

GUEST REPORT
NO. 13, 2023

SCEEUS STOCKHOLM CENTRE FOR
EASTERN EUROPEAN STUDIES

SCEEUS REPORT SERIES ON UKRAINIAN DOMESTIC AFFAIRS, NO. 9

Anti-corruption Reform in Ukraine After Russia's Full-Scale Invasion

Oleksandr Kalitenko
13 June 2023



Executive Summary

Before Russia's full-scale invasion of Ukraine on 24 February 2022, the fight against corruption was consistently at the top of the agenda. At the same time, the reservations and recommendations of experts and international partners were partially heard and implemented. However, the 'window of opportunity' for external expertise has narrowed with time. There is a lack of strategic vision and no systematic approach to the formation and development of anti-corruption policy.

Nonetheless, the anti-corruption infrastructure has proved resilient and continued to function, albeit adapted in different ways to the new realities of war. Corruption cases are still investigated and heard in the courts, but access to a large part of public data has been restricted since 24 February 2022. Such changes may have been appropriate in the early stages of the full-scale invasion, but these security measures are definitely now an overreaction. Some publication of information has been restored, but far from all. This has affected public control, in particular of public sector procurement. Martial law has limited the application of numerous anti-corruption requirements and regulations. This is not a permanent solution and a more balanced approach is required.

Background to Anti-corruption Reform Prior to the Invasion

Anti-corruption reform in Ukraine began after the annexation of Crimea and the Russian invasion of eastern Ukraine in 2014. Existing bodies such as the Security Service of Ukraine (SSU), the Prosecutor's Office, the National Police and the general jurisdiction courts had demonstrated little visible success in the fight against corruption or its prevention throughout 23 years of Ukrainian independence. Before the Revolution of Dignity in 2013–14, state information databases were secret, officials filed printed asset declarations as they pleased with no consequences for false submissions, and public sector procurement took place on paper behind closed doors.

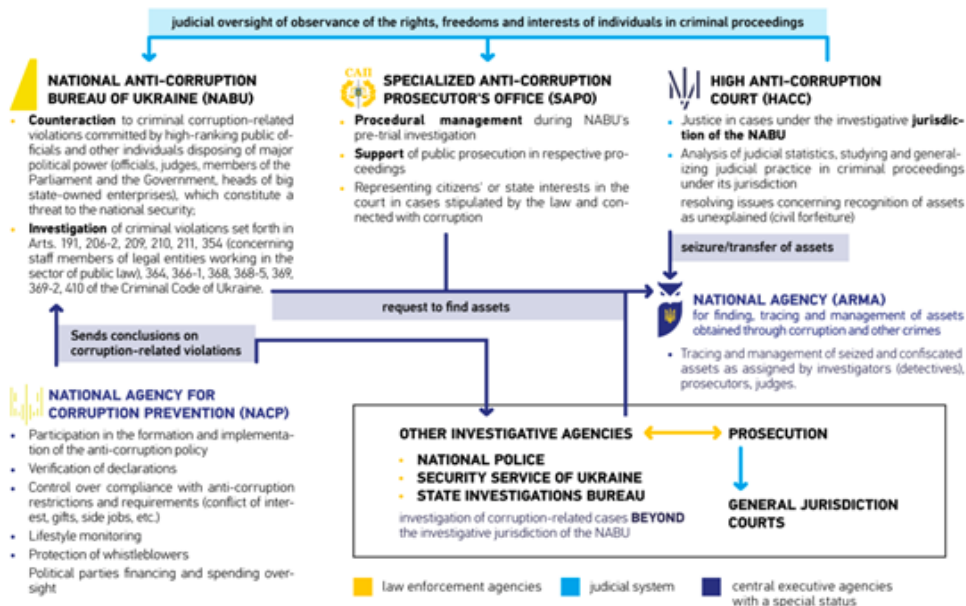
In 2013, Ukraine scored 25 in Transparency International's Corruption Perception Index (CPI), ranking it 144th among the 177 countries on the list.¹ The minimum score (0 points) means that corruption has effectively replaced government, while the maximum score (100 points) indicates an almost complete absence of corruption in the public sector.

