



TRANSPARENCY  
INTERNATIONAL  
UKRAINE

IACC  
MONITOR



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# EXECUTIVE SUMMARY

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## SUMMARY OF FINDINGS

Total number of commitments made at the 18th IACC	5
Total number of commitments selected for monitoring	4

Current level of progress in commitment implementation	
Number of completed commitments	1
Number of partially completed commitments	3
Number of commitments not started/dropped	0

## KEY CHALLENGES TO COMMITMENT IMPLEMENTATION

- There is a lack of political will and experience hampering the implementation of the commitments. Anti-corruption is considered to be one of the main priorities in Ukraine. It is talked about in many international meetings, the commitments are listed as priorities in memoranda with the IMF and in EU macro-financial assistance agreements, Open Government Partnership action plans, and so on. Meanwhile, anti-corruption reforms are hindered by some corrupt officials, oligarchs and businesses. Even though several anti-corruption laws were adopted when new president and parliament took office in 2019, many of them were not implemented.
- There have been frequent changes in government in the last year. Tasks proposed by some decision-makers changed as new people took on their positions with other priorities. For example, the head of the National Agency on Corruption Prevention (NACP) has changed, and the Asset Recovery and Management Agency has operated for almost a year without a head of the agency. The High Anti-Corruption Court only started operating in September 2019 and has not had enough time to show real results.
- The COVID pandemic has shifted the government's priorities to health issues, and there are fewer opportunities for meetings to implement some of the commitments. Also, the budgets of most government bodies, including the anti-corruption agency, have been redirected to a specialised COVID19 fund.
- There has been some destructive legislative initiatives and court decisions that have frustrated the implementation of the commitments. The justice system – especially the courts – have not been reformed in Ukraine. Many of them are inefficient or not impartial in their decisions. At the same time many members of parliament have put forward bills to obstruct anti-corruption reform and civic participation.

# KEY OPPORTUNITIES TO ACCELERATE COMMITMENT IMPLEMENTATION

The main opportunities for accelerating the implementation of the commitments are:

- the momentum created by the disruption of the constitutional court decisions

Ukraine's constitutional court has taken several decisions that may setback the country's anti-corruption system.<sup>1</sup> These decisions have brought a lot of attention to the anti-corruption in the media, parliament, the country's leadership and the international community. If the country uses this momentum correctly to engage all the stakeholders to resolve the situation, the anti-corruption legislation may be improved, discrepancies and the long-lasting problems fixed within the National Agency on Corruption Prevention, National Anti-Corruption Bureau and High Anti-Corruption Court.

- Ukraine's anti-corruption priorities could be included in international agreements with the international financial institutions and other partners to accelerate their implementation

Ukraine needs international support to implement the IACC commitments. Due to the pandemic and the resulting global economic downturn, support from international financial institutions will be essential if Ukraine is to cover its budget needs. The establishment of a beneficial ownership verification mechanism in the International Monetary Fund memorandum might encourage the government to deal with this issue more proactively.

## KEY RECOMMENDATIONS

- Introduce an e-case<sup>2</sup> management system in anti-corruption bodies

Some IACC commitments are aimed at improving the work of anti-corruption bodies and the anti-corruption infrastructure as a whole. Others are more specific, such as the freezing, seizure and confiscation of assets and the verification of beneficial ownership, which are all related to corruption. E-case management system, when introduced, will make the work of the High Anti-Corruption Court, the National Anti-Corruption Bureau and the Specialized Anti-Corruption Prosecutors Office more efficient.

- Interoperability among existing registries

Most of the government registries in Ukraine are electronic; however, many of them are not interoperable, hence cross-checking information has to be done manually, especially when the registries are held by different parties. Currently, the beneficial ownership registry is held at the Ministry of Justice, so cross-checking is necessary with, for example, the asset declarations registry, which is held by the NACP, and with other registries that are not public and which contain personal and/or confidential financial information, including the information possessed by the Asset Recovery and Management Agency. Interoperability of the registries will be useful in other areas as well, for example, in public procurement to find out whether there are conflicts of interest with the procuring bodies or links between the bidders.

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<sup>1</sup>The Atlantic Council. Ukraine caught between constitutional crisis and counter-revolution, 5 November 2020 <https://www.atlanticcouncil.org/blogs/ukrainealert/ukraine-caught-between-constitutional-crisis-and-counter-revolution/>

<sup>2</sup> Synergy International Systems, *Synergy Won a Tender to Develop eCase Management System for Anti-Corruption Bodies in Ukraine*, 26 September 2019, <https://www.synisys.com/synergy-won-a-tender-to-develop-ecase-management-system-for-anti-corruption-bodies-in-ukraine/>

- Open and transparent competitive employment for the heads of the agencies

Soon, the Asset Recovery and Management Agency (ARMA), Specialized Anti-Corruption Prosecutors Office (SAPO) and the National Anti-Corruption Bureau will face changes in leadership. These institutions in Ukraine are not very well developed, and the agency head often defines the success of the institution. Therefore, to accelerate the implementation of the commitments, strong institutions and political leadership are needed. Parliament has failed to nominate selection committee members to head SAPO and ARMA that are acceptable to the society and international partners. Well organized and transparent competitive employment processes will result in stronger leaders of high integrity in the anti-corruption institutions and accelerate commitment implementation. The selection of the judges to the High Anti-Corruption Court is a good example of such an employment process.

# INTRODUCTION

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The 18th IACC in Copenhagen featured a series of high-level meetings among OECD and non-OECD countries and international and regional organisations where participants made a set of statements on the steps each intends to take to make progress in anti-corruption, based on existing commitments such as Open Government Partnership (OGP) action plans, UK summit, United Nations Convention against Corruption (UNCAC), OECD instruments, Sustainable Development Goals (SDGs), etc.<sup>3</sup> Participants at the high-level meetings agreed to set up a follow-up mechanism engaging all stakeholders (including governments, international and regional organisations, companies and civil society) in monitoring the implementation of these commitments.

The aims of the follow-up mechanisms are to:

- assess the level of progress towards the implementation of the commitments
- provide further analysis on, and complement, other reporting mechanisms
- focus on the qualitative nature of the commitments rather than quantitative scoring or ranking
- provide insights into what has and has not worked and why
- provide insights into the opportunities and challenges for implementation as a basis for understanding where technical support should be targeted

This report aims to capture the context and conditions under which the commitments are being implemented as well as recording progress in the implementation of the commitments. It provides further analysis on, and complements, other reporting mechanisms, rather than duplicating them.

This report presents the results of the first round of monitoring for Ukraine.

