in them.

2.3.7. Preventing corruption in the private sector

1. Preventing corruption in the private sector is gaining popularity slowly among state-owned enterprises, while spreading even more slowly in business environment.

2. There is the institute of a business ombudsman that is actually functioning in Ukraine, but the relevant law has not been adopted for a long time.

3. Actions aimed at promoting implementation of real anti-corruption practices in the private sector and their results are still far from the desired state of affairs. The respective sphere is only gaining popularity that is a result of the general situation with combating corruption in our country. The number of appeals to the Business Ombudsman Council confirms these conclusions.

3. In order to ensure proper prevention of corruption in the private sector, the minimum necessary actions include:

1) adoption of the Law *On Institution of Business Ombudsman in Ukraine* and ensuring development of the business ombudsman institution involving this agency in solving current problems of business representatives that are directly related to corruption;

2) development of an anti-corruption compliance agenda for representatives of domestic business and offices of foreign companies;

3) completion of implementation of the measures envisaged in the previous State Program for Implementation of the State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) regarding prevention of corruption in the private sector, and development of a new agenda for the 2021-2025 Anti-Corruption Strategy for making the process of reducing corruption irreversible and for developing this sector of preventing corruption in the country as a whole.

Section 3.

CRIMINALIZATION OF CORRUPTION AND LAW ENFORCEMENT ACTIVITIES

3.1. CRIMINALIZATION OF CORRUPTION IN ACCORDANCE WITH INTERNATIONAL LEGAL STANDARDS

1. The status of implementation in the CC of the provisions of anti-corruption conventions establishing criminal liability can be considered satisfactory.

It should be noted that over the past two years (after the end of the period covered by the previous Alternation Report on Assessment of Efficiency of Implementation of the State Anti-Corruption Policy in 2019) the status of anti-corruption legislation in the part related to criminalizing corruption has somewhat improved.

At the same time, there exist some shortcomings as to criminalization, imposing sanctions, etc.

2. There is no list of corruption criminal offenses based on the signs of corruption and corruption-related offenses specified in the *Law On Preventing Corruption*. Corruption is most frequently perceived as bribery, although in reality the larger-scale and most dangerous type of corruption is misappropriation of budget funds, the state and municipal property, as well as natural resources.

The list of corruption criminal offenses and corruption-related offenses as defined in Article 45 of the Criminal Code, is imperfect since it contradicts the definition of the signs of a corruption offense defined in Article 1 of the *Law On Preventing Corruption*. All criminal offenses committed by a person authorized to perform the functions of the state or local self-government or by a person equated to them through using power, official authority, position or related opportunities and for the purpose of obtaining illegal benefit should be defined as corruption.

Conversely, the criminal offense envisaged in Article 320 of the Criminal Code should be excluded from this list, and Article 210 of the Criminal Code should be amended (to define the purpose of receiving illegal benefit as a qualifying sign).

All corruption offenses and corruption-related offenses should be subject to special investigative jurisdiction of anti-corruption investigation agencies, activities of which should not be duplicated.

3. In recent years, as a result of numerous amendments to the Criminal Code, all components of corruption offenses *in general* were brought in line with international standards, in particular with regard to the objective side, the subjective side, and the subject.

However, in some cases there is still some inconsistency. These can be seen in

individual provisions of Articles 14, 15, 354, 357, 368-3, 368-4, 369, and 410 of the CC, and especially Article 364 of the CC.

4. In order to implement respective provisions of conventions, Section XIV-¹ *Measures of Criminal Legal Nature Regarding Legal Entities* (Articles 96-3–96-11) was added to the CC in 2013. This section envisages quasi-criminal liability for legal entities for certain corruption offenses, namely those related to legalization of property and to a promise, offer and provision of illegal benefit (Articles 209 and 306, Parts 1 and 2 Articles 368-3, 368-4, Articles 369 and 369-2 of the CC).

Clearly, they need to be extended first of all to Article 159-1 of the CC as well as to all criminal offenses committed with the purpose of receiving illegal benefit.

It is necessary to expand the list of sanctions that can be applied to legal entities within the framework of criminal legal measures.

5. Requirements of the conventions on applying criminal sanctions taking into account the degree of danger caused by corruption offenses were implemented in Ukraine in a controversial manner.

For instance, such sanction not in all cases takes into account the degree of danger posed by respective offenses, which means they are not proportionate while the amounts of the fines envisaged by the sanctions, correctional work, arrest, detention or imprisonment are not reconciled with each other.