Since then:

- A new system of anti-corruption infrastructure has been created: The National Anti-corruption Bureau of Ukraine (NABU), the Specialized Anti-corruption Prosecutor's Office (SAPO), the High Anti-corruption Court (HACC), the National Agency for Corruption Prevention (NACP) and the Asset Recovery and Management Agency (ARMA);

¹ Transparency International (2013). The Corruption Perception Index. <https://www.transparency.org/en/publications/cpi-2013>

ANTI-CORRUPTION INFRASTRUCTURE IN UKRAINE



- A National Anti-Corruption Strategy has been adopted by parliament;²
- Electronic asset declarations have been introduced for public officials, with an online register and criminal responsibility for false declarations;
- The state databases on owners of real estate, land plots, vehicles, and so on, have been opened to the public;
- Ukraine was also a leading country in the field of open data.³
- The ProZorro Electronic Competitive Public Procurement System has been launched, achieving international recognition,⁴ saving US\$1.9 billion in budget funds in just its first two years of operation;⁵
- Ukraine launched a number of e-services that made the procurement and property management process truly public, won global awards for e-tools in open governance,⁶ and was even mentioned in the US Strategy on Countering Corruption.⁷
- Information on the ultimate beneficial owners of legal entities has been disclosed;
- Control and accountability of political party finances and their state funding have been

2 The law of Ukraine No. 1699-VII "On the principles of state anti-corruption policy in Ukraine (Anti-corruption strategy) for 2014-2017" dated 14 October 2014. <https://zakon.rada.gov.ua/laws/show/1699-18#Text>

3 Governmental portal (2017). Ukraine entered TOP 30 countries in Global Open Data Index ranking. <https://www.kmu.gov.ua/en/news/249958555>

4 ProZorro (2022). The Prozorro Achievements and Awards. <https://prozorro.gov.ua/en/about/achievements>

5 OECD (2018). eProcurement system ProZorro. <https://oecd-opsi.org/innovations/eprocurement-system-prozorro/>

6 Open Government Partnership Impact Awards (2021). <https://www.opengovpartnership.org/open-government-awards/ogp-impact-awards-2021/>

7 U.S. Strategy on Countering Corruption (2021), p.28. <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>

initiated; and

- Corruption whistleblower protection has been improved.

In 2018, the economic effects of anti-corruption reform were estimated at the equivalent of 6% of GDP, or about US\$6 billion per year.⁸ At the beginning of 2022, Ukraine scored 32 and was ranked 122nd of the 180 countries in Transparency International's CPI.⁹

Nonetheless there have also been constant attempts to destroy the independence of the anti-corruption infrastructure and attacks on anti-corruption activists. The authorities focused their efforts on strengthening or retaining their influence on various branches of government, including the anti-corruption infrastructure, rather than achieving the promised victory over corruption. Too many urgent anti-corruption tasks were delayed, frozen or postponed indefinitely because of the lack of political will before 24 February 2022.

How Has Anti-corruption Reform Been Affected by the War?

In the first months of the invasion, the issue of fighting corruption became less urgent than before as the state desperately fought for its existence and the efforts of millions of Ukrainians were directed at overcoming this challenge. However, Ukraine has shown that the fight against corruption continues even in war conditions. This was proved by the recent improvement in Ukraine's CPI score, to the best score since the CPI methodology was updated in 2012.¹⁰ Ukraine is among the 15 countries that have demonstrated the greatest progress in the CPI in the past 10 years, grouped with Czechia and South Korea.

In 2022 the Ukrainian authorities also finally fulfilled some of the promises made in the anti-corruption sphere. In the summer of 2022, for example, parliamentarians adopted the new National Anti-Corruption Strategy 2021–2025,¹¹ and in March 2023 a State Anti-corruption Programme was adopted by the government as an action plan for that strategy.¹² Nonetheless, there is still room for improvement, and Transparency International Ukraine has expressed some concerns regarding their content and made proposals for their further improvement.¹³

Ukraine has completed competitive selection processes for the leaders of the NABU and the SAPO. The ARMA has been working without a head for more than three years, however, and the selection process is still ongoing but delayed. According to a decision by the Cabinet of

8 The Institute for Economic Research and Policy Consulting (2018). Ukraine's Fight Against Corruption: The Economic Front. Economic Assessment of Anticorruption Measures Implemented 2014-2018. Research

9 Transparency International (2021). The Corruption Perception Index. <https://www.transparency.org/en/cpi/2021>

10 Transparency International (2022). The Corruption Perception Index. <https://www.transparency.org/en/cpi/2022>

11 The law of Ukraine No. 2322-IX "On the principles of state anti-corruption policy for 2021-2025" dated 20 June 2022. <https://zakon.rada.gov.ua/laws/show/2322-IX#Text>