The report contains the following sections:

1. Filtering of commitments: presents the results of selecting Ukraine's commitments based on an assessment of their level of specificity and measurability, and hence the feasibility of monitoring each one of them.
  2. Analysis of the Ukrainian context: presents a brief analysis of the extent to which the commitments overall are considered pertinent to the country context.
  3. Progress in implementing the commitment: presents the level of progress of the commitments selected for monitoring as well as the challenges and opportunities for implementation.
- Recommendations: presents the key recommendations to accelerate the implementation of commitments.

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<sup>3</sup> 18th IACC high level segment commitments, <https://iaccseries.org/18th-iacc/18th-iacc-high-level-segment-commitments/>

# FILTERING OF COMMITMENTS

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In total, Ukraine presented five commitments at the 18th IACC in 2018. Of these, four commitments are deemed feasible to monitor based on their level of specificity and measurability, as presented below

**COMMITMENT 1: “Establishment of the High Anticorruption Court, as a key institution ensuring punishment for committing corruption cases. It is expected to be in full operation by the beginning of 2019. The Public Council of International Experts involved in the process of selection of the judges to the High Anticorruption Court will assure competitive selection of the best professionals.”**

IS THE COMMITMENT SPECIFIC? YES

The commitment targets the establishment of a specific anti-corruption institution and outlines the specifics of its launch and an approximate date for the start of operation. It states a specific requirement for the process of the selection of judges to be competitive with an additional filter, the Public Council of International Experts. The commitment is recognised in a memorandum between Ukraine with the IMF<sup>4</sup> and in the EU Macro-Financial Assistance<sup>5</sup> conditionalities.

IS THE COMMITMENT MEASURABLE? YES

The commitment is measurable as it provides a set of indicators, such as the court's establishment and its mandate, involvement of the Public Council of International Experts. However, it has some indicators that are hard to monitor objectively, such as “selection of best professionals.”

HAS THE COMMITMENT BEEN SELECTED FOR MONITORING YES

**COMMITMENT 2: “In 2016, Ukraine joined the international initiatives of the OECD to Counter Base Erosion and Profit Shifting and is committed to stepping up efforts to counteract aggressive tax planning.”**

IS THE COMMITMENT SPECIFIC? NO

This commitment is merely a description of the existing anti-corruption initiatives that Ukraine joined and is a general statement of intent to step up efforts to counteract aggressive tax planning.

IS THE COMMITMENT MEASURABLE? NO

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<sup>4</sup> UAWire, *IMF welcomes creation of Anti-Corruption Court in Ukraine*, 20 June 2018, <https://www.uawire.org/imf-welcomes-creation-of-anti-corruption-court>

<sup>5</sup> European Commission, *Macro-Financial Assistance to Ukraine: Disbursement of the First Instalment*, 30 November 2018, [https://ec.europa.eu/info/sites/info/files/economy-finance/information\\_note\\_-\\_mfa\\_ukraine\\_1st\\_instalment.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/information_note_-_mfa_ukraine_1st_instalment.pdf)

The commitment does not identify any measurable actions to indicate whether it will have been Achieved, and the language of stepping up efforts is non-committal.

HAS THE COMMITMENT BEEN SELECTED FOR MONITORING NO

**COMMITMENT 3: “Ukraine remains committed to continue creation of corruption prevention mechanisms, by consistently implementing the initiatives and innovative technologies within the mandate of NACP that made state authority and SoEs more transparent and accountable to society.”**

IS THE COMMITMENT SPECIFIC? YES

The commitment is specific as it aims to create corruption prevention mechanisms. These preventive technologies will be implemented on the mandate of the National Agency on Corruption Prevention (NACP).

IS THE COMMITMENT MEASURABLE? YES

The commitment is sufficiently measurable as it includes initiatives and measures in the area of corruption prevention that can be monitored.

HAS THE COMMITMENT BEEN SELECTED FOR MONITORING YES

**COMMITMENT 4: “We remain adhering principles of the UN Convention against Corruption and confirm our willingness to strengthen anti-corruption cooperation on freezing, seizure and confiscation as it is stated in article 31 of the Convention.”**

IS THE COMMITMENT SPECIFIC? YES

The commitment is specific enough for monitoring. Article 31 of the UN Convention against Corruption (UNCAC) has clear provisions on what countries are expected to do (to comply) when it comes to the freezing, seizure and confiscation of assets. This is a sufficiently narrow topic with some international standards being developed already.

IS THE COMMITMENT MEASURABLE? YES

The commitment is sufficiently measurable to be monitored. Article 31 of the UNCAC (in most of its provisions) identifies clear actions with adequate room for interpretation based on common international practices and the national needs to be addressed. This commitment targets the criminal justice field and asset tracing, management and confiscation.

HAS THE COMMITMENT BEEN SELECTED FOR MONITORING YES

**COMMITMENT 5: “Free access to the database with well-structured information on the beneficiary owners of Ukrainian companies is open and publicly available, the verification mechanism is agreed upon and launched.”**

**IS THE COMMITMENT SPECIFIC?      YES**

The commitment is specific and highlights a narrow policy area. It moves towards achieving an international standard on beneficial ownership transparency and verification. It specifies that the database should include Ukrainian companies. It does not specify what kind of information on beneficiary owners should be available and in what exact format and what kind of verification approach it should have. Within this assessment, we will look at the recommendations provided by Open Ownership<sup>6</sup> and use those as a template. Conducting effective verification is new or is not implemented in most countries. Ukraine is one of the countries pioneering this activity.

**IS THE COMMITMENT MEASURABLE?      YES**

The commitment is sufficiently measurable to be monitored. It is possible to assess: whether there is a registry; if it is easy to use and freely available to the public; the quality of data; whether there has been any progress toward the establishment of a verification process; which stakeholders are involved; whether this process was implemented and worked. The commitment states that the information in the database should only cover Ukrainian companies. Most of the indicators in the commitment are measurable and do not require interpretation.

**HAS THE COMMITMENT BEEN  
SELECTED FOR MONITORING      YES**

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<sup>6</sup> Open Ownership website <https://www.openownership.org/>

# COUNTRY CONTEXT

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In 2013-2014, Ukraine underwent the Revolution of Dignity. People protested against a corrupt government and the then president's decision to turn away from Europe towards Russia. As a result of the revolution, Ukraine gained a new president and parliament, and a package of anti-corruption laws was adopted on 14 October 2014. Anti-corruption bodies – National Anti-Corruption Bureau (NABU), National Agency on Corruption Prevention (NACP), Specialized Anti-Corruption Prosecution Office, Asset Recovery and Management Agency – have been launched since then.