In order to eliminate this shortcoming in the CC, there is a need to unify all sanctions in such a way that all specific amounts of each type of the basic punishment correspond to specific amounts of other types of basic punishments.

For instance, if imprisonment for a certain criminal offense:

- is not envisaged, then the amount of the imposed fine may not exceed 500 NMIC;
- is envisaged for up to two years, then alternative punishment may be a fine totaling 500 to 1, 000 NMIC;
- is envisaged for 2 to 5 years – a fine totaling 1, 000 to 2, 000 NMIC.

A similar approach should be taken to establishing the correspondence of other types of punishment.

6. Contrary to the requirements of Article 30 of the UN Convention-1, in many cases the CC does not envisage detention for a certain period of time as a mandatory punishment for persons convicted of criminal offenses committed for gaining illegal benefits (i.e. corruption offenses), deprivation of the right to hold public office or hold office at any enterprise that is completely or partly owned by the state, etc.

7. Contrary to the requirements of Article 30 of the UN Convention-1, in many cases the CC does not take into account the degree of danger caused by certain criminal offenses when considering the possibility of early or conditional release of persons convicted of such offenses.

Legislation still leaves many ways for the persons who committed criminal offenses to avoid liability or punishment or for imposing unjustifiably lenient punishment compared to the danger inflicted by corruption offenses.

In such circumstances, there is a possibility that judges, sometimes with a violation of the law and often without a clear violation of the law, can be subjected to pressure or

bribery and to continue to pass unjustifiably lenient sentences. Judicial practice, according to judicial statistics, has become not an exception but rather a rule.

In order to correct this situation, it is necessary to:

- make the disciplinary liability of judges for violations of the law more efficient;
- narrow the limits of penalties envisaged by the sanctions of in respective articles;
- envisage, when necessary, mandatory application of additional penalties in the form of deprivation of the right to hold certain positions or engage in certain activities, and confiscation of property;

- eliminate the possibilities that still exists for unjustified mitigation of punishment and exemption from criminal liability and punishment for corruption criminal offenses – both those that are directly defined in the note to Article 45 of the CC and others.

8. With regard to taking general measures that may be necessary for ensuring possible confiscation of: a) proceeds from corruption offenses or property, the value of which corresponds to the value of such proceeds; b) property, equipment and other means that were used or meant to be used during commitment of corruption criminal offenses – Ukraine has implemented its international obligations.

However, practice demonstrates that the taken measures are not sufficient in the part related to ensuring the possibility for detecting, tracking, freezing or seizing such proceeds or property for further confiscation, as well as managing of the frozen, seized or confiscated property.

In addition to this, generally with regard to the CC article that establish liability for corruption and certain corruption-related criminal offenses, some of them do not provide a possibility to:

1) confiscate property (due to the rules set forth in Article 59 of the CC, this refers to criminal offenses defined in Parts 1–3 Article 159-1, Part 2 Article 191, Article 354, Article 357, Part 1 Article 364, Part 1 Article 364-1, Part 1 Article 368, Parts 1 and 2 Article 365-2, Parts 1–3 Articles 368-3 and 368-4, Part 1 Article 369, Parts 1 and 2 Article 369-2, Parts 1–3 Article 369-3) or

2) carry out special confiscation (due to the rules set forth in Article 96-1 of the CC, this refers to criminal offenses defined in Part 1 Article 159-1, Part 1 Article 357).

At the same time, confiscation of property is envisaged by sanctions set forth in Article 369 of the CC that are not profit-seeking, which is a direct violation of the rule set forth in Article 59 of the CC.

9. There is need for significant improvement of many provisions of the CUAO that are related both to general provisions (insignificance, statute of limitations, impossibility for prosecutors to appeal against the decisions of first instance courts in the cases of corruption-related administrative offenses, return of respective materials to the National Police and NACP by courts for their proper registration, etc.) and to the language of the articles on corruption-related administrative offenses (in particular, Articles 1841, 172-4, 172-5, 172-7, 172-8, and 172-9).

3.2. APPLICATION OF CRIMINAL LAW, AVAILABILITY OF EFFICIENT PROCEDURES FOR INVESTIGATION AND EXAMINATION OF CRIMINAL CASES ON CORRUPTION CRIMES

1. The CPC envisages generally efficient procedures for investigation and examination in criminal proceedings for corruption criminal offenses. However, on the one hand, the problem of deadlines for investigation of complex corruption crimes should be addressed in the cases when the deadlines are not sufficient: dependence of investigators, detectives and prosecutors on the decision of the investigating judge to extend the term increases the risk of unlawful interference in the investigation process. On the other hand, improving certain provisions of the CPC aimed at making them even more appropriate for investigation of corruption offenses can create a threat for human rights. Therefore, a reasonable balance is needed.

