

# ANTI-CORRUPTION POLICY OF UKRAINE: FIRST SUCCESSES AND GROWING RESISTANCE

## POLICY REPORT

### EXECUTIVE SUMMARY

Ukraine has been plagued by systemic corruption for years after acquiring independence in 1991. The ruling elite very reluctantly introduced necessary anti-corruption changes, but their implementation was by and large sabotaged. Pervasive corruption reached its peak during the presidency of Viktor Yanukovich when the government was turned into a corruption pyramid, with smallest bribes being transferred to the top. Yanukovich and his cronies allegedly embezzled as much as 100 billion USD of public funds. Ultimately, this situation caused the explosion of massive civic protests known as Euromaidan Revolution.

Following Euromaidan Ukraine has had an impressive breakthrough in tackling corruption by launching a drastic anti-corruption reform. A new institutional framework to independently investigate cases of high-profile political corruption was established and new mechanisms to identify and prevent corruption were launched, laying the necessary foundation for a successful fight against corruption. However, these new institutions and practical implementation of new anti-corruption tools face growing resistance from the country's political and business elite, regardless of their formal political affiliation.

The most widely recognized achievements are making registries and information on public finances accessible to the public, launching an open registry of asset declarations for all public officials, and switching all public procurement to a transparent online platform.

The progress in establishing new anti-corruption institutions is quite controversial, with some of them almost fully operational and independent and others lagging far behind the schedule or being susceptible to political pressure.

In order to secure smooth anti-corruption policy implementation, a number of further steps are needed. Most urgent of them are establishing specialized anti-corruption courts with special procedure for judges' selection and providing the National Anti-corruption Bureau with the right for independent wiretapping. Unfortunately, the ruling elites demonstrate low commitment to move forward in anti-corruption reform.

Equally important is for the anti-corruption partnership between civil society, pro-reform politicians and officials, and international organizations to redirect the focus of their activities to implementation of anti-corruption reform. The European Union is expected to play the leading role in these efforts by promptly granting visa waiver to Ukraine, further closely monitoring sustainability of anti-corruption steps made under the framework of the Visa Liberalization Action Plan (VLAP), making its further assistance to Ukraine strictly conditional on effective reform implementation.

This policy report provides an overview of key reform areas as well as achievements, failures and challenges in their implementation as of December 2016.

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This policy report covers period from March 2014 till December 2016.

This policy report is prepared within the framework of the International Renaissance Foundation (IRF) European programme initiative's in-house project 'Implementation of select reform commitments under Association Agreement'. The project is implemented within the Open Society Foundations' network effort to assess and report on the progress made by Georgia, Moldova, and Ukraine in the implementation of political commitments of Association with the EU.

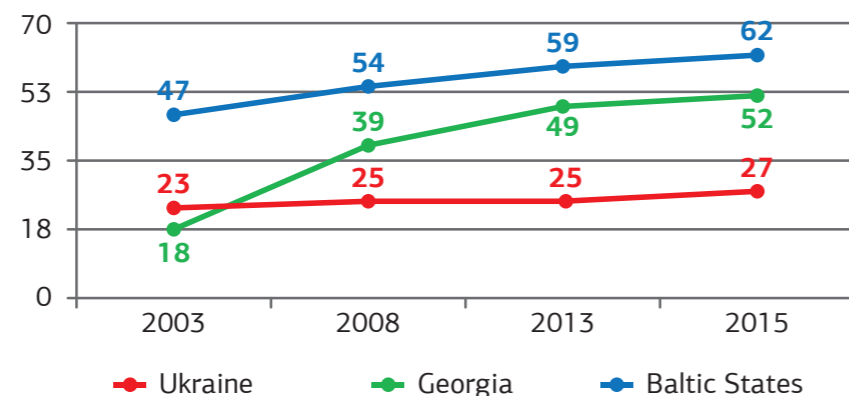
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<sup>1</sup> OECD Report “Anti-Corruption Reform in Eastern Europe and Central Asia. Progress and Challenges, 2013-2015”, p.17. Available in English at: [www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2013-2015-ENG.pdf](http://www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2013-2015-ENG.pdf).