Ukraine scores 30 (on a scale of 0-100, where 0 means that a country is perceived as highly corrupt) on the Corruption Perceptions Index 2019.<sup>7</sup> The country lost two points compared to the year before, but has gained 4 points since 2014. Ukraine ranks 64 out of 190 in the ease of doing business category in the World Bank's Doing Business 2020 report,<sup>8</sup> moving up seven positions since the last edition. While the results are mixed in the short-term, since the Revolution of Dignity Ukraine is moving forward.

The current parliament, elected in 2019, has been working in a so called turbo mode,<sup>9</sup> which has adopted several laws that, while not perfect, were long-awaited and include anti-corruption measures and the means to strengthen the work of several anti-corruption bodies. Some of these include: limiting the cases to the High Anti-Corruption Court to only the top priority and new corruption cases; protection for whistleblowers; relaunching the NACP; revisions to criminal procedural code to give NABU and the State Investigation Bureau independent wiretapping powers; restoring criminal liability for illicit enrichment; and regulating the lease of national and municipal property.

According to a survey by Pact,<sup>10</sup> citizens of Ukraine believe that anti-corruption bodies are the most effective at curbing corruption. The commitments selected for monitoring are at different extremes of the ambition spectrum, but most of them are targeted toward the anti-corruption institutions: High Anti-Corruption Court, National Agency on Corruption Prevention, Asset Recovery and Management Agency. In general, the commitments filtered for monitoring could be assessed as moderately ambitious.

Between 2018 and 2020, Ukraine's national government changed, thus, the president, parliament, cabinet and government are now different from the time the IACC anti-corruption commitments were made. For some time during the pandemic, Ukraine did not have ministers of economy and healthcare. The two main governance challenges in the country are: checks<sup>11</sup> and balances<sup>12</sup> that give the president some opportunities to influence and control other branches of government; and

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<sup>7</sup> TI Ukraine, [Corruption Perceptions Index 2019](#), 2019

<sup>8</sup> The World Bank, *Ease of Doing Business Rankings*, 2020, <https://www.doingbusiness.org/en/rankings?region=europe-and-central-asia>

<sup>9</sup> TI Ukraine, *Zelenskyy's Year of Anti-Corruption: Results*, <https://ti-ukraine.org/en/news/zelenskyy-s-year-of-anti-corruption-results/>

<sup>10</sup> Pact, *Українці залучені до громадської діяльності, але уникають активної участі*, 18 April 2020, <https://engage.org.ua/ukraintsi-zalucheni-do-hromadskoi-dialnosti-ale-unykaiut-aktyvnoi-uchasti/>

<sup>11</sup> The amendments to the constitution proposed by the Office of the President also imply that community mayors will have their powers curtailed, thus distorting the internal system of checks and balances between various representative bodies at the local government level. See, Ukraine Crisis Media Center, *Second Joint Statement of the City, Town and Village Heads, Heads of Amalgamated Territorial Communities and Decentralisation and Local Self-Governance Experts*, 13 January 2020, <https://uacrisis.org/en/74519-druga-spilna-zayava-miskih-selishhnih-silskih-qoliv-qoliv-ob-yednanih-teritorialnih-gromad-ta-ekspertiv-z-pitan-detsentralizatsiyi-vladi-mistsevoqo-samovryaduvannya>

<sup>12</sup> Kennan Institute, *Zelenskyy's Government and the Challenge for Checks and Balances*, 9 September 2019, <https://www.wilsoncenter.org/blog-post/zelenskyy-s-government-and-the-challenge-for-checks-and-balances>

the human resources policy of the presidential office. In the specific area of corruption, the courts, according to the experts, remain the biggest problem.<sup>13</sup>

Another challenge for the country is the persecution of local level activists and investigative journalists.<sup>14</sup> This became especially clear after the death of Kateryna Handziuk, a local activist, who was attacked with sulphuric acid in July 2018 and died in November that year.<sup>15</sup> This case is still ongoing in the court. Many other similar cases are very poorly investigated, and the instigators are never punished.

Therefore, the commitments made at IACC are still pertinent to the country. In 2018, the establishment of the High Anti-Corruption Court was the priority for the country in terms of anti-corruption. The anti-corruption infrastructure had previously been built with this one link missing, which was important as the other courts were not impartial.

The National Agency on Corruption Prevention (NACP) began operating in 2016, and it was soon clear that it was not independent but influenced by high-level political powers. With the support of the international community, donors<sup>16</sup> and civil society advocacy, some monitoring tools were introduced anyway. One of them is an asset declaration registry that offers free public access to the public officials' declarations in open data format. The registry is comprehensive, includes relatives of the officials and a list of all the companies where they are beneficial owners. Civic activists and whistleblowers<sup>17</sup> made claims that the NACP<sup>18</sup> leadership was under the influence of and engaged in corruption, and many of the agency's responsibilities were not implemented well.<sup>19</sup> At the start of 2020, the NACP has got a new head and team.<sup>20</sup> The head was selected in an open competition, where civil society members had a place on the committee. The agency started developing and launching innovative mechanisms for corruption prevention.

Ukraine was the second country in the world to adopt a law on beneficial ownership and included the information from it into the unified registry of organisations and enterprises in Ukraine.<sup>21</sup> Even though the law was adopted, it took a long time for companies to disclose their information. There were no effective punishment mechanisms if companies did not disclose their beneficial owners. In 2019, new anti-money laundering (AML) law<sup>22</sup> was adopted that makes beneficial ownership reporting rules stricter. Ukraine was a first country to sign a memorandum<sup>23</sup> with Open Ownership to allow data on beneficial owners to be included in Open Ownership international registry. The information in the registry only includes Ukrainian companies, but NACP's asset declaration

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<sup>13</sup> The Atlantic Council, *Ukraine's Reforms Remain Hostage to Corrupt Courts*, 15 September 2020, <https://www.atlanticcouncil.org/blogs/ukrainealert/ukraines-reforms-remain-hostage-to-corrupt-courts/>

<sup>14</sup> Ukinform, *39 Attacks on Journalists and Activists Recorded in Ukraine this Year*, 21 June 2019, <https://www.ukrinform.net/rubric-society/2725708-39-attacks-on-journalists-and-activists-recorded-in-ukraine-this-year.html>

<sup>15</sup> The Ukrainian Weekly, *Activists Demand Answers a Year after Kateryna Handzyuk's Death*, 28 November 2019, <http://www.ukrweekly.com/www/activists-demand-answers-a-year-after-kateryna-handzyuks-death/>