2. Criminal cases on corruption offenses are still frequently investigated with violation of the rules of investigative jurisdiction.

This leads to a danger that an accused person will be acquitted. Therefore, such practice should be curtailed, and the prosecutors who violated the rules of investigative jurisdiction should be brought to disciplinary liability.

3. Courts should abandon the unjustified practice of using decisions of courts of other jurisdictions as pre-judicial rulings in criminal proceedings.

4. Specific measures should be taken to improve efficiency of the processes of search and recovery of assets received from corruption and corruption-related crimes, as well as to prevent and combat laundering of money received in an illegal way.

5. It would be advisable to address the issue of transferring to the NABU some corruption and corruption-related criminal offenses, in particular those specified in Articles 159-1, 160, 255, 262, 308, 312, 313, and 357 of the CC if at least one of the conditions stipulated in Clauses 1-3 Part 5 Article 216 of the CPC is present.

Article 216 of the CPC should also be amended, namely:

a) in Clause 2 Part 5 of this article, members of local councils (except for the chairs) and prosecutors (except for the heads) should be excluded from the list of persons subject to pre-trial investigation by the NABU, and

b) in Clause 3 Part 5, the phrase “the amount of the subject of the criminal offense or the damage caused by it by five hundred and more times exceeds the amount of the subsistence level for able-bodied individuals” should be replaced with the phrase “the amount of the subject of the criminal offense or the damage caused by it by five thousand and more times exceeds the amount of the subsistence level for able-bodied individuals”.

The NABU’s activities should be focused on corruption of top-officials so that detectives should not be distracted by petty corruption cases.

At the same time, the number of judges of the High Anti-Corruption Court should be increased, and Clause 1 Part 12 Article 31 of the CPC should be amended to read that “criminal proceedings in the High Anti-Corruption Court are carried out in the first instance court – collectively by a court of three judges for crimes punishable by imprisonment for more than ten years, as well as for crimes committed which are punishable by imprisonment for a term exceeding five years, but not more than ten years, if two or more persons are charged with commitment of the crime”.

6. There is a need to address the issue of priority of examination of criminal proceedings as well as other issues, a failure to solve which has been hampering examination of criminal proceedings by courts for a long time. More specifically, amendments should be introduced to the CPC for preventing abuse of procedural rights, in particular:

in Article 7 – one of the general principles of criminal justice is inadmissibility of abuse of procedural rights;

in Article 22 – the court, while maintaining objectivity and impartiality, should prevent parties to the proceedings from abusing their rights, and take measures to ensure fulfilment of obligations by them;

in new Article 35-1 Inadmissibility of Abuse of Procedural Rights:

1) participants of legal proceedings and their representatives must exercise their procedural rights in good faith; abuse of procedural rights is disallowed;

2) depending on specific circumstances, the court can recognize as abuse of procedural rights the actions running contrary to the objective of criminal proceedings, namely: filing an appeal against a court decision that is not subject to appeal, is not valid or has expired (finished), filing a petition (request) to resolve an issue that has already been resolved by the court in the absence of other grounds or new circumstances, application of knowingly unreasonable recusal or other similar actions aimed at unreasonably delaying or obstructing the proceedings or implementation of a court decision; committing actions aimed at manipulating the automated distribution of cases among judges; taking unreasonable actions to change the jurisdiction of the case;

3) when filing of a complaint, application or petition is recognized as an abuse of procedural rights, the court, taking into account the circumstances of the case, has the right to leave such complaint, application or petition without consideration or return them;

4) the court is obliged to take measures for preventing abuse of procedural rights. In the event of abuse of procedural rights by a party to the proceedings, the court should apply the measures specified in this Code;

in Article 139 – in the event of a failure to appear without a valid excuse or a failure to present the reasons for non-appearance at the summons of the investigating judge or the court, a fine totaling 2 to 3 subsistence minimums for able-bodied persons is imposed;

in Articles 144–147:

1) the fine for a failure to appear without a valid excuse or a failure to notify the reasons for non-appearance at the summons of the investigating judge or the court may be imposed by the court on any party to the proceedings, including a defender and a prosecutor;

