Review of Anti-Corruption Reforms in Ukraine under the Fifth Round of Monitoring

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

OECD

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Foreword

This report was prepared in the framework of the 5th round of the Istanbul Anti-Corruption Action Plan (IAP), a peer review programme of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (OECD/ACN). [1] The programme covers ten countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Ukraine, and Uzbekistan. Other countries of the region, OECD countries, international organisations and non-governmental partners participate in the implementation of the IAP as experts and donors.

The ACN introduced an indicator-based peer review for the IAP 5th round of monitoring (2023-2026). After the pilot[2] that tested the new methodology was completed, the revised IAP 5th Round of Monitoring Assessment Framework and Monitoring Guide were agreed at the ACN Steering Group in November 2022. The framework benefited from a thorough and inclusive consultative process, marking strong ownership and commitment of the participating countries.

The 5th round of monitoring was launched in January 2023 in Armenia, Azerbaijan, and Moldova with the support of the EU for Integrity Programme. Due to Russia's large-scale war of aggression against Ukraine, the ACN Steering Group decided to postpone the launch of the full 5th Round of Monitoring of Ukraine to 2024. At a later stage, however, considering important anti-corruption developments in Ukraine and its EU candidate status, in consultation with the EU and the Government of Ukraine, it was agreed to conduct a review with a reduced substantive scope in 2023, covering selected Performance Areas under of the Assessment Framework. The assessment period for this report is 2022 and first half of 2023.

The peer review team included the following peer reviewers: Mr Silviu Popa, Secretary General of the National Integrity Agency, Romania (PA 1 and 2); Mr Kees Sterk, Senior Judge, Netherlands, former president of European Network of Councils for the Judiciary (PA 5); Mr Alin Poterasu, European Public Prosecutor's Office (PAs 8 and 9) and the OECD/ACN Secretariat: Ms Rusudan Mikhelidze (team leader), Ms Oleksandra Onysko, (PAs 8 and 9), Mr Ivan Presniakov, (local expert - PAs 1 and 2), Mr Anton Marchuk, (local expert - PAs 6, 8 and 9), Ms Arianna Ingle (editorial support) and Ms Iryna Sochay (administrative support).

The National Coordinator of Ukraine in the ACN, the National Agency for Corruption Prevention (NACP) was first represented by Mr Andrii Vyshnevksyi, and replaced by Mr Iaroslav Liubchenko, both as Deputy Heads of NACP. The review was launched in March 2023. Ukraine provided replies to the questionnaire with supporting materials in May 2023. The virtual on-site visit to Ukraine took place on 17-21 July 2023 and included sessions with governmental and non-governmental representatives. In addition, non-governmental organisations and international partners provided replies to the monitoring questionnaire and commented on the draft report. Following bilateral consultations, this report was presented and discussed by OECD/ACN plenary meeting on 3 October 2023.

1 https://www.oecd.org/corruption/acn/istanbul-action-plan.htm

2 Pilot report on Ukraine, hereinafter referred to as "pilot" : OECD (2022), Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, OECD Publishing, Paris, https://doi.org/10.1787/b1901b8c-en.

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Acronyms

ACN	Anti-corruption network for Eastern Europe and Central Asia
ARMA	Asset Recovery and Management Agency of Ukraine
CC	Criminal Code of Ukraine
CCU	Constitutional Court of Ukraine
CPC	Criminal Procedure Code
CPL	Corruption Prevention Law
EUACI	European Union Anti-Corruption Initiative in Ukraine
GRECO	Council of Europe Group of States against Corruption
HACC	High Anti-Corruption Court of Ukraine
HCJ	High Council of Justice of Ukraine
HQCJ	High Qualification Commission of Judges
IT	Information technologies
LAC	Logical and Arithmetical Control (of asset declarations)
LJSJ	Law on the Judiciary and the Status of Judges
MOJ	Ministry of Justice of Ukraine
NABU	National Anti-Corruption Bureau of Ukraine
NACP	National Agency for Corruption Prevention of Ukraine
OECD	Organisation for Economic Co-operation and Development
PA	Performance Area
PEPs	Politically Exposed Persons
PIC	Public Integrity Council
PCIE	Public Council of International Experts
PGO	Prosecutor's General Office of Ukraine
PSL	Prosecution Service Law of Ukraine
SAPO	Specialised Anti-Corruption Prosecutor's Office of Ukraine
SBI	State Bureau of Investigation
SJA	State Judicial Administration
SFMS	State Financial Monitoring Service of Ukraine
SOE	State-owned enterprise
SSU	State Security Service of Ukraine
TI	Transparency International
UAH	Ukrainian Hryvnia
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Programme
Verkhovna Rada	The Parliament of Ukraine

Methodology

The IAP 5th round of monitoring uses an indicator-based methodology to ensure higher objectivity, consistency, and transparency of peer reviews. The normative framework for assessment derives from international standards and good practices based on a stocktake of the previous rounds of IAP monitoring highlighting achievements and challenges in the region.[3] Indicators evaluate anti-corruption policy, prevention of corruption, and criminal liability for corruption, with a focus on practical application and enforcement, particularly at high-level. [4]

The IAP 5th round of monitoring assessment framework includes nine Performance Areas (PAs),[5] with four indicators each and a set of benchmarks under each indicator. Benchmarks are further split into elements to ensure granularity of the assessments and recognition of progress.

Maximum possible score for a Performance Area is 100 points. Indicators under each Performance Area have an equal weight (25 points each). Benchmarks also have an equal weight within an indicator. The exact maximum weight of a benchmark depends on the overall number of benchmarks included in the indicator (i.e., the total weight of the indicator divided by the total number of benchmarks within that indicator).

Each benchmark and its elements (numbered as ''A'', ''B'', ''C'', ''D'' …) are scored individually by three different scoring methods.[6] The performance level for each Performance Area is determined by aggregating scores of all benchmarks within the respective Performance Area according to the below scale (Table 1). Scores of performance areas are not aggregated.

In case of Ukraine, out of 9 Performance Areas (PA) of the 5th Round of Monitoring Assessment Framework four Performance Areas (PAs 1, 6, 8 and 9) have been assessed fully, and one Performance Area (PA 2) has been assessed partly (indicators 3-4).

Table 1. Performance level

PERFORMANCE LEVEL	A OUTSTANDING	B HIGH	C AVERAGE	D LOW
SCORE	76-100	51-75	26-50	<25

[3] OECD (2020), Anti-Corruption Reforms in Eastern Europe and Central Asia

[4] The IAP 5th Round of Monitoring Assessment Framework and Guide.

[5] Performance Area 1: Anti-Corruption Policy; Performance Area 2: Conflict of Interests and Asset Declarations; Performance Area 3: Protection of Whistleblowers; Performance Area 4: Business Integrity; Performance Area 5: Integrity in Public Procurement; Performance Area 6: Independence of Judiciary; Performance Area 7: Independence of Prosecution Service; Performance Area 8: Specialised Anti-Corruption Institutions; Performance Area 9: Enforcement of Corruption Offences.

[6] For more information, see IAP 5th Round of Monitoring Assessment Framework.

Executive summary

Ukraine's **Anti-corruption Strategy and Action Plan** (PA 1) are high quality, evidence-based policy documents, developed through an inclusive and transparent process. However, the anti-corruption policy does not fully consider the newly emerged risks stemming from Russia's large-scale war of aggression against Ukraine. Due to the significant delays of its adoption, the implementation, coordination and monitoring of anti-corruption policy could not be launched until spring 2023. The National Agency for Corruption Prevention (NACP) has a dedicated unit for coordination and monitoring. It also launched an IT system for monitoring the implementation of anti-corruption policy, and a coordination mechanism is being set up. However, the lack of sufficient staff and budgetary resources may impede the implementation. Ukraine is encouraged to secure resources and advance on the implementation of its ambitious anti-corruption policy.

Asset declarations system (PA 2) is advanced, highly transparent and digitized, it applies to a broad category of public officials, and has a wide scope. Asset declarations, including verification and public access have been put on hold during the Martial Law due to Russia's war against Ukraine. Many public officials submitted declarations in the assessment period voluntarily, nevertheless. Ukraine must reinstate asset declarations, thus upholding principles of transparency and accountability, and preventing rolling back of the achievements of its robust system. A risk-based verification of declarations is in place, primarily focused on high-level officials. The NACP has powers to access registers and databases, and the resources to conduct verifications, but the track record of sanctions for violations is relatively low and overall, the effectiveness of the end-to-end process of the complex and multi-phased verification framework, is questionable. Ukraine is encouraged to ensure an unhindered risk-based verification of declarations with a focus on high-level officials. The verification process must be streamlined in line with the law, avoid overlaps and ensure coordination and cooperation within the NACP, and with other relevant agencies. Transparency of verification and its results must be ensured to rebuild public trust in the verification of asset declarations in Ukraine.

In Ukraine, **judicial governance bodies** (PA 6) are responsible for selection, appointment, and dismissal of judges but they were not fully operational in the reporting period, therefore, selections, promotions and disciplinary proceedings have been put on hold. The continued status quo of numerous vacancies in the judiciary raises concerns for access to justice. Judicial governance bodies have been formed through a competitive selection and appointment process and have been operating largely transparently. Ukraine is urged to complete its legal and institutional framework to start merit-based judicial appointments as soon as possible, without compromising their quality. Judges elect court presidents, but the process is not competitive, or merit based. Undue influence of court presidents over judges, and some important decisions, as well as manipulations to hold these positions for more than two terms, have persisted, but the representatives of judicial governance bodies demonstrated the intolerance to these malpractices and shared the plans to address them. The budget of the judiciary appears insufficient, but the remuneration of judges is set in the law and excludes discretionary payments. In Ukraine, grounds for disciplinary proceedings lack clarity, and decisions have not been substantiated in the past. The reform separated disciplinary investigation from decision-making, introducing a new mechanism of disciplinary inspectors,

but the framework is not operational yet, and there is a backlog of some 11 000 disciplinary complaints against judges.

In Ukraine, **specialisation of investigation and prosecution** (PA 8) of high-level corruption is ensured through anti-corruption investigative and prosecutorial bodies NABU and SAPO. The previously widespread undue interference in the functioning of these bodies has substantially diminished in the assessment period. While the new status of NABU does not seem to impede its functioning, SAPO should benefit from an increased institutional independence from the Prosecutor General's Office. ARMA the **specialised stand-alone body** for identification, tracing, management and return of illicit assets has demonstrated some results, except in the asset recovery field. ARMA should ensure transparency, accountability, and due process to increase its credibility and build public trust in its work. The appointment of the heads of NABU and SAPO was transparent and merit-based, and their tenure was protected in the assessment period. The Head of SAPO was appointed at last after a long, obstructed process. Meanwhile the operations of NABU and SAPO suffered, as key decisions in high-level corruption cases had been left at the discretion of the Prosecutor General. Given the past repeated attempts to dismiss the NABU Director, closing legislative gaps in the dismissal grounds and procedures is important along with other measures to prevent such attempts in future. NABU has a direct access to tax and customs databases, but it cannot perform independent wiretapping and the access to bank data remains challenging in practice. Statistics on the work of law specialised enforcement bodies are collected and published but would benefit from further disaggregation.

The specialised anti-corruption bodies demonstrated a remarkable level of **enforcement of high-level corruption cases** (PA 9) with the number of convictions growing despite the war. In the assessment period, the NABU, SAPO and HACC have boosted the fight against corruption, with some prominent cases concluded and more ongoing during the on-site visit. Ukraine demonstrated the routine sanctioning of most corruption offences, confiscation of unexplained wealth, and a universal practice of dismissal of officials convicted for corruption. Still, the investigation of money laundering cases have been rare, and there have been no investigations of foreign bribery. The statute of limitations and time limits for pre-trial investigation continue to impede the enforcement of corruption cases. Enforcement statistics are collected and published but not in a centralised way. Statistics on execution of confiscation orders in corruption cases are not collected. Some types of confiscation are rarely enforced, or not enforced at all. There have been no successful cases of asset recovery from abroad. Corporate liability exists on paper (quasi-criminal model), but it has not been put in operation. The main deficiencies of the model are a non-autonomous nature of the liability linked to the prosecution of an individual perpetrator, the insufficiently dissuasive sanctions, and the lack of a due diligence defence that promotes corporate compliance measures. Ukraine recently became a Participant to the OECD Working Group on Bribery and embarked on a reform to align its legislation and practices with the provision of the OECD Anti-Bribery Convention.

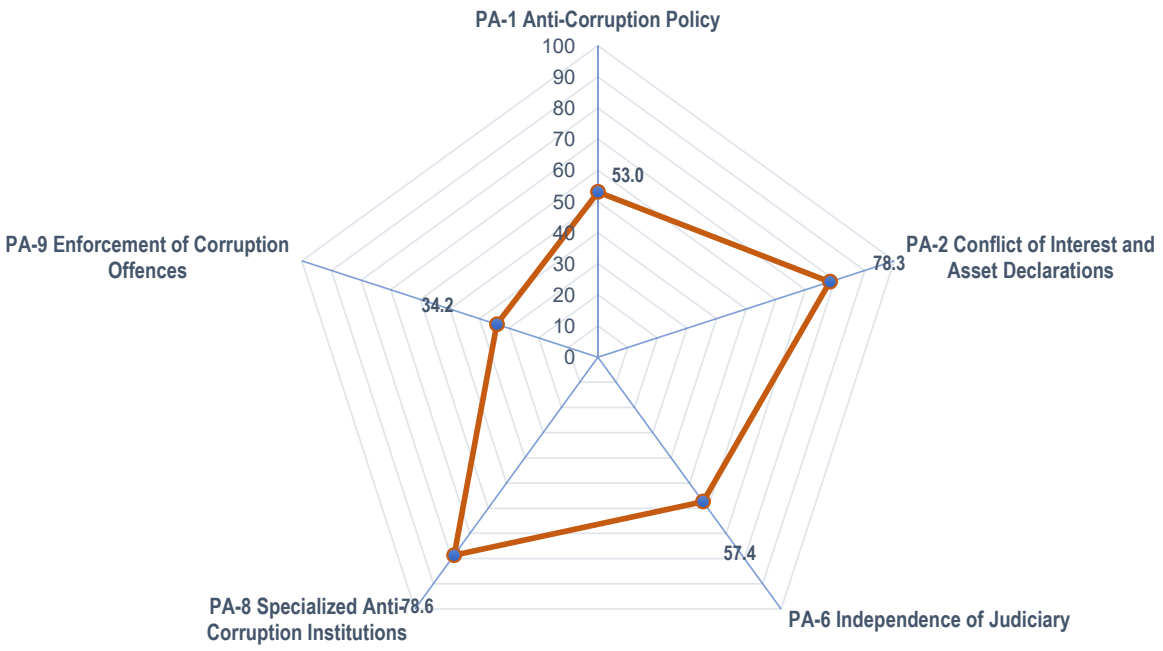
Table 2 shows Ukraine's performance levels for all evaluated areas and the total number of points in each performance area.

Table 2. Performance level and scores of Ukraine by Performance Area

Performance Area	Performance Level	Score
PA-1 Anti-Corruption Policy	High (B)	53
PA-2 Asset Disclosure	Outstanding (A)	78.3*
PA-6 Independence of Judiciary	High (B)	57.4
PA-8 Specialised Anti-Corruption Institutions	Outstanding (A)	78.6
PA-9 Enforcement of Corruption Offences	Average (C)	34.2

** Note: The review did not include conflict of interest section of PA 2 (Indicators 1 and 2) and it covered only asset declarations (Indicators 3 and 4). The figure for PA 2 is a percentage value for asset declarations (Indicators 3 and 4). Absolute value of the score is 39.15 of maximum possible score of 50.*

Figure 1. Anti-Corruption Performance of Ukraine by Performance Area



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1 Anti-corruption policy

Ukraine's Anti-corruption Strategy and Action Plan are high quality, evidence-based policy documents, developed through an inclusive and transparent process. However, the anti-corruption policy does not fully consider the newly emerged risks stemming from Russia's war of aggression against Ukraine. Due to the significant delays of its adoption, the implementation, coordination and monitoring of anti-corruption policy could not be launched until spring 2023. NACP has a dedicated unit for coordination and monitoring. It also launched an IT system for monitoring the implementation of anti-corruption policy, and a coordination mechanism is being set up. However, the lack of sufficient staff and budgetary resources may impede the policy implementation. Ukraine is encouraged to secure resources and advance on the implementation of its ambitious anti-corruption policy.

Figure 1.1. Performance level for Anti-Corruption Policy is high

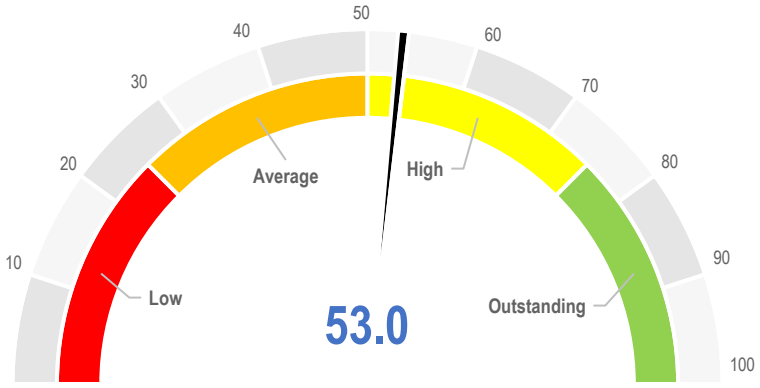
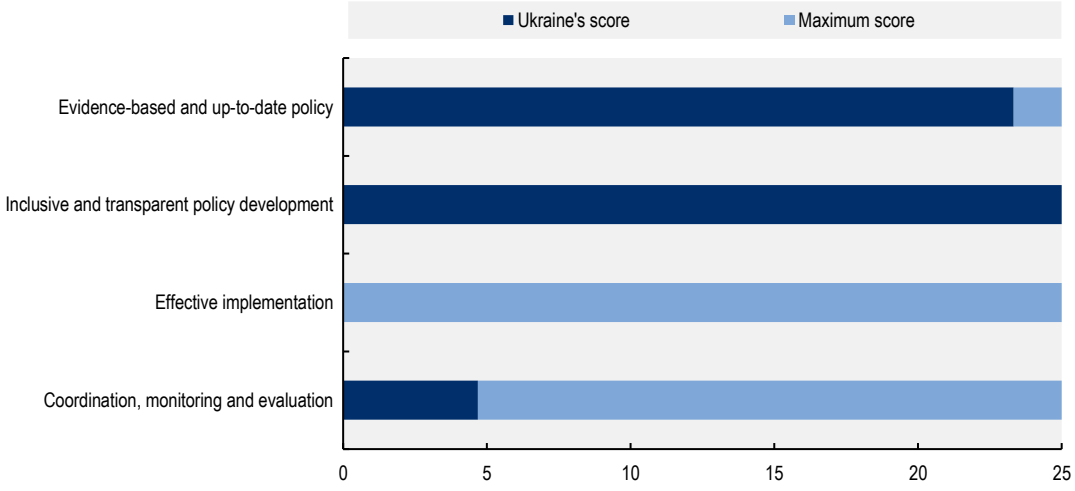


Figure 1.2. Performance level for Anti-Corruption Policy by indicators



Indicator 1.1. The anti-corruption policy is evidence-based and up-to-date

Background

The previous anti-corruption strategy and action plan expired in 2017, leaving Ukraine without a dedicated anti-corruption policy document for over four years. In 2020, a new management team took charge of the National Agency on Corruption Prevention (NACP), the government body responsible for anti-corruption policy development, coordination, monitoring, and evaluation. The agency developed an anti-corruption strategy and submitted it to the Verkhovna Rada of Ukraine (Parliament) for approval in autumn 2020.[7] In November 2020, the Parliament approved the Anti-Corruption Strategy for 2021-2025 (Strategy) in the first reading, however its second reading and adoption were delayed until June 2022.[8] NACP also prepared a

7 The Law on Corruption Prevention (CPL) provides that a Strategy should be passed as a law by the Parliament.

8 The Law of Ukraine "On the Principles of State Anti-Corruption Policy for 2021-2025" No. 2322-IX,

State Anti-Corruption Programme for 2023-2025 to support the implementation of the Strategy (Action Plan) by the end of 2022, and the government approved it in March 2023.

Assessment of compliance

Ukraine's Anti-Corruption Strategy and Action Plan are a result of a comprehensive policy analysis and highly inclusive consultation process, representing a good practice example of a thorough, evidence-based, high-quality policy in the anti-corruption field. However, there were significant delays in the adoption of the Strategy and further delays of the adoption of the Action Plan, and anti-corruption policy framework has not been in place for the most part of the reporting period. While the Strategy is based on a wide range of evidence, it was developed in 2020, therefore, it fails to consider newly emerged risks resulting from the ongoing war following Russia's unprovoked and unjustified aggression against Ukraine. The Action Plan adopted in 2023 partially addresses some of these risks.

Benchmark 1.1.1.

The following evidence has been used for developing objectives and measures of the policy documents, as reflected in the policy documents or their supporting materials:

Element	Compliance
A. Analysis of the implementation of the previous policy documents (if they existed) or analysis of the corruption situation in the country	✓
B. National or sectoral corruption risk assessments	✓
C. Reports by state institutions, such as an anti-corruption agency, supreme audit institution, and law enforcement bodies	✓
D. Research, analysis, or assessments by non-governmental stakeholders, including international organisations	✓
E. General population, business, employee, expert, or other surveys	✓
F. Administrative or judicial statistics	✓

The Law of Ukraine on Prevention of Corruption (CPL) (Art. 18) requires that an anti-corruption strategy is based on an analysis of corruption situation and results of the implementation of previous strategy. NACP has used a wide range of evidence in developing anti-corruption policy documents.[9] Both Strategy and Action Plan are accompanied by the detailed notes explaining the policy considerations and the choice of specific policy priorities (15 priority areas), explicitly referencing evidence in line with this benchmark, including:

- An analytical report on the implementation of the Anti-Corruption Strategy for 2014-2017 and the State Programme for the implementation of the Strategy. [10]
- Sectoral corruption risk assessments conducted by NACP, and risk assessments carried out by non-government think-tanks.[11]

9 NACP's webpage includes a dedicated page with a compilation of anti-corruption research and relevant evidence https://nazk.gov.ua/uk/doslidzhennya-koruptsiyi/

10 https://nazk.gov.ua/wp-content/uploads/2021/02/2.1.-Assessment-Implem-UKR-1-2014-2017.pdf

11 The Action Plan refers to many sectoral risk assessments conducted by the NACP in 2020 – 2022 (on such issues as the introduction of the land market, privatization, defence sector, health care, higher education etc).

- The National Reports on the Implementation of the Principles of Anti-Corruption Policy for 2019 and 2020, which incorporates data from specialized anti-corruption institutions.[12]
- Reports, studies, and research produced by Ukrainian non-government stakeholders, as well as an analysis conducted by international organisations.
- National and sectoral surveys, conducted by both government and non-government stakeholders. These surveys include annual surveys of citizens and businesses, following a standardized methodology developed and approved by NACP.
- Administrative and judicial statistics, included in the annual National Reports on the Implementation of the Principles of Anti-Corruption Policy, compiled by NACP.[13]

Ukraine is compliant with all elements of the benchmark.

While non-governmental stakeholders were unanimous in praising Ukraine's anti-corruption policy, as the best Ukraine has ever had so far, given a considerable time gap between their development and adoption, they contested their relevance to most current risks and pressing challenges. For example, corruption risks of wartime and post-war reconstruction following Russia's unprovoked and unjustified war of aggression in Ukraine, merit proper policy responses. The authorities explained that some relevant measures have been reflected in the Action Plan to mitigate these risks. Others could be addressed either by amending the Action Plan, or in other forthcoming policy documents, such as the De-oligarchisation Plan and Annual Ukraine-NATO national programmes.

Benchmark 1.1.2.

	Compliance
The action plan is adopted or amended at least every three years	✓

The benchmark encourages a regular review and update of anti-corruption action plan to ensure its continued relevance and practical application. To be considered compliant, an action plan must be in force and dated (or amended) within the past three years at the time of the review. In Ukraine's case, the previous action plan expired at the end of 2017. The government approved the new Action Plan in March 2023, covering three years. **Thus, Ukraine is compliant with the benchmark.** It is advisable that the regular review and update of the Action Plan based on the monitoring of its implementation consider the emerging systemic challenges resulting from the ongoing full-scale war in Ukraine.

12 State Programme includes reference to 19 different reports produced by state institutions, including reports of the Accounting Chamber of Ukraine, and the State Audit Service.

13 Although, as it was reflected in the Pilot 5th Round of Monitoring Report on Ukraine, there is no centralized publication of enforcement statistics of corruption offences, which results in its inconsistency and incoherence. OECD (2022), Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan. https://doi.org/10.1787/b1901b8c-en, 135-136.

Benchmark 1.1.3.

Policy documents include:

Element	Compliance
A. Objectives, measures with implementation deadlines, and responsible agencies	✓
B. Outcome indicators	✓
C. Impact indicators	✓
D. Estimated budget	X
E. Source of funding	✓

The Strategy and Action Plan comprise high-quality comprehensive policy framework and include all key elements listed in the benchmark. The Strategy covers 15 corruption-prone areas broken down into 72 objectives with 272 specific goals[14] across various policy areas. Specific measures, implementation deadlines, and responsible agencies are listed in the Action Plan (Annex 2), including overall, 1187 specific measures to be implemented by 109 agencies over the course of three years. The Strategy includes impact indicators, and the Action Plan provides outcome indicators for each of 72 specific goals set in the Strategy. Among the seven indicators referred to as impact indicators, four of them listed below, are direct impact indicators [15], the three others are proxy indicators of international indices:

- An increase in the share of the population with a negative attitude towards corruption.
- A decrease in the share of the population with recent personal corruption experiences.
- An increase in the share of citizens ready to report corruption cases.
- An increase in the share of citizens who reported witnessed corruption.

The Action Plan mirrors the same set of impact indicators and provides that the assessment should be based on data collected from the annual corruption surveys conducted by NACP. The Action Plan also specifies the source of information to assess the implementation of outcome indicators, and features output indicators linked to each specific measure. Further, it designates government bodies responsible for providing information to assess each of these indicators. **Therefore, the elements A-C are met.**

As regards the financial parts for policy documents, that are essential for proper policy planning and implementation, the Action Plan template (Annex 2) includes a column for estimating budget required to implement specific measures. But the actual estimates are provided only for NACP's activities. The benchmark requires that the budget estimates should be prepared as a part of the planning when elaborating an action plan. If the timeframe of an action plan is long, which may make budget estimations difficult, the estimation should be done at least on yearly basis. Given the Action Plan does not include full estimates for at least one year, **the element D is not met.**

NACP has produced budget estimates to cover its own expenses related to the Action Plan's implementation in 2023-2025. Additionally, by analysing requests of other implementing agencies, it has prepared an overall budget estimate for Action Plan implementation in 2023, which is not fully covered by

14 These are referred to in the Strategy as "expected strategic results".

15 Impact indicators are those that demonstrate the long-term effects of policy interventions (see Guide at pg. 8)

the funds allocated in the 2023 state budget due to the asynchrony of adoption of the Action Plan and the State Budget cycle.[16]

Moreover, in 2022, at the initiative of NACP, a dedicated budget programme titled "Implementation of Anti-Corruption Strategies" was introduced to the State Budget of Ukraine for 2023, with initial funds allocated for its implementation. The purpose of this programme is to fund the execution of the Action Plan measures by relevant implementing authorities, when they require specific financial resources for example for developing IT solutions, outsourcing surveys, or conducting awareness-raising campaigns. Dedicated funds will be first allocated to NACP which will be responsible for disbursing them to the implementing agencies.

This new solution represents a promising shift towards a comprehensive approach to funding anti-corruption policy implementation in Ukraine. However, the extent to which the government will allocate the necessary funds to ensure implementation of the envisaged measures, remains to be seen. At the same time, given that NACP's new role in ensuring the funding for implementing agencies, the Agency will have to demonstrate an adequate administrative capacity for managing and overseeing the delivery of such funds.

The Strategy (Chapter 1.3) provides that the implementation should be funded from dedicated funds of the state and local budgets, as well as from international technical assistance. In line with this, the Action Plan includes information on whether the measure is to be funded by the state budget, local budget, or through international technical cooperation projects. This provides a useful reference for planning expenses by the government, including local government level, and donors. Most of the measures, such as the development of regulatory acts, are foreseen to be funded from the State Budget for the respective year, as allocated to the implementing agency in question. **Thus, the element E is met.**

Indicator 1.2. The anti-corruption policy development is inclusive and transparent

Background

An anti-corruption strategy is passed as a law by the Parliament. NACP develops an initial draft, and the Cabinet of Ministers submits it to the Parliament. This section assesses the public consultations conducted by NACP during the initial drafting of the Strategy and not the Government or parliamentary procedure for consideration of the legislation.

Assessment of compliance

The development of the anti-corruption policy in Ukraine has been inclusive and transparent. The drafts of the policy documents have been published online and widely disseminated. NACP held extensive public consultations, providing overall sufficient time for feedback, and invested resources in analysing and responding to the provided feedback. These responses have also been published. During the parliamentary consideration of the Strategy, the revisions were visible on the Parliament's website, allowing for easy tracking of changes. Similarly, NACP website provided updates on the amendments to the Action Plan from other government bodies during its consideration by the Cabinet of Ministers.

16 The funds allocated to the dedicated budget programme in 2023 are EUR 42,500, while the estimated needs for the year, according to the NACP are about EUR 329,000.

Benchmark 1.2.1.

The following is published online:

Element	Compliance
A. Drafts of policy documents	✓
B. Adopted policy documents	✓

Both Strategy and Action Plan, have been published online in their draft and adopted versions. **Therefore, Ukraine complies with both elements of the benchmark.**

To disseminate the information to the interested parties, NACP accompanied the publication of the draft Strategy on its website with an announcement about the forthcoming public consultations and shared this announcement through its social media pages. The draft and adopted versions of the Strategy are available on the NACP website, along with the analytical materials developed during public consultations. They are also published on the web portal of the Parliament as a part of a parliamentary routine practice. This web portal allows individuals to track the progress of the review in both the parliamentary committee and Parliament's floor.

Similarly, the draft and approved versions of the Action Plan are published on NACP website. Given the size of the Action Plan, the draft was published in sections, with the announcements made regarding relevant thematic public consultations. The adopted Action Plan is also available on the web portal of the Cabinet of Ministers, in line with the government's standard practice.

