

Building an anticorruption system in Ukraine – current status and challenges.

An outside perspective”

Background

According to the recent study by Transparency International Ukraine which analyses the period from 2011 to 2014, political parties, businesses, public sector and law enforcement bodies were the most corrupt sectors in Ukraine. Civil society, Parliament, Accounting Chamber, Central Election Commission, Ombudsman and government institutions showed better results. In contrast, the transparency of courts and prosecutor offices significantly decreased. Interestingly, the level of tolerance towards corruption within Ukrainian society has not been significantly reduced since 2010, and almost a third of Ukrainians still believe that corruption can be justified. They view bribery as one of the easiest ways to solve their problems when dealing with different government institutions.

In the coalition agreement as well as in the government action plan the establishment of both anti-corruption agencies (investigative and preventive) is a top-priority and a part of the anti-corruption reform scheduled for 2015.

The previous attempts to build an effective anti-corruption system didn't succeed because the state bodies dealing with the issue were limited in their independence, functional and resources capacity. The new legislative amendments have introduced new anti-corruption policy priorities, a new system of anti-corruption legislation, a new architecture of anti-corruption authorities and format for cooperation between the public and authorities.

On October 14 the Ukrainian Parliament adopted a new legislation on the National Anti-Corruption Bureau, National Agency for the Prevention of Corruption, money laundering (implementation of the FATF recommendations) and an Anti-Corruption Strategy for 2014-2017. These laws are seen as a step forward in reforming the system of anti-corruption bodies and implementation of international anti-corruption standards in Ukraine. At the moment The reform of the anti- corruption system is dearly needed.

The creation of the new system of anti-corruption bodies is remarkable as Ukraine has never had a specialized body responsible for anti-corruption activity. Currently the corruption investigations are conducted by the Ministry of Interior, the Security Service of Ukraine, prosecutors and State Fiscal Agency while the Ministry of Justice has been responsible for the anti-corruption policy.

According to the newly adopted laws, the new anti-corruption agencies have to be established in 2015 (National Anti-Corruption Bureau by January 25, 2015 and National Agency for the Prevention of Corruption by April 25, 2015). Not all deadlines have been met so far. The Bureau was created officially on April 16 with the selection of its Director and the Agency was established on March 18 by the Cabinet of Ministers Decree. Currently both anti-corruption authorities are on different stages of establishment.

An important step forward for the transparency of public funds was made when on 11 February, the Parliament supported with 289 votes the law on Openness of Public Funds Usage. The law, which was first proposed in 2012, defines access to the information on the usage of public funds, operated by holders and users of state and local budgets, economic agents of state and communal enterprises, social insurance funds. As prescribed by the law, on May 20, government presented the idea of the public funds usage portal.

Anti-Corruption Strategy for 2014-2017

The Anti-Corruption Strategy for 2014-2017, was adopted by law and not a presidential decree as it has been customary before. It focuses on corruption prevention in the legislative, executive and judicial branches of power; reform of criminal justice bodies; raising public awareness about the negative impact of corruption; and public and business involvement. The Strategy also defines performance indicators and an annual public government report on its implementation. It was not the case for the previous strategy. Eventually, on April 29 the

Government enacted the state program on Anti-Corruption Strategy implementation for 2015-2017 which maintains the deadlines, performance indicators. It is worth to mention that the anti-corruption state program expenses will be covered from the funds of the State Budget, budgets of ministries and local budgets. Low funding of the previous anti-corruption program was one of the key reasons that led to poor implementation of the Anti-Corruption Strategy 2011-2015. In order not to repeat this vicious circle it was decided to make the National Agency on the Prevention of Corruption responsible for the Anti-Corruption Strategy implementation.

National Anti-Corruption Bureau

According to the Coalition agreement, the National Anti-Corruption Bureau had to be established in January 2015. However, in practice it was established only in mid-April. According to Poroshenko the first results of the National Anti-Corruption Bureau work are expected in the end of August, on Ukraine's independence anniversary.

The National Anti-Corruption Bureau will be a specialized law enforcement body aimed at investigating corruption of high profile officials, including ministers, MPs, high-ranking civil servants, judges, prosecutors of the Prosecutor General Office and regional prosecutor offices, high officers, directors of state enterprises etc. It will be accountable to the public council and Parliament and will also be externally audited. The Bureau has to report about its work every six months.

The NAB Director was publicly selected by a joint independent commission from the representatives of the President, Government and Parliament for the period of seven years. The Director can't be re-appointed.