2) a fine may be imposed by a court in the amount from 1 to 2 of the subsistence minimums for able-bodied persons for: a failure to fulfil the procedural obligations, in particular evasion of actions imposed by the court on a party to the proceedings; abuse of procedural rights, action or inaction aimed at obstructing legal proceedings;

3) in the event of repeated or systematic non-fulfillment of procedural duties, repeated or multiple abuse of procedural rights, a fine is imposed by the court in the amount of 2 to 3 subsistence minimums for able-bodied persons;

4) a decision on imposing a fine can be challenged pursuant to an appeal procedure. An appeal against such a decision does not preclude examination of the case. A decision

of the appellate court based on the results of examination of a ruling on imposing a fine is final and not subject to appeal;

5) a ruling on imposing a fine is an executive document and as such it has to meet the requirements for an executive document specified by law. The collector under such executive document is the State Judicial Administration of Ukraine;

6) the court may cancel its ruling on imposing a fine if the person with regard to whom such ruling was issued has corrected the violation and (or) provided evidence confirming validity of excuses for non-compliance with respective requirements of the court or procedural obligations.

Furthermore, it is necessary to amend:

a) the CPC envisaging that the preliminary court hearing should be completed by the court not later than thirty days from the date of receiving the indictment or a request for release from criminal liability;

b) Clause 2 Part 1 Article 106 of the Law *On Judiciary and the Status of Judges* envisaging that a judge may be subject to disciplinary action for unreasonably delaying examination of the case by violating the timeline envisaged by the law for preliminary hearing or the timelines for beginning of the court hearing, or by not transferring the case or materials for a long time to be forwarded according to the jurisdiction.

3.3. SPECIAL AUTHORIZED INSTITUTIONS FOR DETECTING AND INVESTIGATING THE CASES OF CORRUPTION CRIMES

1. Today, independence of the NABU, SAPO and the SBI in their activities in general is adequately guaranteed by law. At the same time, in practice it is much more difficult to ensure their independence due to the influence by politicians.

There are continued attempts to use the NABU, SAPO and the SBI for the purposes of party, group or personal interests, as well as attempts to place them under illegal control of other state authorities, their officers and officials, in particular due to the threat of early dismissal of the NABU Director and non-appointment of the SBI and SAPO heads for a long time.

2. The procedures for election of the NABU Director and the SBI Director specified in the Law *On the National Anti-Corruption Bureau of Ukraine* (Articles 6 and 7) and in the Law *On the State Bureau of Investigations* (Article 11) respectively are in line with the democratic standards.

However, there are problems related to constitutionality of appointment of the NABU and SBI head that have not been finally resolved yet.

3. The law sets forth requirements for the structure of the NABU, SAPO and the SBI and defines the number of employees, requirements for their education and experience, mandatory staff training, total budget of the agency, procedure for its formation, accountability and transparency, including mandatory regular reporting to the public, etc.

These requirements of the law are observed in practice.

Respective costs for ensuring functioning of these agencies are allocated from the State Budget of Ukraine.

4. Accountability and transparency of the NABU and the SBI, including mandatory

regular reporting to the public are envisaged by law and actually exist, although they have certain shortcomings, in particular the fact that the audit of efficiency of the NABU, its operational and institutional independence over the period of its existence, which is two years, has never been conducted.

Accountability and transparency of the SAPO, including mandatory regular reporting to the public as well as audit (independent external assessment) of SAPO activities are not directly envisaged by law and are virtually absent, except within the framework of requirements specified by law for accountability and transparency of the office in general.

5. Organizational, human resources, scientific and methodical, forensic and other support for investigation of corruption offenses is not provided adequately. Investigative jurisdiction for corruption criminal offenses is contradictory. Investigative units of the National Police are still in the process of being reformed.

6. It is necessary to protect the anti-corruption infrastructure that was created with much difficulty, and to make it more and more efficient. To this end, among other things, there is a need to:

- adopt a new law on audit of the NABU and SAPO eliminating the risks of its use for political influence on their activities, and carry out regular evaluation of performance of these bodies, their operational and institutional independence;

- prevent the situations when specialized anti-corruption agencies work for a long time without heads that have to be appointed on a competitive basis in accordance with the law;

- improve the law on the NABU by removing from it the provisions that were recognized unconstitutional by the CCU, as well as by updating the competitive procedure for selecting the NABU director with involvement of international experts;

- deprive the SBU and the National Police of the power to investigate economic crimes thus turning the SBU into a special service focused on countering foreign intelligence and combating terrorism.