<sup>16</sup> UNDP Ukraine, *How to File E-Declarations: NACP and UNDP Launch Online Course for Civil Servants*, 13 March 2017, <https://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2017/03/13/how-to-file-e-declarations-nacp-and-undp-launch-online-course-for-civil-servants/>

<sup>17</sup> RPR Coalition, *НАЗК: 5 проблем, які має вирішити перезапуск провального органу*, 18 April 2019, <https://rpr.org.ua/news/nazk-5-problem-yaki-maje-vyrishyty-perezapusk-provalnoho-orhanu/>

<sup>18</sup> Pravda, *Соломатіна: Ніхто не розслідує надані мною факти корупції в НАЗК*, 2017, <https://www.pravda.com.ua/news/2017/12/20/7166221/>

<sup>19</sup> *Declarations Under Control, How to Relaunch the Agency on Corruption Prevention that Failed E-Declarations*, 2019, <https://en.declarationscontrol.org/post/how-to-relaunch-the-failed-agency-on-corruption-prevention-responsible-for-e-declarations>

<sup>20</sup> NACP, *100 Days Since NACP Reboot: Key Achievements*, 30 April 2020, <https://nazk.gov.ua/en/news/100-days-since-nacp-reboot-key-achievements/>

<sup>21</sup> Open Ownership, *Improving beneficial ownership transparency in Ukraine: Review and recommendations*, March 2018, <https://www.openownership.org/uploads/improving-beneficial-ownership-transparency-in-ukraine.pdf>

<sup>22</sup> Everlegal, *Ukraine Tightens Rules About Disclosure of Ultimate Beneficial Owners*, 4 May 2020, <https://everlegal.ua/en/ukraine-tightens-rules-about-disclosure-of-ultimate-beneficial-owners>

<sup>23</sup> Open Ownership, *Ukraine signs MOU with OpenOwnership to implement the Beneficial Ownership Data Standard*, October 2018, <https://www.openownership.org/news/ukrainemou/>

registry<sup>24</sup> also has information on any company where a Ukrainian public official is a beneficial owner. Inclusion in the verification mechanism as a part of the commitments makes it an ambitious one; this requirement was also included in the latest Ukraine-IMF memorandum.<sup>25</sup>

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<sup>24</sup> NACP, ПРО РЕЄСТР, <https://public.nazk.gov.ua/>

<sup>25</sup> IMF, [\*Request for Stand-By Arrangement—Press Release; Staff Report; and Statement by the Executive Director for Ukraine\*](#), June 2020

# PROGRESS ON COMMITMENT IMPLEMENTATION

**COMMITMENT 1: “Establishment of the High Anticorruption Court, as a key institution ensuring punishment for committing corruption cases. It is expected to be in full operation by the beginning of 2019. The Public Council of International Experts involved in the process of selection of the judges to the High Anticorruption Court will assure competitive selection of the best professionals.”**

**THEMATIC AREA:** legislative and institutional framework

**COMMITMENT TIMEFRAME:** beginning of 2019

**COMMITMENT SOURCE:** IMF memorandums, macro-financial assistance from EU, visa liberalisation action plan

## Current level of progress in commitment implementation

Completed

x

Partially completed

Not started/dropped

To relaunch the whole court system in Ukraine would have taken five to seven years. Therefore, civil society and international partners saw the opportunity to resolve the issue in around two years with the introduction of the specialised anti-corruption court, the High Anti-Corruption Court (HACC).<sup>26</sup> It was a civil society demand to have the international council as an additional filter<sup>27</sup> on integrity for the judges as they did not trust the existing High Council of Justice (HCJ) and High Qualification Commission of Judges (HQCJ) to select the HACC judges. The Public Council of International Experts (PCIE) consisted of six members with impeccable business standing and significant professional experience. Four of them have been judges, and two were prosecutors. They assessed the backgrounds of the candidates and interviewed them, serving as an additional filter to the work of HCJ and HQCJ for the integrity of judges.

The HACC began<sup>28</sup> its operations on 5 September 2019<sup>29</sup> with the law<sup>30</sup> that was adopted in June 2018. The establishment of a judicial institution was difficult<sup>31</sup> in political and legal terms<sup>32</sup> as during

<sup>26</sup> U4, *Ukraine's High Anti-Corruption Court: Innovation for Impartial Justice*, 2020, <https://www.u4.no/publications/ukraines-high-anti-corruption-court>

<sup>27</sup> TI Ukraine, *Battlefield: How High Anti-Corruption Court Was Established in Ukraine*, 20 December 2019, <https://ti-ukraine.org/en/news/battlefield-how-high-anti-corruption-court-was-established-in-ukraine/>

<sup>28</sup> TI Ukraine, *High Anti-Corruption Court Comes into Operation*, 5 September 2019, <https://ti-ukraine.org/en/news/high-anti-corruption-court-comes-into-operation/>

<sup>29</sup> USAID, *USAID New Justice Program Congratulates the High Anticorruption Court on the Launch*, 5 September 2019, <https://newjustice.org.ua/en/news/usaaid-new-justice-program-congratulates-the-high-anticorruption-court-on-the-launch/>

<sup>30</sup> Verkhovna Rada, *Про Вищий антикорупційний суд*, 2018, <https://zakon.rada.gov.ua/laws/show/2447-19#Text>

<sup>31</sup> UNIAN, *IMF Criticizes Poroshenko's Draft Law on Anti-Corruption Court*, 15 January 2018, <https://www.unian.info/politics/2347007-imf-criticizes-poroshenkos-draft-law-on-anti-corruption-court.html>

<sup>32</sup> Council of Europe, *Documents by Opinions and Studies: Ukraine*, <https://www.venice.coe.int/webforms/documents/?opinion=896&year=all>

the Yalta European Strategy (YES) conference, the president,<sup>33</sup> prosecutor general and the prime minister all said that there was no need for such an institution in Ukraine. The adoption of the legal framework was delayed, there were also problematic issues<sup>34</sup> regarding the cases, subject to the jurisdiction<sup>35</sup> of the HACC, as attempts were made to block the transfer of cases that were already at trial stage. It was suggested that appeals against such cases should be carried out by general criminal courts. During the formation of the HACC, the Public Council of International Experts<sup>36</sup> was actively involved<sup>37</sup> in the selection of judges, and although it had an advisory role, it was an effective filter for eliminating candidates that were not of high integrity. Currently (October 2020), the court is fully operational, and the volume of sentences is approaching two dozen. Meanwhile, society's distrust of the courts in general is 77.5 per cent,<sup>38</sup> the lowest among all other government institutions.