## INTRODUCTION

For many years after gaining independence Ukraine has not progressed in combating corruption. Unlike other post-Soviet states such as Georgia or the Baltic countries, Ukraine’s score on the Corruption Perception Index by Transparency International remained very low and largely unchanged for more than ten years since 2003.

### Corruption Perception Index: Ukraine, Georgia and Baltic States, 2003-2015<sup>1</sup> (higher score means “less corrupt”)



At the same time Ukrainian authorities ratified United Nations Convention Against Corruption (UNCAC) in 2009, and joined a number of international anti-corruption initiatives: OECD Anti-Corruption Network for Eastern Europe and Central Asia in 1998, GRECO in 2006, Open Government Partnership in 2011, etc. Moreover, the anti-corruption reform has been high on the agenda of the EU-Ukraine relations, being discussed in the first Partnership and Cooperation Agreement (1994), Eastern Partnership (2009), Visa Liberalization Action Plan (2010) and, finally, in the EU-Ukraine Association Agreement ratified by the Ukrainian parliament in September 2014.

However, the real breakthrough in this sphere occurred only after Euromaidan Revolution. In October 2014 the anti-corruption package of laws was adopted by the Parliament, which became possible under joint pressure from civil society, reform-minded Members of Parliament (MPs) and international community, notably the EU, the US and the IMF. In response to these changes, VLAP moved to the second phase of implementation and, together with post-Euromaidan EU-Ukraine Association Agenda, set up new anti-corruption priorities. Key international donors included anti-corruption requirements as conditions for their loans, macro-financial assistance and budget support.

## ANTI-CORRUPTION POLICY AND INSTITUTIONAL FRAMEWORK

The first comprehensive anti-corruption policy document, the Anti-Corruption Strategy for 2014-2017, was adopted by the Ukrainian parliament in October 2014, and its provisions were later included in the Coalition Agreement and Cabinet of Ministers’ special governmental

program. The Strategy covers all key policy areas: preventing corruption in the public sector, state-owned enterprises, public procurement, judiciary, private sector; establishing an effective law enforcement system; reforming the civil service; cultivating zero tolerance towards corruption; and increasing transparency and openness of decision making. However, though the Strategy is a step forward in anti-corruption policy development, it lacks clear performance indicators and necessary links and coordination with other reforms to be conducted (in healthcare, decentralization, military, and administrative services). Its narrow focus on anti-corruption institutions and instruments may weaken the important role these reforms should play in uprooting preconditions for corrupt behavior in all sectors of economic, social and political life.

The Strategy and 2014 anti-corruption package of laws envisioned the establishment of several new anti-corruption bodies. For the first time, their senior management was to be selected through an open competition by independent selection panels including CSO representatives and trusted international experts. In some cases, this procedure was also to be used for recruiting regular personnel. Civic oversight councils would be set up to monitor and evaluate their performance.

However, the launch of new bodies ran into significant obstacles — competitions were delayed by unjustifiably late governmental decisions, selection panels sometimes included false CSO representatives, and there have been numerous attempts to influence the selection process in favor of politically dependent candidates. Moreover, following the selection of senior management, the government failed to provide new institutions with necessary premises, equipment and funding to undermine their activity. To overcome these obstacles, civil society and international partners became involved, using all instruments at their disposal — from official statements to street protests.

### Anti-corruption policy development and corruption prevention

The institutions in charge of anti-corruption policy development include the National Agency for Corruption Prevention (NACP), the Committee on Corruption Prevention and Counteraction of the Verkhovna Rada of Ukraine, and the National Council of Anti-Corruption Policy under the President of Ukraine.

While **the subject Committee of the Verkhovna Rada of Ukraine** continues to play an important role in developing anti-corruption policies together with a new consultative and advisory body — **the National Council on the Anti-Corruption Policy** — established as a platform for high-level stakeholders to discuss the results of imposed anti-corruption changes, the leading role in shaping anti-corruption policy was given to **the National Agency for Corruption Prevention**.