Benchmark 1.2.2.

Public consultations are held on draft policy documents:

Element	Compliance
A. With sufficient time for feedback (no less than two weeks after publication)	✓
B. Before adoption, the government provides an explanation regarding the comments that have not been included	✓
C. An explanation of the comments that have not been included is published online	✓

NACP conducted comprehensive public consultations on the draft Strategy, positively assessed by stakeholders and widely regarded as the best practice of public policy development so far in Ukraine. The Agency engaged wide range of stakeholders in this process including civil society, international community, and anti-corruption experts.

NACP published the draft Strategy on June 23, 2020. The consultations took place through virtual discussions and written feedback. From June 26 to July 10, 2020, NACP organized eight thematic virtual consultations, two of which were co-organized with Transparency International Ukraine, broadcasted on NACP's social media pages. Additionally, throughout July and August, NACP received written comments through a dedicated email address.

According to NACP, 270 participants and 30 invited experts attended virtual discussions, while attracting the attention of more than 30,000 viewers on NACP's social networks pages. In total, NACP received eight detailed contributions from international and non-governmental organisations, along with 30 other written

comments sent to its official email address. These contributions resulted in 675 unique amendments to the text of the Strategy.

In 2022, the draft Action Plan underwent public consultations following the same pattern. In September – November 2022 NACP conducted 11 virtual consultations focused on specific chapters of the Action Plan. Although some non-government representatives contended that NACP did not always allow sufficient time to provide written feedback for specific chapters, authorities did not reject any written suggestions provided after the established deadline. **Thus, element A is met for both the Strategy and the Action Plan.**

To ensure transparency, the NACP compiled an extensive comparative table on the comments received for the Strategy, including both accepted and rejected comments with explanations on the comments that have not been included, and published this table on its website[17]. The same approach was later applied in 2022 to the draft Action Plan, with a similar comparative table published[18]. **Therefore, the elements B and C are met as well.**

After the public consultations on the Action Plan, NACP held inter-agency consultations collecting feedback from over a hundred state bodies. NACP also published on its website all amendments suggested by other government bodies for information to the public on inputs and contributions from various government agencies. While the monitoring team received mixed opinions from non-government stakeholders on the nature of the amendments introduced to the Strategy in the Parliament and to the Action Plan during the inter-agency consultations process, there is a consensus that the adopted policy documents remained relevant and of a high quality.

Indicator 1.3. The anti-corruption policy is effectively implemented

Background

Anti-corruption policy framework was not in place for most of the reporting period. The implementation has started in 2023 and is ongoing in the context of the war.

Assessment of compliance

Ukraine has started implementing its anti-corruption policy, following the adoption of the Action Plan, and according to the authorities, state bodies show the commitment to make the progress. The lack of sufficient funding, and wartime related challenges, as well as a priority that will need to be given to the post-war reconstruction evidently, may pose threats to its effective implementation. As the framework is now in place, Ukraine is encouraged to secure the necessary resources and work towards implementing its ambitious anti-corruption policy.

17 See: https://nazk.gov.ua/wp-content/uploads/2020/09/NAZK-Porivnyalna-tablytsya-do-proektu-Antykoruptsijnoyi-strategiyi-na-2020-2024-roky.pdf

18 Comments to the amendments received during public consultations could be accessed here: https://nazk.gov.ua/uk/derzhavna-antykoruptsijna-programa/

Benchmark 1.3.1.

	Compliance
Measures planned for the previous year were fully implemented according to the government reports	0

The purpose of this benchmark is to encourage an effective implementation of the commitments made by state bodies as reflected in the anti-corruption policy documents. It also encourages realistic planning at the beginning of the policy cycle.

In the case of Ukraine, the Action Plan for the new Strategy was not adopted until 2023. There were no coordinated government activities to implement the Strategy in 2022, and no assessment of implementation was made. **Therefore, this benchmark is not met.**

While NACP has been proactively pushing the adoption of the policy documents, related significant delays hindered the anti-corruption policy implementation. According to the authorities, the implementation looks promising in the first half of 2023 and implementing agencies are showing commitment. At the same time, some adjustment of the timelines will likely be necessary.

The stakeholders have a concern that the reconstruction and rebuilding of Ukraine as an obvious policy priority may take over the objective of the implementation of the ambitious anti-corruption policy further complicating the challenging task of NACP and other implementing agencies. A whole-of-government approach would be needed along with sufficient budget and resources for a success. A well-coordinated development support will also be a key factor in this process. The reconstruction efforts should also include integrity and anti-corruption elements.

Benchmark 1.3.2.

	Compliance
Anti-corruption measures unimplemented due to the lack of funds do not exceed 10% of all measures planned for the reporting period	X

As the Action Plan was not in place in 2022, the anti-corruption measures outlined in the Strategy have not been implemented. The authorities informed during the on-site visit that while funds are included in the state budget for 2023 (UAH 1.7 mln), a full budget of implementation has yet to be secured, given the different timelines of budget cycle, and the development and adoption of the anti-corruption policy. As the state budget is scarce for anti-corruption programme, various support programmes would need to be mobilized for the implementation. In 2023, according to NACP, the funds are mainly lacking for IT tools for various implementing agencies foreseen by the Action Plan.

Indicator 1.4. Coordination, monitoring, and evaluation of anti-corruption policy is ensured

Background

NACP is a body responsible for development, coordination, monitoring and evaluation of anti-corruption policy implementation in Ukraine. In the assessment period, NACP primarily focused on the development

of the Action Plan and after its adoption in 2023, started putting in place a coordination and monitoring framework. The war has affected the whole Government of Ukraine and the NACP staff was no exception as they were forced to leave their residences to relocate either to other regions of Ukraine or abroad.

Assessment of compliance

NACP did not perform its policy coordination and monitoring functions for the most part of the assessment period. The respective staff was primarily engaged in the policy analysis and development with some commendable results but the establishment of a dedicated unit for coordination and monitoring was delayed. The NACP is in the process of setting up a coordination mechanism and has launched an IT system for monitoring the implementation of anti-corruption policy.[19] There are concerns about the sufficiency of resources allocated to this function considering the scope of the policy documents. These concerns must be addressed as soon as possible to effectively implement the anti-corruption policy.

Benchmark 1.4.1.

Coordination and monitoring functions are ensured:

Element	Compliance
A. Coordination and monitoring functions are assigned to dedicated staff (secretariat) at the central level by a normative act, and the staff is in place	✓
B. The dedicated staff (secretariat) has powers to request and obtain information, to require participation in the convened coordination meetings, to require submission of the reports of implementation	✓
C. Dedicated staff (secretariat) has the resources necessary to conduct respective functions	x
D. Dedicated staff (secretariat) routinely provides implementing agencies with methodological guidance or practical advice to support policy implementation	✓

NACP is responsible for anti-corruption policy coordination and monitoring functions in Ukraine (Art. 18-2 – 18-3, CPL). It has a dedicated unit – State Anti-Corruption Policy Coordination, Monitoring and Assessment of Effectiveness Unit within the Anti-Corruption Policy Department (Department) – mandated to implement the relevant functions in line with a NACP regulation. This unit was established in March 2023 and has a total of 5 staff, of which 1 position was vacant at the time of the on-site visit. The Anti-Corruption Policy Department has in total 21 positions (the number of its staff was recently increased); at the time of the on-site visit, it had three vacancies, two of the selection procedures were ongoing. **Given that the coordination and monitoring functions are assigned to a dedicated unit at the central level by a normative act, and staff is in place, the element A is met.**

The CPL provides NACP with substantial powers for coordination and monitoring. These include the power to request documents and information related to the implementation of its duties, including classified information, and the power to receive written explanations from public agencies. The participation in coordination meetings can be requested through the Head of NACP. Furthermore, implementing agencies are required to provide NACP with semi-annual status reports on the implementation, and NACP has the authority to determine the specific information and statistical data required from implementing agencies, through the indicators and sources of information in the Action Plan (see the benchmark 1.1.3 above). In

[19] See: https://dap.nazk.gov.ua/

cases of non-compliance, NACP can issue obligatory orders and initiate administrative sanctions applied on violators by court. **The element B is met.**

While the dedicated unit has necessary powers for policy coordination and monitoring, it lacks necessary resources to effectively carry out its functions, given the ambition and volume of the Ukraine's anti-corruption policy and the comprehensive framework for coordination and monitoring of the policy implementation. The unit of 5 persons is expected to coordinate and monitor the implementation of the Action Plan with more than 1000 specific measures, 95 implementing agencies, and at least 15 working groups. The monitoring team is concerned about the lack of sufficient resources allocated to this function. It calls on Ukraine to fill in the vacant positions as soon as possible and, add further resources as necessary, to effectively implement the related functions in practice. Furthermore, the authorities informed that the draft laws are being considered in the parliament which, if adopted, will result in lowering salaries of the NACP staff. To be successful in its work, NACP must endeavour ensuring stability and retention of its staff. **Ukraine is not compliant with the element C of this benchmark.**

After the adoption of the Action Plan in March 2023, NACP began providing advice and coordination to implementing agencies. The Agency highlighted specific examples where it offered guidance and assistance in implementing the Action Plan to various state bodies, including the Ministry of Defence, NABU, and the National Agency on Civil Service of Ukraine. **Thus, the element D is met.**

In July 2023, NACP has passed a separate new procedure for the coordination of implementation of the Strategy and Action Plan further detailing the powers of the dedicated staff and the procedures for coordination with other implementing agencies. At the top level of the coordination framework, a High-Level Coordination Group on anti-corruption policy will be created.[20] This Group is envisaged by the Law and is co-chaired by the Head of NACP and the Minister of the Cabinet of Ministers. According to authorities, the Group should include representatives of government bodies responsible for Action Plan implementation at the level of Ministers. It should meet annually to review the annual assessment reports on implementation of the Action Plan and the Strategy. This new set-up will help secure a higher-level support and accountability for the implementation.

At the working level, NACP plans to set up 15 sectoral coordination and monitoring groups, matching 15 policy priorities, which would include implementing agencies but also representatives of non-governmental stakeholders and meet regularly to coordinate and monitor the progress in implementation of Ukraine's anti-corruption policy. To cover inter-sectoral issues, several inter-sectoral working groups are planned to be created. At the time of the on-site visit, only one inter-sectoral working group focused on the development of digital anti-corruption solutions had been created and was functioning.

NACP also reported about creation of the Information System for Monitoring the Implementation of the State Anti-Corruption Policy, which was in the planning phase during the pilot and was launched in July 2023. The system is widely recognized as an important feature for monitoring progress allowing all implementing agencies to quarterly report on implementation of the measures of the Action Plan, and NACP to produce monitoring and assessment reports. It also allows for public disclosure of these reports (the first report became public in August 2023) and provides modules for civil society feedback (which were under development at the time of the on-site visit).

20 There is also the National Council on Anti-Corruption Policy under the President of Ukraine. This is a consultative body with a wide representation of stakeholders, that advises the President of Ukraine on the issues of anti-corruption policy. The National Council meets on an ad-hoc basis and therefore is not considered as a regular element in the system of coordination of Strategy implementation. The last meeting of the National Council took place in November 2020.

Benchmark 1.4.2.

Monitoring of policy implementation is ensured in practice:

Element	Compliance
A. A monitoring report is prepared once a year	X
B. A monitoring report is based on outcome indicators	X
C. A monitoring report includes information on the amount of funding spent to implement policy measures	X
D. A monitoring report is published online	X

This benchmark evaluates the practice of monitoring policy implementation. Monitoring functions have not been carried out, nor was a monitoring report prepared in the reporting period in Ukraine. At the same time, the first monitoring report covering the implementation of the measures of the Action Plan in the first half of 2023 was published in August 2023 with the launch of the IT system for monitoring the implementation of anti-corruption policy. The first annual monitoring report is planned to be produced in the first quarter of 2024.

Benchmark 1.4.3.

Evaluation of the policy implementation is ensured in practice:

Element	Compliance
A. An evaluation report is prepared at least at the end of each policy cycle	X
B. An evaluation report is based on impact indicators	X
C. An evaluation report is published online	X

In 2017, NACP produced an annual National Report on the Implementation of the Principles of the Anti-Corruption Policy, which included a chapter dedicated to the implementation of the strategy and the action plan. The report is published on NACP website. [21] This chapter indicated that 73% of the action plan was implemented, with 128 out of 176 measures successfully executed. However, this assessment lacked impact indicators and provided only general information on the number of implemented measures, without details. This chapter cannot qualify as an evaluation report for the purposes if this assessment, as it did not evaluate the effectiveness and impact of the policy, which is required by the Guide. **Therefore, Ukraine is not compliant with the elements of this benchmark.**

An external assessment of implementation was however prepared with the support of the European Union Anti-Corruption Initiative in Ukraine (EUACI) and used in the development of the policy documents in force.[22]

21 https://nazk.gov.ua/wp-content/uploads/2019/06/Natsdopovid-2017.pdf

22 2.1.-Assessment-Implem-UKR-1-2014-2017.pdf (nazk.gov.ua)

For the new policy cycle, in the final year of the strategy implementation, in 2025, NACP is expected to produce an evaluation report (Art. 20, CPL). This report should include an assessment of the effectiveness of the Strategy and Action Plan implementation, in line with the requirements of the benchmark.

Benchmark 1.4.4.

Non-governmental stakeholders are engaged in the monitoring and evaluation:

Element	Compliance
A. Non-governmental stakeholders are invited to regular coordination meetings where the monitoring of the progress of the policy implementation is discussed	X
B. A monitoring report reflects written contributions of non-governmental stakeholders	X
C. An evaluation report reflects an assessment of the policy implementation conducted by non-governmental stakeholders	X

NACP did not carry out coordination and monitoring work for the most part of the reporting period. The first monitoring report covering the implementation of the measures of the Action Plan in the first half of 2023 was published in August 2023, outside the reporting period. At the same time, non-governmental stakeholders responding to the questionnaire provided examples of the engagement with NACP and relevant anti-corruption bodies, beyond coordination, monitoring and evaluation, including through participation in the development of policy documents, and specific anti-corruption reform initiatives (courses for SMEs, popularization of whistleblower protection, and others). **Consequently, Ukraine is not compliant with the elements of this benchmark.**

While civil society partners were widely engaged in the development of the draft Action Plan, their involvement in the coordination and monitoring of policy implementation has yet to be ensured. The Information System for Monitoring the Implementation of the State Anti-Corruption Policy would allow non-government stakeholders to directly contribute to monitoring the implementation of the Strategy and Action Plan and provide their assessment of the situation. This information must be taken into account in the monitoring reports.

The Civic Council of NACP is operational. Authorities plan to include the members of the Civic Council into each of the 15 sectoral coordination groups NACP plans to establish, however civic engagement should not be limited to the Civic Council and should include other non-governmental stakeholders to ensure accountability.

Box 1.1. Good practice: Evidence-Based Anti-Corruption Policy of Ukraine

The development and adoption process of the new Strategy and Action Plan in Ukraine can be considered exemplary for transparency and reliance on solid evidence. Three distinct features make this process noteworthy.

First, Ukrainian authorities effectively utilized existing data and research to shape the priorities of the new strategy. Analysis provided by the government, civil society, and foreign stakeholders, along with lessons learned from the implementation of the previous Strategy, contributed to formulating the approach for the new one. NACP's webpage houses a compilation of anti-corruption research and relevant evidence, providing a solid foundation for justifying equal focus on anti-corruption norms, institutions, and mitigating corruption risks in key public administration sectors. The reliance on robust evidence allowed NACP to justify its approach to the Strategy its discussions with the Cabinet of Ministers and the Parliament of Ukraine.

Second, Ukraine has a good practice of conducting regular corruption surveys by the government. Since 2020, NACP has been conducting annual surveys of citizens and businesses, following standardized methodology developed and approved by the agency. These surveys serve a dual purpose: identifying priority areas for strategy and measuring key indicators to evaluate its effectiveness.

Third, NACP demonstrated a strong commitment to involving non-government expertise, instrumental in achieving cross-sectoral support for the Strategy. Non-governmental experts played a pivotal role in drafting both the Strategy and Action Plan from the outset, supported by international technical cooperation projects. Later, during the phase of public consultations, hundreds of amendments from non-government stakeholders were reviewed and some incorporated into the final text, improving its quality and fostering broad support among key stakeholders.

Despite some last-minute amendments during consideration in the Cabinet of Ministers and Parliament, there is widespread consensus among stakeholders that the adopted strategy is an ambitious and relevant document. The evidence-based approach has enabled Ukraine to develop a comprehensive anti-corruption policy that is a solid basis for effective implementation.

Assessment of non-governmental stakeholders

Non-government stakeholders generally positively assess the **development and adoption** of the Strategy. They look forward to the implementation but also express several concerns. One of the key recommendations is that sufficient resources need to be allocated to support NACP in its coordination efforts. The ongoing war and resulting budget deficit pose challenges that may hinder NACP and other responsible agencies from fully implementing the Action Plan.

Non-government stakeholders also point to many **new corruption risk domains** which emerged because of the war, and which were not addressed in the current Strategy and Action Plan. These include new risks in the tax administration, rather non-transparent procedures to authorize foreign travel to men, non-transparent application of sanctions against businesses and many more. This clearly points to the need for regular proactive updates of the policy documents.

Furthermore, non-government stakeholders express broader concerns about the **negative impact** of Russia's war on Ukraine's **anti-corruption policy**. The declaration of Martial Law has led to the suspension of several vital anti-corruption tools that were previously central to policy efforts. Specifically, the obligation for public officials to submit asset declarations has been suspended, and measures by NACP

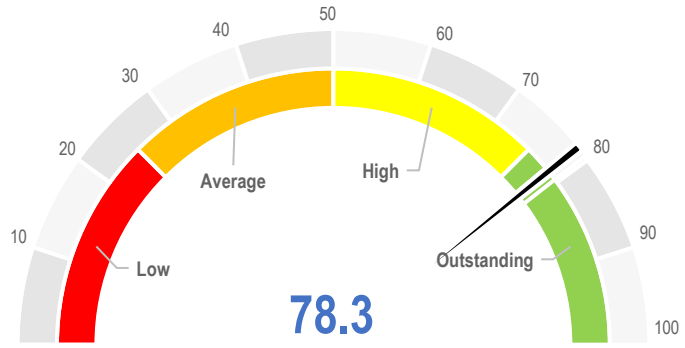
to verify previously submitted declarations have been put on hold. Additionally, simplifications in public procurement procedures, which compromise transparency, have been implemented. It is crucial to promptly reverse this legislation, except for minor exemptions that are justified by the Martial Law situation.

Stakeholders also raise concerns that during Martial Law, NACP has devoted a sizeable portion of its **human resources** to the activities unrelated to anti-corruption policy. Instead, the agency has focused on assisting other government bodies responsible for applying restrictive measures (sanctions) on Russian public officials and oligarchs linked to the Russian war effort. Another activity which is unrelated to NACP's core mandate was the establishment of the Register of the International Sponsors of War, which includes companies present at the Russian market. Moreover, in the case of the Register of International Sponsors of War, the lack of legal regulation and transparent procedures for inclusion into and exclusion from the above Register causes criticism and associated reputational risks to NACP.

2 Asset declarations

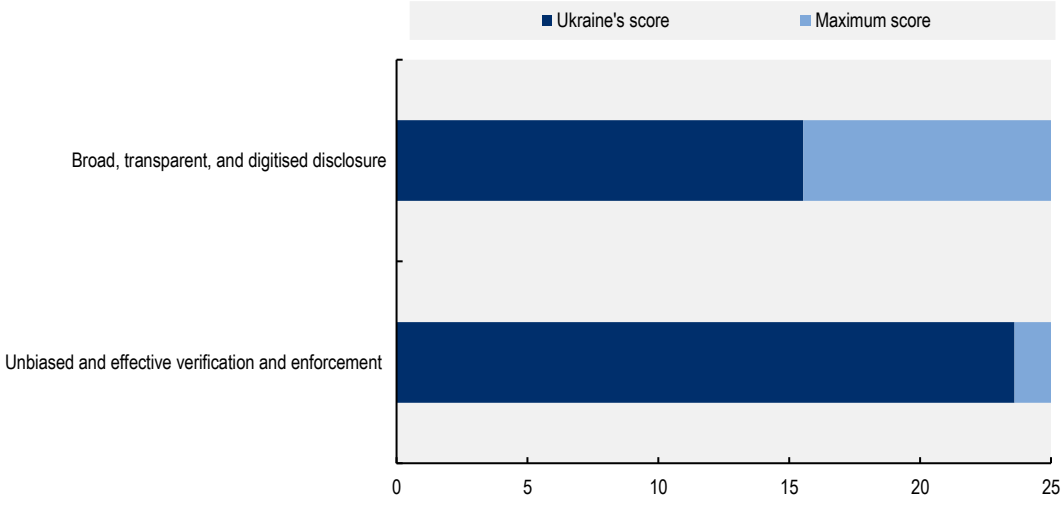
Ukraine's asset declarations system is advanced, highly transparent and digitized, it applies to a broad category of public officials, and has a wide scope. The asset declarations, their verification and public access have been put on hold during the Martial Law due to Russia's war of aggression against Ukraine. Many public officials submitted declarations in the assessment period voluntarily, nevertheless. Ukraine must fully reinstate asset declarations, thus upholding principles of transparency and accountability, and preventing rolling back of the achievements of its robust system. A risk-based verification of declarations is in place, primarily focused on high-level officials. The NACP has powers to access registers and databases, and the resources to conduct verifications, but the track record of sanctions for violations is relatively low and the effectiveness of the end-to-end process of the complex, multi-phased verification framework is questionable. Ukraine is encouraged to ensure an unhindered risk-based verification of declarations with a focus on high-level officials. The verification process must be streamlined in line with the law, avoid overlaps and ensure coordination and cooperation within the NACP, and with other relevant agencies. Transparency of verification and its results must be ensured to rebuild public trust in the verification of asset declarations in Ukraine.

Figure 2.1. Performance level for Asset Declaration is outstanding



Note: The review did not include conflict of interest section of PA 2 (Indicators 1 and 2) and it covered only asset declarations (Indicators 3 and 4). The figure for PA 2 is a percentage value for asset declarations (Indicators 3 and 4). Absolute value of the score is 39.15 of maximum possible score of 50 as in figure 2.2.

Figure 2.2. Performance level for Asset Declaration by indicators



Note: The review did not include conflict of interest section of PA 2 (Indicators 1 and 2) and it covered only asset declarations (Indicators 3 and 4). Absolute value of the score is 39.15 of maximum possible score of 50.

Indicator 2.3. Asset and interest declarations apply to high corruption risk public officials, have a broad scope, and are transparent for the public and digitized

Background

A comprehensive framework for asset and interest declarations was introduced in Ukraine in 2014 and became operational in 2016. Since then, asset declarations have been filed and automatically published online in an open data format. The system covers a high number of declarants and requires disclosing

broad categories of information, including assets, income, expenditures, and interests of public officials and their family members. There have been numerous attempts to obstruct the implementation of the system through amendments in the law and legal challenges. In 2020, the Constitutional Court decision paralyzed the asset declaration system and sanctions having declared unconstitutional some powers of NACP and criminal responsibility for intentional failure to declare and false declarations. These have been later restored but without a retroactive effect, resulting in a significant enforcement gap. In addition, frequent changes in the system of verification of asset declarations, usually followed the changes in the NACP leadership.

In 2022, the framework for asset declarations faced significant challenges due to Russia's war of aggression against Ukraine. Asset declarations and their verifications have been suspended, along with the public access to the online registry of declarations. Ukrainian officials were exempted from asset and interest disclosure, and the deadline for submitting asset declarations covering the entire period of asset disclosure being on hold, was postponed until after 90 days following the end of the Martial Law. These declarations do not have to include information on income and expenditures associated with receiving or providing humanitarian aid to the people affected by the war or providing charity support to Ukrainian Armed Forces. Nevertheless, in 2022 public officials voluntarily submitted more than 228,000 asset declarations through the electronic system.

In March 2023, the Government of Ukraine committed to restoring asset disclosure and reinstating the NACP's function to verify declarations [23] and the relevant law was adopted in September. [24]

The analysis provided in the following sub-sections is primarily based on Ukraine's system of asset declarations in the law and practice, outside the Martial Law. Where applicable, references are made to the circumstances caused by Russia's war against Ukraine. As the system has been suspended during the Martial Law, the benchmarks relevant to the framework and the available mechanism of asset and interest disclosure, are assessed as compliant, with the understanding that the situation was temporary. However, in case of continued suspension of the system, the compliance ratings of these benchmarks will need to be reconsidered. As the law restoring asset declarations was adopted outside the assessment period, the monitoring team did not have an opportunity to analyse it.

Assessment of compliance

In Ukraine, before the suspension due to the state of war, asset and interest declarations applied to a broad category of public officials (about 700,000 declarants overall), had a broad scope of information to be disclosed, were transparent for the public through automatic online publication and were digitized. As a result of Russia's war against Ukraine, asset declarations, their public access and verification, have been suspended. Ukraine must reinstate the asset declarations system in practice fully, including NACP`s verification function, as well as the public access as it existed before the war. Any exemptions from the previously existing system, if applied, should be based on a clear justification caused by the security reasons, and involve a prior public discussion. The monitoring team urges Ukraine to ensure upholding the principles of transparency and accountability and prevent rolling back the achievements of a robust asset and interest disclosure system in Ukraine.

23 IMF-Ukraine: Letter of Intent and Memorandum for Economic and Financial Policy, 24 March 2023. https://bank.gov.ua/en/files/GUOsPxjckrFWnTy

24 https://itd.rada.gov.ua/billInfo/Bills/Card/42379

Benchmark 2.3.1.

The following officials are required to declare their assets and interests annually:

Element	Compliance
A. The President, members of Parliament, members of Government and their deputies, heads of central public authorities and their deputies	✓
B. Members of collegiate central public authorities, including independent market regulators and supervisory authorities	✓
C. Head and members of the board of the national bank, supreme audit institution	✓
D. The staff of private offices of political officials (such as advisors and assistants)	X
E. Regional governors, mayors of cities	✓
F. Judges of general courts, judges of the constitutional court, members of the judicial governance bodies	✓
G. Prosecutors, members of the prosecutorial governance bodies	✓
H. Top executives of SOEs	X

The scope of officials required to annually submit their asset declarations is broad and includes nearly 700,000 public officials (Art. 3 and Art. 45 CPL), meeting the requirements of the elements A-C and E-G of the benchmark. However, the law does not extend the obligation to submit asset declarations to all advisors and assistants of political officials, and all top executives of SOEs, **making Ukraine not compliant with elements D and H of this benchmark.**

Advisors and assistants of the President of Ukraine are covered by the asset disclosure obligation (CPL Art.3.1.1.m.), but not of other political officials. There was a provision in the CPL expanding the asset disclosure obligation to all full-time advisors and assistants of political officials, but it was abolished in March 2020. Top executives of state companies that are established as legal entities of public law are required to submit asset declarations (Article 3, Part 1, Item 2, Sub-item (a) of the CPL). However, this obligation does not include SOEs established as legal entities of private law. For corporate entities where the state holds the majority stake, the law requires only members of their supervisory boards to submit asset declarations.

Benchmark 2.3.2.

The legislation or official guidelines require the disclosure in the declarations of the following items:

	Element	Compliance
A.	Immovable property, vehicles and other movable assets located domestically or abroad	✓
B.	Income, including its source	✓
C.	Gifts including in-kind gifts and payment for services and indicating the gift's source	✓
D.	Shares in companies, securities	✓
E.	Bank accounts	✓
F.	Cash inside and outside of financial institutions, personal loans given	✓
G.	Financial liabilities, including private loans	✓
H.	Outside employment or activity (paid or unpaid)	✓
I.	Membership in organizations or their bodies	✓

The CPL is **fully aligned with this benchmark**. Article 46 of the CPL specifies the scope of information to be disclosed in asset declarations, which includes:

A. Immovable property, including unfinished construction, linked to public officials and their family members; diverse types of vehicles of public officials and their family members; movable assets of public officials and their family members that exceed a threshold of 100 subsistence minimums for able-bodies persons[25] (subsistence minimums) located domestically or abroad.

B. All types of income received by public officials and their family members, along with its source.

C. Gifts received by public officials and their family members that are worth more than 5 subsistence minimums. The definition of gift includes in-kind gifts and payment for services.

D. Shares in the companies, other corporate rights of declarants and their family members; securities owned by public officials and their family members.

E. Bank accounts opened by public officials and their family members.

F. Financial assets of public officials and their family members, including cash inside and outside financial institutions, personal loans granted, and assets in banking metals, if the total value reaches a threshold of 50 subsistence minimums.[26]

G. Diverse types of financial liabilities of public officials and their family members, if the amount exceeds a threshold of 50 subsistence minimums.

H. Outside employment or activity of public officials (paid or unpaid).

I. Participation of public officials in managing, controlling or supervising bodies of civic associations, charities, self-regulatory or self-governing professional organisations, as well as membership in these organisations.

25 As of 1 January 2023, 100 subsistence minimums equal to UAH 268,400 (USD 7,341).

26 As of 1 January 2023, 50 subsistence minimums equal to UAH 134,200 (USD 3,671).

At the same time, in July 2022 the Ukrainian Parliament amended the CPL to relax certain requirements during the period of Martial Law. For asset declarations covering this period, public officials are not required to submit information on:

1. Income received as humanitarian assistance or the forms of support: free housing, transportation services, medical services, medicines, or financial assistance from foreign governments.
2. Funds personally raised by public officials to provide humanitarian assistance to individuals affected by the war, provided that relevant expenditures are confirmed (these expenditures are also exempt from declaration).
3. Funds personally raised by public officials to support to the Armed Forces of Ukraine, which are transferred to the benefit of the Armed Forces of Ukraine.

Even though, the authorities met during the on-site visit asserted that these changes do not pose a risk for concealing assets, the monitoring team believes there are risks associated with covering unjustified increase in assets due to income received as humanitarian assistance or funds raised. The monitoring team invites Ukraine to pay particular attention to these exceptions, carefully addressing associated risks.

Benchmark 2.3.3.