## Challenges to effective commitment implementation

The HACC is becoming a target for media attacks by opponents of anti-corruption reform. Members of Parliament (MPs) are also applying pressure through appeals to the Constitutional Court of Ukraine<sup>39</sup> to declare the HACC inconsistent with the constitution of Ukraine and offset all anti-corruption reform.

Another challenge is the HACC Appeal Chamber does not have any permanent premises. Even though it has been operating for more than a year, the government has not yet provided suitable premise in possession to comply with the security needs for the judges. The IMF has included this issue in their memorandum with Ukraine.<sup>40</sup>

## Opportunities to accelerate commitment implementation

The HACC needs assistance with their communication strategies. The website, for example, is not user-friendly. People are mostly only aware of the negative aspects of its work, and public trust is crucial for such an institution and where the courts already have little public support. According to a survey conducted in July 2020, 70 per cent of the public do not trust the HACC.<sup>41</sup>

## Recommendations

<sup>33</sup> Kyiv Post, *Poroshenko Rejects Anti-Corruption Courts Once Again*, 15 September 2017, <https://www.kyivpost.com/ukraine-politics/poroshenko-rejects-anti-corruption-courts-2.html>

<sup>34</sup> Ukraine Crisis, *High Anti-Corruption Court Starts Work in Ukraine: How Will It Operate?*, 6 September 2019, <https://uacrisis.org/en/73207-high-anti-corruption-court>

<sup>35</sup> TI Ukraine, *HACC Jurisdiction Under New Draft Law*, 9 July 2019, <https://ti-ukraine.org/en/blogs/11858/>

<sup>36</sup> The Global Anticorruption Blog, *Ukraine's Bold Experiment: The Role of Foreign Experts in Selecting Judges for the New Anticorruption Court*, 2 March 2020, <https://globalanticorruptionblog.com/2020/03/02/ukraines-bold-experiment-the-role-of-foreign-experts-in-selecting-judges-for-the-new-anticorruption-court/>

<sup>37</sup> TI Ukraine, *PCIE Is Ready to Veto 12 More Candidates for the High Anti-Corruption Court*, 9 January 2019, <https://ti-ukraine.org/en/news/pcie-is-ready-to-veto-12-more-candidates/>

<sup>38</sup> Razumkov, *Початок нового політичного року: довіра до соціальних інститутів*, 4 September 2020, <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/pochatok-novogo-politychnogo-roku-dovira-do-sotsialnykh-institutiv-lypen-2020r>

<sup>39</sup> Constitutional Court of Ukraine, *A Constitutional Petition Regarding Constitutionality of the Law of Ukraine "on the High Anti-Corruption Court" Was Filed to the Court*, 2020, <http://www.ccu.gov.ua/en/novina/constitutional-petition-regarding-constitutionality-law-ukraine-high-anti-corruption-court>

<sup>40</sup> National bank of Ukraine, *IMF-Ukraine: Letter of Intent and Memorandum of Economic and Financial Policies*, 9 June 2020, <https://bank.gov.ua/en/files/mVURYkPNyUdMiR>

<sup>41</sup> Razumkov, *Початок нового політичного року: довіра до соціальних інститутів*, 4 September 2020, <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/pochatok-novogo-politychnogo-roku-dovira-do-sotsialnykh-institutiv-lypen-2020r>

1. Enhance safety and security for HACC judges since they deal with major anti-corruption cases, and are at risk of physical attacks and threats. There is currently a lack of state funding for this.
2. Judicial reform,<sup>42</sup> especially of the High Council of Justice and High Qualifications Committee of Judges need to be relaunched, and high integrity candidates with impeccable qualifications need to be selected.
3. The Supreme Court has to ensure the unity of judicial practice in all corruption crimes, including those considered by the HACC and other courts.

**COMMITMENT 2: “Ukraine remains committed to continue creation of corruption prevention mechanisms, by consistently implementing the initiatives and innovative technologies within the mandate of NACP that made state authority and SoEs more transparent and accountable to society.”**

**THEMATIC AREA:** legislative and institutional framework, public integrity

**COMMITMENT TIMEFRAME:** not stated

**COMMITMENT SOURCE:** N/A

### Current level of progress in commitment implementation

Completed

Partially completed

x

Not started/dropped

The National Agency on Corruption Prevention (NACP) is a central authority of executive power with a special responsibility for the development and implementation of the national anti-corruption policy.<sup>43</sup> The main functions of the NACP are corruption prevention and overseeing the formation and implementation of the state anti-corruption policy. NACP’s mandate is defined by Article 11 of the Corruption Prevention Law of Ukraine,<sup>44</sup> adopted on 14 October 2014.

Since making this commitment at the IACC in 2018, NACP continues to develop corruption prevention mechanisms and implement the relevant initiatives and make use of innovative technologies within its mandate, such as the Declare 2020<sup>45</sup> website and a guideline-driven declaration chat-bot for those who submit asset declarations. The Declare 2020 portal contains official clarifications, search modules, infographics and educational videos, a hotline, official NACP media channels, and so on. The website shares relevant information about the provisions for declaring persons authorised to perform the functions of the state or local self-government. There are automatic verifications of these declarations with red flags to select declarations for verification. There is also POLITDATA,<sup>46</sup> an e-register of political parties’ reports that provides better public access to this information, and a transparent online voting competition to select members of the Public Council. The National Anti-Corruption Strategy for 2020-2024<sup>47</sup> was submitted to parliament

<sup>42</sup> DeJure Foundation, *Judicial Reform Roadmap*, 2020, <http://en.dejure.foundation/judicial-reform-map-eng>

<sup>43</sup> NACP, *Інформація щодо повноважень Національного агентства з питань запобігання корупції*, 15 August 2016, <https://old.nazk.gov.ua/news/informaciya-shchodo-povnovazhen-nacionalnogo-agentstva-z-pytan-zapobigannya-korupciyi>

<sup>44</sup> Verkhovna Rada, *Про запобігання корупції*, 14 October 2014, <https://zakon.rada.gov.ua/laws/show/1700-18#Text>

<sup>45</sup> Declare 2020 website, <https://deklaruy.org.ua/>

<sup>46</sup> POLITDATA website, <https://politdata.nazk.gov.ua/#/>

<sup>47</sup> NACP, *NACP Releases Draft Anti-Corruption Strategy 2020 to 2024*, 24 June 2020, <https://nazk.gov.ua/en/news/nacp-releases-draft-anti-corruption-strategy-2020-to-2024/>

and awaits voting in the plenary session. Unfortunately, this commitment was only partially implemented as the functioning of the automatic verification of asset declarations is poor because of incompleteness of Ukrainian state registers, which are needed for comparisons to the declaration information. Also, the new NACP's approach for the use of the red flags to select declarations for verification was criticised by civil society.<sup>48</sup> The downside is that the national agency has not made the process of developing new rules of logical and arithmetical control inclusive and open to the public. The NACP ignored the public's request to join their renewal. Ensuring public participation in such processes will help the development of the new initiatives.