12 The order of the Cabinet of Ministers No. 220 "On the adoption of state anti-corruption program for 2023-2025" dated 4 March 2023. <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text>

13 Transparency International Ukraine (2023). Cabinet of Ministers adopts state anti-corruption program: details. <https://ti-ukraine.org/en/news/cabinet-of-ministers-adopts-state-anti-corruption-program-details/>

Ministers,¹⁴ the ARMA Head Selection Commission, which restarted its work in September 2022, was supposed to complete the new competition by the middle of January 2023, but this has not happened.

The ARMA also received new powers following the full-scale invasion, including on the management of Russian assets which can be transferred to it by the courts. This is not an easy challenge as the management of any property requires knowledge and specialists from various fields. NABU detectives have also started work on new tasks, such as searching for Russian property that might be subject to confiscation.

The NACP has lost some of its core functions, however, such as checking the asset declarations of public officials. The public register for asset declarations was closed, postponing the mandatory obligation to submit asset declarations until the end of martial law. Since the beginning of the Covid-19 pandemic, political parties have not had to submit financial reports to the NACP. The NACP has generally placed most of its focus on sanctions policy while much of its core work cannot be carried out. After more than three years of non-submission, political parties should again be required to submit financial reports for verification by the NACP.

The issue of professionalism can also be added to the challenges. In public procurement, for example, there is a shortage of people who can efficiently and promptly conduct tenders at the local level. Some specialists have gone to war, while others have left the country. Suppliers have also changed, making it more difficult to ensure competitive procurement under such conditions.

Unfortunately, the lack of transparency in procurement has had consequences. At the beginning of 2023, two high-profile corruption scandals were exposed by investigative journalists, both related to procurement.¹⁵ Investigative journalists and the regulatory and anti-corruption authorities continue to find cases of potential overpayment, the splitting of orders between selected companies and other abuses.

The key war-related challenges in the fight against corruption at the local level are primarily linked to the decrease in transparency of the work of local government and the reduction in access for and participation by citizens. Anti-corruption measures are not a priority, and there are insufficient resources to apply them at the local level.

In the context of restrictions on the work of open data portals – the websites of local self-government bodies and their divisions – the amount of available information on the work of city councils has declined. This is also true of information on lease agreements, the provision of residential premises and the activities of land cadastration, among other things. City councils are receiving huge amounts of humanitarian and charitable assistance, the distribution of which is not always properly accounted for. In some cases, implementation of local anti-corruption programmes is now on pause.

14 Transparency International Ukraine (2022). Cabinet of Ministers extends ARMA Competition. <https://ti-ukraine.org/en/news/cabinet-of-ministers-extends-arma-competition/>

15 Transparency International Ukraine (2023). Stormy Beginning of 2023: Biggest Anti-Corruption Cases and Challenges. <https://ti-ukraine.org/en/news/stormy-beginning-of-2023-biggest-anti-corruption-cases-and-challenges/>

The publication of open data that does not pose a threat to national security is a long-awaited step to strengthen effective control by journalists and the public over the actions of the authorities. Freedom of speech did not disappear in Ukraine after February 2022 – where the state fails, public organizations and journalists can be able to police it effectively. Even in conditions of limited access to data, constant monitoring and investigation of likely abuse by representatives of the authorities must prevent dishonest officials from profiting from the war.

Of course, Ukrainians themselves have also changed a lot in this time. An opinion poll by the USAID ENGAGE programme in November 2022 found that 64% of Ukrainians believed that corruption could never be justified (in 2021 it was 40%), and 84% were ready to report cases of corruption (44% in 2021).¹⁶ Public orientation towards European integration also creates the basis for an effective fight against corruption. The citizens of Ukraine show a strong desire to join the European family, which means they share European values, among which are intolerance of bribery and corruption.

For all civil society's fighters against corruption there is even more work than before because war crimes add to the already familiar challenges. Many civil society organizations became key partners of the state almost from the beginning of the invasion, such as those engaged in international advocacy. Unfortunately, the state does not engage with civil society in all the processes currently taking place. For example, very few NGOs were invited to the recent Conference on the Reconstruction of Ukraine in Berlin, where international partners planned assistance with Ukraine's reconstruction. It is important to engage with civil society organizations at the planning stage.