3.4. STATISTICAL INFORMATION ON APPLYING CRIMINAL LEGISLATION ON COMBATING CORRUPTION. ANALYSIS OF STATISTICAL DATA ON THE RESULTS OF ACTIVITIES OF SPECIALLY AUTHORIZED ENTITIES IN THE SPHERE OF COMBATING CORRUPTION COMPARED TO SIMILAR PERIOD OVER THE PREVIOUS TWO YEARS

Collection and analysis of statistical information about liability for corruption and corruption-related offenses

1. Since preparation of the 3rd alternative report, the problems related to compiling a list of corruption and corruption-related offenses remains unresolved, including the remaining discrepancies between the note to Article 45 of the CC of Ukraine and definitions used in the *Law On Preventing Corruption*. Until today, no amendments were introduced to include the State Bureau of Investigations in the list of specially authorized entities in the sphere of combating corruption. In view of this, there is a need to:

- revise the lists of corruption and corruption-related criminal offenses defined in the note to Article 45 of the CC, and reconcile them with the definitions of corruption and corruption-related offenses used in the *Law On Preventing Corruption*;

- include the SBI in the list of specially authorized entities in the sphere of combating corruption.

2. Problems with the quality and completeness of statistics on prosecuting corruption and corruption-related offenses, as well as on activities of specially authorized entities in the sphere of combating corruption, remain serious. The NABU is the only agency, about which sufficient, complete and understandable information is available.

Criminal statistics is not centralized. Statistical data continue to be fragmented, inconsistent, collected by different agencies using different methodologies, presented in different templates without any explanation, and are in general not summarized. Even publication of statistics in the form of open data sets, although commendable, still fails to bring noticeable benefits because of the practical restraints quoted above. No significant progress has been made over the last two years, and one can only mention new approaches of the NACP to publication of general statistical information – such practice should be supported. In the future, it is necessary to:

- ensure in practice collection and publication of data directly specified in the Law *On Preventing Corruption*;

- introduce a uniform system for collecting, summarizing and visualizing statistics on corruption offenses;

- apply efficient and dissuasive disciplinary sanctions for public officials who fail to provide complete and accurate information required by law and/or requested by the NACP;

- revise the templates used for collecting statistics on liability for corruption and corruption-related offenses granting powers and authorities to the NACP for defining such templates;

- supplement statistical templates or published statistical indicators with brief methodological explanations;

- improve the quality of open data sets that contain respective statistical indicators;

- introduce regular collection and publication of statistical information on bringing individuals to disciplinary responsibility for committing corruption and corruption-related offenses;

- introduce regular collection and publication of statistical information on recognition of assets as unfounded and their collection for the state revenue;

- introduce collection and regular publication by the NACP of statistical information in accordance with the indicators of the 5th round of monitoring of the OECD Anti-Corruption Network for Eastern Europe and Central Asia¹;

- consider the previously provided recommendations of experts on improving the system for collection and analysis of criminal statistics².

Status of bringing people to criminal liability for corruption and corruption-related offenses

3. Compared to 2017–2018, the number of reported criminal offenses remains the same. Authorized entities (except for the NABU) do not provide the number of received notifications about alleged violations and the results of their examination, which prevents

¹ Istanbul Anti-Corruption Action Plan. 5th Round of Monitoring. Pilot Performance Indicators (OECD, 2021): <https://bit.ly/3kH6FyA>.

² Report on Criminal Statistics in Ukraine (R. Shekhavtsov, M. Khavroniuk, 2019): <https://bit.ly/3A2ZxTn>.

us from assessing, first, whether these entities respond to such notifications, and second, the level of efficiency of notification on alleged violations.

4. As to the number of initiated intelligence gathering cases and their efficiency, only the NABU publishes such information: in 2019, the number of intelligence gathering cases initiated by the NABU was the highest for the entire period of the agency's work, and their efficiency increase as will, and in 2020 it amounted to 35%, which is the best indicator for the entire period of the NABU's work.

5. The number of criminal proceedings, within which persons were notified of suspicion in 2019–2020 decreased both in absolute terms and in terms of the share of all registered offenses: in 2018 – over 41%, in 2019 – 37.34% and in 2020 – 39.34%.

6. With regard to the number of registered criminal offences, for which indictments were sent to a court, it also decrease both in absolute terms compared to 2017–2018, and in percentage terms: 2018 – 36%, 2019 – 26.43%, and 2020 – 31.72%.