### Challenges to effective commitment implementation

Insufficient and delayed budget funding for the NACP, which could interfere with NACP's further implementation of the initiatives and technologies within its mandate.<sup>49</sup>

The process for employing people is not adequate due to the COVID-19 pandemic. NACP needs a system of transparent and openly competitive recruitment system with relevant integrity and professionalism checks.

The NACP does not always make the process of developing new innovative tools inclusive and open to the public. For instance, the NACP did not ensure inclusiveness, openness and transparency when finalising the rules for the automated verification of asset declarations.<sup>50</sup> There was no announcement or invitation to participate in the process. Similarly, the draft results were not made public, there was no request for proposals, suggestions or comments.

Ukrainian state registers have low quality data and are incomplete. They are not compatible with other registers and databases and the speed of information exchange between registers complicates the effective implementation of this commitment.

### Opportunities to accelerate commitment implementation

Amendments should be made to improve the efficiency and integrity of the legislation on the state financing of political parties. NACP can gather information from previous years' reports on political party financing and suggest revisions to the relevant law. The automatic verification of such electronic reports, already developed by NACP, could accelerate the implementation of this commitment.

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<sup>48</sup> TI Ukraine, *Logical and Arithmetic Control of Declarations: How NACP Will Go about It*, 1 September 2020, <https://ti-ukraine.org/en/news/logical-and-arithmetic-control-of-declarations-how-nacp-will-go-about-it/>

<sup>49</sup> NACP, *НАЗК розраховує на підтримку міжнародних партнерів у питанні модернізації Реєстру декларацій*, 30 October 2019, <https://nazk.gov.ua/uk/novyny/nazk-rozrahovuye-na-pidtrymku-mizhnarodnyh-partneriv-u-pytanni-modernizatsiyi-reyestru-deklaratsij/>

<sup>50</sup> TI Ukraine, *Логічний і арифметичний контроль декларацій: як НАЗК планує його проводити*, 21 October 2020, <https://ti-ukraine.org/news/logichniy-i-arifmetichnyi-kontrol-deklaratsij-yak-nazk-planuye-yogo-provodyty/>

## Recommendations

1. Provide sufficient and timely budget funding to the NACP, which should be adequate to maintain the agency and develop the relevant registers.
2. Ensure an inclusive, open and transparent process for developing new initiatives.
3. Increase the quality and completeness of the Ukrainian state registers.
4. Develop effective international mechanisms for information exchange as recommended in the UNCAC. International partners, governments and other anti-corruption agencies could consider giving the NACP free and open access to their state registries to verify asset declarations.
5. Introduce a case management system for monitoring and evaluating the effectiveness of the NACP and its employees.

**COMMITMENT 3: “We remain adhering principles of the UN Convention against Corruption and confirm our willingness to strengthen anti-corruption cooperation on freezing, seizure and confiscation as it is stated in article 31 of the Convention.”**

**THEMATIC AREA:** legislative and institutional framework; security and law enforcement

**COMMITMENT TIMEFRAME:** not stated

**COMMITMENT SOURCE:** members of the UN Convention against Corruption; partially in the EU directives on the ARO-AMO agencies

## Current level of progress in commitment implementation

Completed

Partially completed

X

Not started/dropped

Article 31 of the UNCAC has provisions that member-countries are expected to follow. They are aimed at building foundations (legislative and administrative) to find, trace and manage assets seized in cases of grand corruption. In 2015, Ukraine implemented all the necessary legislative changes to create the legislative background for asset tracing and management. Such legislative changes<sup>51</sup> included the adoption of a specific law and amendments to the criminal code and the criminal procedure code of Ukraine, among others. The Asset Recovery and Management Agency (ARMA)<sup>52</sup> was established to find, trace and manage assets derived from corruption and other crimes. This agency was created to fulfil the obligations of the visa liberalisation action plan, OECD recommendations and other international obligations Ukraine has, including those specified in UNCAC.

Even though ARMA is fully functional at this point, there is a need for legislative amendments to improve its work and fulfil its stated goals. ARMA is a unique and new agency for Ukraine, and when

<sup>51</sup> Verkhovna Rada, *Проект Закону про Національне агентство України з питань виявлення, розшуку та управління активами, одержаними від корупційних та інших злочинів*, 4 September 2015, [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?pf3516=3040&skl=9](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=3040&skl=9)

<sup>52</sup> ARMA website, <https://arma.gov.ua/en/>

legislation for its creation was adopted it was impossible to predict all the necessary details. The most urgent matters that need to be addressed through amendments to the law are: i) the independence of the agency and its head; ii) management of assets; iii) and the need to make ARMA more efficient and transparent. A draft of this law<sup>53</sup> has already been registered in parliament.

## Challenges to effective commitment implementation

It took some time to establish ARMA since there was no other agency like it in Ukraine. Even though ARMA is fully functioning now, there are several challenges that prevent it from being more efficient.

For almost a year now, ARMA has been operating without a head of the agency, this is despite the fact that the Ukrainian law on civil service<sup>54</sup> (Art. 31, clause 8) states that a vacant position in public office cannot exceed three months. This period has already passed three times over and continues to this day. As of 1 September 2020, and due to the unsystematic<sup>55</sup> and unprofessional approach of parliament,<sup>56</sup> no commission has been formed to select the new head of ARMA.

Attempts to limit the independence of the agency come from concerns about the removal of protection for civil servants in category “A” from the possibility of arbitrary dismissal. Thus, the head of the agency is directly dependent on the person who appointed them: the prime minister. After changes to the law on civil service from 19 September 2019, the Cabinet of Ministers of Ukraine may dismiss the head of the ARMA without any reason, at its discretion.<sup>57</sup> The head of ARMA is currently not protected from unjustified dismissal. This is different from the heads of other anti-corruption institutions who can only be dismissed for pre-determined reasons, such as a negative review from an external audit.<sup>58</sup>

ARMA can and should work more efficiently, especially in asset management. Ukraine needs to amend legislation for ARMA to work more efficiently with seized assets. ARMA was supposed to ensure the preservation of the economic value of seized assets in criminal proceedings, but this has not happened for several reasons, namely: the inconsistency of the law and the criminal procedural code; the lack of a stable judicial practice; court decisions that do not recognise ARMA’s discretionary powers to choose how to manage assets; blockage of the agency’s work; and its inability to ensure effective management of certain types of assets.<sup>59</sup> The legislation must, therefore, be amended to eliminate the existing problems in ARMA’s work.<sup>60</sup>