The legislation or official guidelines contain a definition and require the disclosure in the declarations of the following items:

Element	Compliance
A. Beneficial ownership (control) of companies, as understood in FATF standards, domestically and abroad (at least for all declarants mentioned in Benchmark 3.1.), including identification details of the company and the nature and extent of the beneficial interest held	✓
B. Indirect control (beneficial ownership) of assets other than companies (at least for all declarants mentioned in Benchmark 3.1.), including details of the nominal owner of the respective asset, description of the asset, its value	✓
C. Expenditures, including date and amount of the expenditure	✓
D. Trusts to which a declarant or a family member has any relation, including the name and country of trust, identification details of the trust's settlor, trustees, and beneficiaries	X
E. Virtual assets (for example, cryptocurrencies), including the type and name of the virtual asset, the amount of relevant tokens (units), and the date of acquisition	✓

The scope of disclosure as provided in Article 46 of the CPL **aligns with elements A, B, C, and E** of the benchmark:

- Beneficial ownership of companies: The CPL includes the requirement to disclose beneficial ownership of companies, as defined in the anti-money laundering law (Article 46, Part 1, Item 5-1 of the CPL).
- Beneficial ownership of assets other than companies: The requirement to disclose beneficial ownership of assets other than companies (Article 46, Part 3 of the CPL) applies to public officials holding responsible and especially responsible positions.

- Expenditures: The CPL obliges declarants to disclose expenditures that exceed 50 subsistence minimums (Article 46, Part 1, Item 10 of the CPL), including the date and amount of expenditure[27].
- Virtual assets: The CPL mandates the disclosure of non-material assets, including cryptocurrencies (Article 46, Part 1, Item 6 of the CPL), meeting the requirements of the element E of the benchmark.

Regarding trusts, while the disclosure is envisaged (Art. 46.1. 5-1, CPL), it does not cover all information as required in the benchmark. CPL requires disclosure of trusts in which the declarant or family member is an ultimate beneficial owner (controller). According to the definition of the Law on Anti-Money Laundering, it means the founder, trustee, protector (if any), beneficiary (beneficiary) or group of beneficiaries (beneficiaries), as well as any other natural person who exerts a decisive influence on the activities of the trust (including through the chain of control/ownership). This meets the requirement to include disclosure of trusts to which the declarant or family member have "any relation." However, neither the law, nor the procedure for filling the asset declaration or the form's template[28] require the identification details of the trust's settlor, trustees, and beneficiaries if they are not the trust's controller (that is the declarant or family member). It means that other people related to the trust in which the declarant or family member is an ultimate beneficial owner (controller) are not disclosed in the form. **For this reason, Ukraine is not compliant with the element D of the benchmark.**

Benchmark 2.3.4.

	Compliance
The legislation or official guidelines require the disclosure in the declarations of information on assets, income, liabilities, and expenditures of family members, that is, at least spouse and persons who live in the same household and have a dependency relation with the declarant	X

Under the CPL, public officials are required to disclose the assets, income, and liabilities of their family members. However, the law does not mandate the disclosure of family members' expenditures, therefore **Ukraine is not compliant with the benchmark**. The CPL defines family member as follows in line with the benchmark:

a) Spouse of the public official and official's children until they reach the age of majority, regardless of their cohabitation with the public official.

b) Individuals who live together, share common household, and have mutual rights and obligations with the public official (excluding individuals whose mutual rights and obligations are not of a family nature). This includes unmarried individuals who live together.

27 Section IV item 16 of the Procedure for Filling out and Submitting a Declaration of a Person Authorized to Perform the Functions of the State or Local Self-Government, approved by the Order of the NACP No. 449/21 dated 23/07/2021

28 https://zakon.rada.gov.ua/laws/show/z0987-21#Text.

Benchmark 2.3.5.

	Compliance
Declarations are filed through an online platform	✓

Asset declarations are submitted through a user-friendly online platform, the Unified State Register of Declarations of Persons Authorized to Perform the Functions of the State or Local Self-Government (Register) accessible at https://portal.nazk.gov.ua/login. To access it, individuals need to register using an electronic signature issued by an accredited key certification centre in accordance with the law. Once registered, declarants can use their accounts in the Register to generate drafts asset declarations, enter information, save draft versions, and submit the final declaration electronically. Submitted declarations can be used as a template in future, simplifying the process for subsequent submissions.

Public officials had an uninterrupted access to the Register and were able to submit their annual declarations in the reporting period. According to the NACP a total of 228 085 declarations were submitted in 2022. The fact that a considerable number of filers chose to submit asset declarations despite the suspension of the obligation to declare, is a demonstration of a growing culture of integrity in Ukraine.

To further ease the process of submission of declarations, Ukraine introduced an automatic transfer of information from government datasets to the draft asset declarations by law. While asset declarations will be automatically pre-filled, the officials will continue to bear the responsibility to provide accurate and reliable data. This feature is yet to be added to the system.

There is an exception from a general rule of online submission of declarations applied to the staff of intelligence agencies and officials working in classified positions. Their declarations must be submitted in a way that prevents the disclosure of their affiliation with the relevant state bodies or military formations (Art. 52-1 CPL). The monitoring team could not review the relevant procedures as they are classified. Nevertheless, based on the information received during the on-site visit, declarants falling under this exception seem to be submitting paper declarations.

Non-government stakeholders continue to express concerns that as declarations from these individuals may be submitted in paper form, this may potentially lead to a misuse of the restrictions that should be applied to designated categories and not all the staff of the relevant agencies. They suggest that all such submissions should be made electronic, and that the law should be amended to give NACP powers to define specific positions within each relevant government agency that would qualify for a special procedure.

According to the authorities, the Action Plan includes measures transitioning to the electronic submission of declarations for the special category, eliminating potential errors and biases. Additionally, the unit responsible for verifying declarations of intelligence officers has been monitoring these declarations for any misuse of the special procedure by unauthorized employees of security and intelligence services. The NACP reported several cases of unauthorised employees of the Security Service submitting their declarations under the special procedure (Article 52-1) instead of following the general rules. In response, the NACP required them to submit declarations to the general system and charged them with administrative protocols for late submission.

To help build trust in the system of submission of asset declarations by this special category of declarants, the monitoring team reiterates the recommendation of the pilot report for NACP, to proactively share with the public selected unclassified information (e.g., statistical data) on its efforts of verifying declarations submitted by the special category and identifying any attempts to misuse the special system. This

transparency can help demonstrate NACP's commitment to fair and effective implementation of asset declaration procedures and contribute to an increased public confidence in the process.

Given the system for online submission of asset declarations has been in place and accessible to public officials, despite the suspension of the requirement to submit declarations during Martial Law, and that many public officials submitted asset declarations nevertheless, **Ukraine is compliant with the benchmark.** At the same time, the monitoring team reiterates the need to restore the obligation to declare as soon as possible.

Benchmark 2.3.6.

Information from asset and interest declarations is open to the public:

Element	Compliance
A. Information from asset and interest declarations is open to the public by default in line with legislation, and access is restricted only to narrowly defined information to the extent necessary to protect the privacy and personal security	X
B. Information from asset and interest declarations is published online	X
C. Information from asset and interest declarations is published online in a machine-readable (open data) format	X
D. Information from asset declarations in a machine-readable (open data) is regularly updated	X

As the public access to declarations continued to be suspended in the assessment period, the **elements of the benchmark are not met.**

Since the introduction of the Martial Law, the NACP restricted public access to the Register, citing security risks to public officials, especially those located in the occupied territories, without a legal basis for this decision. While in March 2022, the government temporarily allowed the closure of the access to state electronic registers and databases, this regulation was amended in December 2022, specifying that the suspension of operation for public electronic registers is only applicable to the occupied territories and areas with active combat operations. The law opening public access to asset declarations was passed in September 2023 outside the assessment period. It provides for an exemption from public access to declarations of specific officials in relation to Martial Law.

The following section describes the system in law and in practice before the Martial Law.

Asset declarations are subject to a public disclosure by default. The information not disclosed publicly includes certain personal data, namely tax ID number, passport number, unique number in the Unified Demographic Register, address of residence, date of birth, bank account number, and detailed address of immovable property, except for region, city, or village where it is located (Art. 47 CPL).

The declarations are published online automatically immediately after the submission and are available in machine-readable format. According to NACP, the information of the public Register available through an application programming interface (API) is usually updated every 30 minutes, ensuring access to the up-to-date data. It is also available as a JSON file which is a machine-readable format.

However, there is an exception for declarations of intelligence and counter-intelligence officials (Art. 52-1, CPL). These declarations are not available publicly with the exemption of declarations of officials appointed and dismissed by acts of the President of Ukraine and the Verkhovna Rada of Ukraine whose appointment does not constitute state secret. As highlighted above, stakeholders also maintain that non-disclosure may

not be limited in practice to the specific officials and also include those employees whose appointment is a public information, due to the lack of a detailed list of officials to which special rules should apply.

The benchmark does not require publication of declarations of classified positions or declarations containing classified information, but it requires that the exemption should not extend to the officials, whose appointment in the intelligence or security bodies is a public information. Legislation should identify positions of cases when the declarations are filed under the specific requirements.

The monitoring team calls on Ukraine to reinstate the public access to the register as it existed before the war. The principles of transparency and accountability must be upheld to prevent rolling back of the achievements of a robust asset and interest disclosure system in Ukraine.

Benchmark 2.3.7.

Functionalities of the electronic declaration system include automated cross-checks with government databases, including the following sources:

Element	Compliance
A. Register of legal entities	✓
B. Register of civil acts	✓
C. Register of land titles	✓
D. Register of vehicles	✓
E. Tax database on individual and company income	X

The electronic declaration system in Ukraine has automated access to 16 state registers, including most of those required under the benchmark. The only exception is the tax database of company income, **therefore all elements of the benchmark are met except the element E**.

The Register of declarations allows for automated access to information from other state bodies' registers and databases. It performs various functions such as comparing information in a declaration with data from other sources, generating risk assessments for each declaration, and ranking declarations based on risk ratings. These risk assessments serve as criteria for initiating full verifications of declarations.

The NACP obtains automated access to information from other registries and databases through bilateral agreements with the respective owners or administrators. The information is transmitted securely through communication channels that comply with information protection and personal data protection laws. This functionality is available to the NACP staff while they perform different procedures, including full verification.

Indicator 2.4. There is unbiased and effective verification of declarations with enforcement of dissuasive sanctions

Background

NACP is responsible for verification of asset declarations in Ukraine in line with CPL and secondary legislation. The agency performs accuracy checks (for “correctness and completeness”), logical and arithmetic control of declarations, lifestyle monitoring and full verifications. It also provides for special

checks of declarations to the appointing agencies for the appointment to specific public offices. [29] In 2021, the NACP had split the accuracy checks into two processes – "correctness" and "completeness" checks – introducing a new procedure referred to as "short verifications" aimed at identifying false and incomplete declarations (see benchmark 2.4.4).

For the purposes of this indicator, "verification" means an in-depth analysis and review of the declaration that goes beyond basic checks of timeliness and completeness.[30] In Ukraine, short verifications and full verification qualify as such.

Criminal, administrative, and disciplinary sanctions are envisaged for violations related to asset declarations. NACP has a jurisdiction for detecting and referring administrative offences committed by high-level officials to the court for sanctioning, and the National Police is responsible for detection of the rest. When NACP identifies evidence of a criminal offence, it refers the case to the National Anti-Corruption Bureau of Ukraine (NABU) for public officials holding high-level positions, or to the National Police for all other instances. Cases of unjustified assets subject to civil confiscation are referred by the NACP to the Specialized Anti-Corruption Prosecutor's Office (SAPO). Following the decision of the Constitutional Court of Ukraine (CCU) invalidating relevant legal grounds for verifications in 2020, fully restored in 2021, many ongoing verifications have been terminated.[31] Verification function has been suspended during the Martial Law, but NACP has preserved the function of lifestyle monitoring. In September 2023, the law restored NACP's verification mandate.

Assessment of compliance

Ukraine developed a complex, multi-phased framework of risk-based verification of declarations primarily focused on high-level officials and NACP possesses the capacity to verify them, including the powers to access registers and various databases. At the same time, there is a relatively low track record of sanctions for violations and the effectiveness of the end-to-end process is questionable. Despite the NACP's referrals of potential violations, courts only impose sanctions in a few cases. The verification, enforcement, and dissuasive sanctions are instrumental for any progress in this area, therefore, Ukraine is encouraged to ensure unhindered risk-based verification of declarations with a focus on high-level officials. The verification process must be streamlined in line with the law, avoid overlaps, ensuring coordination and cooperation within the NACP and with other relevant agencies. Transparency of verification and its results must be ensured to rebuild public trust to verification of asset declarations in Ukraine.

29 Negative findings may result in non-appointment. In the context of promotion to the higher position within public administration, the special check may identify violation that triggers administrative or criminal liability. The special checks were suspended for the period of Martial Law.

30 Guide, page 32: "an in-depth analysis and review of the declaration that goes beyond checking whether the declaration was filed on time and whether the form is complete, and all required fields have been filled in" -

31 Verifications were terminated for declarations submitted in 2020 and earlier. According to the pilot report, 555 verifications have been terminated, 5 administrative and 6 criminal sanctions had to be cancelled due to CCU Decision

Benchmark 2.4.1.

Verification of asset and interest declarations is assigned to a dedicated agency, unit, or staff and is implemented in practice:

Element	Compliance
A. There is the specialized staff that deals exclusively with the verification of declarations and does not perform other duties (70%) OR	100%
B. Verification of declarations is assigned to a dedicated agency or a unit within an agency that has a clearly established mandate to verify declarations and is responsible only for such verification and not for other functions (100%)	

In Ukraine, verification of asset declarations is assigned to dedicated units of NACP, that have clearly established mandate to verify declarations, and do not perform any other functions. In 2022 there were two separate units: the Department of Full Verifications and the Department of Mandatory Full Verifications, which had similar functions. In the first half of 2023 these were merged into a single unit comprising 33 staff responsible for full verifications. Another unit was established to conduct "control of completeness" and lifestyle monitoring, consisting of 19 staff members, with five dedicated to controlling the completeness of declarations.[32] At the same time, according to the stakeholders that responded to the questionnaire, some of the highly qualified employees of the dedicated units resigned. The staff were also involved in the work related to the sanctions policy, and that this impacted the NACP's resources. In addition, according to CSOs, many qualified staff left the agency in the assessment period.

The NACP's core powers to verify asset declarations have been suspended in times of war as explained above. Still, in the reporting period, NACP has performed some of its verification functions: full verifications and short verifications were conducted in the beginning of 2022 (see benchmark 2.4.2-2.4.4) and NACP continued to perform lifestyle monitoring in the full reporting period. **Ukraine meets the higher standard of this benchmark (element B).**

Non-governmental stakeholders have raised concerns that the verification of declarations of intelligence and counterintelligence personnel, and classified positions within law enforcement agencies are handled by the NACP's Internal Control unit and not the dedicated units mentioned above.[33] This does not correspond to the unit's mandate as articulated in the CPL. These concerns were echoed in the recently published an independent external assessment of NACP.[34]

The monitoring team has questions as to the effectiveness of the organisation of the verification process, use of available resources, coordination between various verification functions and the overall results of verification. While frequent changes of the verification system do not contribute to a sustained impact, the existing regulations and practices require streamlining in line with the CPL, to best meet its objectives of detecting violations for the necessary follow up. These issues will be further examined in the future

32 The lifestyle monitoring gained more importance in 2022 and 2023, as it is the only financial control procedure which the law allows to conduct during Martial Law. In the absence of submitted declarations the monitoring is used to analyse specific facts concerning public officials (luxury place of residence, etc) and to refer cases to law enforcement for further investigations of possible illicit enrichment or unjustified assets. It remains to be seen how this tool will evolve after the restoration of core NACP functions to conduct full verifications of submitted declarations.

33 As part of this mandate the Internal control Unit also conducts full verification of asset declarations submitted by the NACP staff.

34 https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/report-of-the-commission-for-conducting-independent-assessment-of-the-effectiveness-of-the-nacp.pdf

monitoring, after the verification functions and practices are resumed in Ukraine (see also the benchmark 2.4.4).

Benchmark 2.4.2.

Verification of asset and interest declarations, according to legislation and practice, aims to detect:

Element	Compliance
A. Conflict of interest (ad hoc conflict of interest or other related situations, for example, illegal gifts, incompatibilities)	✓
B. False or incomplete information	✓
C. Illicit enrichment or unjustified variations of wealth	✓

In Ukraine, full verification of asset declarations is aimed at identifying false or incomplete information, conflict of interest, illicit enrichment, and unjustified assets (Art. 51-3 CPL). In 2021, the NACP conducted 1,043 full verifications, targeting a similar number for 2022. However, due to the suspension of verifications during the Martial Law, the NACP conducted only 124 full verifications in 2022. In January-February 2022, NACP identified 84 cases of false or incomplete information, which could indicate commission of administrative or criminal offence (they were referred to courts or law enforcement agencies depending on jurisdiction). Also, in six cases NACP has identified signs of unjustified assets and referred these cases to the SAPO. One case of incompatibility has been identified in the process of verifications within the reporting period, with several other similar cases identified for an earlier period.[35] **Ukraine is compliant with all three elements of the benchmark.**

In addition, a new form of "completeness check", so-called "short verification" the NACP put in place in 2021, having split the function of the "control of completeness and correctness of declarations" provided by CPL into two different procedures[36] (see benchmark 2.4.4), targets the detection of false or incomplete information according to the authorities.[37] In January – February 2022, the NACP conducted only 13 short verifications and identified 10 cases of potential administrative or criminal offences of false or incomplete declarations. In 6 cases pre-trial investigation is ongoing and one case resulted in an administrative sanction. It is not possible to determine what happened with three cases due to the war.

35 Statistics of 2021 demonstrates NACP capacity for 12 months. In this year, as a result of full verifications, NACP detected 308 cases of false or incomplete information, which could indicate commission of administrative or criminal offence. It has also detected 10 cases with signs of unjustified assets and 1 possible case of illicit enrichment. Three cases of violations of restrictions on compatibility and concurrent employment were identified as a result of full verifications in 2021.

36 Some stakeholders believe that such split has no legal basis and contradicts the CPL. Independent external assessment of NACP concluded that the the new procedure is illegal. https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/report-of-the-commission-for-conducting-independent-assessment-of-the-effectiveness-of-the-nacp.pdf

37 Article 51-1 of the CPL provides "control of completeness and correctness of declaration."

Benchmark 2.4.3.

A dedicated agency, unit, or staff dealing with the verification of declarations has the following powers clearly stipulated in the legislation and routinely used in practice:

Element	Compliance
A. Request and obtain information, including confidential and restricted information, from private individuals and entities, public authorities	✓
B. Have access to registers and databases which are held/administered by domestic public authorities and are necessary for the verification	✓
C. Access information held by the banking and other financial institutions: with prior judicial approval (50%) or without such approval (100%)	100%
D. Have access to available foreign sources of information, including after paying a fee if needed	✓
E. Commissioning or conducting an evaluation of an asset's value	✓
F. Providing ad hoc or general clarifications to declarants on asset and interest declarations	✓

Legislation provides the dedicated staff of the NACP with all powers listed in the benchmark, including:

- Requesting and obtaining information, including classified information, from public authorities, entities, and private individuals (Item 1-1, part 1 Article 12, para 4, Part 1, Article 13 CPL).
- Having direct automated access to registers and databases administered by public bodies (Item 1-2, part 1 Article 12 CPL).
- Receiving requested information from banking institutions without prior judicial approval (Item 3 Part 1 Article 62 of the Law "On Banks and Banking Activities"). (Compliance 100%)
- Accessing information from available foreign registers and databases, including after paying a fee if needed (Item 2-2 Part 1 Article 12 CPL).
- Referring to experts and specialists to determine the market value of declared assets as of the date of their purchase (Para 2, Item 14, Section II, Procedure for Full Verification of the Declaration of a Person Authorized to Perform the Functions of the State or Local Self-Government).
- Providing clarifications (ad hoc or general) to public officials on matters of financial control (Item 15, part 1 Article 11 CPL).

Despite the suspension of verification of asset declarations during the reporting period, in the period when verification was operational Ukraine demonstrated compliance with all elements of the benchmark. In 2022 full verifications were conducted only in January and February. In this period, in 5 cases of full verifications information was requested and obtained from different third parties. In 137 cases the NACP also accessed government registers when conducting the full verification. At least in 5 cases the NACP staff requested and accessed information from banking institutions. In 3 cases the NACP sent requests to foreign jurisdictions to obtain needed information. Although the law allows receiving information after paying a fee, in all presented cases the NACP submitted direct requests to government or business entities. In 4 cases in 2022 the NACP requested the Kyiv Scientific Research Institute of Forensic Expertise to assess the value of declared assets, including land plots, apartments, garages, and vehicles. As the function of providing clarifications to declarants was not suspended during the war, in 2022, the NACP issued 26,466

clarifications on asset and interest declarations, consisting of three general guidelines and 26,463 individual clarifications. Therefore, **all elements of the benchmark are met in the assessment period.**

Non-governmental stakeholders expressed criticism that the NACP relies only on the Kyiv Research Institute of Forensic Examinations to determine the market value of declared assets and suggest expanding the involvement of expert institutions. The NACP reported that in July 2023 it has concluded an agreement with a private company for provision of services related to assessment of the value of assets. Stakeholders also recommend allocating more funds for a regular access to paid data from foreign registers and advocate for the NACP to actively engage with foreign competent authorities bilaterally and participate in relevant international initiatives to facilitate international data exchange for the verification of property declarations.[38]

Benchmark 2.4.4.

The following declarations are routinely verified in practice:

Element	Compliance
A. Declarations of persons holding high-risk positions or functions	✓
B. Based on external complaints and notifications (including citizens and media reports)	✓
C. Ex officio based on irregularities detected through various, including open sources	✓
D. Based on risk analysis of declarations, including based on cross-checks with the previous declarations	✓

The law prescribes verification of declarations listed in elements A-D and NACP verifies these declarations in practice through full verifications. A procedure for the selection of declarations for full verification is adopted as a Regulation of the Head of the NACP and it has a recommendatory nature. According to the regulation, each subsequent declaration that undergoes full verification should belong to the following categories in the specified order. If, at a given moment, there are no declarations available within a particular category, the declaration from the next category in the sequence is referred to for full verification. These categories are:

1. Declarations that have been fully verified in the past, but new evidence is received indicating possible illicit enrichment, unjustified assets, or intentionally false information in the submitted declaration.
2. Declarations submitted by high-level officials or officials holding high-risk positions, as defined by the legislation, and established by the NACP.
3. Declaration with the highest risk score based on the the logical and arithmetic control (LAC).
4. Declarations that are the subject of external complaints, including those from the media and citizens, indicating possible criminal offences related to intentionally false information, illicit enrichment, or unjustified assets.
5. Declarations that are the subject of external complaints, including those from the media and citizens, indicating possible administrative offences related to intentionally false information.

38 In 2021 report NACP acknowledged that only in 18% of the requests for information sent abroad they received reasonable responses.

6. Declarations that show irregularities between the declared assets and the individual's lifestyle, as identified through lifestyle monitoring by NACP staff.

For 2022, specifically the period, when the verification was ongoing before its suspension, the NACP reported the following statistics:

- 72 verifications of declarations of persons with high-level and high-risk positions;
- 16 verifications initiated by external complaints and notifications;
- 5 verifications prompted by identified irregularities in lifestyle monitoring;
- 44 verifications based on risk analysis, a high-risk determined by LAC.[39]

To conclude routine application in practice, the monitoring team must establish at least three relevant cases for each element in the reporting period and Ukraine has provided these case examples. **Therefore, all elements of the benchmark are met.**

At the same time, the monitoring team deems it necessary to highlight various concerns related to the verification of asset declarations, raised during the monitoring, which may impact the practice under this benchmark. These concerns relate to the lack of transparency of regulations related to the verification of declarations, verification of declarations of the staff of the classified positions, the new procedure of "short verifications" and lifestyle monitoring (see also the section Assessment of Non-Governmental Stakeholders below). The law explicitly prescribes that NACP should adopt regulations on all financial control mechanisms prescribed by the law.

Non-government stakeholders criticize that after 2021 NACP is not disclosing the document regulating the logical and arithmetic control (LAC) procedure, used to compute risk assessment for each declaration. According to NACP, this document is now designated for a restricted use as it was reclassified by an expert institution as a file containing configuration parameters of the software of the Register. The procedure was open to the public before, and the grounds and justification for restricting access to it are questionable.

Non-government stakeholders also criticize the procedure of verification of declarations of the staff of the intelligence agencies and officials working in classified positions. Given that these declarations are submitted in a paper form, they are not subject to the LAC procedure. These declarations are handled by the NACP's Internal Control unit, which does not have this mandate under the CPL as mentioned above in the benchmark 2.4.1. The former Head of the Unit was a former Security Service officer which raises doubts about the impartiality of managing the verification process.[40]

Furthermore, the new procedure of short verifications has sparked a significant controversy among non-governmental stakeholders. It involves two stages and takes around 40 days (compared to full verification that takes around 120 days). Firstly, an automatic comparison is made between the information provided in the asset declaration and data from other government databases to identify any inconsistencies. Then the NACP staff manually analyse detected inconsistencies and either submit an administrative case to a court or refer a case to the relevant law enforcement bodies depending on the nature and scope of the identified false information and the position of the official involved. This means that each submitted declaration goes through two different set of assessments: an automatic cross-check with the information from government registers to calculate the "degree of completeness of declaration information" to rank them for short verification; and LAC, to assess risks, rank declarations for verification based on such risks

39 For 2021, the NACP reported that 671 verified declarations which were submitted by persons holding high-level and high-risk positions, 186 verifications which were triggered by external complaints and notifications, 14 verifications which were triggered by identified irregularities in the process of lifestyle monitoring, and 197 verifications which were conducted due to the high risk score as a result of logical and arithmetic control of a declaration.

40 https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/report-of-the-commission-for-conducting-independent-assessment-of-the-effectiveness-of-the-nacp.pdf

and determine the need for full verification. According to the authorities, the updated LAC procedure does not include a comparison of declaration data with other registers, as this step is performed exclusively within “short verifications”.[41] The LAC procedure is not open for public access.

Non-governmental organisations believe that short verification allows NACP to avoid full verification of declarations, simply by identifying “red flags” and sending this information to the law enforcement agencies.[42] (See also the section Assessment of Non-governmental Stakeholders). The recently published independent external assessment of the NACP found that short verifications overlap with full verification of declarations and contradict the CPL.[43]

The NACP contends that the new procedure complements full verification, saves time, broadens the scope of verifications, and improves the NACP's ability to identify false information in asset declarations. According to the authorities, short verifications in principle do not overlap and are complementary to full verification, which is triggered based on specific grounds (see above), such as risk-based prioritisation though LAC. In case of an overlap, procedure for short verifications establishes a clear hierarchy between the two types of verification. Declarations that undergo full verification cannot be subjected to "short verification." However, during the "short verification" process, if there are indications of severe violations, the NACP staff may suspend the procedure and refer the case for full verification. The NACP believes that this mitigates the concerns of non-government stakeholders. The law enforcement authorities met during the on-site visit did not see any major difference in terms of the cases referred to them by NACP based on short or full verifications, explaining that in any case law enforcement authorities need to carry out their own investigations based on the received material. Therefore, in their view a less resource-intensive version would meet the need to identify signs of a violation (in case of short verifications this is false or incomplete declarations) and refer the case accordingly.

The effectiveness of the existing mechanism of verification has yet to be seen in practice by a robust track record of cases. Once the function is reinstated in full, the NACP is invited to reassess it in the light of these concerns, bringing clarity, and predictability to the verification of asset declarations (see also benchmark 2.4.1).

41 According to the NACP’s external assessment report LAC does not apply to the declarations submitted under Art. 52-1, CPL.

42 https://antac.org.ua/en/news/new-examinations-of-declarations-by-nacp-compliance-risks/

43 https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/report-of-the-commission-for-conducting-independent-assessment-of-the-effectiveness-of-the-nacp.pdf Page 89. “the NACP artificially split the united (as stated in the LCP and this criterion) procedure into two separate procedures – control of correct and control of complete filling-in of declarations. This unjustified multiplication of procedures creates ambiguity contrary to the legal certainty principle, overlaps with the general procedure of the full verification of declarations, and contradicts the LCP.

Benchmark 2.4.5.

The following measures are routinely applied:

Element	Compliance
A. Cases of possible conflict of interest violations (such as violations of rules on ad hoc conflict of interest, incompatibilities, gifts, divestment of corporate ownership rights, post-employment restrictions) detected based on the verification of declarations and referred for follow-up to the respective authority or unit	X
B. Cases of possible illicit enrichment or unjustified assets detected based on the verification of declarations and referred for follow-up to the respective authority or unit	✓
C. Cases of violations detected following verification of declarations based on media or citizen reports and referred for follow-up to the respective authority or unit	✓

In 2022 the NACP identified one case of violation of rules on incompatibilities as a result of full verification of declarations (the benchmark requires at least three cases to qualify for "routine" application of measures). In six cases where verifications indicated signs of unjustified assets, NACP referred them to SAPO for a follow up. Additionally, in 14 verifications[44] violations were detected based on media or citizens reports. The NACP transferred these cases to the relevant law enforcement agencies or units within the NACP for the follow-up. No information is available about the results of the law enforcement action in these cases. Ukraine is compliant with the **elements B and C** but **not A** of the benchmark.

Benchmark 2.4.6.

The following sanctions are routinely imposed for false or incomplete information in declarations:

Element	Compliance
A. Administrative sanctions for false or incomplete information in declarations	✓
B. Criminal sanctions for intentionally false or incomplete information in declarations in cases of significant amount as defined in the national legislation	✓
C. Administrative or criminal sanctions on high-level officials for false or incomplete information in declarations	✓

Ukraine's record of sanctions for violations related to asset declarations is relatively weak. Although the NACP consistently identifies signs of potential violations and refers cases for further action, sanctions are rarely imposed.

In 2022, the NACP transferred 11 cases of possible administrative violations involving the intentional false information in declarations (for public officials in responsible positions) to the court. Additionally, they referred 16 cases to the National Police. The NACP reported only 2 court decisions with first-instance courts finding public officials guilty of committing this administrative offence. These two individuals were fined UAH 17,000 each (about EUR 435). One case was closed due to expiration of the deadline for

44 62 cases in 2021.

imposing administrative sanctions, another one was returned to the NACP by the court after the expiration of the deadline for imposing administrative sanctions. Four cases were closed by courts due to the absence of elements of an administrative offence. Three other cases were in judicial proceedings at the time of the monitoring visit. In one case referred to the National Police, in March 2022 the court sanctioned one individual with fine of UAH 17,000 (about EUR 435). At least in two other cases the court found individuals guilty in committing an administrative offence but closed proceedings because of the expiration of statute of limitations. Based on the provided information, **Ukraine is compliant with the element A of the benchmark** with three reported cases of applied administrative sanctions.