7. As before, statistics on the activities of pre-trial investigation agencies and prosecutorial bodies are maintained for the registered criminal offenses, while court statistics are maintained with regard to persons. This circumstance continues to make it impossible to carry out meaningful comparative analysis of statistical indicators.

8. The number of individuals, regarding whom court decisions in criminal proceedings came in force in 2019 remained approximately at the level of the previous year, while in 2020 there was a slight decrease of this number from 1,829 to 1,628. At the same time, the number of guilty verdicts increased in 2019–2020 both in absolute terms and in percentage terms as shown above.

Compared to 2018, there has been a decrease of the number and percentage of people who were released from criminal liability (in 2019 – 609, in 2020 – 417), although the level of 2017 has been reached yet (311 such individuals). Since 2018, the number of acquitted person has decreased; the number of persons acquitted in the cases on aforementioned criminal offences totaled about a third of all people acquitted in 2019–2020, while the share of acquitted persons among those for whom a court decisions regarding these offenses came in force is higher than in general for criminal offenses (the total share of acquitted individuals totaled 1% and 1.2% in 2019 and 2020 respectively¹, while in the cases on the aforementioned corruption and corruption-related offenses – 1.7% and 3.34% in 2019 and 2020 respectively). The number of persons against whom the materials of criminal proceedings were closed remains high – one third of all persons in 2019, and one quarter in 2020. Probably, one of the reasons for this is closure of criminal proceedings after expiration of the period of limitations, while for some offenses (such as under Article 366-1 of the CC) also on the grounds of effective remorse.

9. Regarding imposed punishment, the number of person sentences to imprisonment remains very low, and in percentage terms compared to 2017–2018 it only continues to decline and is already below 5%. In the vast majority of cases, the penalty is a fine. The percentage of persons convicted and released from serving the main sentence remains high – over 16% and 12% in 2019 and 2020, respectively. A comprehensive explanation of

¹ Analysis of the situation with administration of justice in criminal proceedings and cases on administrative offences in 2019 (Supreme Court, 2020): <https://bit.ly/3hvpPXq>; Analysis of the situation with administration of justice in criminal proceedings and cases on administrative offences in 2020 (Supreme Court, 2021): <https://bit.ly/3hv1ZLn>.

such situation with imposed sentences can be provided only on a basis of full analysis of judicial practice, although one can assume that either courts impose too lenient sentences without observation of the proportionality principles or low-level officials are brought to criminal liability in Ukraine for receiving illegal benefits in a relatively small amount or causing relatively minor losses and damage.

10. Application of a special confiscation procedure and confiscation as an additional punishment remains extremely low. Such cases are virtually sporadic. Even a small increase in the number of persons for whom confiscation or special confiscation was used did not have a significant impact. A special confiscation procedure is mostly used in cases when persons are convicted under Article 369 of the CC, while its breakdown by the CC articles does not correspond at all to the number of persons convicted according to the said criterion. The amount of funds and other assets collected for state revenues remains insignificant. However, the situation with compensation for damage has slightly improved, although the vast majority of losses or damage established in respective proceedings remain uncompensated.

11. Since 2018, the absolute number and percentage of persons found guilty and deprived of the right to hold certain positions or engage in certain activities as an additional punishment continues to decrease: in 2018 – 36.5%, in 2019 – 32.54%, and in 2020 – only 25.13%.

12. One gets a general impression that statistical indicators have improved without a significant impact on the situation with corruption in Ukraine. The growth of statistical indicators in 2020 compared to 2019 is observed mostly with regard to the crimes specified in Articles 191 and 369 of the CC.

13. As to the case law of the High Anti-Corruption Court, as of September 2021, the Court issued 45 verdicts against 50 persons¹, out of which 22 verdicts against 25 persons came in force, including 10 verdicts in criminal proceedings where a plea agreement was concluded. In 19 verdicts, persons were sentenced to main punishment in the form of imprisonment, including 8 verdicts with release from serving the main punishment (in proceedings with a plea agreement); in 9 verdicts additional punishment was imposed in the form of deprivation of the right to hold certain positions or engage in certain activities; in 3 verdicts – an additional punishment in the form of confiscation; and in 1 verdict a special confiscation procedure was used².