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<sup>53</sup> Verkhovna Rada, *Проект Закону про внесення змін до деяких законодавчих актів України щодо вдосконалення діяльності Національного агентства з питань виявлення, розшуку та управління активами, одержаними від корупційних та інших злочинів*, 4 May 2020, [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68739](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68739)

<sup>54</sup> Verkhovna Rada, *Про державну службу*, 2016, <https://zakon.rada.gov.ua/laws/show/889-19#Text>

<sup>55</sup> Ukrainska Pravda, *АРМА без голови: ризики, проблеми та причини затягування конкурсу*, 21 September 2020, <https://www.pravda.com.ua/rus/columns/2020/09/21/7267048/>

<sup>56</sup> Verkhovna Rada Anti-Corruption Committee, *Про продовження відбору представників від Верховної Ради України до складу конкурсної комісії з відбору кандидата на посаду Голови Національного агентства України з питань виявлення, розшуку та управління активами, одержаними від корупційних та інших злочинів*, 3 November 2020, [http://crimecor.rada.gov.ua/news/main\\_news/74300.html](http://crimecor.rada.gov.ua/news/main_news/74300.html)

<sup>57</sup> TI Ukraine & USAID, *Research of Capacity, Management and Interaction of Anti-Corruption Infrastructure Bodies of Ukraine*, 29 October 2020, pp.136-139 [https://drive.google.com/file/d/1wvDL3FcF6eVrkDho7hbNFxINF\\_8rESmJ/view](https://drive.google.com/file/d/1wvDL3FcF6eVrkDho7hbNFxINF_8rESmJ/view)

<sup>58</sup> TI Ukraine, *Are Anti-Corruption Institutions Capable and Effective: Research*, October 2020, <https://ti-ukraine.org/research/chy-spromozhni-ta-efektyvni-antikoruptsiyni-instytutsiyi-doslidzhennya-ti-ukrayina/>

<sup>59</sup> ARMA, *Legislative Changes to Increase the Efficiency of ARMA: Infographics*, May 2020

<https://arma.gov.ua/news/typical/zakonodavchi-zmini-schodo-pidvischennya-efektivnosti-arma-infografika>

<sup>60</sup> Pravda, *Owners of Seized Assets and Courts: Three Schemes of Interaction*, 5 April 2019, <https://www.pravda.com.ua/rus/columns/2019/04/5/7211333/>

## Opportunities to accelerate commitment implementation

Amendments of the Asset Recovery and Management Agency. The main areas of the legislation that need to be amended to improve ARMA's efficiency:

- The legislation on ARMA is reviewed in parliament, and ARMA's role in asset management in criminal proceedings could be reviewed and strengthened. According to current legislation<sup>61</sup> and practice, the agency receives information about the transfer of assets for management after the relevant court decision has been made. In other words, ARMA is not involved in decisions on whether it makes sense to transfer assets, the amount of the seizure or the method of management, among others.<sup>62</sup> This creates a situation where assets that are unsuitable for management or sale are transferred to ARMA. The inability to prepare for the management of specific assets before the actual transfer is made may cause inefficiency and ineffective management. Changes designed to introduce a planning stage before the transfer of seized assets to management and to grant the status of a participant in criminal and judicial proceedings for ARMA are needed to facilitate planning before the seizure or transfer of assets and to remove the unnecessary burden from law enforcement agencies in the judicial appeal for the transfer of seized assets.
- As the new head of the agency has to be selected, it is an opportunity to accelerate ARMA's effectiveness. ARMA has repeatedly faced attempts to block its asset management work as people with vested interests (owners of seized assets or related persons) use provisional injunctions on assets transferred to ARMA,<sup>63</sup> which is only aided by the ingrained problems in the judicial system. Administrative and economic courts interfere in the implementation of ARMA decisions of criminal courts on asset management by prohibiting ARMA from managing assets seized in criminal proceedings at the request of asset owners. Problems in Ukraine's judicial system due to corruption allow asset owners and stakeholders to seek a ban (with the help of administrative and commercial courts) on ARMA's asset management activities by arrested criminal courts.
- Improve the efficiency of asset management to preserve economic value. Sale as a method of asset management is essential to preserve the economic value of the seized property. The mechanism provided for by current legislation for selecting the seller of seized assets does not allow for engaging specialists in public bidding and selling assets quickly and at the highest price.<sup>64</sup>

## Recommendations

<sup>61</sup> Verkhovna Rada, *Criminal Procedural Code of Ukraine*, <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

<sup>62</sup> Yur Gazeta, *ARMA Can and Should Work More Efficiently: the Bill Has Been Registered in the Parliament*, 24 April 2020, <https://yur-gazeta.com/publications/practice/insh/arma-mozhe-ta-mae-pracyuvati-efektivnishe-v-parlamenti-zareestruvali-zakonoproekt.html>

<sup>63</sup> TI Ukraine, *Власники арештованих активів і суди: три схеми взаємодії*, 5 April 2019, <https://ti-ukraine.org/blogs/vlasnyky-areshtovanyh-aktyviv-i-sudy-try-shemy-vzayemodiyi/>

<sup>64</sup> ARMA, *Report on the Results of the Operational Audit of the Activities of the National Agency on the Issues of Detection, Search and Management of Assets for 2018, 2020*, p. 40 <https://arma.gov.ua/files/general/2020/01/28/20200128091657-30.pdf>

1. Adopt relevant legislation to ensure the independence of the head of ARMA from administrative and political pressure and prevent the unjustified dismissal of the agency's management.
2. Enable ARMA to be involved in discussions before the possible seizure of assets and transfer to ARMA to better establish the feasibility of the transfer of certain assets, the scale of such arrests and methods of management.
3. Introduce a clear and transparent mechanism for the sale of assets by involving market leaders in the process.
4. Make it impossible to block ARMA's work in asset management by courts with non-criminal jurisdictions.