The NACP has also reported about three criminal cases investigated by the National Police, in which individuals were sanctioned for submitting false information in their asset declarations in 2022 – first half of the 2023. All three cases concern representatives of the local government. In one case the plea agreement was concluded with the sanction of 150 hours of community service and prohibition of holding elected positions in local self-government bodies for the period of one year. In two other cases individuals were sanctioned to fine of UAH 51,000 (EUR 1,300) with similar prohibition of holding elected positions in local self-government bodies for the period of one year. In all cases court decisions entered into force, while one of them is being contested by the individual in cassation criminal court. The data on other cases referred by the NACP to the National Police is not available.

In one case investigated by the NACP, an administrative sanction for submitting false information in asset declarations was applied to a high-level official. In June 2022, a prosecutor from the Zakarpattia Regional Prosecutor's Office was sanctioned with the administrative fine of UAH 17,000 (as described above) for providing inaccurate information amounting to UAH 357,718.91 (about EUR 9,170). The appeal court left the decision of the first instance court in force. In 2022 criminal sanctions have not been applied to high-level officials for false or incomplete information in their declarations However, in the first half of 2023 in 2 cases the first instance court found members of Ukrainian Parliament guilty for providing false information in their declarations. In the first case, the MP provided inaccurate information amounting to UAH 3,700,000 (about EUR 94,870), which included undeclared leased apartment and part of non-residential premises that belonged to them on the right of ownership in 2020. In the second case, the MP provided inaccurate information amounting to UAH 2,500,000 (about EUR 64,100), which included undeclared leased apartment. These cases were closed by the appeal court due to the statute of limitations. Given that for criminal sanctions the benchmark takes into account the first instance court sentences, and that this report provides assessment for Ukraine's performance in 2022 and the first half of 2023, **Ukraine is also compliant with the elements B and C of the benchmark (with total of 5 cases of applied sanctions for the element B and three reported cases for the element C).**

Regarding the lack of effectiveness of administrative sanctions, both non-government stakeholders and the NACP point to legislative shortcomings that need to be addressed. These include the NACP's limited powers to present administrative cases in court or appeal court decisions, as well as a short statute of limitations for corruption-related administrative offences. The NACP has also proposed a legal initiative to transfer the review of administrative cases against high-level officials to the High Anti-Corruption Court (HACC) to ensure timely and impartial review, but this is controversial due to the high case load of HACC.

Box 2.1. Asset and Interest Disclosure in Ukraine

Ukraine`s comprehensive system of assets and interest disclosure is recognized by its citizens and the international and non-governmental stakeholders as one of the key instruments to prevent corruption. Despite many challenges that the system faced in the past and the current suspension during the Martial Law, it remains one of the most promising asset and interest disclosure systems around the world[45]. For the period covered by the monitoring, three features of the system stand out:

The first one goes beyond the mandatory minimum and outline excellence in the public service system. Due to the war, all Ukrainian public officials were exempted from the obligation to disclose, the deadline being postponed 90 days after the end of the Martial Law. Still, in 2022 more than 228.000 declarations were submitted voluntarily which showcases commitment to integrity principles even in times of adversity and the ease of using the system by declarants.

The second one refers to the interconnectivity of the electronic declaration system with 16 state registers which allows for automated crosschecks. This feature has a merit of enhancing the effectiveness of the verification process and may constitute a good practice example for countries that seek to transition into full automation. The NACP has also tested the functionality of retrieving data from external registers during the filling out the form by the declarant to make the submission process even easier and prevent mistakes.

The third one refers to the legal provisions that institutes the obligation to disclose beneficial ownership of companies and indirect control of assets other than companies. There are not many countries that implemented such disclosure requirements that go beyond what is owned in the name of the filer, their spouse and dependent children. The benefits for adding beneficial ownership in the declaration will definitely make it harder for officials to distance from what thy actually own, thus contributing to a higher trust in the public sector. In addition, the form requires disclosure of assets that are not formally or informally owned but also assets used by the declarant or family member.

Assessment of non-governmental stakeholders

Although non-government stakeholders have provided critical feedback on how the government handles asset disclosure, there is a consensus that the main priority for Ukraine at present is the restoration of the asset declaration system, despite the ongoing Martial Law. Non-government stakeholders believe it is crucial to fully restore the system, which includes not only the functions of submission and verification of declarations but also their public disclosure, with possible additional narrowly defined temporary exemptions for certain information due to security considerations. They strongly believe that a prolonged suspension of asset declaration obligations will hinder the progress in anti-corruption reforms.

While there is an agreement on preserving and further developing the existing asset declaration system, non-government stakeholders have raised practical issues and disputes with the approach to asset verification taken by the NACP in 2020-2021. As mentioned earlier, some of the debated issues include

45 As it was highlighted by the authors of the dedicated chapter on Ukraine in the 2021 World Bank publication “Enhancing Government Effectiveness and Transparency: The Fight Against Corruption”, https://www.worldbank.org/en/topic/governance/publication/enhancing-government-effectiveness-and-transparency-the-fight-against-corruption.

the submission and verification practices of intelligence and security agencies' staff, non-disclosure of the LAC rules, and the new procedure of "short verifications".[46]

According to civil society representatives that took part in the monitoring, the system of verification of asset declarations should be streamlined to reduce its complexity and to increase its effectiveness and efficiency.

In view of civil society short verifications have led to a reduction in the scope of the logical and arithmetic control (LAC) of declarations. Consequently, there is a possibility that declarations which would have previously qualified for full verifications may now be directed to the "short verification" procedure. This raise concerns that the "short verification" may only uncover minor violations, while potentially failing to identify more significant wrongdoings that would have been detected through the comprehensive process of full verification. Critics argue that this procedure diverts resources from detecting more serious violations such as illicit enrichment, unsubstantiated assets, and conflicts of interest. They believe it primarily focuses on identifying cases where public officials fail to submit information available in other government registries.[47] Stakeholders have an expectation that short verifications will be abolished.

Non-government stakeholders are also skeptical about the lifestyle monitoring performed by the NACP. They support the use of this tool during Martial Law given that it is the only measure of financial control NACP can currently perform. However, once Martial Law is over, they are not convinced there is a need to continue using this tool, given that the NACP still does not have proper regulatory framework for it. Some civil society stakeholders believe that the procedure of the lifestyle monitoring extensively overlaps with the full verification of asset declarations. According to the independent external assessment of NACP, the procedure involves interference in the realization of human and citizen rights and freedoms guaranteed by the Constitution of Ukraine and the ECHR.[48]

From the perspective of non-government stakeholders, other problematic issues include the adoption of the law to introduce a mechanism for automatically sanctioning public officials for late submission of asset declarations with ex-post judicial control. The law, awaiting the President’s signature, is criticized for lacking sufficient procedural safeguards for defendants and imposing strict 72-hour time limit for presenting evidence of valid reasons for late submission. Furthermore, in many instances the late submission of asset declarations cannot be automatically identified. Consequently, if enacted, this new mechanism for identifying late submission of declarations may lead to numerous false-positive and false-negative outcomes. This law excludes individuals who commit the administrative offence of providing false information in asset declarations from being listed in the Unified Register of Persons who Committed Corruption Offences.

Regarding resources, in addition to diversion of resources of NACP due to the war pointed out under PA 1 (section Assessment of Non-Governmental Stakeholders), hampering NACP's ability to fulfil its core mandate, CSOs reported that many qualified staff left the agency in the assessment period.

46 https://ti-ukraine.org/en/news/nacp-s-new-quick-declaration-checks-law-compliance-and-risks/

47 Another line of criticism of this procedure is that it does not fully complies with LCP provisions: Article 51-1 of LCP provides for “control of the completeness and correctness of declaration” as a one separate type of control. This was the case until 2021, when NACP came with the new interpretation of the law and differentiated control of completeness of the declaration as a separate procedure. The Regulation on the procedure was passed in August 2021 and registered with the Ministry of Justice in September 2021.

48 https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/report-of-the-commission-for-conducting-independent-assessment-of-the-effectiveness-of-the-nacp.pdf

6 Independence of Judiciary

In Ukraine, judicial governance bodies are responsible for the selection, appointment, and dismissal of judges, but they were not fully operational in the reporting period. The continued status quo of numerous vacancies in the judiciary raises concerns for the access to justice. Judicial governance bodies have been formed through a competitive selection and since have been working largely transparently. Ukraine is urged to complete its legal and institutional framework to start merit-based judicial appointments as soon as possible, without compromising their quality. Judges elect court presidents, but the process is not competitive, or merit based. Undue influence of court presidents over judges, and over some important decisions in the judiciary, as well as manipulations to hold these positions beyond statutory terms, have persisted. The judiciary budget appears insufficient, but the remuneration of judges is set in the law and excludes discretionary payments. In Ukraine, grounds for disciplinary proceedings lack clarity, and decisions have not been substantiated in the past. The reform separated disciplinary investigation from decision-making, introducing a new mechanism of disciplinary inspectors, but the framework is yet to be put in practice and there is a backlog of some 11 000 disciplinary complaints against judges.

Figure 6.1. Performance level for Independence of the Judiciary is high

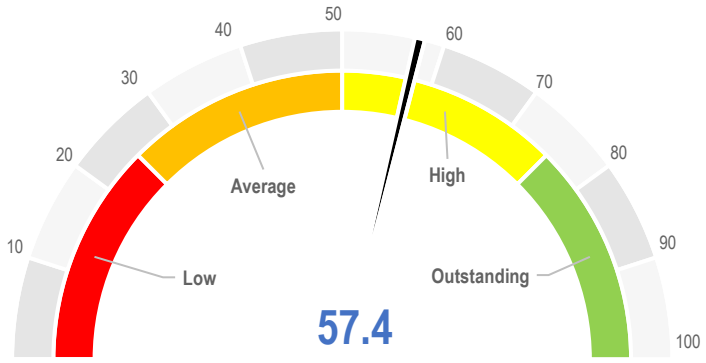
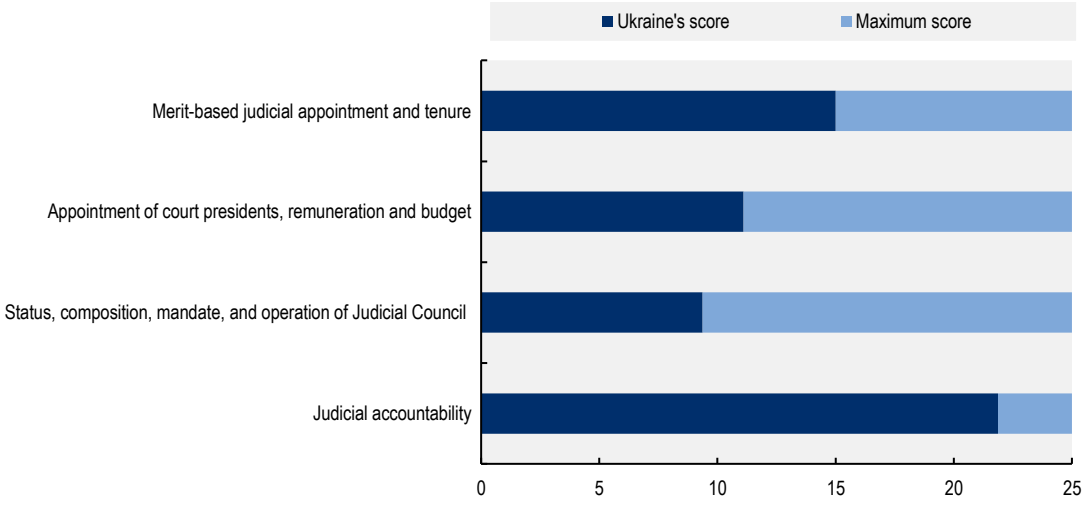


Figure 6.2. Performance level for Independence of Judiciary by indicators



Context

The reform of the judiciary has been ongoing in Ukraine for many years.[49] The 2016 constitutional reform strengthened the judicial governance bodies, repealed the probationary appointment of judges, introduced vetting of all judges, and reformed disciplinary proceedings. However, the lack of independent judicial governance bodies has been a continued challenge to the judicial independence and integrity as described

49 Venice Commission (Opinion No. 999 / 2020) highlighted fragmented, often rushed, non-holistic approach, to judicial reforms in Ukraine over the course of many years, lacking clarify and impact assessment (paras. 6-7) along with the lack of implementation after their adoption. “Following presidential elections, the new political power would often start new changes to the judicial system. In the absence of a holistic approach, various pieces of legislations were adopted that did not have the character of a comprehensive reform.” “Due to the numerous unfinished and incoherent attempts to reform the judiciary, the Ukrainian Judiciary rests in a stage of transition.” https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)022-e

in the pilot report. According to a 2017 GRECO report, the judiciary of Ukraine was "considered as weak, politicised, and corrupt, and dominated by a strong prosecution service headed by a political appointee."[50]

In 2021, a new reform package was adopted aimed at cleaning up and resetting judicial governance bodies dissolved in 2019 pending the reform. International experts were given a decisive role in the selection of new and vetting of existing members of these bodies, following a similar successful model of selection of judges for the High Anti-Corruption Court of Ukraine (HACC). These amendments were passed after several versions of drafts, Constitutional Court decisions blocking the reform, and the Venice Commission Opinions, following a joint effort of Ukraine's internal and external partners. The pilot report commended the amendments and encouraged their implementation.

Granting EU candidate status to Ukraine in June 2022 further boosted the judicial reform, as the European Commission singled out the reform of the selection of judges of the Constitutional Court,[51] as well as the continuation of the reform of the judicial governance bodies, as two of the seven priorities for Ukraine.[52]

Judicial reform is in the centre of attention of Ukrainian society. The authorities met during the on-site visit showed a commitment to the ongoing reform, the recognition of existing deficiencies and challenges, a strong will to make it a success, as well as openness to criticism, recommendations, and support. A concerted vision, aimed at cultivating a culture of integrity and accountability of judiciary in Ukraine seemed to be shared by key players including judicial governance bodies, their civil society member, judges, and the Parliament. The next step in the reform is for the new governance bodies to show that they deliver in the best interest of an independent judiciary, in an honest and accountable way. The stakeholders were hopeful that these bodies would live up to their tasks, and proof to be a new beginning for independent justice in Ukraine.

Indicator 6.1. Merit-based appointment of judges and their tenure is guaranteed in law and practice

Background

All judicial appointments were suspended in 2019 with the termination of powers of the judicial governance bodies pending the reform.[53] Two relevant bodies have now been formed (see Indicator 3) but some more regulations are pending for selection and qualification assessment for promotions and post-probation re-appointments to be resumed. At the time of the on-site visit, Ukraine was also resetting the Public Integrity Council[54] - a body composed of civil society representatives, mandated to assess integrity during the qualification assessment of judges. In Ukraine qualification assessment is used for vetting judges post-probation and for the appointments at higher instance courts (promotions).

50 GRECO (2017), Fourth Evaluation Round, Ukraine, para 111. http://rm.coe.int/grecoeval4rep-2016-9-fourth-evaluation-round-corruption-prevention-in-/1680737207

51 This is out of the scope of the IAP 5th Round of Monitoring Assessment Framework.

52 Disciplinary Inspectors Service (an independent structural unit operating in the Secretariat of the HCJ), while the Disciplinary Chamber of the High Council (formed from the members of the HCJ) judges the case and makes a decision.

53 Venice Commission Opinion No. 999/2020 "As concerns judicial vacancies, it seems that a large number of candidates had already been evaluated by the former HQCJ but their files could not be terminated because the HQCJ was dissolved with immediate effect on 7 November 2019. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)022-e

54 On August 14, 2023, a new composition of the Public Integrity Council was elected. https://grd.gov.ua/news/obrano-tretii-sklad-hromads-koi-rady-dobrochesnosti/

Selection, appointment, and qualification assessment methodologies have not changed since the pilot. A reform is ongoing to simplify selections (from up to 24 months process to 9 months), and overhaul criteria and methodology of ethics and integrity assessments, with the aim to apply a unified approach to such assessments used for all purposes: selection, promotion, and vetting of judges, and for the selection of members of the judicial governance bodies.

Judicial authorities seem to have a coordinated approach to the ongoing reform, planned to be finalised in autumn 2023, after which judicial appointments could be launched. Meanwhile, there are 2065 judicial vacancies, and 264 judges are awaiting qualification assessment following probationary period, they receive salaries but cannot adjudicate cases.[55]

Assessment of compliance

Merit-based appointment of judges and their tenure is guaranteed in law, but further regulations are needed to define clear criteria and methodology for integrity assessments carried out at various stages of the selection and qualification assessment processes. The judicial governance bodies are responsible for the selection, appointment, and dismissal of judges but they were not operational in the reporting period and the related practices of selection, promotion and dismissal have not been carried out. The continued status quo of numerous vacancies raises concerns for access to justice.[56] At the same time, there is need to strike a balance between filling out the vacancies as soon as possible and ensuring a proper, merit-based process. Now that the judicial governance bodies are in place, Ukraine is urged to complete its legal framework to complete merit-based judicial appointments as soon as possible, without compromising their quality.

Benchmark 6.1.1.

Irremovability of judges is guaranteed:

Element	Compliance
A. Judges are appointed until the legal retirement age (100%) OR	0
B. Clear criteria and transparent procedures for confirming in office following the initial (probationary) appointment of judges are set in the legislation and used in practice (70%)	

The Constitution of Ukraine and the Law on the Judiciary and the Status of Judges (LJSJ) guarantee the appointment of judges until legal retirement age (65 years). While probation of judges was abolished in 2016, judges appointed before the reform for the initial term of five years, need to go through qualification assessment (for competences, professional ethics, and integrity) before their appointment until the legal retirement age. There are 264 sitting judges whose probation has expired. They receive salaries but are not authorised to adjudicate cases. [57] Therefore, Ukraine's system falls under the element B of the benchmark, until these qualification assessments are completed.

To conclude compliance with the element B, clear criteria, and transparent procedures for confirming in office following the initial (probationary) appointment of judges should be set in the legislation and used in practice. While the law regulates main steps of the process, making the procedure transparent, and results

55 There are total of 5044 sitting judges in Ukraine. High Anti-Corruption Court (HACC) has 38 judges and only one vacancy.

56 Link to Venice Commission Opinion

57 According to the Guide a country is compliant with one of the alternative elements A-B if the respective procedure applies to all judges. If different procedures apply to different categories of judges, the country's score is determined by the element with the lower number of points.

are available online, criteria for assessing ethics and integrity are not clearly set in the legislation and used in practice.

The procedure for qualification assessment of judges is defined in LJSJ and further elaborated in the High Qualification Commission of Judges (HQCJ) regulations.[58] Qualification assessment includes an exam consisting of various tests and practical tasks,[59] including psychological and general skills tests, review of a judicial file and interviews. A rapporteur from among HQCJ members reviews the file, followed by an interview by a HQCJ panel, where the rapporteur presents the findings, and the judge has a right to add, clarify or object to the presented information. There is a high degree of transparency in the process of qualification assessment. The results are published, including dossiers with all relevant information and scores, indicating points under each component of the assessment.[60] Interviews are video broadcasted online and final decisions are also published. Thus, transparent procedures are set in legislation and applied in practice.

At the same time, the monitoring team is not satisfied that the clear criteria for confirming in office following the initial (probationary) appointment of judges are set in the legislation and used in practice, particularly, for assessing integrity.

The LJSJ defines criteria for assessing the qualification of judges including competences, professional ethics, and integrity (para. 20, chapter XII, LJSJ). Criteria on competences seem clear, but criteria for professional ethics and integrity lack clarity and precision. For example, one of the vague criteria for professional ethics is “compliance with behaviour that ensures trust to judicial post and authority of judiciary”.

Public Integrity Council - a body composed of 20 civil society representatives, selected at the conference of non-governmental organisations, including human rights activists, legal scientists, attorneys, journalists - carries out integrity assessments based on the indicators on integrity and ethics.[61] However, its conclusions are not mandatory in the selection process, and can be overruled by HQCJ, which, also decide on integrity of candidates. The HQCJ has further defined the criteria for integrity assessment but these lack precision and clarity. For example, one of them is the existence of the facts of liability of a judge for the commission of a misconduct or an offence that indicates the lack of his/her integrity. Furthermore, HQCJ regulation on qualification assessment provides that in case of non-compliance with integrity criteria the candidate gets 0 score, but no guidance is provided on what indicates such a “non-compliance”. In addition, after receiving the conclusions on recommended candidates from HQCJ, the HCJ can make its own determination of integrity, but criteria are not established for these decisions. There have not been any promotions in the judiciary since 2019.

HQCJ overruling the negative opinions of PIC without justification has been one of the areas of concern of the pilot report, along with the HCJ appointment of judges that were not successfully vetted. At the time of the on-site visit Ukraine was in the process of setting up a new composition of PIC[62] and amending regulations, to address the past shortcomings. The authorities informed that in all cases, where HQCJ recommended to lay off judges that did not pass the vetting, but HCJ refused to do so, these judges will have to go through the vetting anew. In addition, the vetting of all Supreme Court sitting judges is also proposed.

58 The same qualification assessment is used for promotion of judges (see Benchmark 1.5).

59 https://vkksu.gov.ua/sites/default/files/poriadok_new.pdf

60 https://vkksu.gov.ua/sites/default/files/poriadok_new.pdf

61 https://grd.gov.ua/wp-content/uploads/2020/12/Indykatory-HRD-vid-16.12.2020.pdf

62 The new composition is now in place since August 2023.

As clear criteria for confirming in office following the initial (probationary) appointment of judges are not defined in legislation, Ukraine is non-compliant with the element B of the benchmark.

The judicial authorities met during the on-site visit recognize these deficiencies. They explained that the law lacks clarity on what action, inaction or circumstances could serve as basis for non-compliance with the indicators of integrity and ethics, and how the points are allocated. The authorities stressed the need for overhauling the system and for using a unified approach in all assessments of integrity and ethics indicators, including during selection, promotion and assessing integrity of HCJ members. A joint work is ongoing to clarify relevant indicators, and develop clear criteria and methodology of the assessment, planned to be finalised in autumn 2023, after which judicial appointments could be launched.

The monitoring team commends the openness and reform-oriented approach demonstrated by judicial authorities during the on-site visit and encourages Ukraine to clarify criteria and process of integrity assessments, aimed at ensuring that judicial reappointments (as well as selection and promotions) are based on merit in practice, and perceived as such by Ukrainian society, which is essential to building trust towards judiciary.

Benchmark 6.1.2.

A Judicial Council or another judicial governance body plays an important role in the appointment of judges, and the discretion of political bodies (if involved) is limited:

Element	Compliance
A. The Judicial Council or another judicial governance body directly appoints judges. The role of Parliament or President (if involved at all) is limited to endorsing the Council's decision without the possibility to reject it (100%) OR	100%
B. The Judicial Council or another judicial governance body prepares a proposal on the appointment of a judge that is submitted to the Parliament or President that may reject it only in exceptional cases on clear grounds provided in the legislation and explained in the decision (70%) OR	
C. The Judicial Council or another judicial governance body reviews all candidates for judicial office and makes a justified recommendation to the relevant decision-making body (50%)	

Note: The country is compliant with one of the alternative elements A-C if the respective procedure applies to all judges. If different procedures apply to different categories of judges, the country's score is determined by the element with the lower number of points.

The 2016 constitutional reform abolished the power of the Parliament to appoint judges, and political bodies do not have a decisive role in judicial appointments (and dismissals). The responsibility for judicial selection and appointments rests with judicial governance body – the High Council of Justice (HCJ) supported by another judicial governance body – the High Qualification Commission of Judges (HQCJ). HQCJ selects candidates and proposes them to the HCJ, which decides about candidates to propose to the President for the appointment. HCJ proposals to the President are mandatory and the President's role in the appointment is ceremonial. Thus, **the highest standard of the benchmark (A) is met**. At the same time, the grounds for rejecting candidates recommended by HQCJ as defined in the LJSJ (art. 79) are not clear, leaving a high degree of discretion to the HCJ in this process: one ground is "existence of reasonable doubt on compliance of candidate with criteria of integrity or professional ethics, or other circumstances that may negatively impact on public trust to judiciary in case of such an appointment". The monitoring team recommends clarifying the grounds and delineate the discretion of HCJ to reject candidates in the law.

Benchmark 6.1.3.

A Judicial Council or another judicial governance body plays an important role in the dismissal of judges, and the discretion of political bodies (if involved) is limited:

Element	Compliance
A. The Judicial Council or another judicial governance body directly dismisses judges. The role of Parliament or President (if involved at all) is limited to endorsing the Council's decision without the possibility to reject it (100%) OR	100%
B. The Judicial Council or another judicial governance body prepares a proposal on the dismissal of a judge that is submitted to the Parliament or President that may reject it only in exceptional cases on clear grounds provided in the legislation and explained in the decision (70%) OR	
C. The Judicial Council or another judicial governance body reviews all proposals for dismissal of judges and makes a justified recommendation to the relevant decision-making body (50%)	

Dismissal of judges is an exclusive power of the High Council of Justice, and political authorities do not have a role in dismissal of judges (Art. 131 Constitution of Ukraine). No dismissals were reported in the reporting period. **Ukraine meets the element A of this benchmark.**

Benchmark 6.1.4.

Judges are selected:

Element	Compliance
A. Based on competitive procedures, that is when vacancies are advertised online, and any eligible candidate can apply	✓
B. According to merits (experience, skills, integrity)	X

The Constitution of Ukraine provides for a competitive selection of judges and the selection to the first instance courts is competitive and merit based except for integrity assessments that are not based on clear criteria and methodology. The selection includes an admission exam, special background check, training, qualification exam post-training, placing successful candidates in the reserve with ranking, announcement of vacancies, and recommendation of HQCJ to HCJ on the appointment followed by a decision of the HCJ to propose candidates for the appointment to the President and their appointment. The process takes up to 24 months from the start of selection to appointment. Venice Commission found it too complex and recommended simplifying it.

HQCJ publishes an online announcement with eligibility criteria and deadline for submission of applications (30 days). Any eligible candidate can apply. HQCJ then reviews and shortlists applications using eligibility requirements that includes five years of professional experience, as well as integrity. The assessment of competences includes testing for moral and psychological qualities and drafting skills, based on the established criteria and methodology. HQCJ screens candidates for integrity after special background checks (e.g., no criminal record, truthful information about education, truthful asset declaration), and any other information it may receive regarding the candidate (Art. 74 LJSJ). Public Integrity Council (PIC) does not have a role, but discussions were ongoing about adding PIC's integrity assessments to the selection of first instance court candidates, similar to qualification assessments and promotions. At the same time, it is questionable whether the current capacity and resources of PIC would allow for expanding its role.

Following the selection, HQCJ recommends one candidate per each vacant position to the HCJ which can reject a candidate in case of a reasonable doubt about his/her compliance with the integrity or professional ethics criteria, and any other circumstances that may negatively affect the public trust in judiciary in case of the appointment. This decision is highly discretionary as it is based on HCJ's assessment of the circumstances related to a candidate and their qualities without clear criteria, grounds, or methodology (Art. 79 LJSJ). This refusal can however be appealed in court. The monitoring team found this excessive discretion problematic and recommended clarifying it in the law. The authorities assured that the integrity assessments of the HQCJ will play an important role in the future selections of judges in the reformed HCJ, and the HCJ will have to justify its decisions made through a transparent process with 14 votes, requiring votes of at least 3 non-judicial members, which will address the concerns of the monitoring team.

Ukraine complies with element A, but not B of this benchmark, as integrity assessments are not based on clear criteria and methodology.

In the absence of a functioning Judicial Council in the reporting period, proposals for only two judicial appointments were made, based on the process completed by the "old" HQCJ and HCJ. Given many vacancies, there is an urgent need for the selection and appointment of judges in Ukraine. In the past, Venice Commission urged Ukraine to appoint judges who had passed qualification assessments prior to the reform, as soon as possible. The authorities informed during the on-site visit that this would not be a helpful solution as there are not many such cases. As a priority, Ukraine is planning to speed up the process of qualification assessment of sitting judges. On the other hand, to accelerate the process, a draft law aimed at streamlining the selection, without compromising its quality and integrity assessments, provides for shortening the process from 24 to 9 months.

Benchmark 6.1.5.

Judges are promoted:

Element	Compliance
A. Based on competitive procedures, that is when vacancies are advertised online, and any eligible candidate can apply	✓
B. According to merits (experience, skills, integrity)	X

In Ukraine, promotion of judges is equivalent to the appointment to a higher-level court: appeals court, higher specialized court, or Supreme Court. Promotions are within the mandate of HCJ, HQCJ and PIC. HQCJ is responsible for the selection supported by PIC's integrity assessments, and HCJ is responsible for the decision to propose candidates to the President for the appointment.

Promotions are based on competitive procedures and merits overall (LJSJ, art. 79, 81) except for the assessment of integrity that is not based on clear criteria and methodology.

HQCJ publishes announcement online and any eligible candidate can apply. A qualification assessment is a part of the promotion process (described in detail under benchmark 1.1). Based on the results of qualification assessment, candidates are rated and selected for vacant positions. Specific experience (for attorneys and law scientists) and effectiveness of carrying out judicial function are considered in the assessment of professional competences. Qualification assessment includes general skills and psychological tests for moral and personal qualities. It also includes assessment of compliance with integrity and professional ethics criteria.

While PIC's assessment of ethics and integrity are based on clear criteria, its decision is not mandatory and can be overruled by HQCJ (negative conclusion to the positive one and vice-versa). Furthermore, at

a later stage, when deciding on the candidates for the appointment, HCJ can make its own determination on integrity, rejecting candidates recommended by HQCJ. Criteria for this decision are not defined, and its ground is vaguely formulated: “existence of reasonable doubt on compliance of candidate with criteria of integrity or professional ethics, or other circumstances that may negatively impact on public trust to judiciary in case of such an appointment”. Therefore, despite integrity assessment being part of the promotion process, the monitoring team could not conclude the compliance with the requirements of this benchmark relating to integrity (see also above, benchmark 6.1.1 and 6.1.4.)