This Agency is in charge of: policy development, monitoring and evaluation; holding anti-corruption expertise of draft laws and by-laws; administration of online registry and verification of public servants’ asset declarations and their lifestyles; oversight of conflict of interest; control over finances of political parties; whistleblower protection, etc. The Agency is also in charge of preparing the Annual National Report on Implementation of Anti-Corruption Policy.

<sup>2</sup> NACP official statement about results of its activity as of December 2016. Available in Ukrainian at: <http://nazk.gov.ua/news/nazk-u-mizhnarodnyy-den-borotby-z-korupciyeyu-i-shchodnya-nacionalne-agentstvo-na-varti>.

<sup>3</sup> Civil society statement. Available in English at: [http://www.transparency.org/news/pressrelease/ukraine\\_must\\_certify\\_e\\_declaration\\_anti\\_corruption\\_tool\\_to\\_make\\_it\\_effectiv](http://www.transparency.org/news/pressrelease/ukraine_must_certify_e_declaration_anti_corruption_tool_to_make_it_effectiv).

<sup>4</sup> See NACP official statement about results of its activity as of December 2016.

It is subordinated to the Cabinet of Ministers of Ukraine; its five members are appointed by a Cabinet decree and are elected for four-year terms by a selection panel that includes representatives of different public institutions and civil society. The Agency has its own secretariat and has the right to set up territorial branches. The Law “On Corruption Prevention” stipulates a number of measures to guarantee the NACP’s independence and impartiality.

However, when it came to implementation, the election of the NACP members was significantly delayed by the government’s unwillingness to have an independent selection panel. In 2015 the Cabinet attempted to stage the election of civil society representatives who would join the selection panel. In January 2016 civil society panel members appealed to the administrative court against appointment of the NACP member, who, they argued, was elected despite a conflict of interest. However the court rejected their claims in December 2016.

The four members were officially appointed and the Agency was launched in March 2016; by August it claimed to be fully functional. However, as of December only 70% of necessary staff was recruited<sup>2</sup>, the Public Council under the NACP was not elected, and cooperation with other governmental bodies was at initial stages. The work of the selection panel to elect the fifth Agency member stalled.

Moreover, the NACP was heavily criticized by the EU Delegation to Ukraine, the IMF, the UNDP and civil society for not performing their functions properly, specifically for nearly failing to launch the web-portal of public servants’ asset declarations<sup>3</sup>. All high-level public servants and senior local self-government officials were obliged to submit a new electronic form of asset declarations by October 30, 2016. The form provides an expanded access to information about officials’ and their family members’ revenues, expenditures, movable and immovable property, savings, and cash reserves.

According to NACP statistics, as of December 2016 the web-portal contained 107,972 asset declarations for 2015, 1,467 officials’ reports about significant changes in their financial and property status, and 1,436 annual declarations of candidates for public positions<sup>4</sup>.

It was evident that the NACP was under political pressure to postpone the launch of asset e-declarations.

When the web-portal was ultimately launched, the NACP delayed adopting by-laws needed to verify the accuracy of declarations, and as an outcome, this work began only two months after the declarations were submitted.

Another important task the NACP is charged with is controlling party finances. Almost complete control over political parties by oligarchs and business interests has been another long-standing feature of Ukrainian politics. Political parties were often registered as legal entities with the purpose of ‘selling’ them before parliamentary or local elections — this is the main reason for such a high number of registered parties (350 as of December 2016).

Under pressure from civil society and international organizations the Ukrainian parliament introduced limitations on financing political parties, provided transparency requirements towards their revenue sources and envisaged parties’ financing from the state budget. Specifically, the legislation obliges all political parties to receive all contributions only in non-cash form through special bank accounts; the size of contributions is regulated; contributors must be identified; all parties must submit their quarterly financial reports to NACP; reports must be published; administrative and criminal liability is introduced for violating key requirements. It is also stipulated that political parties that received more than 5% of votes during the 2014 parliamentary elections will have the right to apply for state financing. It will include parties that reach a 2% threshold in the next elections.

The law on party finances was enacted on July 1, 2016. The NACP decided to release the first tranche to all political parties with factions in the parliament by the end of 2016, excepting “Opposition Block” which did not apply for state financing. Five parliamentary political parties already received almost 6 million Euros.