These indicators look better in percentage terms compared to the general judicial practice, although in absolute terms they are still insignificant, and the challenge is the pace of court proceedings in criminal cases falling within the jurisdiction of the High Anti-Corruption Court. There are also some instances of violation of the jurisdiction of the High Anti-Corruption Court that so far were observed at the stage of pre-trial investigation.

Bringing people to administrative liability for corruption-related offenses

14. In 2020, after a sharp increase in a number of cases on administrative offenses forwarded to a court for examination in 2018–2019, this indicator began to decrease: in

¹ Two years of myths and results: how the High Anti-Corruption Court lives? (O. Tanasevych, *Ukrainska Pravda*, 2021): <https://bit.ly/3Eczsnw>.

² Based on the data of analysis of the case law of the High Anti-Corruption Court carried out by the Anti-Corruption Action Center on an ongoing basis.

2020, by almost 25% fewer cases compared to 2019. Such decrease occurred primarily with regard to Article 172-6 of the CUAO, and the reasons for this can be a decrease in the number of civil servants required to report on significant changes of their property status¹, a decrease of the number of people who do not submit declarations on time, distribution of competences related to drawing protocols between the NACP and police agencies.

15. Whereas in 2019, the percentage of people on whom administrative fines were imposed totaled 50%, similar to 2018, in 2020 it increase to almost 64%, although in absolute terms the number of individuals brought to administrative liability decreased. Such changes can be explained by the above-mentioned overall decrease of the number of cases submitted for examination.

16. The number of closed cases remains significant. More than one quarter of cases are closed in view of the absence of elements of offense or an administrative offense event, although random analysis of court decisions demonstrates the presence of instances of obvious unfoundedness of respective court conclusions (see examples in Section 2.2.2). In 2020, judges referring to the CCU Decision 13-p/2020 often closed cases on corruption-related administrative offenses without due justification². Following the legislative changes introduced in 2019, in 2020 the percentage of proceedings closed on the grounds of expiration of the period for imposing an administrative fine somewhat decreased, although such cases are still widespread and necessitate further amendments to Article 38 of the CUAO. The percentage of cases closed on the grounds of their insignificance is constantly growing.

17. Even in those cases where the first instance court imposes an administrative fine, more than a half of such decisions are canceled during the appellate review, and the respective cases are closed. The reasons for this are granting the right to submit and appeal only to the defense, prosecutorial oversight is not efficient in practice, while appellate courts adopt final decisions that cannot be appealed to a higher court (which fact also raises a question of the lack of unity in judicial practice).

18. It is impossible to analyze the indicators for each of the entities authorized to draw up protocols on corruption-related administrative offenses given the volume of the published statistical indicators. One of the reasons for this is also the NACP's non-compliance with requirements concerning the amount and content of information to be indicated in the NACP's annual reports; the agency should comply with the direct requirements of the law and provide information on the results of the review of protocols on administrative offenses.

¹ Respective amendments were introduced pursuant to Law 140-IX, after coming in force of which the obligation to submit information on significant changes in the property status no longer applies to all declarants but only to officials holding a responsible or especially responsible position.

² Not top corruption alone, How local courts use the CCU decisions to close cases on administrative offenses (Center for Anti-Corruption Action, 2020): <https://bit.ly/3hlodPG>.

Section 4.

INTERNATIONAL COOPERATION

4.1. UKRAINE'S PARTICIPATION IN INTERNATIONAL LEGAL INSTRUMENTS ON COMBATING CORRUPTION

1. In general, the situation with Ukraine's implementation of recommendations of international organization in 2019–2020 can be described by two main trends:

1) normative and legal regulation was significantly harmonized with the requirements of international standard;

2) in practice, implementation of many progressive provisions of the new anti-corruption legislation is largely hampered by various factors, the main of which is a lack of political will.

2. The GRECO and OECD recommendations have become much more substantive and detailed in terms of content since 2019. Only occasionally, they refer to the need to adopt new laws or amend the existing laws. These recommendations are mostly aimed at improving by-laws and ensuring scrupulous enforcement by all authorized state agencies of the provisions of anti-corruption legislation in the sphere of their competence, as well as their providing explanations and carrying out extensive awareness-raising work among civil servants on the content of individual regulatory institutions.

A lot of attention in these recommendations is paid to description of the ways and instruments for achieving goals by the authorized entities from the angle of anti-corruption legislation, and importance of comprehensive public control over the implementation of the state anti-corruption policy.