Ukraine complies with element A, but not B of this benchmark, as integrity assessments are not based on clear criteria and methodology.

Indicator 6.2. Appointment of court presidents and judicial remuneration and budget do not affect judicial independence

Background

The pilot report concluded that the selection of court presidents was not merit-based or transparent in Ukraine. Court presidents stayed in the office longer than two terms using their influence and various schemes.[63] Judicial remuneration was set in the law and considered as proportionate and sufficient to ensure judicial independence, but the budget of judiciary was found insufficient to ensure its autonomy.[64] The recent reform did not affect the election of court presidents or their term of office.

Assessment of compliance

In Ukraine, judges of respective courts elect court presidents, but the process is not competitive or merit-based. Undue influence of court presidents over judges, and some important decisions, as well as manipulations to hold these positions for more than two terms, have persisted in the assessment period, but the new judicial authorities demonstrated the intolerance to these malpractices and explained the plans of addressing them. The budget of judiciary appears insufficient, but the remuneration of judges is set in the law and excludes discretionary payments.

Benchmark 6.2.1.

Court presidents are elected or appointed:

Element	Compliance
A. By the judges of the respective court or by the Judicial Council or another judicial governance body	✓
B. Based on an assessment of candidates’ merits (experience, skills, integrity)	X
C. In a competitive procedure	X

In Ukraine court presidents are elected by meetings (congress) of judges of respective courts (Art. 20 LJSJ) but the law does not envisage competitive merit-based process. There is no requirement to publish vacancies. Candidates are proposed by judges of the relevant court orally at the congress, or in writing in

63 Ibid (p. 71).

64 Ibid (p. 73).

preparation of the congress. Judges can also nominate themselves. Eligibility criteria are set in the law, but candidates' experience, skills, and integrity are not assessed. At the congress, candidates present themselves, judges ask them questions, and discuss the candidates followed by a secret vote and a decision with a simple majority.

The monitoring team was informed that some courts use a better process, at their own initiative. However, no evidence was provided that the election of court presidents in 2022 in practice was based on the assessment of merits or through a competitive procedure.

Therefore, Ukraine only meets the element A of this benchmark.

In addition, stakeholders alluded that the issues described in the pilot report related to court presidents' undue influence on judges and manipulations with the term of office, have not been resolved. Non-governmental stakeholders responding to the questionnaire stated that "court presidents have very important informal role as leaders among judges and use it to influence judicial decisions in particular cases or election of members to judicial governance institutions". According to the stakeholders, court presidents are still often considered corrupt links that affects judicial independence. Several court presidents that have been known for their undue influence and had stayed in office for more than 10 years are still in place.[65] The monitoring team was informed of a legislative initiative in the Parliament to abolish the position of court presidents as such (except the position of President of Supreme Court)[66] however, the authorities did not confirm this information. The authorities also responded to the civil society concerns about the role of the court presidents in the appointment of the HCJ members by the Congress of Judges as these appointments were made from the pool of candidates that passed a robust integrity vetting by Ethics Council (see indicator 3 below), and court presidents did not take part in the meeting that selected relevant HCJ members.

At the same time, the monitoring team observed a positive shift towards intolerance to these malpractices (manipulations of the term of office), which the authorities considered against the spirit of law and integrity of judges, demonstrating a clear resolve to change these through available means, such as disciplinary proceedings, integrity vetting and amendments of the law, as necessary. While they did not confirm any new cases of influence, pressure, or retaliation in the reporting period, unlike past confirmed practices, they highlighted the problem of manipulating the term of the office, and a vision to address them, *inter alia*, through the measures prescribed by the Anti-Corruption Action Plan. One of such measures is legal amendments to explicitly prohibit holding the position of a court president for more than two years (not just consecutive two years), in addition to objective disciplinary proceedings in case of violations, and not appointing judges with questionable integrity in the judicial governance bodies. Ukrainian judicial authorities believe that with this approach the problem will diminish gradually, and integrity culture will grow in the judiciary. Stakeholders have also observed positive signals, but the tangible results are still to be seen, mainly through the work of HCJ, who is maintaining the registry of undue influence reported by judges. In addition, according to the Stakeholders, the proposed vetting of Supreme Court Judges will be important in this regard.

65 District Administrative Court of the city of Kyiv known for various malpractices has been liquidated. The Law on its liquidation and the formation of the Kyiv City District Administrative Court, adopted on 13 December 2022.

66 https://itd.rada.gov.ua/billInfo/Bills/Card/41135

Benchmark 6.2.2.

The budgetary funding allocated to the judiciary:

Element	Compliance
A. Was not less than 90% of the amount requested by the judiciary or, if less than 90%, is considered sufficient by the judiciary	X
B. Included the possibility for the judicial representatives to participate in the consideration of the judicial budget in the parliament or the parliament's committee responsible for the budget	X

State Judicial Administration as a main administrator of funds for most of the courts requested the financing of UAH 26,69 billion, while the Law on State Budget for 2022 provided UAH 19,03 billion, with the reduction to UAH 16,92 billion in April 2022. This means that only 63% of the funds (after the reductions in spring 2022) requested by judiciary was provided from the State Budget in 2022.

According to the civil society respondents to the monitoring questionnaire, the judicial system did not have a sufficient budget for proper functioning in the reporting period. Underpaid court staff and related personnel shortage was listed as one of the problems. In addition, according to the latest available data, the debt of the State Judicial Administration amounted to more than UAH 1 billion, and after the issuance of court decisions, taking into account court fees, executive fees and legal aid costs, this amount will almost double. All this indicates the underfunding of the judiciary in 2022.

Representatives of judiciary did not have an opportunity to directly participate in the consideration of the judicial budget in the budget committee of the Verkhovna Rada but had an opportunity to indicate their needs. This is not in line with the benchmark.

In September 2022, the chief managers of the funds of the judicial authorities provided indicators of the deficit of expenditures necessary for the functioning of the judicial system in conditions of Martial Law, on the basis of which proposals were developed for the draft law on the State Budget 2023. The working group on the issues of proper financing of the judiciary in Ukraine worked with the State Judicial Administration (SJA) to calculate the fair distribution of expenses between courts in the SJA system.

Ukraine is not compliant with the elements of the benchmark 2.2.

Benchmark 6.2.3.

The level of judicial remuneration:

Element	Compliance
A. Is fixed in the law	✓
B. Excludes any discretionary payments	✓

Judicial remuneration is fixed in the law and excludes discretionary payments (Art. 135, LJSJ). Remuneration of a judge consists of a base salary and additional payments for seniority, for holding an administrative position in court, an academic degree, and work involving state secrets. Minimal salary of a judge of a first instance court is UAH 63,060 (EUR 1 865), and of a Supreme Court judge is UAH 157,650 (EUR 4,664). As of January 2022, the average salary in Ukraine was UAH 14,577 (EUR 471) and in Kyiv, the highest in Ukraine, was UAH 21,347 (EUR 690). According to the Government and stakeholders,

considering the average salary in Ukraine and judicial remuneration was sufficient to ensure judicial independence. At the same time, the authorities voiced the concerns that the remuneration is not regularly adjusted. **Ukraine is compliant with both elements of the benchmark.**

Indicator 6.3. Status, composition, mandate, and operation of the Judicial Council guarantee judicial independence and integrity

Background

High Council of Justice (HCJ) is a judicial governance body with a mandate of appointment, disciplinary proceedings, and dismissals of judges and its own budget. High Qualification Commission of Judges (HQCJ) is another judicial governance body dealing with the selection and qualification assessment of judges. Even though the HQCJ does not manage its budget independently, the funding is provided through another judicial body (the State Judicial Administration). Both bodies qualify as judicial governance bodies for the purposes of this performance area.

Judicial governance bodies had been widely perceived as a main bottleneck to the judicial independence in Ukraine. Due to serious misgivings in their functioning, for example, in the process of appointment of Supreme Court Judges or disciplinary proceedings, they were dissolved in 2019. Venice Commission noted that “the issue of integrity and ethics of the HCJ should be addressed as a matter of urgency”.[67]

The 2021 reform package aimed at transparent and merit-based formation of these bodies. To select new and vet the existing members of HCJ, an Ethics Council was created composed of three Ukrainian and three international experts with a prevailing vote. Likewise, to form a new HQCJ, a Selection Commission was established also with three Ukrainian and three international experts. After the first interviews held by Ethics Council, most members of the HCJ have resigned. [68] Interrupted by the war, in May 2022, the Ethics Council resumed its work, however, the new HCJ was fully formed only by January 2023.[69] HCJ appointed new members of HQCJ in June 2023 following the selection by the Selection Commission. [70]

Assessment of compliance

Judicial governance bodies are now in place but have not been functioning in most of the reporting period Following the reform, they have been formed through a competitive selection and appointment process, but their membership in the law or in practice does not meet the requirements of the relevant benchmarks. There is a coordinated process of completing framework necessary for functioning of these bodies. The newly formed bodies have been operating largely transparently, their decisions are published but HCJ decisions lacked justification.

67 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)018-e (para. 16).

68 https://kyivindependent.com/most-members-of-main-judicial-body-to-resign-over-reform/

69 HCJ was functioning briefly in January-February of 2022.

70 https://vkksu.gov.ua/news/pryznacheno-novyy-sklad-vyshchoyi-kvalifikaciynoyi-komisiyi-suddiv-ukrayiny

Benchmark 6.3.1.

	Compliance
The Judicial Council and other judicial governance bodies are set up and function based on the Constitution and/or law that define their powers	✓

High Council of Justice is set up based on the Constitution of Ukraine, which defines its powers (art. 131), along with the law on HCJ, (art. 3). The Ethics Council carries out integrity vetting of candidates for the membership to HCJ based on the pre-established criteria on integrity and ethics and proposes at least two candidates for each vacant position to the appointing authorities (art. 9-1, Law on HCJ). This rule does not apply to the President of Supreme Court, who is an ex officio member of HCJ.

The new composition of the HCJ was formed following a competitive selection process carried out by Ethics Council. However, concerns regarding the transparency have been raised since the Ethics Council decided to suspend broadcasting interviews temporarily. The Ethics Council explained this decision with the objective to protect candidates who are sometimes in the army fighting to defend Ukraine in Russia's war of aggression. Conversely, the interviews for the selection of heads of anti-corruption law enforcement bodies carried out in the same circumstances had been broadcasted (see PA 8).

Stakeholders met during the on-site visit provided an overall positive assessment, largely validating the selection process and its results. At the same time, specifically civil society representatives voiced criticism highlighting the lack of feedback, communication, and transparency of deliberations of the Ethics Council following the submission of information about the candidates by civil society and initial meetings to clarify provided information. Other stakeholders explained that the Ethics Council had interacted with civil society, in Ukraine but also in Warsaw where its meetings were held due to the war. [71] Some representatives contended that the Ethics Council's positive decisions lacked reasoning and questioned the integrity of several of the newly appointed members of HCJ. Civil society also challenged the composition of the Ethics Council and recommended that in future preference be given to the models that include Ukrainian stakeholders in the composition, along with international experts (for example like PCIE). During the on-site visit, the Ethics Council representative explained that the Council received voluminous information from the public and civil society about the candidates. The members reviewed these in detail and published well- substantiated decisions following extensive deliberations, including in person meetings in Poland, due to the war.

High Qualification Commission of Judges (HQCJ) is a body in charge of the selection of judges. It is set up based on the Constitution of Ukraine (Art. 131) and the primary law defines its mandate and powers (art. 92-93 LJSJ). HQCJ is operational since June 2023. The Selection Commission selected candidates for HQCJ membership through a merit-based process and HCJ formed the current composition. According to the stakeholders, the Selection Commission ensured full transparency in the selection of candidates for the HQCJ.

As both HCJ and HQCJ were set up based on law and functional in the reporting period, **Ukraine is compliant with the benchmark.**

[71] Decisions of the Council were made only during the meetings held in Ukraine, not in Warsaw.

Benchmark 6.3.2.

The composition of the Judicial Council and other judicial governance bodies includes not less than half of the judges who:

Element	Compliance
A. Are elected by their peers	X
B. Represent all levels of the judicial system	X

The HCJ consists of 21 members, with 10 judges or retired judges elected at the Congress of Judges (art. 131, Constitution of Ukraine) from among the pool of candidates vetted by Ethics Council. The President of the Supreme Court is an ex officio member and not elected by peers. Currently, the HCJ operates with 17 members of which 11 are judges, including the President of the Supreme Court, but the latter does not count in the requirement of the less than of this benchmark. While the law does not provide a rule on representation of judges of various levels of judicial system in the HCJ, in practice, both old and current HCJ included representatives of all levels of judiciary. **The HCJ does not meet the elements of the benchmark, as its composition includes less than a half of judges elected by their peers, and the representation of all levels of judicial system is not ensured by law.**

The HQCJ consists of 16 members, including 8 members appointed among judges or retired judges selected by a selection commission through a competitive process (art. 95, 95-1 of the LJSJ). There is no legal requirement on representation of judicial HQCJ members all the levels of the judicial system. New HQCJ members were appointed in June 2023 only, judicial members include representatives from appeal and first instance courts. **The HQCJ does not meet the elements of the benchmark, as its judge members are not elected by their peers and the representation of all levels of judicial system is not ensured by law.**

Benchmark 6.3.3.

	Compliance
The composition of the Judicial Council and other judicial governance bodies includes at least 1/3 of non-judicial members with voting rights who represent the civil society or other non-governmental stakeholders (for example, academia, law professors, attorneys, human rights defenders, NGO representatives)	X

HCJ includes 10 members appointed or elected by the following authorities two each: President, Parliament, Congress of Attorneys, All-Ukrainian Conference of Prosecutors, and Congress of Law Academia (art. 131, Constitution of Ukraine). There are no regulations on who could be appointed or elected by these authorities and at least in case of the President and the Parliament, it depends on their discretion. The election and appointment should be done from the pool vetted by Ethics Council.

According to the Guide at least 1/3 of judicial governance body members, which is seven members in case of HCJ, should represent civil society or other non-governmental stakeholders and non-judicial members who are public officials (for example, members of parliament, government, prosecutors) do not count for the compliance with this benchmark. The relevant requirements are not spelled out in legislation, but four members that are attorneys and academia qualify as non-judicial members under this benchmark by nature. As for the members nominated by Parliament or the President, in practice in 2022 the Parliament

appointed two members from attorneys/civil society and academia respectively,[72] on the contrary, the President under its quota appointed a judge in 2019 who still is a member of HCJ.[73] In the current composition only three non-judicial members meet the requirements of the benchmark. **Therefore, HCJ does not meet the benchmark neither in law nor in practice.**

In case of HQCJ, the law provides that of 16 members only 8 should be judges or retired judges. There are no regulations about non-judicial members. In practice, among new HQCJ members appointed in 2023, 5 members represent academia (3) and attorneys (2). [74] 3 other non-judicial members were public officials before the selection as HQCJ members, i.e., they do not represent civil society or non-governmental stakeholders.[75] **Therefore, HQCJ does not meet the benchmark in law or in practice.**

Non-judicial members of both HCJ and HQCJ have voting rights.

Benchmark 6.3.4.

Decisions of the Judicial Council and other judicial governance bodies:

Element	Compliance
A. Are published online	✓
B. Include an explanation of the reasons for taking a specific decision	X

The law provides for publication of the full text of decisions of the HCJ in seven days after their adoption (art. 34, Law on HCJ). In practice, decisions of HCJ were published online on the HCJ official website in the reporting period when HCJ was functional. **Thus, the element A is met.** In August 2023, HCJ amended its Rules of Procedures and defined that its meetings must be broadcasted online (in case of objection of one of the parties, HCJ may decide not to broadcast a meeting).[76]

As regards justification, an example provided by the authorities includes an explanation of the reasons.[77] However, non-governmental stakeholders reported about a recent case (2023) of an unreasoned decision of HCJ on rejection to temporary suspend powers of a judge who is a suspect in NABU case.[78] Another example is a decision on refusal to appoint a judge after the qualification assessment.[79] The authorities stated that two cases out of over 900 do not represent the overall situation. At the same time, civil society stressed that the above-mentioned case is high-profile, and it is not sufficiently reasoned. **The element B is not met.**

72 https://hcj.gov.ua/news/obrano-dvoh-chleniv-vyshchoyi-rady-pravosuddya-vid-verhovnoyi-rady-ukrayiny

73 https://hcj.gov.ua/rubric/sklad-vyshchoyi-rady-pravosuddya-0

74 One attorney is a retired judge.

75 https://www.ukrinform.ua/rubric-society/3716958-visa-rada-pravosudda-priznacila-16-novih-cleniv-vkks.html

76 https://hcj.gov.ua/sites/default/files/field/reglament_vrp_17.08.2023.pdf

77 https://hcj.gov.ua/doc/doc/25067

78 https://hcj.gov.ua/doc/doc/39544.

79 https://hcj.gov.ua/doc/doc/39672

Indicator 6.4. Judges are held accountable through impartial decision-making procedures

Background

The pilot report found disciplinary proceedings to lack impartiality and highlighted instances of using it as a weapon against judges with high integrity. [80] 2021 amendments substantially changed the disciplinary procedure introducing Disciplinary Inspectors Service, an independent unit in the Secretariat of the High Council of Justice (HCJ) responsible for initiating and preparing a case for a discussion and decision by Disciplinary Chambers of HCJ. However, the Service is not in place yet and disciplinary proceedings of judges are on hold with a backlog of about 9000 cases at the time of the on-site visit. HCJ has to select Disciplinary Inspectors through a transparent, merit-based process, but it only resumed functioning in January 2023.

Assessment of compliance

In Ukraine, grounds for disciplinary proceedings lack clarity, and decisions have not been substantiated in the past. At the time of the monitoring, the disciplinary proceedings were put on hold, awaiting further legal amendments. Disciplinary investigation of allegations against judges is separated from the decision-making in the law and the procedural guarantees for judges are in place. However, the new framework is not operational yet, and there is a backlog of some 11 000 disciplinary complaints. Ukraine is planning to reintroduce its old model with some changes, in the transition period, until the new model can be operationalized. Ukraine is encouraged to finalise the reform as soon as possible.

Benchmark 6.4.1.

The law stipulates:

Element	Compliance
A. Clear grounds for the disciplinary liability of judges that do not include such grounds as “breach of oath”, “improper performance of duties”, or “the loss of confidence or trust” unless the legislation breaks them down into more specific grounds	x
B. All main steps of the procedure for the disciplinary liability of judges	✓

The pilot report found that the grounds for disciplinary liability were not narrowly and clearly defined.[81] There has been no change in this regard and at least the following ground is problematic: “commission by a judge of conduct that defames the title of judge or undermines the authority of justice, in particular in matters of morality, honesty, integrity, conformity of the judge's lifestyle to his status, compliance with other judicial ethics and standards of conduct that ensure public confidence in the court” (art. 106 of the LJSJ). The relevant GRECO recommendation also remains unimplemented, as noted in the latest compliance report.[82] The anti-corruption strategy and action plan envisage legislative amendments to bring grounds

80 https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1684346976&id=id&accname=guest&checksum=64CC2156C9460E49F15F307B099C21C0 (p. 82).

81 https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1684346976&id=id&accname=guest&checksum=64CC2156C9460E49F15F307B099C21C0 (p. 81)

82 https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680aaa790 (p. 15-16).

for disciplinary liability for judges in line with GRECO recommendations and align them with the principle of legal certainty.

All main steps of disciplinary proceedings against judges are defined in the Law on HCJ, including filing a disciplinary complaint, examination of the complaint, opening of a disciplinary case, hearings, rights, and obligations of the parties. Under the new model, which is yet to be put in practice, Disciplinary Inspectors consider a complaint and propose to HCJ Disciplinary Chamber to open a case or not (art. 43-46, Law on HCJ). If the case is initiated, Disciplinary Inspector prepares the case for the consideration by the HCJ disciplinary chamber (art. 48, law on HCJ). A judge and a complainant have a right to participate in the hearing in person or through a representative, witnesses and other participants can also take part. Decisions are approved by a simple majority of the members of the Disciplinary Chamber.

Ukraine is not compliant with element A and is compliant with the element B of the benchmark.

Benchmark 6.4.2.

	Compliance
The disciplinary investigation of allegations against judges is separated from the decision-making in such cases	✓

Disciplinary investigation of allegations against judges is separated from the decision-making in law. Newly introduced Disciplinary Inspectors are mandated to carry out a preliminary check of a disciplinary complaint against a judge, collect information and documents, analyse them, draft decisions of HCJ Disciplinary Chambers (art. 28, Law on HCJ).

However, Inspectors unit is not in place yet and disciplinary proceedings against judges have not been carried out in practice in the reporting period. Inspectors were to be selected by newly formed HCJ, which stated operating in January 2023.

Non-governmental organisations contend that the relevant law is still problematic on various grounds, including the following: 1) the status of the Service of Disciplinary Inspector (SDI) and disciplinary inspectors, which does not ensure their independence; 2) non-transparent selection procedure of inspectors; 3) impossibility of Disciplinary Chambers of the HCJ to consider complaints before the formation of the Service of Disciplinary Inspectors. To address these points, amendments need to be elaborated, which would establish 1) the subordination of disciplinary inspectors directly to the HCJ (and not to the head of the HCJ Secretariat), 2) an open competition for the positions of inspectors, which will be carried out by a selection commission formed by the HCJ with the involvement of the Public Integrity Council to check for integrity, 3) until the creation of the SDI, consideration of disciplinary complaints takes place in the HCJ (according to the previous model). [83]

A new law foresees further revisions of the 2021 reform to redesign the Disciplinary Inspectors. At the time of the on-site visit the draft had been prepared in close consultations with international partners and civil society, according to the authorities and adopted on 10 August 2023.

To address the backlog as a temporary measure in the transition period, Ukraine is in the process of reinstating the old (2016) model where a HCJ member initiates a case and a Disciplinary Chamber of the HCJ decides, with some adjustments to the procedure until Disciplinary Inspectors are selected. Stakeholders do not contest this temporary solution, as they believe the risks of abuse are lower with the new reformed HCJ.

[83] Eight thousand disciplinary complaints: how to organise the work of the new HCJ effectively? https://bit.ly/44P8PSX

While the reasoning behind this temporary solution is clear to the monitoring team, having had no opportunity to review the proposed changes to the old procedure, it reiterates that the previous model was not in line with international standards. Therefore, it encourages Ukraine to finalize the legal framework for the new model and put in place Disciplinary Inspectors as soon as possible.

Ukraine is compliant with the benchmark in law and there has been no practice in the reporting period.

Benchmark 6.4.3.

	Compliance
There are procedural guarantees of the due process for a judge in disciplinary proceedings, namely the right to be heard and produce evidence, the right to employ a defence, the right of judicial appeal, and these guarantees are enforceable in practice	✓

In Ukraine, there are due process guarantees for a judge in disciplinary proceedings, which includes the right to be heard and produce evidence, the right to employ a defence, and judicial appeal. A judge can provide explanations, request summoning of witnesses, ask questions to the participants, express objections and recusals, examine case materials and make other requests. A judge has a right to be present and can request to postpone the hearing once, in case he/she cannot participate. A judge can appeal the decision in a disciplinary case to HCJ and the HCJ decision can be subsequently challenged in the Supreme Court. The monitoring team did not come across any reasons why these would not be enforceable in practice. **Therefore, Ukraine's law is in line with the benchmark.**

In the reporting period disciplinary proceedings have not been carried out as the new model is not in place yet. As Ukraine is in the process of redesigning the disciplinary proceedings to align them with international standards, the issue of pending cases raises concerns. It would be important that these cases are dealt with properly and are not terminated due to expiry of statute of limitations or dropped arbitrarily.

Benchmark 6.4.4.

	Compliance
There is no criminal or administrative punishment for judicial decisions (including for wrong decisions or miscarriage of justice), or such sanctions are not used in practice	✓

In Ukraine, there is no criminal or administrative punishment for judicial decisions (including for wrong decisions or miscarriage of justice). With a decision of the Constitutional Court of Ukraine in June 2020, the former art. 375 of the Criminal Code of Ukraine providing liability for knowingly unfair judgement was declared unconstitutional and became invalid in 6 months following the decision.

Assessment of non-governmental stakeholders

Overall, stakeholders positively assess the vector of judicial reforms, recognizing signs of openness and attempts of building the culture of integrity and accountability among judicial authorities. However, as most of the reforms of the law are still to be finalized Ukrainian judiciary is once again in transition and the practice based on the reform are yet to be seen.

Regarding the **selection and promotion** of judges, stakeholders recalled one of the problems in the procedures that led to a reform of judicial governance bodies: "the HQCJ seriously delayed with announcing competitions to fill existing judicial vacancies, and the HCJ then sabotaged the appointment of decent candidates". Stakeholders also raised a concern that numerous judicial positions are vacant, so the procedures for selection of judges have to be optimized, in particular, training in the National School of Judges can take less time (different replies on duration, 9 or 12 months) and it can take place at the final stage of the selection process. One more proposal from non-governmental stakeholders was to "improving the legal certainty" of PIC's role in selection and promotion of judges. As the judicial governance bodies are now working on redesigning the model of selection, qualification assessment and promotion of judges, there is a call to establish transparent, clear, and merit-based processes.

On the issues of undue influence by **court presidents** who stay in the office for a long time using various schemes to manipulate the system, stakeholders were unanimous that these practices have not been uprooted yet, but there are certain improvements. With the abolition of Kyiv City District Administrative Court and stronger enforcement, only a few examples have been reported. HCJ's role in addressing reporting of undue influence by judges will be instrumental. Stakeholders also believe that a system of rotation of court presidents should be in place and judges should be free and encouraged to report undue pressure.

Non-governmental stakeholders agree that the level of **budgetary** allocation to judiciary is rather insufficient (one respondent believes it is sufficient). NGOs provided contradictory information about the participation of representatives of judiciary in the parliamentary consideration of the state budget for 2023. One reply stipulates that judges themselves bear responsibility for insufficient funding of the judiciary, because after the restrictions on the level of renumeration imposed uniformly for public officials due to COVID-19 and declaration of that restriction unconstitutional, judges requested compensation of renumeration they had not received. Judicial remuneration seems sufficient, but not of the court staff and judicial assistants, which was considered low during the pilot.

Regarding **judicial governance bodies,** it was stressed that the practice of the legal reform is yet to be assessed, because new composition of HCJ "may repeat the mistakes of the previous one as the reform was not bold enough to touch the authority of the congress of judges". Stakeholders also mentioned that while attorneys are included to the HCJ **composition**, "there are huge issues of independence and integrity in Ukrainian bar. The most dubious members of the former composition of the HCJ were appointed by the congress of attorneys"[84]. The same point was made about representatives of law academia, whose representative was defined as non-compliant with integrity requirements by the Ethics Council during one-off integrity assessment of sitting HCJ members.[85] On the other hand, representatives of the international community validated the selection processes, stating that quality of assessments have not been compromised in case of neither HCJ nor HQCJ selections. At the same time some signals of lack of transparency have been noted, highlighting a recent example when HCJ used secret voting when deciding on the performance of the leadership of State Judicial Administration, so it was not possible to see how the individual members voted. CSO representatives also call for a greater **transparency** of HCJ work and its disciplinary chambers, namely, to introduce video-broadcasting of meetings (cancelled in 2019), introduce rollcall (nominal) voting and publication of its results.

NGOs provided information that HCJ decisions were **published**, but for a certain period were exempted from public access after the start of full-scale war of aggression started by Russia. Later, the access was reinstated. In general, HCJ decisions in 2022 were assessed as reasoned, however, one of respondents

84 http://en.dejure.foundation/tpost/ymkjz78fd1-the-acting-hcj-head-malovatsky-and-the-h

85 https://ec.court.gov.ua/userfiles/media/new_folder_for_uploads/ec/rishennj_6_07_05_2022.pdf

pointed to a decision of new composition of HCJ on refusal to the motion of Head of SAPO to suspend powers of a judge.[86]

As to **disciplinary liability** of judges, respondents recalled that previously HCJ failed to carry out disciplinary proceedings in an impartial manner. Since August 2021, HCJ has not been able to carry out disciplinary proceedings, as explained above. This function was restored with the law adopted on 10 August. A number of stakeholders mentioned that legislative amendments related to disciplinary inspectors are highly desirable: (1) to subordinate this unit directly to HCJ and not the head of HCJ secretariat; (2) an open competition for the positions of inspectors, which will be carried out by a selection commission formed by the HCJ with the involvement of the Public Integrity Council". Respondents also share the view that temporary assignment of disciplinary investigation to HCJ members-rapporteurs is possible (the model before 2021) until the unit of disciplinary inspectors is formed. One of respondents also pointed to the need to establish "the order of consideration of disciplinary complaints".

All non-governmental stakeholders agree that there are sufficient **procedural guarantees** for judges in **disciplinary** proceedings, most of the respondents think that grounds for disciplinary proceedings are also **clear**, and one respondent believed they are not.

Civil society representatives further informed the monitoring team that about the recent legislative proposals that may endanger the independent selection and appointment of judges and introduce a dubious polygraph testing of acting judges.

86 https://hcj.gov.ua/doc/doc/39544

8 Specialised Anti-Corruption Institutions

In Ukraine, specialisation of investigation and prosecution of high-level corruption is ensured through anti-corruption investigative and prosecutorial bodies NABU and SAPO. The previously widespread undue interference in the functioning of these bodies has substantially diminished in the assessment period. While the new status of NABU does not seem to impede its functioning, SAPO should benefit from an increased institutional independence from the Prosecutor General's Office. ARMA, the specialised stand-alone body for identification, tracing, management and return of illicit assets, demonstrated some results in practice, except in the asset recovery field. ARMA should ensure transparency, accountability, and due process to increase its credibility and build public trust in its work. The appointment of the heads of NABU and SAPO was transparent and merit-based, and their tenure was protected in the assessment period. The Head of SAPO was appointed at last after a long, obstructed process. Meanwhile the operations of NABU and SAPO suffered, as key decisions in high-level corruption cases had been left at the discretion of the Prosecutor General. Given the past repeated attempts to dismiss the NABU Director, closing legislative gaps in the dismissal grounds and procedures is important along with other measures to prevent such attempts in future. The specialised anti-corruption investigative and prosecutorial bodies have adequate powers and work transparently. NABU has a direct access to tax and customs databases, but it cannot perform independent wiretapping and the access to bank data

remains challenging in practice. Statistics on the work of specialised law enforcement bodies are collected and published but would benefit from further disaggregation. The specialised anti-corruption bodies demonstrated an important progress of enforcement of high-level corruption cases in recent years with the number of convictions growing despite the war.