However, the NACP itself failed to use its powers to hold parties’ leaders and accountants liable for violating legislative requirements – it submitted administrative protocols for five individuals, citing untimely submission of financial reports<sup>5</sup>, whereas independent civic monitors suggested that there should have been over 200 administrative protocols<sup>6</sup>.

In addition, the 2014 anti-corruption legislative package introduced a more advanced system of incentives and guarantees for whistleblowers. It is possible to report corruption anonymously (information about whistleblowers can be disclosed only in limited cases). If there is a threat to the life, property or housing of whistleblowers or their families, the state must undertake necessary measures to protect them. Whistleblowers cannot be fired or forced to leave their current jobs or brought to disciplinary responsibility for their anti-corruption activity. The NACP can act on the behalf of the whistleblower if he or she initiates an administrative or civilian lawsuit against their senior manager/employer for violating their rights.

However, presently there is no information about cases of NACP’s support of whistleblowers. Further guarantees and incentives for whistleblowers’ activity are stipulated in the special draft law currently promoted by civic activists and reform-minded MPs and public officials.

## ANTI-CORRUPTION LAW ENFORCEMENT

The system of anti-corruption law enforcement and prosecution bodies will also be radically changed when all legislative initiatives are fully implemented. It will include the National Anti-Corruption Bureau (NABU), the Specialized Anti-Corruption Prosecutor’s Office (SAP), the National Police of Ukraine, the State Bureau of Investigations (SBI) and prosecutor’s office. A National Agency for Detection, Investigation and Management of Assets Derived from Corruption and Other Crimes will be set up to identify, recover and manage confiscated assets.

<sup>5</sup> See NACP official statement about results of its activity as of December 2016.

<sup>6</sup> Monitoring Report by the Center of Policy and Legal Reform, December 2016. Available in Ukrainian at: [http://pravo.org.ua/img/zstored/files/FD\(2\).pdf](http://pravo.org.ua/img/zstored/files/FD(2).pdf).

<sup>7</sup> The Report of NABU Director about NABU activity from February to August 2016. Available in English at: [https://nabu.gov.ua/sites/default/files/reports/report\\_februaryaugust2016.pdf](https://nabu.gov.ua/sites/default/files/reports/report_februaryaugust2016.pdf).

<sup>8</sup> NABU official statement on results of its activity as of December 2016. Available in English at: <https://nabu.gov.ua/en/novyny/first-year-nabus-investigations-580-million-uah-embezzlement-prevented-100-million-uah>.

<sup>9</sup> NABU press release. Available in Ukrainian at: <https://nabu.gov.ua/novyny/pislya-likvidaciyi-gazovoyi-shemy-zusylyamy-nabu-prybutky-ukrgazydobuvannya-suttyevo-zrosly>.

<sup>10</sup> Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding, September 01, 2016. Available in English at: <http://www.imf.org/external/np/loi/2016/ukr/090116.pdf>.

### Tackling high-profile corruption

Currently, there are two bodies in charge of fighting high-profile corruption – the NABU and the SAP. The NABU is an entirely new anti-corruption law enforcement body created within the 2014 Law of Ukraine “On the **National Anti-Corruption Bureau of Ukraine**”, which aims to investigate large-scale bribes, embezzlement, and corruption crimes committed by high-level public servants, judges, MPs, managers of large state-owned companies, and foreign officials.

The legislation provides unprecedented independence to the Bureau, its leadership and personnel: the Director of the Bureau is chosen by the President of Ukraine from two candidates elected by the selection panel, that includes representatives of civil society, academia, media, foreign experts, etc.; the Bureau personnel are recruited through an open competition with involvement of civil society representatives; and the personnel are guaranteed high salaries by the law. The Public Council under the NABU is entitled to monitor and evaluate its activity. The Director must submit public reports about NABU’s activity biannually.

The President of Ukraine appointed Artem Sytnyk as the Director of the NABU in April 2015. By December 2016 almost 80% of NABU personnel were recruited, and a number of regional offices are expected to be fully launched by the end of 2016. Access to more than one hundred state registries and databases was already provided to Bureau detectives and analysts. Cooperation agreements were concluded with respective institutions in a number of foreign countries<sup>7</sup>.