3. At present, both the GRECO and OECD recommendations agree on the importance of taking measures to reduce corruption in the work of the Members of Ukrainian Parliament and the legislature in general, and emphasize the importance of systematic education for civil servants (in particular, judges and prosecutors) on conflict of interest and adherence to the norms of professional ethics. At the same time, the recommendations do not mention development of the SBI's capacity, which is a rather important element of combating corruption, as it is authorized to investigate corruption crimes, except for those that fall within the investigative jurisdiction of the NABU.

4. Based on the said above, it can be recommended that:

1) the Verkhovna Rada of Ukraine should adopt a new Anti-Corruption Strategy in the second reading as soon as possible (draft law № 3145); the NACP and the Cabinet of Ministers should draft and approve the State Program for Implementation of the Strategy based first of all on the aforementioned recommendations of the GRECO and the OECD.

In this process, special attention should be paid to measures to be taken in the sphere of further implementation of provision on preventing corruption among Members of Parliament of Ukraine, judges, prosecutors, as well as in activities of state-owned enterprises. Conditions for more efficient performance of their functions by the NABU, SAPO, High Anti-Corruption Court, ARMA, NACP, and the SBI should be created;

2) a code of conduct for Members of Parliament of Ukraine should be developed and approved;

3) *de facto* finalization of all draft laws by the Verkhovna Rada should be ensured with adherence to the respective level of transparency and consultation, in particular through openness of the work of the VR committees, also through public consultations and hearings with involvement of experts;

4) the law *On Administrative Procedure* should be adopted in order to reduce significantly the level of discretion of executive bodies in exercising their regulatory and oversight functions, and in provision of administrative services;

5) the law *On Normative Legal Documents (On Norm-Making Activities)* should be adopted that would regulate the following issues: a) establishment of an exhaustive list of the types of normative legal documents; b) hierarchy of normative legal documents according to their legal force; c) mandatory requirements for the structure of normative legal documents; d) mandatory requirements for the procedure of adoption of by-laws; e) ways to resolve all kinds of typical collisions between legal norms, and to eliminate legislative gaps. This law is expected to ensure clarity and predictability of the actions of state agencies regarding legal regulation, and to reduce opportunities for manipulation of ambiguities in legal regulation;

6) transparency and integrity of cooperation should be increased for Members of Parliament of Ukraine and civil servants involved in the law-making process with the private sector for law drafting and avoiding conflict of interest by adopting the law *On Lobbyism* in accordance with the best international standards (but taking the Ukrainian realities into consideration, in particular, in the form of non-application of this law to civil society structures). This will reduce the opportunities for Members of the Ukrainian Parliament and civil servants to abuse their connections with business, to establish equal and clear lobbying rules for all business entities, and to determine the types of liability of politicians, civil servants, and lobbyists for violating these rules. At the same time, it is extremely important to ensure that under disguise of regulating lobbyism, the rights of civil society organizations and trade unions are not limited in terms of their protection of the interests of the society and various social groups, as well as in terms of their advocacy activities regarding individual legislative ideas. In other words, the norms of the law on lobbyism should not in any form apply to trade unions and civil society organizations. Instead, relations (in the legislative sphere) of Members of Parliament of Ukraine and civil servants with enterprises, business unions, business associations, self-regulating organizations, and organizations engaged in professional self-government should on the contrary be regulated by the would-be law on lobbyism.

4.2. INTERNATIONAL COOPERATION AND MUTUAL LEGAL ASSISTANCE

1. Efficiency of activities of the NABU, PGO, and the MoJ related to participation in international legal assistance in criminal proceedings on corruption crimes committed in the territory of Ukraine remains low despite a large number of requests forwarded to other countries.

2. There is gradual intensification of the ARMA's activities related to searching and

arresting property outside Ukraine which was potentially received through corruption. However, at present there are no grounds to talk about any significant achievements of this agency in this sphere.

3. The PGO should introduce:

1) collection, registration and publication of information on the number and content of the received and submitted requests for international legal assistance in connection with investigation of corruption offenses, including extradition, as well as in connection with the search, arrest and confiscation of funds and other property outside/inside Ukraine;

2) collection, registration and publication of information on the amounts of funds or the value of assets returned to Ukraine or to another country as a result of implementation of requests for international legal assistance in connection with investigation of criminal cases on corruption.

4. The NABU and the ARMA should increase significantly the efficiency of their actions related to international legal assistance in investigation of corruption crimes, as well as search and arrest of respective assets outside Ukraine.

5. In reporting documents on its activities, the ARMA should provide a separate description and quantitative analysis of assets located outside Ukraine.