Figure 8.1. Performance level for Specialized Anti-Corruption Institutions is outstanding

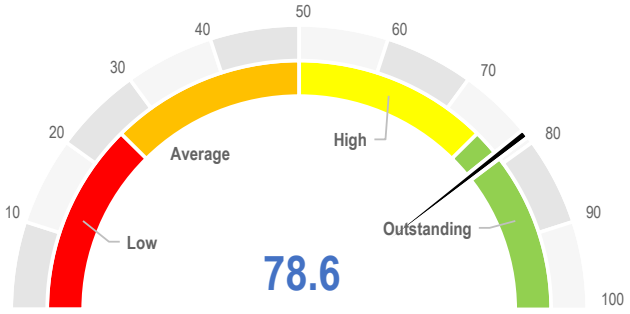


Figure 8.2. Performance level for Specialized Anti-Corruption Institutions by indicators

Indicator 8.1. The anti-corruption specialisation of investigators and prosecutors is ensured

Background

The National Anti-Corruption Bureau of Ukraine (NABU) is an investigative body specialised in high-level corruption cases. NABU's investigative jurisdiction is mirrored by the prosecutorial jurisdiction of the Specialised Anti-Corruption Prosecutor's Office (SAPO) and the judicial jurisdiction of the High Anti-Corruption Court (HACC).

The pilot of the 5th round of IAP monitoring report raised concerns of alleged political and other undue interference in the work of NABU and SAPO, undermining the enforcement of high-level corruption cases. It called on Ukraine to preserve the independence and autonomy of its specialised law enforcement institutions and protect their jurisdiction.[87]

In 2021, the amendments based on a Constitutional Court decision revoked some of the provisions of the Law on NABU and NABU became a central executive body with a special status, but its operational and investigative independence seems to have remained intact. At the same time, potential risks of impediments in NABU's functioning are now higher compared to its previous independent status. NABU representatives, however, confirmed that in practice the obstacles for NABU's operations related to its status (such as the lack of the power to independently conduct the procurement) have been promptly resolved by the Cabinet of Ministers.

Assessment of compliance

Specialisation of investigation and prosecution of high-level corruption is ensured in law and in practice. Investigative and prosecutorial jurisdiction are clearly delineated and primarily assigned to NABU and SAPO, respectively. These specialised anti-corruption bodies demonstrated an important progress of enforcement of high-level corruption cases in recent years with the number of convictions growing despite the war. The interferences into the jurisdiction and functioning of these bodies has substantially diminished compared to the situation during the pilot report and are limited to some isolated cases without any clear attribution to a deliberate or concerted political or other undue influence. While the new status of NABU did not seem to impede its functioning in the reporting period, in the view of the monitoring team, SAPO should benefit from an increased institutional independence from the Prosecutor General's Office of Ukraine.

87 OECD (2022), Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan. https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1688399125&id=id&accname=guest&checksum=F9BC68BCE6B8C8DDC90038A7A0DEF26F

Benchmark 8.1.1.

Investigation of corruption offences is assigned in the legislation to a body, unit or a group of investigators which specialise in combatting corruption:

Element	Compliance
A. There are investigators with a clearly established mandate and responsibility to investigate corruption offences as the main focus of activity (70%) OR	B (100%)
B. There is a body or unit of investigators with a clearly established mandate and responsibility to investigate corruption offences as the main focus of activity (100%)	

Investigation of corruption offences is assigned to several pre-trial investigation agencies, including the National Anti-Corruption Bureau of Ukraine (NABU), the State Bureau of Investigation (SBI), the Economic Security Bureau, the Security Service of Ukraine (SSU), and the National Police (art. 216 CPC).[88] For the purposes of this benchmark, in case of multiple bodies investigating corruption cases, the one dealing with high-level corruption[89] should be assessed, which is NABU.

NABU is a pre-trial investigative body dealing exclusively with the investigation of high-level corruption and corruption-related offences (such as money laundering or false statements in asset declarations) in the public sector. In particular, NABU's investigative jurisdiction covers corruption and related offences:

- committed by high-ranking officials (listed in the Art. 216.5.1 CPC);
- if the object of crime (benefit) or damages exceed certain value (500 times higher than the subsistence minimum for able-bodied persons);
- committed against a foreign official.

In exceptional circumstances, for instance, in case of multiple offences, encompassing corruption, where the separation of criminal proceedings is impossible, NABU may investigate other criminal offences (Art. 216, CPC). NABU may also investigate criminal offences that caused or could cause serious consequences to state or public interests, as well as freedoms and interests of an individual or a legal entity.

The SBI investigates offences committed by NABU Director, Head of SAPO and its prosecutors, and judges of the High Anti-Corruption Court, and the National Police investigates corruption offences that fall outside the jurisdiction of NABU and SBI. The Security Service of Ukraine (SSU) has a jurisdiction over the abuse of power or official position offence (Art. 364, CC), except for cases being investigated by NABU. In addition, the Economic Security Bureau has the mandate to investigate cases of embezzlement and abuse of power or official position under certain thresholds of the amount of the object of crime or its damage, if these cases are not under NABU's and SBI's jurisdiction.

The law gives precedence to NABU in case of concurring jurisdiction (for example with SBI, Art. 36.5 CPC). Jurisdictional disputes are settled by the Prosecutor General or deputy Prosecutor General (Art. 216.5, CPC).

88 Criminal Procedure Code Of Ukraine, Article 216, https://zakon.rada.gov.ua/laws/show/4651-17#Text

89 "High-level corruption": Corruption offences which meet one of the following criteria: A. Involve high-level officials in any capacity punishable by criminal law (for example, as masterminds, perpetrators, abettors, or accessories). B. Involve substantial benefits for officials, their family members, or other related persons (for example, legal persons they own or control, political parties they belong to). A substantial benefit means a pecuniary benefit that is equal to or exceeds the amount of 1,000 monthly minimum wage (or the equivalent of the minimum wage if it is not applicable) fixed in the respective country on 1 January of the year for which data is provided.

Since NABU is a stand-alone body with a clearly defined mandate to investigate high-level corruption cases, Ukraine is aligned with a higher standard under this benchmark (element B).

Benchmark 8.1.2.

Jurisdiction of the anti-corruption body, unit, or a group of investigators specified in 1.1, is protected by legislation and observed in practice:

Element	Compliance
A. The legislation does not permit corruption cases to be removed from the specialised anti-corruption body, unit, investigator, or allows it only exceptionally, based on clear grounds established in the legislation	✓
B. There were no cases of transfer of proceedings outside legally established grounds	✓

There is a general prohibition to assign pre-trial investigation of criminal proceedings under NABU's jurisdiction to other pre-trial investigative bodies (Art. 36.5, CPC). While previously this prohibition was absolute, in March 2022, the Parliament adopted an exception in response to Russia's war against Ukraine. These amendments stipulate that proceedings falling within the jurisdiction of NABU can be transferred to another pre-trial investigation body in case of "objective circumstances that make it impossible for NABU to function or to conduct pre-trial investigation under the Martial Law". The authorities explained that these provisions were appropriate at the beginning of the war, and they have not been applied in practice. **Given that removal of cases from NABU is prescribed by law as an exceptional measure based on the clear grounds, Ukraine is compliant with the element A of the benchmark.**

However, despite clear legal provisions, jurisdiction of NABU has not always been observed in practice. The pilot report identified unlawful removal of cases from NABU as a systemic problem.[90] In the reporting period, however, neither the government nor stakeholders have provided examples of an unjustified transfer of proceedings from NABU to other pre-trial investigation bodies. According to NABU, in the reporting period, 215 criminal proceedings were sent for investigation to other investigative bodies, but there were no cases of removal of criminal proceedings from NABU outside the established grounds. This positive shift can be partly explained by the appointment of the Head of SAPO in the reporting period. As the decision on transfer of a case is made by the Head of SAPO or the Prosecutor General and the responsibilities of the acting head of SAPO have not been clear in this regard, these decisions were left at the discretion of the Prosecutor General before the appointment of the Head of SAPO.

Given that there were no instances of removal of cases outside the legally established grounds, the element B of the benchmark is met.

At the same time, the monitoring team was informed of other ways of impeding NABU's investigative jurisdiction, for example, opening cases with a different legal qualification that does not fall within NABU's jurisdiction, sometimes duplicating investigations on the same facts as those investigated by NABU ("cloned investigations").[91] Such "schemes" are allegedly used to create obstacles to investigations, by hiding or weakening evidence, or leading to expiry of pre-trial investigation terms circumventing NABU's investigative jurisdiction prescribed by law. Due to the highly obscure system of the case record, it is difficult

90 OECD (2022), Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan. https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1688399125&id=id&accname=guest&checksum=F9BC68BCE6B8C8DDC90038A7A0DEF26F

91 Cloned investigations are when the same facts investigated by NABU are investigated under a different legal qualification by another law enforcement body.

to detect such cases and they are often discovered through unofficial means. If uncovered, these cases are usually transferred later to NABU, but the Bureau has to claim the case through the Prosecutor General or the Head of SAPO, requesting the resolution of a jurisdictional dispute.

The authorities met during the on-site visit revealed that in one such case, an investigative body notified a person of a suspicion and later transferred the case to NABU. The case was terminated due to the expiry of the pre-trial investigation term, as NABU could not gather sufficient evidence to complete the investigation within the short time left. In another case, NABU's operative measures were compromised due to a public disclosure, necessitating urgent searches and other investigative actions to preserve the evidence and the investigation. During the searches, NABU discovered that the necessary evidence had already been seized by the National Police and sent for expertise. The expertise institution refused to transfer materials to NABU as the National Police acted as an investigative body in this case. Later, the Prosecutor General transferred this case to NABU.

Against this background, the monitoring team urges Ukraine to undertake any measures that are necessary to prevent impeding the investigation and prosecution of corruption cases, be it through manipulations with qualification of cases, other breaches of investigative jurisdiction. Enhancing transparent management of case record and improving collaboration and information sharing between law enforcement bodies could be one such measure.

Benchmark 8.1.3.

Prosecution of corruption offences is conducted by a body, unit or a group of prosecutors which specialise in combatting corruption:

Element	Compliance
A. There is a body, unit, or a group of prosecutors with a clearly established mandate to supervise or lead the investigation of corruption cases as the main focus of activity	✓
B. There is a body, unit, or a group of prosecutors with a clearly established mandate to present corruption cases in court as the main focus of activity	✓

There is a specialization of prosecutors introduced for high-level corruption cases. The Specialized Anti-Corruption Prosecutor's Office (SAPO) functions as a structural unit of the Prosecutor General's Office. The mandate of SAPO is clearly defined to include supervision of operative investigative activities and pre-trial investigations conducted by NABU and prosecution of these cases (Art. 8, Law on Prosecution Service (LPS)). SAPO prosecutors present high-level corruption and related asset recovery cases in court and do not deal with other cases. Accordingly, in Ukraine prosecution of corruption offences is conducted by a body which specializes in combatting corruption, and **Ukraine complies with both elements of the benchmark.**

Nevertheless, the lack of institutional autonomy from the Prosecutor General's Office negatively impacts SAPO's operations. For instance, SAPO lacks not only prosecutors, but also IT, financial, internal control, and HR units, which are part of and managed by the Prosecutor General's Office. SAPO's correspondence passes through the PGO hindering operational efficiency and creating confidentiality risks. In addition, under the previous leadership, the PGO has at times hindered initiation of extradition requests, leading to limitations in carrying out SAPO's mandate effectively.

To address these issues and strengthen the institutional independence of SAPO, a draft law was introduced designating SAPO as an independent legal entity. Even though, the Verkhovna Rada's committee rejected this proposal, the discussions continue. There are supporters of this initiative among state bodies, but the Prosecutor General's Office is not in favour of a separation, contending that the unity

of the prosecutorial system, of which SAPO is an integral part, must be preserved. The Ministry of Justice introduced a new draft law in September 2023, proposing a set of measures to bolster SAPO's autonomy. The monitoring team stresses that enhancing the institutional autonomy of SAPO is crucial for reinforcing the prosecution of high-level corruption cases in Ukraine and will closely observe these legislative developments in the upcoming monitoring rounds.

Indicator 8.2. The functions of identification, tracing, management and return of illicit assets are performed by specialised officials

Background

The pilot report observed a considerable progress in Ukraine's efforts in the recovery and management of corruption proceeds. This progress was primarily attributed to the establishment of a dedicated body, Asset Recovery and Management Agency (ARMA).[92] Nevertheless, despite the positive institutional developments, the actual results were scarce, and there was a need for the reforms, specifically with the aim "to ensure a greater level of insulation from political interference in the management of complex assets".[93] The Head of ARMA had not been selected for almost three years following the resignation of the previous head due to being investigated for involvement in a corruption scheme.[94] At the time of the on-site visit, there are some initial discussions on possible reform of asset management function, separating it from ARMA and moving it to another state body.

Assessment of compliance

In Ukraine, the functions of identification, tracing, management and return of illicit assets are performed by ARMA, as a specialised stand-alone body. Although ARMA's annual report demonstrates results of active work in various operational aspects, asset recovery functions do not seem to have been performed in practice. ARMA's head was finally appointed in the assessment period, but there are major concerns regarding qualification and integrity. ARMA must ensure transparency and due process in its operations to ensure accountability and build public trust in the existing institutional model.

Benchmark 8.2.1.

	Compliance
A dedicated body, unit or group of specialised officials dealing with the identification, tracing and return of criminal proceeds, including from corruption (asset recovery practitioners), functions in practice	X

ARMA serves as a central executive authority with a primary responsibility of identifying, tracing, and recovering the proceeds of corruption (Art. 9, Law on ARMA). ARMA is also tasked with facilitating cooperation with foreign authorities in charge of asset identification, tracing, and management, as well as

92 OECD (2022), Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan. https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1688399125&id=id&accname=guest&checksum=F9BC68BCE6B8C8DDC90038A7A0DEF26F

https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1685006483&id=id&accname=guest&checksum=2ACD8E1C25FAEA66F60C5EA05731BACE(p. 146).

94 https://nabu.gov.ua/news/koruptc-ia-v-arma-organ-zatoru-zlochinno-grupi-obrano-zapob-zhnii-zakh-d/

other competent foreign authorities and international organisations. Definitions of "asset tracing" and "asset identification" provided in Article 1 of the Law on ARMA link both activities either to criminal proceedings on corruption, or civil proceedings on confiscation of unexplained assets.

However, the task of identifying and tracing assets may also be carried out by NABU, other investigative bodies, and to some extent, the NACP. None of these bodies deal exclusively with the mentioned functions, while ARMA has separate structural units specifically designated for asset identification and tracing.

In 2022, in addition to its primary mandate, ARMA also carried out activities related to the new provisions of the Law on Sanctions. The agency executed requests on search of assets of prohibited political parties in Ukraine as well as assets of persons under sanctions.[95] ARMA also engaged in the purchase of military bonds using its deposit portfolio.

In addition to ARMA's mandate for asset recovery, ARMA plays a role in return of criminal proceeds from abroad. This function is split between other authorities, with the Prosecutor General's Office and NABU acting as central authorities for international cooperation in criminal proceedings during the pre-trial investigation, and the Ministry of Justice (MoJ) assuming functions of central authority in criminal proceedings during the trial. Both ARMA and NABU, along with the MoJ, are responsible for representing Ukraine's interests in foreign jurisdictions. NABU and MOJ are addressing requests for international legal assistance.[96]

ARMA was operational in 2022 and according to its annual report, 4,401 requests on asset identification and tracing were received and fully executed by the agency.[97] As to the return of assets, ARMA's 2022 annual report stated that the agency "did not receive notifications about the initiatives of the Ministry of Justice and approvals of public prosecutors' offices on representation of Ukraine in foreign jurisdictions' bodies in cases related to return of assets to Ukraine". The authorities did not provide any other evidence on the practice of return of proceeds of corruption from foreign jurisdictions to Ukraine. **Therefore, Ukraine does not meet the requirements set of the benchmark due to the lack of asset recovery in practice.** The authorities informed about the recent adoption of the new asset recovery strategy, which is a welcome step, but it is yet to be implemented. The monitoring team underscores the need to make the asset recovery operational in Ukraine.

At the same time, ARMA's credibility has been undermined by allegations of the lack of integrity, investigations of corruption against previous leadership and significant delays or ineffectiveness in the implementation of its tasks. Notably, ARMA has been criticised for the delays in the publication of the register of the seized assets, which became open only in August 2023. In addition, the relevance and accuracy of the data in the registry raise doubts.[98] ARMA must ensure transparency and due process in its operations to build public trust.

In addition, the appointment of the Head of ARMA has been pending for three years, while critical for effective functioning of ARMA. On June 30, 2023, based on the results of the selection procedure, carried out by a specialised selection commission, the Cabinet of Ministers finally appointed a new Head of ARMA. During the on-site visit discussions, some non-governmental stakeholders strongly challenged this appointment as presenting a significant threat to ARMA's work and the overall anti-corruption system. The G7 ambassadors noted civil society concerns and stated that due process is important to build public confidence in ARMA.[99] Non-governmental stakeholders are concerned that the newly appointed Head of

95 https://zakon.rada.gov.ua/laws/show/896-2022-%D0%BF#top; https://zakon.rada.gov.ua/laws/show/z0710-22#top

96 https://zakon.rada.gov.ua/laws/show/228-2014-%D0%BF#Text

97 https://arma.gov.ua/files/general/2023/04/14/20230414151815-81.pdf

98 https://ti-ukraine.org/en/blogs/what-will-you-fail-to-find-in-seized-assets-register/

99 https://twitter.com/G7AmbReformUA/status/1674743336865878017

ARMA lacks necessary experience and allegedly has close ties with the former head of the State Security Service of Ukraine, and business ties with individuals suspected of cooperation with Russia, and that the new Head was also involved in campaigning for a presidential candidate, indicating her political bias.[100]

Benchmark 8.2.2.

	Compliance
A dedicated body, unit or group of specialised officials dealing with the management of seized and confiscated assets in criminal cases, including corruption, functions in practice	✓

Asset management is one of the functions of ARMA (Art. 9, Law on ARMA) covering seized or confiscated assets both in criminal and civil proceedings. ARMA manages movable and immovable property, securities, and other rights by selling the assets or transferring them to external managers. A separate unit deals with asset management within the agency.[101]

The government reported that in 2022, ARMA received more than 340 court decisions on the transfer of seized assets to the agency. Over 156 competitive selections of external managers for seized assets were announced with 19 winners selected. After the valuation of seized assets transferred to ARMA, 10 asset management contracts were concluded, and various types of seized assets transferred to external managers.[102] In January 2023, the Unified State Register of Assets Seized in Criminal Proceedings became operational but was not open to the public during Martial Law until August 2023. **Ukraine is compliant with the benchmark.** At the same time, the pilot report underscored the need for an enhanced transparency and robust procedures to ensure that the selection process of asset managers is not subject to external influences and complexities.[103] The lack of competitive appointment of asset managers and potential abuse during the process of selling of seized assets seem to remain unresolved.[104] The monitoring team was informed that ARMA is working on a draft resolution to align the process of selling seized assets through electronic auctions with international standards and practices, making it more transparent and accessible to organisations worldwide. The proposed changes also include the introduction of a two-tiered electronic trading system (ETS) for asset realisation. Currently, the draft resolution is being refined and will undergo further consideration by the Government.

Due to the dissatisfaction with ARMA's results in asset management, at the time of the on-site visit, policy discussions had been initiated to reform the asset management function, by transferring it to another body, (for example, the State Property Fund of Ukraine). The monitoring team stresses the need for a set of well-thought and coordinated reforms aimed at improving asset management.

100 https://ti-ukraine.org/en/news/appointment-of-olena-duma-can-put-an-end-to-arma/

101 https://arma.gov.ua/organizational-structure

102 https://arma.gov.ua/files/general/2023/04/14/20230414151815-81.pdf (p. 29-54).

103 OECD (2022), Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan. https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1688399125&id=id&accname=guest&checksum=F9BC68BCE6B8C8DDC90038A7A0DEF26F

104 https://www.epravda.com.ua/columns/2023/05/26/700539/

Indicator 8.3. The appointment of heads of the specialised anti-corruption investigative and prosecutorial bodies is transparent and merit-based, with their tenure in office protected by law

Background

The previous rounds of IAP monitoring confirmed that the appointment of the heads of specialized anti-corruption investigative and prosecutorial bodies had been transparent and merit-based in practice.

In 2021, the Constitutional Court found the President's role in the appointment and dismissal of NABU Director unconstitutional. The amended Law on NABU changed the selection procedure with the Government making a final decision from three candidates selected with a decisive role of international experts.[105] In the run up to the end of the tenure of the former NABU Director in April 2022, the selection commission was formed comprising six members, with three international experts selected by international partners and three Ukrainian experts appointed by the government. [106] The new Director was appointed in early March 2023.

Given the significance of the selection of NABU Director, international partners and civil society kept a close eye on the process. The European Union and International Monetary Fund have highlighted its importance as a condition for providing financial assistance to Ukraine.[107] The close oversight of the process resulted in high standards of transparency in the selection process. This opinion is widely shared by stakeholders.

The Head of SAPO resigned in August 2020, and many relevant powers have been de-facto exercised by the Prosecutor General since then. The selection of a new Head was dragged for more than two years, negatively impacting the performance of SAPO. The new Head was finally appointed in July 2022 through a merit-based process, after significant hurdles.[108]

Assessment of compliance

In Ukraine, the appointment of heads of the specialised anti-corruption investigative and prosecutorial bodies is transparent, conducted through an open call of candidates who are assessed based on their merits. Their tenure is protected by law. The dismissal grounds for the NABU Director are largely clear, but the regulations of the audit commission for assessing effectiveness of NABU work are not in place, and the procedure for dismissal in line with the Law on Oligarchs is not defined. Given the past repeated attempts to dismiss the former NABU Director, closing legislative gaps will be crucial to prevent such attempts in future. The Head of SAPO was finally appointed after more than two years of dragged process, following important external pressure. The operations of NABU and SAPO suffered during these years, as key decisions on investigation and prosecution of high-level corruption cases had been left at the discretion of the Prosecutor General. SAPO would benefit from a strengthened institutional independence from the Prosecutor General's Office.

105 Initially, the voting rule followed a simple majority principle, but it has since transitioned to either a qualified majority or, in the event of a tie vote, a prevailing decision by international experts.

106 https://zakon.rada.gov.ua/laws/show/148-2022-%D1%80#Text

107 https://www.eurointegration.com.ua/eng/articles/2023/01/16/7154226/

108 https://ti-ukraine.org/en/news/detective-klymenko-wins-sapo-competition-the-commission-has-approved-the-winner-but-there-are-nuances/

Benchmark 8.3.1.

The head of the anti-corruption investigative body, unit, or group of investigators, which specialises in investigating corruption, is selected through the following selection procedure in practice:

Element	Compliance
A. The legislation regulates the main steps in the process	✓
B. The information about the outcomes of the main steps is published online	✓
C. The vacancy is advertised online	✓
D. The requirement to advertise the vacancy online is stipulated in the legislation	✓
E. Any eligible candidates could apply	✓
F. The selection is based on an assessment of candidates' merits (experience, skills, integrity) in legislation and in practice	✓

This benchmark assesses the law and practice of the selection of the head of anti-corruption investigative body, NABU Director.

The Law on NABU sets forth key stages of the selection process, which include: establishment of the selection commission; approval by the selection commission of the rules of procedure, schedule, and criteria and methodology of evaluation; publication of an announcement; screening of applications; knowledge and general aptitude tests; shortlisting candidates for interviews; background checks; integrity and competence interviews and selection of top three candidates proposed for the appointment to Prime Minister of Ukraine. **Given that legislation regulates main steps of the selection process, Ukraine is compliant with the element A of the benchmark.**

The transparency of the process and open competition are guaranteed by law and these requirements have been observed in practice during the selection of the NABU Director in 2022-2023. The announcement of the competition was published on the Government website and widely disseminated through the national print media and other online platforms.[109] It included the list of required documents and eligibility criteria, allowing any eligible candidate to apply. The deadline for the submission of applications initially set at 21 days was extended to 35 days to allow wider access. The selection commission reviewed 78 applications and compiled a shortlist of 74 eligible candidates with the reasoning on exclusions, such as failure to meet established criteria or incomplete documents, or voluntary withdrawal. Based on the results of the knowledge test, 21 candidates were selected for an interview on integrity and 11 candidates were further selected for an interview on competences. Finally, the selection commission identified three shortlisted candidates recommended for an appointment to the Prime Minister. The information published for this appointment included the initial list of candidates with the results of the assessment per each candidate, the shortlists for the interviews, as well as the list of top three candidates proposed to the Prime-Minister for appointment, and the decision of the Cabinet of Ministers appointing NABU Director. **Therefore, Ukraine meets the requirements of the elements B, C, D and E of this benchmark.**

The decision of the selection commission must be substantiated according to the law and include justification for selecting three candidates proposed to the Prime Minister, but in practice it seems to have lacked the reasoning.[110] While not required by the benchmark, in the view of the monitoring team, the publication of a justified decision at each stage of the competition procedure (especially when the decision

109https://www.kmu.gov.ua/storage/app/sites/1/konkurs-nabu/oholoshennya_pro_umovy_ta_stroky_provedennya_konkursu_nabu.pdf

110https://www.kmu.gov.ua/storage/app/sites/1/konkurs-nabu/20-04032023-zasidannia-komisii-z-provedennia-konkursu-na-zainiattia-posady-dyrektora-nabu.pdf

involves voting) would further enhance the transparency and accountability of this process. Furthermore, a procedure in which the selection commission presents a single selected candidate to the Prime Minister would increase the transparency and minimize political discretion at the final stage of the selection process. Another way of achieving this could be a merit-based approach and a transparent decision by the Prime Minister when selecting from the three candidates proposed by the commission.

To conclude compliance with the element F, the monitoring team does not examine the quality of the assessment of candidates, but it determines whether the selection was based on merits in practice: that the assessment of experience, skills, and integrity influenced the decision on the appointment. The selection of the NABU Director included various tests and interviews to assess candidates' experience, skills and integrity. NABU and NACP further explained that integrity assessments are based on specific criteria defined in the Corruption Prevention Law (CPL), such as: existence of criminal liability, including for corruption offences; administrative sanctions for corruption-related offences; reliability of the information specified in the asset declaration; possession of equity rights; health condition and academic degrees; relation to military service; access to state secrets; application to a person of the ban to hold the relevant position, as envisioned by provisions of the Law On Lustration. In addition, the selection commission established its own criteria for assessing integrity and considered information received from non-governmental stakeholders. Each candidate must explain and respond to any concerns regarding his/her integrity in writing (if requested by the selection commission) and during an in-depth integrity interview.[111] **Thus, the monitoring team concluded that Ukraine complies with the element F of this benchmark.**

Benchmark 8.3.2.

The procedure for pre-term dismissal of the head of the anti-corruption investigative body, unit, or a group of investigators, which specialise in investigating corruption, is clear, transparent, and objective:

	Element	Compliance
A.	Grounds for dismissal are defined in the law	✓
B.	Grounds for dismissal are clear and do not include such grounds as "breach of oath", "improper performance of duties", or "loss of confidence or trust" unless the legislation breaks them down into more specific grounds	X
C.	The law regulates the main steps of the procedure	X
D.	The law requires that information about the outcomes of different steps (if there are several steps) of the procedure is published online	X

The procedure and grounds for dismissal of NABU Director are defined in the Law on NABU. Thus, **Ukraine is compliant with element A.**

A qualified majority (two-thirds) of the Cabinet of Ministers approves the dismissal. In principle, grounds for dismissal are clear (Art. 6 of the Law on NABU). However, the monitoring team raised concerns about the dismissal ground based on the external audit results, if it concludes the ineffectiveness of NABU and improper performance of duties by its Director. "Ineffectiveness" and "improper performance" are not broken down into more specific grounds in the law, as required by the benchmark, but the law implies that the audit commission must define the criteria and methodology for the evaluation (Art. 26 of the Law on NABU). As the audit commission has not been formed yet, these criteria are not in place. **Therefore, Ukraine is not compliant with element B.**

The law regulates the main steps of the procedure, for most of the grounds, which vary depending on a particular ground. For some grounds the dismissal is based on a prior court decision or decision of another

111 https://www.kmu.gov.ua/storage/app/sites/1/konkurs-nabu/kryteriyi-ta-metodika-ocinki-kandydativ-na-posadu-dyrektora-nabu.pdf

competent authority. For external audit, the law defines its frequency and scope, procedure for appointment of the audit commission, the requirement to define criteria and methodology for assessment, rights and obligations of commission members, voting procedure, requirements on publication and dissemination of the audit report.

The main steps of the procedure are not specified for dismissal on the grounds of the violation of the Law on Oligarchs, which is related to a declaration about contacts with an oligarch or its representative. It is unclear who establishes the violation and based on which procedure. As of now, this ground cannot be applied in practice because no one has been identified as an oligarch based on the mentioned law. The law is being amended, and it is planned that the amendments will consider the Venice Commission's opinion, which advised deferring the implementation of this law and suggested a reassessment of its necessity after the war. [112] If the law remains relevant at that time, the Venice Commission emphasized the importance of conducting a significant revision of its provisions.

Non-governmental stakeholders raised concerns regarding the procedure for dismissal due to the inability to perform duties for health reasons. The government authorities explained that in this case evaluation by a medical commission established by a central executive body responsible for implementing healthcare policy (i.e., Ministry of Health) is required. The law does not define the procedure for establishing such a commission or guidelines for its functioning. However, these procedures are clearly defined in the secondary legislation and the government does not see any pitfalls regarding this specific ground for dismissal.

Ukraine is not compliant with element C of the benchmark on account of the lack of clear procedure for dismissal based on the Law on Oligarchs.

There are varying requirements on publication of information about the outcomes of different steps of the dismissal procedure relative to different grounds. For instance, in case of a dismissal based on the negative assessment of effectiveness, online publication of the approved audit report is required (Art. 26, Law on NABU). In instances where dismissal is based on a court decision (e.g., conviction), the publication of the court decision is provided under the Law on Access to the Court Decisions. However, for grounds, such as violation of the Law on Oligarchs or health incapacity, there are no legal provisions outlining any specific publication requirements. The final decision of the Cabinet of Ministers on the dismissal of the NABU Director must be published on the CMU's website (Art. 52, Law on CMU). **Ukraine is not compliant with the element D. The monitoring team emphasizes the need to ensure publication of the outcomes of different steps in cases where there is more than one step in the dismissal procedure.**

Benchmark 8.3.3.