Setting up the **Specialized Anti-Corruption Prosecutor’s Office** was an important measure to secure NABU’s independence. The SAP is empowered to supervise NABU’s activity and support court cases. Although the head of the SAP holds the position of Deputy Prosecutor General, its leadership and key personnel were recruited through an open competition conducted by an independent panel consisting of representatives of civil society and trusted foreign experts. Nazar Kholodnytsky was appointed as the head of the SAP in December 2015, and all administrative positions were filled in the same month.

Consequently, the NABU was able to launch its first investigation only in December 2015, following the establishment of the SAP, and its first case was submitted to the court in February 2016. One year after launching their investigative work, NABU detectives conducted over 250 criminal investigations, submitting 41 cases to court and obtaining nine convictions (however, five of them resulted in a plea bargain). An equivalent of nearly 4 million euros was returned to state-owned companies, and NABU prevented embezzlement of almost 22 million euros. The damage caused by the investigated corrupt actions was estimated at 3 billion euros<sup>8</sup>.

A number of Members of Parliament were under investigation by NABU detectives. One of them, Oleksandr Onyshchenko, fled to the UK after the Bureau accused him of plotting a nationwide “gas corruption scheme”. The scheme allegedly resulted in the embezzlement of up to 100 million Euros<sup>9</sup>.

Immediately after its launch the work of the NABU faced fierce resistance from MPs, the Prosecutor General’s Office (PGO) and other law enforcement bodies. NABU detectives were unlawfully detained by PGO armed personnel when conducting undercover surveillance of a suspected prosecutor. PGO officials who were involved in the clash did not face any serious sanctions from the Prosecutor General. Moreover, a number of draft laws were submitted to the Parliament, aiming to limit NABU’s investigative capacity and to allow the Prosecutor General to interfere in NABU’s investigations.

These actions indicate that political elites are not yet ready to comply with independent investigation of high-profile corruption and struggle to preserve influence on anti-corruption law-enforcement. The PGO acts as the leading institution trying to thwart the efforts of newly established institutions.

The experience of the NABU and the SAP suggests the need for further legislative amendments to increase their independence and effectiveness. Currently, the NABU has to submit a request to the State Security Service of Ukraine to install wiretapping. This undermines NABU’s independence and risks information leakages in high-profile anti-corruption investigations. The initiative to give the NABU an autonomous right to wiretap was a condition of Ukraine-IMF Memorandum signed in September, 2016<sup>10</sup> and was openly supported by the EU<sup>11</sup>. Despite this, as of December 2016, the relevant draft law was not adopted by the Parliament.

The NABU faces another urgent issue when submitting cases for court consideration. The unreformed Ukrainian court system suffers from its inability to make unbiased decisions in any corruption-related cases.

Transparency International Ukraine revealed that only 20% of those accused of extortion or bribe collection were imprisoned by court decisions<sup>12</sup>. Every tenth person was acquitted while the rest received probation or were fined<sup>13</sup>. According to a journalist anti-corruption project “NashiGroshi”, not a single senior official was imprisoned for corruption related offenses in 2015-2016<sup>14</sup>.

As of December 2016, most of the 41 cases filed by NABU have not yet undergone the first court hearing. At the same time, courts use legal opportunities to block NABU’s work by refusing to issue investigative warrants, leaking information regarding NABU’s evidence-collecting activities, releasing NABU’s suspects on low bails or refusing to remove them from governmental posts.

Although the newly adopted framework law on judiciary envisages establishing the High Anti-Corruption Court, the relevant legislation to implement this provision has yet to be submitted to the Parliament.

### Fighting against other types of corruption

Other types of corruption are to be investigated by the State Bureau of Investigations and the National Police under the supervision of the prosecutor’s office. The process of establishing or reforming these institutions is less encouraging compared with the NABU and the SAP.