Before the voting on the anti-corruption package, MPs amended the draft law, so that the NAB political independence was decreased. For instance, the NAB Director can be dismissed by the simple majority of MP's votes and the law doesn't define the wage level for the NAB employees. The coalition agreement stated that these disadvantages will be solved. The NAB employees have to pass an integrity check and monitoring the difference between civil servants' incomes and expenses. The maximum number of its staff is 700 people. It will have seven territorial units in Kyiv, Lviv, Khmelnytskyi, Poltava, Kramatorsk (Donetsk region), Mykolayiv and Melitopol (Zaporizhzhia region).

Some anti-corruption civil society organizations have criticized Poroshenko for attempting to appoint his candidate as the NAB Director and shorten the term for the selection of the Director. The selection commission conducted public interviews with short-listed candidates and submitted two of them to the President for his final decision. As a result young lawyer Artem Sytnyk has become the first NAB Director.

At the same time civil society activists failed to amend the legislation in such a way that the commission has to submit only one candidate to the President for his approval in order to minimize his influence in the process.

In November 2014, the Presidential Administration, which is accountable for the establishment of the NAB, invited a group of Georgian anti-corruption experts to work on anti-corruption reforms in Ukraine. The group has developed the entire concept of the NAB, based on the following principles:

- to build an open law enforcement body that will cooperate with civil society and business;
- to organize a research center, interagency data base;
- to outsource from journalists and civil society activists;
- to train the personnel on case-based approach;
- to train true detectives;
- to implement a US-approach to anti-bribery testing for NAB staff (provocation);
- to raise public awareness about NAB activity.

The Georgian experts have emphasized that they don't intend to impose Georgian reforms on Ukraine. Instead, they will try to adopt them and use important lessons learned from the

case of Georgia. In addition to the Georgian experts, a group of detectives from the US, Canada and a number of European countries will help develop guidelines for the NAB detectives. Moreover, it is planned to form a small group of detectives that will immediately start investigative work once the NAB Director has been appointed. Once the NAB commences its work, new investigations on ministers, deputy ministers, governors and other high profile officials will be transferred to its supervision from the Prosecutor General Office. Those cases that have been already submitted to court will still remain with the Prosecutor General's Office.

It is appeared that the newly elected Director will learn from the experience of Georgian experts as one of them was appointed as his first deputy director.

The work of the NAB will be seen as a good governance virtuous circle only in the case of transparent competition at all NAB positions, building effective channels of communication with citizens and mass media, and alienating from other government bodies in order to safe political independence.

National Agency for the Prevention of Corruption

The National Agency for the Prevention of Corruption will be a preventive state body aimed at monitoring civil servants' incomes and expenditures, creating of a unified register for civil servants' declarations, monitoring the conflict of interest and ethical standards. In addition, this body will appear for whistle-blowers in court.

It will consist of five members that will be selected in open competition and will be protected from dismissal as well as it will inherit the old structure of 132 territorial anti-corruption units within national and regional state bodies, left from the Governor on Anti-Corruption Policy. It is expected that the e-database of civil servants' declarations is to be established by the end of 2015, so civil servants will submit their 2015 declarations electronically, so the public will have access to them.

The Ministry of Justice (MoJ) is responsible for the establishment of the National Agency for the Prevention of Corruption (NAPC). As the law on corruption prevention doesn't deal with the establishment of the Agency itself, the supporting by-laws on establishing a selection commission appointing of the Agency's head, body's independence, staff composition, anti-corruption check of the staff, salary level are required. Some by-laws have been already issued by the government. For instance, civil society has selected its four representatives to be nominated to the selection commission. Hopefully this week Ukrainian Parliament will also improve its representative as well as President and Cabinet of Ministers. Dawdling of the selection process results in the loss of trust as well as slows down the anti-corruption reform in Ukraine. At the same time the pressure and expert support of international partners, such as UNDP, boosts the process. The MoJ expects the new body will be fully operational by the end of summer. It is likely that the cumulative effect from the establishment of the NAPC will be higher than from the NAB as the NAPC will cover the whole administrative system with all officials adopting transparency and integrity standards and enabling public checks of incomes and life level.

Last but not least, the desire of the ruling elites' groups to control anti-corruption agencies, low number of experts in anti-corruption field in Ukraine to ensure the work of new agencies, non-allocation of financial resources, non-functional judicial and criminal justice systems, low public expertise in anti-corruption check of draft laws and by-laws, lack of coordination of anti-corruption functions within the state bodies might prevent a good governance virtuous circle being initiated.