	Compliance
There were no cases of dismissal of the head of the anti-corruption investigative body, unit, or a group of investigators outside of the procedure described in benchmark 3.2	✓

In 2022, the tenure of the previous NABU Director ended in accordance with the law in the reporting period. **Ukraine is therefore compliant with this benchmark.**

The pilot report identified the attempts to dismiss the former NABU Director, including through various draft laws and Constitutional Court ruling that the appointment of the NABU Director by the President was unconstitutional, but this decision could not result in the dismissal due to its non-retroactivity and since a decision of the Constitutional Court is not one of the prescribed grounds of dismissal.

112 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)018-e

The monitoring team underlines the importance of filling the legislative gaps identified in the benchmark 3.2. and preventing any new threats to the independence guarantees and performance of duties by NABU Director.

Benchmark 8.3.4.

The head of the anti-corruption prosecutorial body or unit is selected through the following selection procedure:

Element		Compliance
A.	The legislation regulates the main steps in the process	✓
B.	The information about the outcomes of the main steps is published online	✓
C.	The vacancy is advertised online	✓
D.	The requirement to advertise the vacancy online is stipulated in the legislation	✓
E.	Any eligible candidates could apply	✓
F.	The selection is based on the assessment of candidates' merits (experience, skills, integrity)	✓

The legislation regulates the main steps in the process of the selection of the Head of SAPO (Arti. 8-1, Law on Prosecution Service (LPS)) and the selection commission further detailed the process. [113] The main stages of selection process in the LPS include setting up of the selection commission, publication of information about the process, verification of compliance of selected candidates with requirements, commission's decision on the selected candidate and submission for the appointment to the Prosecutor General. **Thus, Ukraine meets the element A of the benchmark.**

Transparency and open competition requirements are set in the law and have been observed in practice in the selection of the Head of SAPO in 2022. The announcement of the competition was published on the PGO's website, any eligible candidate could apply. The results of each step were also published.[114] **Therefore, the elements B, C, D, and E have been met.** As highlighted in the benchmark 3.1., a requirement to publish a justified decision at each stage of the competition procedure (especially when the decision involves voting) would further enhance the transparency and accountability of this process.

The selection is based on the assessment of candidates' merits, experience, skills, and integrity. There are multiple stages to assess candidates' skills, competence, and integrity on pre-defined criteria.[115] Knowledge and general skills tests scores are assigned automatically and other aspects (e.g., professional competence and leadership skills) are evaluated and scored by the selection commission. The commission evaluates the integrity criteria in an interview and decides by voting. [116] **The element F is also met in law and in practice.**

At the same time, the monitoring team cannot neglect what seemed to be a disrupted and sabotaged process of the selection of the SAPO Head, which took over two years to complete. The authorities referred to it as a "saga" and TI Ukraine described various alleged manipulations involved at lengths. [117] Among the impediments were a decision of the District Administrative Court of Kyiv finding the selection procedure

113 https://old.gp.gov.ua/ua/file_downloader.html?_m=fslib&_t=fsfile&_c=download&file_id=213309

114https://www.gp.gov.ua/ua/posts/vidkritij-konkurs-na-zajnyattya-administrativnih-posad-u-specializovanij-antikorupcijnij-prokuraturi-2 ; https://www.gp.gov.ua/ua/posts/ogoloshennya-pro-provedennya-vidkritogo-konkursu-na-zajnyattya-administrativnih-posad-u-specializovanij-antikorupcijnij-prokuraturi-3

115 https://old.gp.gov.ua/ua/file_downloader.html?_m=fslib&_t=fsfile&_c=download&file_id=211111

116 See benchmark 3.1 for the relevant analysis in relation to the Head of NABU.

117 https://ti-ukraine.org/en/news/new-year-again-and-no-sapo-head/

unlawful, absence of members of the selection commission during its meetings, pending certification and appointment of selected candidate, and more. The impartiality of some members of the selection commission, appointed by Verkhovna Rada, has been questioned due to their alleged links with a person reportedly involved in a high-level corruption case, previously investigated by one of the candidates for the position of the Head of SAPO. The stakeholders also expressed concerns regarding the quality of the integrity assessment, which eliminated all candidates besides two, without justification of non-compliance for many candidates. Furthermore, one candidate withdrew from the competition citing the lack of objectivity of the assessment.[118]

International members of the commission voiced their concerns about the slow process, attempts to influence the result of the competition, and cautioned about leaving the commission. The G7 ambassadors stated that the delays were unjustified and contradicted Ukraine's obligation to appoint the Head of SAPO within the committed timeframe. Ukraine-US joint statement of partnership included a promise for an immediate selection of the SAPO Head, this obligation was also included in the IMF Memorandum. This pressure has finally resulted in the appointment of the Head of SAPO. The delays in the appointment have had a detrimental impact on the enforcement of liability for corruption in Ukraine.

In 2023, as part of the EU macro-financial assistance[119] and IMF program[120], Ukraine committed to enhancing the selection of SAPO management, including the Head of SAPO. A package of draft amendments aimed at improving selection procedures, audit of SAPO's performance and its enhanced independence from the PGO was submitted to Verkhovna Rada. It was rejected by the parliament's committee, but the discussions continue, and the issue is still on the agenda.

Indicator 8.4. The specialised anti-corruption investigative and prosecutorial bodies have adequate powers and work transparently

Background

NABU has a wide range of statutory powers to conduct quality analytical work, financial investigations, and covert operations. The pilot report found that NABU was proactive in detection of corruption, and transparent and accountable to the public in its work. At the same time, relying on the Security Service of Ukraine (SSU) to conduct wiretapping was highlighted as a challenge.[121] There have been no changes in the reporting period in this regard.

Assessment of compliance

The specialised anti-corruption investigative and prosecutorial bodies have adequate powers and work transparently in Ukraine. For NABU, an important power that has not been yet put in operation is independent wiretapping, and it still relies on the Security Service of Ukraine in this matter. Despite the progress in cooperation with banks, accessing bank data remains challenging in practice, but NABU has a direct access to tax and customs databases. Statistics on the work of specialised law enforcement bodies are collected and published in NABU's biannual reports but would benefit from further disaggregation.

118https://zn.ua/ukr/POLITICS/prokuror-majdanivets-vidmovivsja-vid-uchasti-v-konkursi-na-hlavu-sap-cherez-tatarova-tspk.html

119https://economy-finance.ec.europa.eu/system/files/2023-01/Memorandum%20of%20Understanding_EU-UA.pdf (p. 9).

120 https://bank.gov.ua/ua/files/QfUGGzuAdbHzeDS (para. 56).

121https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1685006483&id=id&accname=guest&checksum=2ACD8E1C25FAEA66F60C5EA05731BACE (p. 185-186).

Benchmark 8.4.1.

An anti-corruption investigative body, unit, or a group of investigators, which specialises in investigating corruption, has in legislation and practice:

Element	Compliance
A. Powers to apply covert surveillance, intercept communications, and conduct undercover investigations	✓
B. Powers to access tax, customs, and bank data - directly or through a court decision	✓

NABU has powers to apply covert surveillance, intercept communications and conduct undercover investigations (Art. 246.6, 261-264, 271, 272, CPC). However, for wiretapping, in practice, NABU relies on Security Service of Ukraine due to a lack of necessary equipment and the absence of secondary legislation. Under element A of the benchmark, interception can be performed directly by a dedicated investigative body or through (or with the help of) other bodies, as long as such powers are clearly spelled out in the legislation and applied in practice. **Thus, Ukraine is compliant with the element A of the benchmark.**

However, according to the authorities and stakeholders, in practice, the reliance on SSU for wiretapping increases the risks of leaks of information about ongoing investigations, which is impossible to prove if traces of modifications are erased from wiretapped material. Noting that this issue has been pending for some time now, the monitoring team urges Ukraine to amend its secondary legislation as needed and provide necessary technical facilities to NABU for an independent wiretapping.

NABU has the authority to request and receive information from other law enforcement and public agencies, including tax and customs (Art. 17, Law on NABU). It has cooperation agreements with the State Tax Service of Ukraine and State Customs Service of Ukraine, and a direct access to tax and customs information through the relevant registers and databases. NABU representatives met during the on-site visit confirmed that they actively and successfully cooperate with tax and customs authorities.

NABU can also request information from banks (Art. 17, Law on NABU and Art. 62, Law on Banks and Banking Activity) without a court order. A detailed procedure is defined in the secondary legislation of the National Bank of Ukraine.[122] Previously, NABU could not receive data about the recipients' account number due to the conflicting legal provisions. This appears to have been addressed as the National Bank introduced amendments to the procedure for cooperation between the state bodies and banks, enabling NABU to access information about counterparties and their accounts.[123] The National Bank also defined a set of information to be provided to NABU and engaged with banks to resolve the issues with access.

However, there are still challenges in practice: some banks refuse to provide information, provide it with a delay (up to 60 calendar days), provide incomplete information or in a format not suitable for analysis. This causes delays in investigations. The lack of unified registry of bank accounts of natural persons makes the identification of bank accounts and institutions maintaining them difficult. As a result, NABU must send requests to all the banks. Of 67 banks, 5 reject NABU's requests on a regular basis. NABU recently appealed to the National Bank seeking written explanation on how banks should act in response to these information requests.

In money laundering cases, NABU solicits the State Financial Monitoring Service of Ukraine (SFMS) for obtaining data about bank accounts of the individuals. The SFMS can send such requests in an automated manner and receive a response in a short time. NABU also uses bank information that tax authorities

122 https://zakon.rada.gov.ua/laws/show/z0935-06#Text

123 https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680aaa790 (para. 24).

possess. However, it cannot be used as evidence in court, and NABU has to follow up directly requesting the relevant information. Additionally, NABU can monitor bank accounts in criminal proceedings as a covert investigative measure (Art. 269-1, CPC). Information about the application of this measure has not been provided to the monitoring team, but it was made aware of some impediments in the past.[124]

NABU can also access tax, customs, bank, and other data through the procedure of provisional access to items and documents (Art. 160 CPC). Such access requires a judicial authorization, except during the period of Martial Law, where certain data can be obtained with provisional access only with the approval of the Head of SAPO.

Ukraine is compliant with the element B. However, the monitoring team highlights the necessity to improve, streamline and expedite the access to information held by financial institutions in practice.

Benchmark 8.4.2

Detailed statistics related to the work of the anti-corruption investigators and prosecutors are published online at least annually, including:

Element	Compliance
A. A number of registered criminal proceedings/opened cases of corruption offences	✓
B. A number of persons whose cases were sent to court disaggregated by level and type of officials	✓
C. A number of terminated investigations with grounds for termination	X

NABU publishes its biannual activity reports that include statistics relevant to the work of SAPO. These reports include information on the number of initiated pre-trial investigations,[125] number of suspects, charged and convicted persons, disaggregated by type of officials based on the categories provided in the Corruption Prevention Law. **Therefore, the elements A and B of the benchmark are met.**

However, these reports do not provide information about terminated investigations with grounds for their termination. The information regarding the number of registered criminal proceedings and terminated investigations is available in the monthly Unified Report on Criminal Offences, published on the website of the Prosecutor General's Office.[126] A separate page of this report includes the information about NABU's pre-trial investigations and terminated cases that are disaggregated with two grounds of termination. However, there is no further disaggregation based on all grounds. **Thus, the element C is not met.**

124https://nabu.gov.ua/sites/default/files/page_uploads/25.04/nabu_assessment_report_en.pdf

125https://nabu.gov.ua/site/assets/files/27960/angl_sayt_final.pdf - Report for 1st half of 2022, see p. 50, https://reports.nabu.gov.ua/site/assets/files/1029/dodatki_sait.pdf - Report for 2nd half of 2022.

126https://www.gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

Box 8.1. Impact of war on the work of anti-corruption law enforcement agencies in Ukraine

The impact of Russia's large-scale war on the anti-corruption law enforcement agencies in Ukraine has been profound, presenting unique challenges and necessitating strategic adaptations of the law enforcement work. Despite the war, the law enforcement agencies showed impressive results demonstrating that the fight against corruption has been a top priority for the country.

Investigating corruption during the war requires overcoming numerous challenges, ranging from the security risks to the resource limitations and witness protection:

- One of the primary difficulties lies in the presence of armed groups and volatile security situation in conflict zones, making it dangerous for investigators to operate freely. The National Anti-Corruption Bureau of Ukraine (NABU) faces a key challenge in documenting crimes committed in the territories, which are under the constant threat of shelling. The time of curfew and air raid alerts on the whole territory of Ukraine further complicate search and investigation efforts, limiting entry into premises and causing delays in the investigative process. The destruction of infrastructure and disruption of communication lines during the war also hampered the collection and preservation of evidence. In addition, when the war started, NABU had to destroy materials previously sent to expert institutions in the cities close to the frontline in order to maintain the confidentiality.
- Accessing witnesses and conducting interrogations has proven difficult, as many have moved to other countries, making it challenging to identify and interview them. To overcome logistical challenges, NABU and SAPO embraced technology enhancing investigative capabilities allowing an online interrogation of suspects. However, suspects often get themselves mobilised to military facilities, sometimes to avoid liability, and the defence in criminal proceedings often asks to postpone proceedings.
- Extradition of suspects has become a complex issue, exacerbated by Martial Law and the European Convention on Human Rights, which prohibits extradition to a country in a state of war. Foreign jurisdictions often deny extradition requests, citing concerns about the security of prisons. Even with assurances of detaining extradited persons in the prisons in the safe territories in western Ukraine, the issue remains unresolved, leading to difficulties in bringing suspects to justice. In 2023, there were only two cases in which suspects have been successfully extradited (from Slovakia and Lithuania).

While NABU and SAPO staff cannot be engaged in military activities, except on a voluntary basis, a considerable number of law enforcement practitioners, including 11 SAPO prosecutors (25 % of the SAPO's staff), joined the Armed Forces of Ukraine. To deal with the increased amount of workload, structural reorganization was initiated, including hiring 7 prosecutors. In addition, SAPO conducted an audit of registered cases to deal with the phenomenon of chaotic case registration. This allowed to significantly reduce the number of opened investigations by deleting cases registered without the existence of the elements of crime.

Assessment of non-governmental stakeholders

Overall, non-governmental stakeholders, which contributed to this review, positively assessed the work of the specialised anti-corruption investigative and prosecutorial bodies in Ukraine. The stakeholders did not raise any substantial concerns regarding the independence of NABU or SAPO, except for highlighting isolated instances of certain high-profile corruption cases investigated by bodies outside the jurisdiction of

NABU and SAPO without providing specific examples (the relevant section of the report includes the information provided by the authorities in this regard).

The stakeholders expressed concerns that ARMA had been functioning without a permanent Head for over three years and that the eventual selection was based on the political considerations rather than merits. Stakeholders have also voiced criticism about ARMA's operations in practice and the lack of collaboration with other anti-corruption agencies. The stakeholders raised various practical issues concerning the seizure and management of assets, and proposed ways to address these problems, such as implementing comprehensive pre-seizure planning; establishing a clear procedure for competitively selecting managers of seized assets transferred to ARMA; ensuring transparent and fair procedures for the sale of seized assets and management of seized corporate rights, and prioritizing asset seizure in criminal proceedings. Additionally, the stakeholders emphasized the need to improve the quality of the asset management control through enhanced expertise, establish a mechanism for storage and return of seized assets to their owners, and to improve the accuracy of the information in the recently launched public register of seized assets. A national asset recovery strategy, approved by the CMU on August 1, 2023, and an action plan could serve as a valuable tool in resolving complex issues pertaining to the asset recovery process.

The non-governmental stakeholders generally had a positive appraisal of the selection of the NABU Director, highlighting that the procedure was observed at every stage and the decisions were substantiated and transparent. Regarding the dismissal procedure of the NABU Director, the stakeholders highlighted that the previous attempts to dismiss NABU Director were effectively addressed through existing safeguards. Nonetheless, concerns have been raised about certain problematic grounds for dismissal. Some of these concerns are reflected under benchmark 3.2.

Criticism of the selection procedure of the Head of SAPO referred to an alleged "sabotage" of the process by the selection commission members and unjustified delays in selecting the new Head. Non-governmental stakeholders also challenged the quality of the integrity assessments, that in their view, excluded qualified candidates from the selection process. Civil society representatives also raised concerns about the lack of sufficient guarantees against arbitrary dismissal of the Head of SAPO.

The stakeholders emphasized the importance of ensuring an independent wiretapping by NABU by amending the secondary legislation and implementing the necessary technical facilities. They proposed several policy measures aimed at bolstering the capacity of NABU, including improving plea-bargaining procedures in NABU-investigated proceedings, and establishing an independent forensic examination institution for NABU investigations. Likewise, the stakeholders recommended measures to strengthen SAPO's capacity by designating SAPO as an independent legal entity and granting it a greater autonomy from the Prosecutor General's Office. The stakeholders also identified areas for improvement in the publication of the results of the law enforcement work and the need to produce consistent statistics.

9 Enforcement of Corruption Offences

The specialised anti-corruption bodies demonstrated a remarkable level of enforcement of high-level corruption cases with the number of convictions growing despite the war. In the assessment period, NABU, SAPO and HACC have boosted the fight against corruption with some prominent cases concluded and more ongoing during the on-site visit. Ukraine demonstrated the routine sanctioning of most corruption offences, confiscation of unexplained wealth, and a universal practice of dismissal of officials convicted for corruption. Still, the investigation of money laundering cases has been rare, and there have been no investigations of foreign bribery. The statute of limitations and time limits for pre-trial investigation continue to impede enforcement of corruption cases. Enforcement statistics are collected and published but not in a centralised way. Statistics on execution of confiscation orders in corruption cases are not collected. Some types of confiscation are rarely enforced, or not enforced at all. There have been no successful cases of asset recovery from abroad. Corporate liability exists on paper (quasi-criminal model), but it has not been put in operation. The main deficiencies of the model are the non-autonomous nature of the liability linked to the prosecution of an individual perpetrator, insufficiently dissuasive sanctions, and the lack of a due diligence defence that promotes corporate compliance measures. Ukraine recently became a Participant to the OECD Working Group on Bribery and embarked on a reform to align its legislation and practices with the provisions of the OECD Anti-Bribery Convention.

Figure 9.1. Performance level for Enforcement of Corruption Offences is average

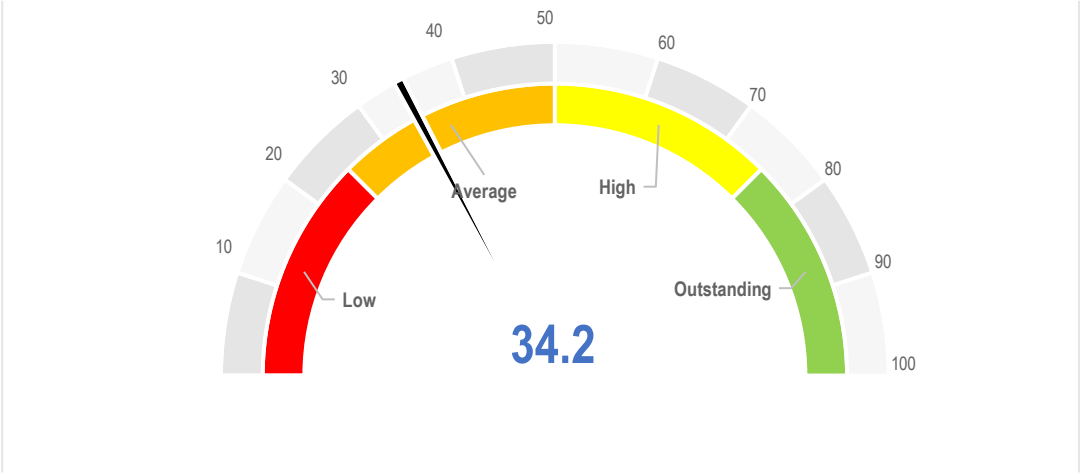
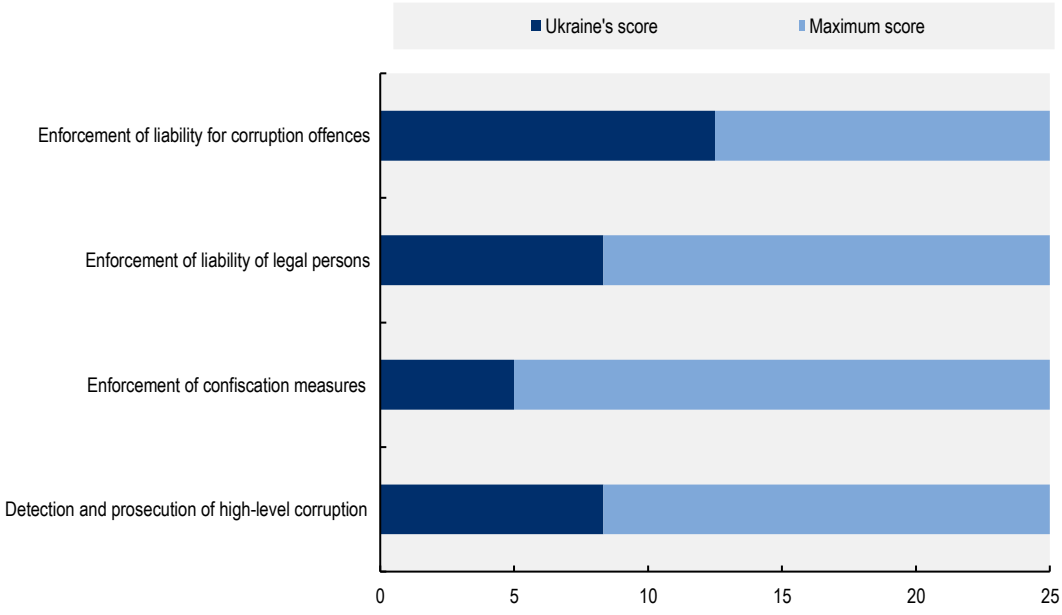


Figure 9.2. Performance level for Enforcement of Corruption Offences by indicators



Indicator 9.1. Liability for corruption offences is enforced

Background

Ukraine's track record of enforcing liability for corruption offence, particularly high-level corruption, has been increasing and reached a remarkable level in the reporting period, despite Russia's war against Ukraine. In the previous IAP monitoring rounds, courts tended to release convicts with conditional

sentences, and applying more lenient penalties, primarily fines. This practice has changed in the assessment period.

The pilot report noted that the statute of limitations for misdemeanour corruption offences (3 years) was short for a full pre-trial investigation and trial, often leading to termination of proceedings or release from liability. There have been no changes in the law or practice, but Ukraine is planning to amend the statute of limitations and pre-trial investigation terms.

Assessment of compliance

The anti-corruption law enforcement bodies continued the fight against corruption, improving performance despite the challenges of war. Many high-profile cases were adjudicated in the assessment period. Ukraine has demonstrated the routine sanctioning of most of the corruption offences, confiscation of unexplained wealth, as well as a universal practice of dismissal from office of officials convicted for corruption. Still, the investigation of money laundering cases is rare and there have been no investigations into foreign bribery. The statute of limitations and the time limits for pre-trial investigation continue to impede the enforcement of corruption cases. The enforcement statistics are collected and published but not in a centralised way.

Benchmark 9.1.1.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Active bribery in the public sector	✓
B. Passive bribery in the public sector	✓
C. Active or passive bribery in the private sector	X
D. Offering or promising of a bribe, bribe solicitation or acceptance of an offer/promise of bribe	✓
E. Bribery with an intangible and non-pecuniary undue advantage	X
F. Trading in influence	✓

For this benchmark to be met, the authorities must present three examples of the first-instance convictions in the reporting period for each element (A-F). Ukraine provided conviction statistics, except for the element E, as in the table below. The statistics show an impressive track record of the convictions for corruption offences. However, a significant disparity between the number of convictions for active bribery compared to passive bribery suggests that authorities may need to prioritize prosecuting public officials involved in corrupt practices.

The authorities also provided the relevant case examples (except element E), but the case examples under the element C did not qualify as bribery in the private sector. Most of these examples involved relatively small sums of bribe or undue advantage. In addition, all examples under the element B were about judges requesting, accepting, or receiving bribes. A case presented under the element A involved a HACC conviction of a former SOE official for bribing a NABU detective to terminate a criminal proceeding (USD 100,000 paid in bribes). **Ukraine is compliant with all elements of the benchmark, except elements C and E**.

Table 9.1. General statistics of convicted persons for corruption offences in 2022

Convictions for specific corruption offences	2022
1. Number of persons convicted for active bribery in the public sector	1035

2.	Number of persons convicted for passive bribery in the public sector	127
3.	Number of persons convicted for active and passive bribery in the private sector	25
4.	Number of persons convicted for offering or promising of a bribe, bribe solicitation or acceptance of an offer/promise of bribe	25
5.	Number of persons convicted for bribery with an intangible and non-pecuniary undue advantage	0
6.	Number of persons convicted for trading in influence	114

Source: Responses to the IAP monitoring questionnaire.

Benchmark 9.1.2.

	Compliance
Sanctions (measures) are routinely imposed for criminal illicit enrichment or non-criminal confiscation of unexplained wealth of public officials (unjustified assets)	✓

This benchmark requires a routine application of sanctions for either criminal illicit enrichment or, alternatively, confiscation of unexplained wealth through administrative or civil proceedings. In Ukraine, the legislation foresees both the crime of illicit enrichment (Art. 368-5, Criminal Code of Ukraine) and civil confiscation of unjustified assets (Art. 290-292, Civil Procedure Code). The threshold of approximately UAH 8 million (~USD 221 087) delineates these two procedures: public officials can be held criminally liable if they acquire assets exceeding their legal income by more than 6 500 minimum wages[127], while the civil procedure covers cases where the discrepancy between a public official's legal income and the value of assets falls above a certain threshold (500 minimum wages) but below the limit for the crime of illicit enrichment.

There have been no concluded cases of illicit enrichment in the reporting period. Civil confiscation of unexplained wealth (unjustified assets) was applied by the High Anti-Corruption Court in four cases during the reporting period. In one case, close relatives of a district court judge acquired an apartment and a car for the disposal by a judge. The value of these assets exceeded the legal income of the judge by more than UAH 5 million (~USD 136 397). HACC recognised the apartment as unjustified (but not the car) and ordered the defendant to pay UAH 3.6 million (~USD 98 000). The authorities provided another case example, in which HACC confiscated the funds (UAH 2.3 million and USD 35 000) deposited on the bank account of a deputy head of the National Police as they did not correspond to his legal income.

The monitoring team concludes compliance with the benchmark, recognizing that routine application of confiscation of unexplained wealth in civil proceedings is a commendable enforcement practice.

127 In 2023, for the qualification of an administrative or criminal offence (not the amount of the fine as punishment), the non-taxable statutory minimum wage is UAH 1 342.

Benchmark 9.1.3.

	Compliance
There is at least one case of the started investigation of foreign bribery offence	X

There were no cases of investigations of foreign bribery offences during the reporting period. **Ukraine is not compliant with the benchmark.**

Benchmark 9.1.4.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Money laundering with possible public sector corruption as a predicate offence	✓
B. Money laundering sanctioned independently of the predicate offence	X

The authorities did not demonstrate routine application of sanctions for money laundering with public sector corruption as a predicate offence or money laundering sanctioned autonomously of the predicate offence in the reporting period. **Therefore, Ukraine is not compliant with element B of this benchmark.**

The Government provided three examples of sanctioning for money laundering with public sector corruption as a predicate offence, **showing compliance with element A of this benchmark.** One of the provided cases involved a HACC judgement in which the predicate offence was the abuse of powers (Art. 364 of the CC) committed in complicity. Several real estate properties of a state-owned company were intentionally sold with a lower price to the company controlled by the alleged perpetrators who aimed to pose as bona fide buyers and ultimately resell the properties at market price. These actions were qualified as a criminal offence of laundering of proceeds of crime (Art. 209 of the CC). The defendant was convicted for 5 years with a conditional release and a fine.

The authorities met during the on-site visit explained that, despite a few on-going investigations, there were challenges in enforcement of autonomous money laundering offence. The amendments were introduced in the Criminal Code in 2019, criminalising independent money laundering offence (Art. 209 of the CC),[128] but the law enforcement practitioners are still reluctant to apply money laundering without a predicate offence.

The monitoring team encourages Ukraine to proactively investigate autonomous money laundering offence. Proactive application and awareness raising among the practitioners would help establish a new practice of prosecution of money laundering independently of a predicate offence.

128 https://bit.ly/3rC5NCi (p. 9).

Benchmark 9.1.5.

	Compliance
In all cases of conviction for a corruption offence, public officials are dismissed from the public office they held	✓

To be compliant with this benchmark, the country should demonstrate a universal practice of dismissal of convicted officials from public office, which implies that the legislation includes relevant requirements and there are no known cases of their breach in practice.

Ukrainian authorities explained that more than 30 legal acts regulate the status of different public officials, requiring immediate and unconditional dismissal of a public official, following a conviction for an intentional offence (all corruption offences are intentional under the law). This is applicable to key categories of public officials, including MPs, judges, members of the CMU, public servants, judges, and prosecutors.

Moreover, the law provides an additional sanction of depriving individuals convicted of corruption offences of the right to hold certain positions or engage in specific activities. This sanction can be applied even if it is not explicitly prescribed for a particular offence (Art. 55 of the CC).

The stakeholders did not provide any example of a public official convicted for corruption offence not dismissed from the office in the reporting period.

Given that legislation prescribes dismissal from the public service in case of conviction for a corruption offence, and there were no examples of breach of this rule in 2022, **Ukraine is compliant with the benchmark.**

Benchmark 9.1.6.