<sup>11</sup> Remarks by the European Commissioner for European Neighborhood Policy and Enlargement Negotiations, Johannes Hahn, on the occasion of meeting with Ukrainian anti-corruption institutions at the Verkhovna Rada in Kyiv, September 16, 2016. Available in English at: [https://ec.europa.eu/commission/2014-2019/hahn/announcements/remarks-johannes-hahn-occasion-meeting-ukrainian-anti-corruption-institutions-verkhovna-rada-kyiv\\_en](https://ec.europa.eu/commission/2014-2019/hahn/announcements/remarks-johannes-hahn-occasion-meeting-ukrainian-anti-corruption-institutions-verkhovna-rada-kyiv_en).

<sup>12</sup> Statistic is based on data from March 2014 to February 2016.

<sup>13</sup> TI Ukraine study results. Available in Ukrainian at: <http://ti-ukraine.org/en/news/oficial/5948.html>.

<sup>14</sup> Results of Nashi Groshi monitoring. Available in Ukrainian at: <http://nashigroshi.org/2016/08/31/zi-vsih-vip-chynovnykiv-za-mynulyj-rik-v-ukrajini-sily-v-tyurmu-lyshe-troje-slidchyh-i-holova-silrady>.

**The State Bureau of Investigations** is supposed to investigate serious crimes, including corruption, by high-level officials and personnel of the law enforcement bodies (except those under NABU jurisdiction), crimes committed by the staff of the NABU and the SAP, and military crimes. SBI establishment was stipulated by the respective law adopted in December 2015. The bureau's head has to be chosen by a selection panel and appointed by the President of Ukraine.

However, as of December 2016 the head of the SBI was not yet selected. Civil society and international organizations criticized the selection process for its unclear criteria for selecting panel members, inclusion of MPs into the panel, its closed and non-transparent work, and potential political influence on the panel's decision. The final decision is expected to be taken in February 2017.

The delay in setting up the SBI seriously undermines the effectiveness and credibility of the new anti-corruption institutional infrastructure. It leaves law enforcement and army personnel, including the NABU, without due oversight since the PGO, currently empowered to oversee and investigate their activities, is itself in need of a radical reform.

**The National Police of Ukraine** is supposed to investigate minor corruption crimes (petty bribery beyond the jurisdiction of the NABU and the SBI) and corruption-related administrative offenses. The comprehensive reform of the Ministry of Internal Affairs including the creation of the National Police is still underway.

Although there are reasons to believe that the new patrol police will be corruption free, there are serious concerns that further reform of the National Police will stall. The Interior Minister Arsen Avakov is blamed for failing to dismiss officers who participated in repressions against Euromaidan activists. He was also rightfully accused of protecting some senior officials presumably involved in corruption schemes. Current open competitions for a number of senior posts largely fail to attract professionals with high integrity standards.

It is expected that prosecution bodies will supervise pre-trial anti-corruption investigations conducted by the SBI and the police and will support the accusations in court. **The Prosecutor General's Office of Ukraine** is widely perceived as one of the main obstacles to the successful implementation of the anti-corruption reform. The transitional provisions of the 1996 Constitution stipulated that the post-Soviet prosecution system should have been brought in line with the EU standards. The investigative and oversight functions should have been clearly separated and the PGO should have mainly focused on overseeing pre-trial investigations and supporting accusations in courts.

It was not until Euromaidan that the reform was launched. However, an attempt to bring "new blood" into the PGO failed. As an outcome of a large scale recruitment campaign at the local level, only 3% of new people outside the system were appointed to administrative positions. Attempts to reboot the PGO at the central level also failed and reform-oriented Deputies of the General Prosecutor David Sakvarelidze and Vitalii Kasko were removed.

Current General Prosecutor Yuriy Lutsenko already proposed that some reform initiatives should be reversed — he stated that the so-called "general oversight functions" should be given back to the PGO. This function was widely used by the prosecutors to extort bribes from businesses and citizens. Moreover, one MP recently submitted a draft law giving the PGO the right to decide what institution should investigate each high-profile corruption case. The draft law was clearly aimed at undermining NABU's independence.

