

Anti-corruption reforms in Ukraine: progress or lack thereof?

During four years of anti-corruption reforms, a number of institutions were established to tackle the problem at different levels. New state bodies provide the infrastructure for investigation and prosecution of criminal cases, for monitoring, guidance and surveillance of implementation of anti-corruption measures, and administration of confiscated assets.

Despite all efforts and some progress, the newly established institutions have yet to bring any corrupt, high-level official to account. It is questionable whether they would have been established out of political will, had it not been for the constant push of the civil society and the help of foreign donors.

Corruption, defined as an abuse of entrusted power for private gain, is still prevalent nationwide, which is reflected in the limited improvement Ukraine made in Transparency International's Corruption Perceptions Index over the last years.

For a transparent environment, strong legal action and enforcement methods are needed. A decisive step to promote the rule of law is to bring the anti-corruption court into existence and to conduct an effective judiciary reform.

Corruption perceptions in Ukraine

Corruption is hard to measure, primarily due to its hidden nature, and is generally comprised of illegal activities. Transparency International's [Corruption Perceptions Index \(CPI\)](#) scores and ranks countries by their perceived levels of public sector corruption according to experts and business people.

It is a composite index, a combination of surveys and assessments of corruption, collected by a variety of reputable institutions and uses a scale of 0 to 100, where 0 is highly corrupt and 100 is very clean. The index's source data captures several aspects of corruption, including bribery, diversion of public funds, effective criminal prosecution for corrupt officials, state capture, red tape, and others.

This year, Ukraine scored 30 on CPI, a one-point improvement over last year, and 130 out of 180 countries included in CPI 2017.

This means that corruption continues to be a serious barrier to establishing an independent judiciary and legal system free of political influence and to attracting investors and businesses to Ukraine.

New anti-corruption Institutions

To date, Ukraine's biggest success is the establishment of a new anti-corruption institutional infrastructure. This includes the following agencies and offices:

National Anti-Corruption Bureau (NABU) is a law enforcement agency tasked to investigate cases of high-level corruption committed by members of parliament, politicians, top managers of large state-owned enterprises, and judges.

Specialized Anti-Corruption Prosecutor's Office (SAPO) provides procedural guidance of NABU's investigations, ensures compliance with legal framework, and brings charges in criminal proceedings investigated by NABU.

National Agency for Prevention of Corruption (NAPC) is a preventative body in charge of developing and implementing national anti-corruption policies, verifying income and asset declarations, monitoring political party financing, protecting whistle-blowers, and regulating conflict of interest of public officials. In the past few years, NAPC experienced some significant political scandals that threaten its ability to effectively prevent corruption, including reports about rigged selection process of the agency's top officials. In addition, in 2016 NAPC was accused of delaying and sabotaging the launch of the e-declaration system. The system was eventually launched, but the process of checking income and asset declarations fails to meet standards of transparency and impartiality.

State Bureau of Investigations (SBI) is an executive agency with a mandate to investigate those crimes by public officials not covered by NABU.

Asset Management and Asset Recovery Office (AMRO) is responsible for detection, search, and management of seized assets.

High Anti-Corruption Court (HACC) is not established yet but will examine and try cases brought by NABU. After months of struggle, on 7 June 2018, the Parliament approved a law on anti-corruption court, which is critical for further cooperation with the International Monetary Fund (IMF). However, the adopted law contains a controversial amendment that the appeals in the NABU cases which are currently handled in courts, will be reviewed in general jurisdiction courts, rather than in the Appeal Chamber of the HACC. Having assessed the newly adopted law, the IMF called on the Ukrainian side "... to restore the requirement that the HACC will adjudicate all cases under its jurisdiction."

Jurisdiction of the HACC will focus exclusively on cases of top corruption under investigative jurisdiction of NABU. Currently, all cases of high-level corruption

investigated by NABU are brought to ordinary courts, where they are stalled. Under the adopted law, international experts will play a significant role in the selection of judges for the HACC.

In order to establish the anti-corruption court and start operations, two more legislative initiatives are needed. First, a technical law on the establishment of the HACC was recently adopted. Second, amendments to the law “On the Judiciary and the Status of the Judges” should be adopted in order to detail procedures of the court and clarify the selection and appointment of judges. Realistically, this piece of legislation will be reviewed by Parliament during summer or autumn 2018, and if adopted, the launch of the anti-corruption court is unlikely to happen before the spring of 2019.

Anti-corruption success stories

Over the last few years, Ukraine made some progress on the anti-corruption front. This includes:

- In 2017, NABU and SAPO launched investigations and brought charges against many top-level officials.
- The ProZorro public procurement online system is now used for all government tenders
- The government launched an electronic system for VAT administration, designed to prevent fraudulent VAT returns.
- During 2015-2016, the government began a gas sector reform; however, progress has since slowed due to resistance from vested interests in control over this lucrative sector.
- An open public registry of beneficial ownership was established, which is integrated with the global Open Ownership Register.
- A number of “zombie banks” non-compliant with international banking standards were closed.
- An electronic system for automating the accounting of health services was introduced.
- A small-scale privatization process was introduced, with all tender processes directed through the online ProZorro.Sale system.

Challenges and way forward

While an independent anti-corruption court is critical to address high-level corruption, ordinary courts are equally important, because they provide a place where citizens and business entities turn for justice. As such, the government must conduct a successful judiciary reform. Without an independent judiciary, protection of property rights for business, as well as civil liberties of citizens, are an illusion.

The privatization of large state-owned enterprises could also help fighting corruption in Ukraine. In theory, by transferring assets from state control to private ownership, corruption could be minimised. However,

the opposite could occur as privatization processes are fraught with corruption risks. To ensure transparent and fair privatization, a comprehensive analysis and assessment of corruption risks must be made, along with measures to mitigate those risks.

In addition, the NAPC should be reset. The agency has a crucial role to play in preventing conflict of interest, ensuring transparent party financing, and ensuring the integrity of public officials. Finally, to curb political corruption, Ukraine should reform the electoral code and the Central Electoral Commission.

Moving forward, Ukraine should double its efforts to fight corruption, while maintaining realistic expectations. It takes years, if not decades for anti-corruption laws to yield results. Also, as pressure for reforms from the international community and civil society grows, so does the resistance of those in power, who have a vested interest in the status quo and are reluctant to change to a rule-based system.

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