How Will Anti-corruption Reform Align With EU Candidate Status After the War?

All 27 European Union (EU) member states voted to grant Ukraine candidate status on 23 June 2022. To get closer to the start of official negotiations on EU membership, however, Ukraine must implement seven recommendations by the European Commission, among them recommendation 3:

*further strengthen the fight against corruption, in particular at high level, through proactive and efficient investigations, and a credible track record of prosecutions and convictions; complete the appointment of a new head of the Specialised Anti-Corruption Prosecutor's Office through certifying the identified winner of the competition and launch and complete the selection process and appointment for a new Director of the National Anti-Corruption Bureau of Ukraine.*¹⁷

The part of the recommendation related to the appointment of the heads of the SAPO and the NABU and has been addressed by the appointment of new heads of these bodies. The SAPO head was appointed after a long delay. The successful candidate had been announced at the end of 2021 but was not appointed for nearly six months. The EU recommendation

16 USAID/ENGAGE (2022). Civic Engagement Poll 2022: Surge in Civic Activism, Overwhelming Support to Resisting the Enemy and Fundamental Shift in Perceiving Corruption. <https://engage.org.ua/eng/cep-2022-surge-in-civic-activism-overwhelming-support-to-resisting-the-enemy-and-fundamental-shift-in-perceiving-corruption/>

17 European Commission (2022). Opinion on the EU membership application by Ukraine. 17 June. https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_3802

basically stated that that particular winner had to be appointed. To prevent similar situations with delays in the appointment of a SAPO head in the future, the participation of independent experts and the criteria for a full examination of candidates' professional competencies and integrity, as well as the requirements of the Selection Commission's decision-making process should all be clearly stipulated in law. More attention should also be paid to the selection of Commission members. In the case of the SAPO competition, parliament appointed a seven-member Commission only at the third attempt and supported several individuals with no experience of anti-corruption activities. However, this took place before EU candidacy status was granted.

For the NABU leader competition, experts at Transparency International Ukraine analysed all the available public information on the candidates.¹⁸ It publicly identified five candidates about whom the public had the most questions.¹⁹ The eventual winner, Semen Kryvonos, was among the five. Traditionally, Transparency International experts try to identify any data that can provide an indication of the level of integrity of all the applicants, but it has been much more difficult to conduct such an analysis this year. Since access to the register of electronic declarations is limited, the basis for Transparency International verification was any publicly available information and the documents published by the Selection Commission. Transparency International Ukraine expressed concern about how, according to open sources, Kryvonos and his wife have managed on a small income to become owners of seven and a half hectares of land, a house, and an apartment near Kyiv with an area of 80 m². Kryvonos has also acquired another ten plots of land. Transparency International Ukraine provided the Commission with all the information it had collected about the candidates.

During the integrity interviews, the Selection Commission was particularly interested in any existing contacts the new NABU Director had with various government officials – in both the Presidential Office and in the Cabinet of Ministers – as all these persons fall under the jurisdiction of the NABU. For his part, at that time, candidate Kryvonos provided assurances that all such contacts were purely work-related and would not affect his future activities at NABU. Kryvonos will now be able to prove his independence and willingness in practice to investigate corruption in all branches of government. Transparency International Ukraine has stated that it will carefully monitor his performance and successes.

The NABU competition was conducted as transparently and systematically as possible. The competition comprised several stages, all of which were disclosed beforehand to the candidates, members of the public and international partners. Members of the Commission were as thorough as possible about their work and posed all the questions to the candidates, which had been provided by all parties interested in the process. Of all the competitive processes in recent years, the competition for the head of the NABU was perhaps the most systematic, complete and open, and without unreasonable delays.

With regard to the first part of the recommendation, on “further strengthening the fight against corruption, in particular at high level, through proactive and efficient investigations, and a credible track record of prosecutions and conviction,” it is notable that since the

18 Transparency International Ukraine (2023). Property, Connections, Reputation: Dubious Potential Heads of NABU. <https://ti-ukraine.org/en/blogs/property-connections-reputation-dubious-potential-heads-of-nabu/>

19 Transparency International Ukraine (2023). NABU Competition: 5 Candidates to Whom TI Ukraine Has Most Questions. <https://ti-ukraine.org/en/news/nabu-competition-5-candidates-to-whom-ti-ukraine-has-most-questions/>

appointment of the head of the SAPO in the summer of 2022, the number of investigations of corruption at the highest level has increased significantly. During the year of resistance to Russian aggression in Ukraine, more than 33 verdicts were handed down on high-level corruption. In 2022, the NABU launched 456 investigations, indicated suspicions held against 187 persons and sent 54 indictments to court, including of nine MPs.