There are safeguards against the abuse of special exemptions from active bribery or trading in influence offences:

Element	Compliance
A. Any special exemption from active bribery or trading in influence offence is applied taking into account circumstances of the case (that is not applied automatically)	✓
B. The special exemption is applied on the condition that voluntary reporting is valid during a short period of time and before the law enforcement bodies become aware of the crime on their own'	X
C. The special exemption is not allowed when bribery is initiated by the bribe-giver	X
D. The special exemption requires active co-operation with the investigation or prosecution	✓
E. The special exemption is not possible for bribery of foreign public officials	✓
F. The special exemption is applied by the court, or there is judicial control over its application by the prosecutor	✓

The Criminal Code provides for a special exemption from active bribery and active trading in influence offences (Art. 354 Part 5, CC) with the safeguards prescribed in this benchmark**, except for elements B and C.**

The authorities clarified that application of the special exemption is not automatic, it is initiated based on a motion of a prosecutor and is subject to a mandatory judicial review, which means that the circumstances of each case must be evaluated. **Ukraine is therefore compliant with elements A and F of this benchmark.**

The special exemption can be applicable only if the perpetrator voluntarily disclosed the offence to a competent authority. This voluntary reporting should be done prior to the authority receiving information about the offence from other sources. However, the provision on special exemption does not prescribe reporting in a short period of time, **therefore, element B is not met.**

The special exemption is applicable to any person who offered, promised, or gave an undue benefit, a bribe-giver who initiated the bribery, thus, **Ukraine is not compliant with element C**.

The special exemption is applicable only if the perpetrator actively facilitates the investigation of a crime committed by the person who received an undue benefit or accepted an offer or promise of the bribe. **This is in line with the standard in the element D.**

The special exemption cannot be applied in cases of active bribery of foreign public officials. **Ukraine is compliant with element E.**

During the on-site visit, the authorities did not recall any instances of practical application of special exemption in the reporting period. Nevertheless, they mentioned the plans to raise awareness about this provision to facilitate reporting of corruption offences.

Benchmark 9.1.7.

No case of corruption offence by a public official is terminated because of:

Element	Compliance
A. The expiration of the statute of limitations	X
B. The expiration of time limits for investigation or prosecution	X

The authorities reported the termination of corruption cases by HACC because of both expiration of statute of limitations (four cases) and of time limits for pre-trial investigation (four cases) in 2022. In addition, SAPO informed about four criminal proceedings terminated before issuing a notice of suspicion due to the end of time limits for pre-trial investigation (Art. 219 of the CPC). Civil society also raised concerns over the termination of high-level cases due to the inconsistencies in the interpretation of the above-mentioned procedural time limits.[129] **Ukraine, therefore, did not meet the elements of the benchmark.**

Ukraine is planning to amend the statute of limitations as it continued to create obstacles to the enforcement of liability for corruption offences. During the on-site visit, the law enforcement practitioners highlighted the challenges faced in investigation of complex corruption cases, where international cooperation is involved. Regarding the statute of limitations for misdemeanours, on the other hand, the authorities explained that the statute of limitations did not impact their work, as only few corruption cases qualify as misdemeanours.

A bigger obstacle to the effectiveness of NABU and SAPO work has been the time limits for pre-trial investigation. The relevant provisions of the Criminal Procedure Code were amended multiple times resulting in ambiguous norms leaving the room for different interpretations and leading to inconsistent practice and questions on closing certain proceedings. The issue was especially relevant in joint criminal investigations in which each episode of the case was registered before and after the changes in the relevant articles of the CPC. Furthermore, during the on-site visit discussions, the authorities referred to the Supreme Court's decision which changed the approach to calculation of pre-trial investigation terms creating further difficulties regarding the interpretation and application of the mentioned legal provisions.

129https://ti-ukraine.org/blogs/pidstupna-mina-v-dosudovyh-rozsliduvannyah-yak-popravky-lozovogo-rujnuyut-koruptsijni-spravy/

Furthermore, during Martial Law, time limits in proceedings, where the suspected person is not identified or is missing, are suspended (Art. 615 of the CPC) with no clarity on how and in which cases this exception can be applied.

Representatives of NABU and SAPO confirmed the urgent need to reform procedural aspects related to the time limits for pre-trial investigation. While legislative amendments are pending, there is no uniform opinion on how to resolve this issue.

Benchmark 9.1.8.

Enforcement statistics disaggregated by the type of corruption offence is annually published online, including information on:

Element	Compliance
A. Number of cases opened	✓
B. Number of cases sent to the court	✓
C. Number of cases ended with a sentence (persons convicted)	✓
D. Types of punishments applied	✓
E. Confiscation measures applied	X
F. Types and levels of officials sanctioned	X

Criminal enforcement statistics are not centralised in Ukraine.

The Prosecutor General's Office annually collects and online publishes statistics, including on the number of criminal proceedings opened and the number of proceedings sent to the court disaggregated by criminal offences (including corruption offences) investigated by all pre-trial investigation bodies in total and by specific bodies (including NABU).[130] **Ukraine is compliant with the elements A and B.**

The State Judicial Administration annually publishes statistics about persons convicted and types of sanctions applied- the **elements C and D are met**. While judicial statistics include information about confiscation measures, these are not disaggregated by corruption offences, **therefore the element E is not met.** The monitoring team is of the view that publication of statistics on the total value of damages caused by corruption as well as types and total number and total value of assets confiscated under each of the corruption offences would be useful for policy analysis.

Regarding element F, HACC publishes statistics that include the number of officials convicted for corruption offences disaggregated by types of officials (civil servants, judges, prosecutors, etc.) and categories of public servants. This is **not sufficient for compliance with the element F**, because the HACC's statistics concern only cases adjudicated by this court, and the general judicial statistics reports do not include disaggregation by the levels of officials for each corruption offence.[131]

The NACP representatives informed during the on-site visit that a new regulation for collection of statistical data was approved in May 2023 (see the next benchmark) which reportedly addresses the requirements of the benchmark, however, the monitoring team did not have an opportunity to examine the regulation which is not applied in practice yet.

130https://www.gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

131 The Guide provides that "the country will be compliant if individual authorities publish relevant information. However, in this case there should be no gaps – if one of the authorities does not publish online annually information required in one of the elements, the element is not met".

Benchmark 9.1.9.

	Compliance
Enforcement statistics on corruption offences is collected on the central level	X

In Ukraine, enforcement statistics for corruption offence is not collected on a central level, and, therefore, **the benchmark is not met.** PGO collects the information about all criminal proceedings (including on corruption offences) and outcomes of pre-trial investigation, while the State Judicial Administration collects the information about the adjudication of cases, including on corruption offences. However, this cannot be qualified as collection of data "on a central level" because these bodies do not have a coherent and comprehensive statistics on all the elements defined in the benchmark 1.8.

In 2022, amendments to the Law on Corruption Prevention were enacted to ensure centralized collection of enforcement statistics on corruption offences by NACP. The law requires that agencies implementing the State Anti-Corruption Programme submit annual statistics to the NACP (Art. 18-3 of the LCP). The data should cover number of registered reports on alleged corruption offences; number of cases sent to the court; number of convictions and acquittals; data disaggregated by the type and level of an official; information about assets confiscated based on the court decision. Based on these amendments, in May 2023, NACP approved a new regulation, which also includes a requirement to collect data on types of punishments applied. However, new data collection system is not operational yet. The centralisation of enforcement statistics requires putting in place a unified methodology of collection and management of relevant data, which has yet to be ensured in practice.

Indicator 9.2. The liability of legal persons for corruption offences is provided in the law and enforced

Background

Ukraine introduced the so-called measures of criminal law nature applicable to legal persons (which correspond to a quasi-criminal corporate liability model)[132] back in 2014. The liability extends to corruption offences. The pilot report identified several shortcomings, including non-autonomous nature of corporate liability, the lack of due diligence defence and variety of non-monetary sanctions,[133] and the lack of enforcement. Ukraine has not made any changes in law or in practice since then.

At the same time, a reform has been initiated, as Ukraine was granted a Participant status to the OECD Working Group on Bribery in International Business Transactions in February 2023. To accede to the Anti-Bribery Convention and become a member of the WGB, following its participation period of two years, Ukraine must align its corporate liability with Article 2 of the Convention.

Ukraine has launched a National Taskforce on Co-operation with Working Group on Bribery, mandated with the development of proposals for aligning its legal framework with the requirements of the Anti-Bribery Convention, including on corporate liability. Discussions are ongoing which model of corporate liability would suit the Ukrainian legal system while meeting the requirements of the Convention.

132 See: OECD (2020), Anti-Corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges, 2016-2019, p. 223-224, www.oecd.org/corruption/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2016-2019-ENG.pdf.

133https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1685006483&id=id&accname=guest&checksum=2ACD8E1C25FAEA66F60C5EA05731BACE (p. 137).

Assessment of compliance

Corporate liability exists on paper, but it has not been put in operation. The authorities continue to resort to traditional arguments that "unreformed" law enforcement and judiciary may use corporate liability to exert leverage on businesses, extort bribes or other unlawful benefits and that criminal law measures against legal persons are still considered "a new concept", outside the frames of the traditional legal system, 9 years after their adoption. The main deficiencies of the model are the lack of an autonomous liability, dissuasive sanctions, and due diligence defence. Ukraine recently became a Participant to the OECD Working Group on Bribery and embarked on the reform to align its legislation and practices with Anti-Bribery Convention. The monitoring team encourages the authorities to ensure participation of non-governmental stakeholders in these discussions as well as give a due consideration to criminal liability which is a preferred model under international standards or consider reforming the existing model.

Benchmark 9.2.1.

	Compliance
The liability of legal persons for corruption offences is established in the law	✓

To comply with the benchmark, primary law must be in place establishing liability (including non-criminal) and sanctions applicable to legal entities for corruption offences.

Ukraine has a "quasi-criminal" liability of legal persons for corruption offences in place. Criminal Code provides that "measures of criminal law nature" (Chapter XIV of the CC) are applicable to a legal person if:

- an authorized person of the legal entity committed in the interest of legal entity offences of, inter alia, money laundering (Art. 209 CC), active bribery in private or public sector (Art. 368-3 and 369 CC respectively), active bribery of person carrying out public function (Art. 368-4 CC), trading in influence (Art. 369-2 CC);
- an authorized person failed to implement measures for corruption prevention foreseen in the law or statutory documents of the legal entity, resulting in the commission of offences, including money laundering, active bribery in private or public sector, active bribery of person carrying out public function, or trading in influence.

Sanctions include a monetary fine, confiscation of company's property, and liquidation of a company. **Ukraine is compliant with the benchmark.**

Benchmark 9.2.2.

	Compliance
The liability of legal persons for corruption offences is autonomous that is not restricted to cases where the natural person who perpetrated the offence is identified, prosecuted, or convicted	X

The application of measures of criminal law nature to a legal entity is contingent upon the conviction of a natural person (Art. 96-3 of the CC). The liability of legal persons is not autonomous and is restricted to cases where the natural person, the perpetrator is identified, prosecuted and convicted, in terms of both substantive and procedural criminal law. When applying measures of criminal law nature to a legal entity, the court must take into account, inter alia, the gravity of the crime committed and the degree of the

perpetrator's criminal intent (Art. 96-10 of the CC); proceedings against a legal entity are opened and carried out simultaneously with the relevant criminal proceedings of a natural person, and are closed if criminal proceedings against the natural person have been closed or the person was acquitted (Art. 214 and 284 of the CPC). **Ukraine is not compliant with the benchmark.**

Benchmark 9.2.3.

	Compliance
The law provides for proportionate and dissuasive monetary sanctions for corporate offences, including by taking into account the amount of the undue benefit paid as a bribe or received as proceeds	X

Monetary sanction applicable to legal persons is a fine (art. 96-7 of the CC). The court determines the amount of the fine considering "illegally obtained undue benefit". In principle, a fine is imposed as a double amount of the undue benefit (bribe) obtained. Therefore, in corruption cases which involve granting or receiving undue benefit, such as active bribery or trafficking in influence, legal persons would be subject to fines of double the amount of the undue benefit to serve as a dissuasive measure. If undue benefit was not received or its amount cannot be calculated, such as in money laundering cases, the Criminal Code provides a scale of fines that can be applied by a court depending on the gravity of criminal offence:

- for a criminal misdemeanour – a fine from 85,000 to 170,000 UAH (EUR 2,171 to EUR 4,342);

- for a minor crime – a fine from 170,000 to 340,000 UAH (EUR 4,342 to EUR 8,684);

- for a grave crime – a fine from 340,000 to 1,275,000 UAH (EUR 8,684 to EUR 32,567);

- for an especially grave crime – a fine from 1,275,000 to 1,700,000 UAH (EUR 32,567 to EUR 43,422)[134].

The pilot report concluded that "the maximum fine for an extremely grave crime is around 49 000 EUR which is not sufficiently severe to have an impact on large corporations".[135] In 2022, this sum in euro is even lower due to the devaluation of Ukrainian Hryvnia. Therefore, the scale of fines may not be sufficiently dissuasive for corruption offences in which the amount of the undue benefit cannot be determined. Furthermore, Article 96-10 establishes general sentencing guidelines, which might not guarantee the proportionality of sanctions when applied to specific legal entities. This highlights the need to more tailored approaches to ensure that the penalties are appropriately aligned with the gravity of the offences committed by legal entities. **Ukraine is not compliant with this benchmark.**

Benchmark 9.2.4.

	Compliance
The law provides for non-monetary sanctions (measures) applicable to legal persons (for example, debarment from public procurement or revocation of a license)	X

Only one type of non-monetary sanction – debarment (Art. 17, Law on Public Procurements) – applies to legal entities for corruption offences except for money laundering offence to which confiscation and

134 Sum in EUR is defined based on official currency exchange rate defined by the National Bank of Ukraine for 4 June 2023.

135https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1685006483&id=id&accname=guest&checksum=2ACD8E1C25FAEA66F60C5EA05731BACE (p. 139.

liquidation are also applicable. At least two non-monetary sanctions are required for the compliance with this benchmark. **Thus, Ukraine is not compliant with it.**

Benchmark 9.2.5.

	Compliance
The legislation or official guidelines allow due diligence (compliance) defence to exempt legal persons from liability, mitigate, or defer sanctions considering the case circumstances	✓

When applying criminal law measures against a legal person, courts must consider as a mitigating circumstance the measures undertaken by this entity to prevent a criminal offence (Article 96 of the CC). This mitigating factor must be assessed considering the specific circumstances of the case. **Ukraine meets this benchmark.**

However, there is no practice of application of this provision. The authorities met during the on-site visit informed the monitoring team that the reform aimed at introduction of a due diligence defence was still in the design phase. According to the Guide, the defence can be formulated in diverse ways: that the company had sufficient compliance rules and mechanisms and that it did everything in its power to prevent the crime, or that the company had an effective internal controls and compliance programme. Ukraine could consider these formulations during its domestic discussions and provide relevant regulations in law or official guidelines.

Benchmark 9.2.6.

The following sanctions (measures) are routinely applied to legal persons for corruption offences:

Element	Compliance
A. Monetary sanctions	X
B. Confiscation of corruption proceeds	X
C. Non-monetary sanctions (for example, prohibition of certain activities)	X

Measures of criminal law nature have not been applied to legal persons in Ukraine during the reporting period. Ukraine is encouraged to take necessary steps to ensure the enforcement of liability of legal persons for corruption offences. **Ukraine is not compliant with the elements of this benchmark.**

Indicator 9.3. Confiscation measures are enforced in corruption cases

Background

Ukraine's legal framework includes confiscation of instrumentalities and proceeds of corruption crimes (special confiscation), and civil confiscation of unjustified assets of public officials. Confiscation as a sanction for criminal offence - a reminiscence of Soviet legacy - is still provided by law and applied in practice, however this falls outside the scope of this indicator. Ukraine also has a criminal non-conviction based special confiscation, extended confiscation but it is not enforceable in practice due to the lack of the

relevant procedure,[136] value-based confiscation, confiscation of mixed profits, as well as confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties.

Assessment of compliance

The statistics on execution of confiscation orders in corruption cases are not collected. The practice of application of some types of confiscation regimes is still lacking or scarce. In practice, the authorities tend to use confiscation as a sanction as a key tool, thus creating obstacles for effective mutual legal assistance. There is also no evidence of successful cases of asset recovery from abroad as highlighted in the PA 8.

Benchmark 9.3.1.

Confiscation is routinely applied regarding:

Element	Compliance
A. Instrumentalities of corruption offences	X
B. Proceeds of corruption offences	✓

In 2022, special confiscation was applied by the first instance courts in a total of 575 cases, however, this figure covers all criminal offences and there is no disaggregation by corruption offences.

To demonstrate routine application of confiscation, the government provided three examples of confiscation of proceeds of corruption offences, including an economic advantage obtained directly through the commission of bribery or embezzlement. However, only one example of confiscation of instrumentalities has been provided. **Therefore, Ukraine is not compliant with the element A and compliant with the element B of the benchmark.**

During the on-site visit, the authorities mentioned that in most cases courts apply confiscation as a sanction rather than a special confiscation. The main reason is the simplicity of the procedure as there is no need for prosecution to prove the illicit origin of assets. However, this approach raises issues of proportionality of such confiscation and obstacles for effective mutual legal assistance (see also benchmark 3.2). The monitoring team encourages Ukraine to ensure effective special confiscation instead of applying confiscation as a sanction.

Benchmark 9.3.2.

	Compliance
Confiscation orders in at least 50% of corruption cases are fully executed	X

HACC issued twelve final confiscation orders in 2022. The information about the execution of other confiscation orders is not available. The authorities could not provide percentage of fully executed confiscated orders in corruption cases, as the reporting forms do not allow to single out executive documents regarding confiscation in cases of corruption and corruption-related offences. **Ukraine is**

136 Article 100.9.6-1 of the Criminal Procedure Code envisages confiscation of the property of a person convicted for corruption or money laundering "if the legality of the grounds for acquiring the rights on such property has not been confirmed in court".

therefore non-compliant with the benchmark and encouraged to ensure the collection of relevant data.

During the on-site visit, the authorities explained the difficulties related to the execution of confiscation orders. In cases with partial confiscation of assets as a sanction, it is difficult to sell the confiscated assets and receive any income. In addition, the authorities informed about a case in which the court decision applying confiscation as a sanction was not executed abroad. The reason was the non-proportionality of the confiscation as a sanction, as the measure was applied to all assets of the convicted person. There is a clear need to improve the legal framework regulating different confiscation regimes. The relevant policy discussions should be initiated to enhance effective cooperation with foreign authorities as well as return of confiscated assets from abroad.

Benchmark 9.3.3.

The following types of confiscation measures were applied at least once in corruption cases:

	Element	Compliance
A.	Confiscation of derivative (indirect) proceeds of corruption	X
B.	Confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties	✓
C.	Confiscation of property the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation)	✓
D.	Confiscation of mixed proceeds of corruption offences and profits therefrom	X

No evidence is available on the application of confiscation of indirect proceeds of corruption, nor on mixed proceeds of corruption, **thus elements A and D are not met**. Both value-based confiscation and confiscation from informed third parties were applied in one case. **Thus, Ukraine is compliant with the elements B and C.** In one case HACC delivered a judgment with the approval of a plea agreement convicting a judge for passive bribery (Art. 368 of the CC). The convict had agreed to a special confiscation in the amount equivalent to USD 7,000 corresponding to the part of the undue benefit obtained but spent. As the initial proceeds of the offence could not be confiscated, the court decided to confiscate a corresponding sum, which can be considered as a value-based confiscation. In another case, HACC applied special confiscation to funds held in a bank account opened on behalf of a third person. The account had been utilized by the convicted person for various transactions involving the proceeds of corruption offence (specifically, embezzlement under Art. 191 of the CC). However, the amount confiscated in this case was low (~USD 87 in total).

The low level of application of diverse types of confiscation measures is explained by the fact that the law enforcement authorities tend to apply confiscation as a sanction without tracing the proceeds of corruption offences.

Benchmark 9.3.4.

The following types of confiscation measures were applied at least once in corruption cases:

Element	Compliance
A. Non-conviction based confiscation of instrumentalities and proceeds of corruption offences	X
B. Extended confiscation in criminal cases	X

According to the authorities, in 2022, non-conviction based confiscation of instrumentalities and proceeds of corruption offences was applied in 3 cases, while extended confiscation was applied in 28 cases, but the provided case examples did not fall under the categories specified in the elements A and B of this benchmark. **Therefore, Ukraine is not compliant with the elements of this benchmark.**

Benchmark 9.3.5.

Measures are taken to ensure the return of corruption proceeds

Element	Compliance
A. The return of corruption proceeds from abroad happened at least once	X
B. The requests to confiscate corruption proceeds are routinely sent abroad	X

Ukraine did not provide any examples of measures taken to ensure the return of corruption proceeds from abroad. The Ministry of Justice, which is a central authority for international cooperation in criminal proceeding during trial, indicated that there were no incoming mutual legal assistance requests for the return of income received on corruption offences. Additionally, no outgoing requests for such returns were made by the courts during the reporting period. PGO mentioned that statistical data on this matter is not collected, while NABU referred to the absence of requested information. During the on-site visit, one case of refusal to execute a court decision with confiscation as a sanction for corruption offence was mentioned. Neither the successful return of corruption proceeds from abroad, nor the routine sending of requests to confiscate corruption proceeds (i.e., at least three cases) have been demonstrated. **Therefore, Ukraine is not compliant with the elements of this benchmark.**

Indicator 9.4. High-level corruption is actively detected and prosecuted

Background

The pilot report highlighted Ukraine's unprecedented leap in tackling high-level corruption through the work of the dedicated independent investigative, prosecutorial, and judicial institutions. With the HACC actively concluding cases, an increase in convictions for high-level corruption has become significant. However, political and other undue interference in investigation and prosecution and adjudication of high-level corruption cases have been noted as a major impediment, according to the pilot report. In the reporting period, the specialized anti-corruption institutions have demonstrated resilience and continued to function, albeit with adaptations necessitated by the new circumstances of wartime.

Assessment of compliance

High-level corruption has been actively detected and prosecuted in the reporting period, with some prominent cases concluded and ongoing during the on-site visit. The conviction rates have significantly increased despite the war. With the growing workload, NABU's resources have become scarce requiring immediate attention. An increase of staff is needed for SAPO and HACC as well. Providing necessary resources to these institutions is vital to ensure their continued effectiveness in combatting corruption.

Benchmark 9.4.1.

	Compliance
At least 50% of punishments for high-level corruption provided for imprisonment without conditional or another type of release	X

In 2022, HACC, which has a jurisdiction over high-level corruption cases, convicted 23 persons for aggravated bribery offences, and 11 of them were sentenced to imprisonment, which is less than a half. However, this does not represent a full picture of punishments for high-level corruption, as it does not include statistics of general courts. Due to the gap in the national statistical system, it is impossible to summarize the number of sentences imposed in high-level cases. **As the monitoring team was not provided with the relevant information, Ukraine is not compliant with the benchmark.**

Non-governmental stakeholders warned about application of probational release in cases concluded with plea agreements by HACC, using softer alternatives or granting of conditional release.

Benchmark 9.4.2.

Immunity of high-level officials from criminal investigation or prosecution of corruption offences:

Element	Compliance
A. Is lifted without undue delay	X
B. Is lifted based on clear criteria	X
C. Is lifted using procedures regulated in detail in the legislation	X
D. Does not impede the investigation and prosecution of corruption offences in any other way	X

Immunity of high-level officials continued to be an obstacle for criminal investigation and prosecution of corruption offences in the reporting period.

The legislation provides special procedures for criminal proceedings involving certain categories of public officials, including judges and MPs (Art. 480 of the CPC).[137]

137 According to Article 480 of the CPC, a special procedure for criminal proceedings applies to MPs, judges, judges of the Constitutional Court of Ukraine, judges of the High Anti-Corruption Court, as well as jurors during their performance of duties in court, Chairman, Deputy Chairman, member of the High Council of Justice, Chairman, Deputy Chairman, member of the High Qualification Commission of Judges of Ukraine; a candidate for the President of Ukraine; Commissioner for human rights of the Verkhovna Rada of Ukraine; Chairman, other members of the Accounting Chamber; deputies of the local councils; lawyers; Prosecutor General, his deputy, prosecutor of the Specialized Anti-Corruption Prosecutor's Office; Director and employees of the National Anti-Corruption Bureau of Ukraine.

As regards judges, in 2022, immunities were not lifted as the High Council of Justice (HCJ), authorized to lift them, was not functional until then. For example, in a criminal proceeding on an alleged passive bribery by a judge, NABU issued a notice of suspicion in September 2022 and HCJ considered the motion only in February 2023.[138] Following its launch, HCJ has been prompt in lifting immunities, and already in the first half of 2023, six judges were convicted for corruption offences. In addition, in 2022, HACC convicted nine judges based on the proceedings started in the previous years.

Regarding the MPs, even though the amendments introduced in 2020 removed the requirement for the Verkhovna Rada to provide its approval, neither NABU nor SAPO can initiate a case (enter information in the registry to open a case) on its own. Such cases must be dealt with by the Prosecutor General, this includes opening a case and taking procedural decisions, such as covert investigative measures, detention, arrest, and any other measures that may restrict rights and liberties of MPs (Art. 482-2 of the CPC). This, in practice, has impeded effective investigation and prosecution of MPs during the pilot monitoring. NABU and SAPO confirmed that the situation improved after the appointment of the Head of SAPO who has the right to independently charge MPs with suspicion of committing a crime. However, the Office of the Prosecutor General on several occasions obstructed NABU's requests to conduct investigative actions in cases involving MPs. According to the authorities, during the reporting period there were at least two cases where the Prosecutor General did not authorize searches of MPs' property without providing any justification. Moreover, in September 2022, a motion on application of a bail to an MP, along with several additional procedural restrictions, was returned to NABU detectives because it had not been preliminary approved by the Prosecutor General. Non-governmental stakeholders also provided examples of cases where the criminal proceeding against an MP had not been started in due time. Thus, the procedures on lifting immunities of MPs are not sufficiently detailed and clear criteria are lacking, and in the reporting period there were delays in lifting immunities of MPs.

Therefore, **Ukraine is not compliant with any of the elements of this benchmark.**

Benchmark 9.4.3.

	Compliance
No public allegation of high-level corruption was left not reviewed or investigated (50%), or decisions not to open or to discontinue an investigation were taken and explained to the public (50%)	✓

The monitoring team is not aware of any public allegation of high-level corruption that have not been reviewed or investigated, neither of any instances of not opened or closed cases that have not been explained to the public in 2022. **The benchmark is met.**

138https://hcj.gov.ua/doc/doc/39268

Box 9.1. NABU-SAPO-HACC: unprecedented success stories

Amidst the war, Ukraine's National Anti-Corruption Bureau (NABU) and the Specialized Anti-Corruption Prosecutor's Office (SAPO) are making headlines for their extraordinary accomplishments. NABU has been detecting high-level cases involving sitting politicians, working hand in hand with SAPO to prosecute cases resulting in convictions by HACC. The achievements of the specialised anti-corruption law enforcement agencies in the reporting period marked an unprecedented milestone in Ukraine's modern history.

Case of the Chairman of the Supreme Court

In May 2023, NABU and SAPO exposed the Chairman of the Supreme Court at the moment of receiving a second tranche of a bribe. The scheme was discovered thanks to the penetration of the NABU undercover detective inside the criminal group. The investigation revealed that a Ukrainian businessman, unhappy with a court decision, conspired with a lawyer from a Kyiv bar association who had connections with the Supreme Court judges. Between March and April 2023, the businessman transferred USD 2.7 million to the lawyer, with USD 1.8 million going to the Supreme Court judges, and the remainder as payment for mediation services. Ultimately, in April 2023, the Supreme Court ruled in favour of the businessman. Subsequently, both the Chairman of the Supreme Court and the lawyer received notices of suspicion for involvement in large-scale bribery (Art. 368, Part 4 of the CC). The pre-trial investigation is ongoing.

Case of the Deputy Minister of Community Development, Territories, and Infrastructure

In January 2023, NABU detained the Deputy Minister of Community Development, Territories and Infrastructure of Ukraine. This development came in the wake of an ongoing investigation, which was initiated by NABU in September 2022. The investigation revolves around allegations of corruption related to the Deputy Minister (dismissed from office a day after detention). He is suspected of advocating for overpriced contracts with controlled companies for equipment purchases (electricity generators), which were part of a government programme. NABU conducted a covered investigation, including surveillance, audio/video recordings, and phone tapping, leading to the Deputy Minister's arrest. The pre-trial investigation is ongoing.

Case of the Former Deputy Minister for Temporarily Occupied Territories and Internally Displaced Persons

In August 2019, NABU exposed and arrested the former Deputy Minister for Temporarily Occupied Territories (TOT) and his "assistant" during the receival of the second tranche of a bribe. According to the investigation, the former Deputy Minister promised to the representatives of the private company to settle two legal issues in exchange for USD 100 000. Later the amount of the bribe was reduced to USD 80 000. His plan hinged on reaching out to the ex-deputy prosecutor general, who, in a cascading chain of influence, would exert pressure on the head of the Civil Court of Cassation, subsequently affecting the decisions of the court's judges. In May 2020, SAPO sent the case to the court. In February 2022, HACC found the former Deputy Minister guilty of inciting bribery and fraud, sentencing him to 10 years in prison and confiscation of property.

Assessment of non-governmental stakeholders

Non-governmental stakeholders confirmed that the specialized agencies continued to enforce liability for corruption in the reporting period, despite Russian full-scale military aggression against Ukraine. Besides the challenges of the secondment of staff to the military and intelligence units, some of the offences could

not be enforced due to the restrictions during the Martial Law (offences on false declaring or non-submission of declaration, see PA-2).

Regarding the prosecution of corruption offences, the stakeholders perceive that implementation of various sanctions was effective. However, concerns were raised about the increasing application of conditional release by SAPO in cases with plea agreements, which are approved by HACC. Substituting sanctions with softer alternatives or granting conditional release appears overly lenient in the view of non-governmental stakeholders.

Non-governmental stakeholders also raised concerns about the lack of enforcement of corporate liability for corruption crimes and the lack of involvement of civil society and business community in the policy discussions on this issue.

In addition, stakeholders recommended to improve the effectiveness of anti-corruption investigations in Ukraine, including by improving legal framework on confiscation, statute of limitations and investigation time limits, and by consolidating scattered statistics on corruption offences.

Review of Anti-Corruption Reforms in Ukraine under the Fifth Round of Monitoring

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

The report assesses Ukraine's anti-corruption reforms against a set of indicators, benchmarks and their elements under five performance areas that focus on anti-corruption policy, prevention of corruption and enforcement. It analyses Ukraine's efforts to amend laws, build anti-corruption institutions, its measures to detect, investigate and prosecute corruption cases and identifies areas for improvement.

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