It is worth noting separately that the PGO failed to properly investigate corruption crimes presumably committed by high-level politicians and senior public servants under Viktor Yanukovich regime — not a single corruption accusation was submitted to the court.

## IDENTIFYING AND MANAGING STOLEN ASSETS

The implementation of a new approach towards identification and management of crime related assets was one of VLAP requirements. Since Ukraine's independence, there was no consistent system of detecting, recovering and managing those assets. Legislative acts adopted in November 2015 initiated necessary changes.

**The National Agency for Detection, Investigation and Management of Assets Derived from Corruption and Other Crimes** will be set up to work with assets arrested or confiscated by court decision within criminal proceedings, including those related to corruption offenses. The Agency will cooperate with foreign countries to identify and recover assets from abroad. It is supposed to act as a hub for other law enforcement bodies for identifying and seizing criminal assets. It is also meant to ensure that confiscated assets are properly stored, managed or sold for the benefit of the state budget.

The head of the Agency was also selected by a selection panel including representatives of different public institutions and CSOs. The winner of the competition is appointed for a five-year term. Yearly evaluation of the Agency's activity will be conducted by an external control commission comprised of representatives of the Cabinet, the Parliament and the President, the Agency's activity will also be overseen by the Public Council. Anton Yanchuk, Deputy Minister of Justice, was proposed by the selection panel and appointed as the head of the Agency by the Cabinet in December 2016. It is expected that the Agency will be fully functional by mid-2017.

## MAKING BUREAUCRATIC 'CASTLE' OPEN AND TRANSPARENT

A real breakthrough was achieved in the sphere of transparency and access to information and to governmental decision-making: all key governmental registries and databases were made accessible online free of charge or for a small fee (business registry, land cadaster, property and car registries). The 2015 Law of Ukraine on access to public information in an open data format requires all governmental bodies to present their

<sup>15</sup> Latest statistics on the governmental open data web-portal are available in Ukrainian at: <http://data.gov.ua/>.

<sup>16</sup> 2016 Open Government Awards. Available in English at: [www.opengovawards.org/2016Results](http://www.opengovawards.org/2016Results).

datasets in a machine readable format. All datasets should be published and regularly updated on the web-portal [data.gov.ua](http://data.gov.ua). By December 2016, 1,000 governmental bodies published over 9,000 datasets<sup>15</sup>.

In addition, Ukraine is one of a few countries in the world that obliged all legal entities to disclose their final beneficiaries in the governmental business registry.

An outstanding progress is showed by the public procurement reform — since August 1, 2016, all public procurement units must use the electronic procurement system ProZorro that provides free online publication of all documents related to any bid (from procurement plans to procurement contracts and information about their completion). The system was developed and launched in partnership with civil society (TI-Ukraine), private businesses (IT companies) and the government (the Ministry of Economic Development and Trade). The ProZorro helped to eradicate procurement corruption and as of November 2016 has saved approximately 300 million USD of budget funds. The system was recognized by two international awards in 2016 – the World Procurement Award and the Open Government Award by the Open Government Partnership<sup>16</sup>. Some EaP countries showed their interest in replicating the system (e.g. Moldova).

Moreover, the system's use goes beyond traditional public procurements: in November 2016 the Deposit Guarantee Fund conducted auctions to sell property of bankrupt banks using the ProZorro system adapted to the Fund's needs. There is also a prospect that sales of the country's municipal and governmental property will be gradually transferred to ProZorro. Sales system based on the same principles of openness and transparency ("everybody sees everything").

Another revolutionary step in ensuring transparency of governmental spending was adoption of the Law of Ukraine "On Open Use of Public Funds" in February 2015. The law requires all governmental and local self-government bodies as well as municipal and state-owned companies to disclose their budgets and transactions on the online portal [spending.gov.ua](http://spending.gov.ua). However, only half of governmental bodies and one fifth of companies published their information by the end of 2016<sup>17</sup>. In order to secure full compliance, legislative amendments were prepared and advocated by CSO coalition. Further integration of this initiative with the ProZorro system could shape a united electronic environment, allowing any citizen to exercise free and easy control over public spending.