An increase in the number of high-profile arrests is not related to an increase in corruption in the country. It is testament to the well-coordinated work of the anti-corruption infrastructure and its focus on the fight against internal enemies – bribery and corruption. It actually demonstrates the effectiveness of the work of the anti-corruption infrastructure.

Statistical reports by the HACC indicate that its focus is not on the number of convictions, but on their quality.²⁰ At the same time, however, it is also indicative that the annual number of judgments handed down by the HACC is gradually increasing. This means that HACC judges are developing their own judicial practice and establishing increasingly clear legal positions on the issues under consideration in criminal proceedings on corruption and related criminality.

Conclusions

The selection of leaders of the anti-corruption bodies is only the tip of the iceberg. The number of employees in these bodies is still insufficient to resolve the problems associated with post-war reconstruction. SAPO needs wider institutional autonomy and an expansion of the powers of its leadership. Changes to the institution of parliamentary immunity mean that all key decisions on criminal proceedings are made by the Prosecutor General, which is a negative development.

The NABU de facto still has no ability to use autonomous wiretapping. Problems persist with the NABU's access to high-quality, impartial forensics expertise. Genuine justice is hampered by procedural problems, such as with the terms of pre-trial investigation before notification of suspicion, judicial review of NACP protocols or violations of the jurisdiction of the NABU, the SAPO and the HACC.

An independent and comprehensive audit of the performance of the ARMA, the NABU and the SAPO is yet to begin work, limiting the ability of these bodies to plan a clear way forward to fully realize their potential.

At the same time, some violations of the Law on the Prevention of Corruption²¹ still do not receive the prescribed administrative sanction. The SSU still has atypical powers on fighting corruption that do not correspond with the best Euro-Atlantic practices, overlap with the mandate of the anti-corruption infrastructure and create significant risks of corruption. The issue of SSU reform has been postponed until after the war, during which the work of the SSU will be crucial, with the silent consensus of the government and wider society.

20 HACC (2023). Statistical reports. <https://hcac.court.gov.ua/hcac/gromadyanam/reports/>

21 Law of Ukraine No. 1700-VII on the Prevention of Corruption, dated 14 October 2014. <https://zakon.rada.gov.ua/laws/show/1700-18#Text>

Policy Recommendations to Ukrainian Government

All previously closed state registers, such as the Unified Register of Asset Declarations, should be open, with the exception of confidential and/or personal data or data where disclosure might be a threat to national security.

The suspended obligation on civil servants to declare their public assets should be restored, and the NACP mandate concerning the control and verification of these declarations should be fully restored as required in law. Any limitations on the NACP mandate or weakening of the responsibility for non-submission or false declarations during the restoration of the asset declaration regime should be considered inappropriate. Many international stakeholders endorsed and recognized the previous e-declaration system that was in place before the full-scale invasion.

The NABU, SAPO, NACP, ARMA and HACC must have the institutional capacity to ensure the genuine effectiveness of their performance and to fulfil the EU's anti-corruption recommendation in connection with Ukraine's EU candidate status.



Oleksandr Kalitenko

Legal Advisor for Transparency International Ukraine. Develops the Ukrainian anti-corruption reform since 2014.

About SCEEUS

The Stockholm Centre for Eastern European Studies (SCEEUS) at the Swedish Institute of International Affairs (UI) is an independent Centre, funded by the Swedish Government, established in 2021. The Centre conducts policy relevant analysis on Russia and Eastern Europe and serves as a platform and meeting place for national and international discussions and exchanges on Russia and Eastern Europe. Any views expressed in this publication are those of the author.

© 2023 Stockholm Centre for Eastern European Studies

Cover image: Shutterstock

Previous SCEEUS Publications:

Russia-China Energy Relations Since 24 February: Consequences and Options for Europe by Henrik Wachtmeister

NKK/SCEEUS Report No. 1

The War, Sanctions, and Russian Oil and Gas by Geir Westgaard

SCEEUS Guest Commentary No. 19, 2023