## CONCLUSIONS

During 2014-2016 Ukraine has greatly progressed in its fight against corruption: a new institutional framework was established and anti-corruption instruments were launched. However, as anti-corruption reform enters its decisive stage – enabling anti-corruption institutions' work and sentencing corrupt officials – it meets growing resistance from old political and business elites.

The most widely recognized achievements are providing open access to public information and involving civic activists in governmental decision-making. The success of establishing new anti-corruption institutions is mixed, with some of them almost fully operational and independent, and

others falling prey to political pressure. The General Prosecutor's Office appears to be the main institutional stronghold of those trying to thwart post-Euromaidan anti-corruption fight. Their resistance culminated in a fight over the introduction of the new public servants' electronic asset declaration system.

The newly created National Agency for Corruption Prevention shows disturbing vulnerability to political influence. It has been unable to effectively monitor public officials' integrity and lifestyles and political parties' compliance with new requirements for their financial transparency. Therefore, NACP's further activity should be closely monitored by civil society and international organizations.

Being almost fully functional, the NABU and the SAP demonstrate first encouraging results of anti-corruption investigations, despite growing resistance from the GPO and sabotage from courts.

The development of the SBI was stalled at the stage of selecting its head.

In order to ensure smooth implementation of anti-corruption policy, additional legislative measures are needed. It is crucial that CSOs, pro-reform politicians and officials, and international organizations focus their efforts on the implementation of anti-corruption reforms. The EU, and other international partners, should make their assistance to Ukraine strictly conditional on the reform's effectiveness.

<sup>17</sup> Evaluation figures by CSO "Eidos". Available in Ukrainian at: <http://eidos.org.ua/novyny/chy-zapustyat-parlamentari-povnotsinnu-robotu-portalu-e-data/>.

<sup>18</sup> Recommendations from the Special Report “EU Assistance to Ukraine” of the European Court of Auditors. Available in English at: [www.eca.europa.eu/Lists/ECADocuments/SR16\\_32/SR\\_UKRAINE\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR16_32/SR_UKRAINE_EN.pdf).

## RECOMMENDATIONS

Further actions of the **Ukrainian authorities** to keep anti-corruption course sustainable should be focused on the following spheres.

First, there is an urgent need to adopt legislative draft acts on:

- 1) establishing Anti-corruption Courts with a special politically independent procedure for judges’ selection;
- 2) giving the NABU the right to conduct wiretapping independently of the Security Service or any other law enforcement bodies;
- 3) providing further guarantees and incentives for whistleblowers;
- 4) amending legislation on the open use of public funds and public financing of political parties. These draft laws should be developed in close cooperation with civil society and international community.

Second, the government should provide necessary resources for the new anti-corruption institutions (budgetary resources, equipment, etc.).

Third, authorities of all levels and branches of power as well as political forces should strictly abstain from illegal interference in the work of anti-corruption institutions. It is expected that the President of Ukraine, the Cabinet of Ministers, and leaders of parliamentary factions should publicly and repeatedly endorse key anti-corruption initiatives, as some of them already did.

Fourth, the independency of the NACP should be strictly preserved whereas the development of the SBI should significantly accelerate.

**The European Union** already provided invaluable contribution to the launch of the new anti-corruption policy and institutional framework in Ukraine. The VLAP and the EU-Ukraine Association Agreement have been effectively used as powerful instruments to initiate and sustain changes.

Given that the basic legislative acts have already been adopted, the European Union should redirect the focus of its support from legislative changes to their effective implementation. It is noteworthy that the special report of the European Court of Auditors “EU Assistance to Ukraine” clearly states that “the Commission, in cooperation with civil society organizations, should make further EU assistance conditional on effective implementation of key anti-corruption reforms”<sup>18</sup>. There are several instruments the EU can use to support reform implementation, such as providing technical or financial assistance to newly established anti-corruption institutions and ensuring monitoring of sustainable implementation of VLAP requirements after granting visa waiver to Ukraine.

It is crucially important that visa-free regime for Ukraine is approved and introduced without any further delays which will strengthen the confidence of the Ukrainian citizens in the European Union and facilitate further effective advocacy and implementation of key systematic changes.