**COMMITMENT NAME: “Free access to the database with well-structured information on the beneficiary owners of Ukrainian companies is open and publicly available, the unified verification mechanism is developed and launched.”**

**THEMATIC AREA:** legislative and institutional framework; fiscal integrity

**COMMITMENT TIMEFRAME:** not stated

**COMMITMENT SOURCE:** OGP action plan; UK anti-corruption summit; IMF memorandum

#### Current level of progress in commitment implementation

Completed

Partially completed

X

Not started/dropped

Access to the beneficial ownership database is free and the information is included in the Unified State Registry of Organizations and Enterprises.<sup>65</sup> The registry was updated in 2020 to make beneficial ownership information more structured. Transliteration from Cyrillic to Latin script is not provided, however. Ukraine established a working group called Dostovirno, made up of government agencies, civil society, donor representatives, businesses and other stakeholders in the process, to develop the verification mechanism.<sup>66</sup> The group proposed a mechanism for verification,<sup>67</sup> but there is no agreement among the government agencies on the responsibilities as yet, and discussions are ongoing. The cabinet has to adopt a concept and action plan for the verification. Ukraine created an international Telab<sup>68</sup> strategic group to grow into the community that aims for cross-border cooperation on beneficial ownership and a unified approach to its verification. The ministries of finance and justice are working on a format and the content for changing of the property structure of

<sup>65</sup> Unified State Registry of Organizations and Enterprises, <https://usr.minjust.gov.ua/content/free-search>

<sup>66</sup> DTKT, Мінфін, ДФС та Мін'юст займаються верифікацією інформації про кінцевих бенефіціарних власників, 22 July 2019, <https://news.dtki.ua/society/politics/56595>

<sup>67</sup> Pravda, *All Come Out of the Shadows: About the Opening Up of Real Owners of Companies in Ukraine*, 23 February 2019, <https://www.pravda.com.ua/columns/2019/02/23/7207455/>

<sup>68</sup> State Financial Monitoring Service of Ukraine, *SFMS Continues to Implement the Concept “Do 100% VIRNO”*, 22 February 2020, <https://fiu.gov.ua/en/pages/dijalnist/funkcional/news/derzhfinmonitoring-prodovzhuje-realizaciyu-konczepcziji-do100virno.html>

legal entities in accordance with the new AML law.<sup>69</sup> Cabinet has issued a decree<sup>70</sup> on the disclosure of beneficial ownership information for all COVID-19 procurements.

## Challenges to effective commitment implementation

One of the greatest challenges to the effective implementation of this commitment is the change in Ukrainian government. Since 2019, Ukraine has had two prime ministers, and several heads of the ministries have changed as well. The president of Ukraine has declared that the people in his team have to show results in six months, otherwise they will be dismissed.<sup>71</sup>

Agencies do not want to take responsibility for the verification. There are many governmental agencies involved in the implementation of the commitment, especially on the verification side. When deciding on the process of verification, there should be one agency responsible for the result and interconnection with all other agencies, but no single agency is willing to undertake new and unknown responsibilities.

Weak intergovernmental cooperation between agencies and use of information and communication technology (ICT). To use well-structured beneficial ownership data, it is necessary to gather them from several registries, compare and verify them. Good cooperation between agencies is therefore needed, especially in ICT. Although Ukraine is quickly adopting IT tools and there is an e-document flow<sup>72</sup> on a technical level within the government, most of the registries are still not integrated.<sup>73</sup>

Other issues become higher in priority. Ukraine is a developing country, but is advanced in beneficial ownership compared to many other countries.<sup>74</sup> Therefore, beneficial ownership verification is often not prioritised by the decision-makers.

Beneficial ownership transparency and verification is a sensitive topic as it is so closely tied with the business interests, especially with oligarchs. The establishment of an efficient verification mechanism would make it more difficult for them to launder money<sup>75</sup> in offshore centres and reduce conflict of interest in public procurement,<sup>76</sup> among others. There is, therefore, resistance from such stakeholders that may influence decision-makers.

## Opportunities to accelerate commitment implementation

- International recognition of the commitment. This commitment is high on the international agenda, and any progress will be recognised internationally.

<sup>69</sup> European Business Association, *New Requirements for Disclosure of Beneficial Ownership*, 27 April 2020, <https://eba.com.ua/en/novi-vymogy-do-rozkryttya-informatsiyi-pro-kintsevyh-benefitsiarnyh-vlasnykiv/>

<sup>70</sup> Government of Ukraine, *Мінфін забезпечує прозорість та ефективність використання коштів Фонду для боротьби з COVID-19*, 18 June 2020, <https://www.kmu.gov.ua/news/minfin-zabezpechuye-prozorist-ta-efektivnist-vikoristannya-koshtiv-fondu-dlya-borotbi-z-covid-19>

<sup>71</sup> Ukraine BBC. *HardTalk with Stephen Sackur*, 12 October 2020, <https://www.bbc.co.uk/programmes/m000nivy>

<sup>72</sup> E-governance Academy, *Trembita Data Exchange Solution in Ukraine*, [https://ega.ee/success\\_story/trembita-data-exchange-solution-in-ukraine/](https://ega.ee/success_story/trembita-data-exchange-solution-in-ukraine/)

<sup>73</sup> Cabinet of Ministers of Ukraine, *E-Procurement, Electronic Declaration System, Single Customs Window, Etc. Need to Be Integrated with Many State Registers and Databases in Order to Function Properly on Approval of the Concept of Development of the Digital Economy and Society of Ukraine for 2018-2020 and Approval of the Action Plan for Its Implementation*, 2018, <https://zakon.rada.gov.ua/laws/show/67-2018-%D1%80#Text>

<sup>74</sup> Open Ownership, *Improving beneficial ownership transparency in Ukraine: Review and recommendations*, March 2018 <https://www.openownership.org/uploads/improving-beneficial-ownership-transparency-in-ukraine.pdf>

<sup>75</sup> OECD, *A Beneficial Ownership Implementation Toolkit*, March 2019, <https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf>

<sup>76</sup> Open Government Partnership, *Beneficial Ownership, Global Report*, 2019, [https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report\\_Beneficial-Ownership.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report_Beneficial-Ownership.pdf)

- Ukraine has announced its willingness to join the leadership group on beneficial ownership, but has not completed all the necessary steps. If it were to join it would accelerate the implementation process.
- The Minister of Justice in Ukraine has changed since most of the commitments on the beneficial ownership were made. Engaging the new minister and his deputies might positively influence the implementation.
- There are commitments to OGP National Action Plan (NAP) and within the IMF memorandum with Ukraine. They can be used as an advocacy tool, especially because IMF money depends on it.

## Recommendations

1. Complete Ukraine's previously announced aspiration to join the leadership group on beneficial ownership.
2. Engage Ministry of Justice and Ministry of Finance leadership to implement the commitment and publicly show that there is a political will for advancement in this area.
3. Strengthen the link to public procurement and develop a mechanism for crosschecking information with the asset declaration registry.

# RECOMMENDATIONS

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- **Interoperability of registries among government organisations**

To enhance the implementation of the commitments, especially on asset recovery and beneficial ownership, the governmental agencies of Ukraine should assess the quality of data in their registries, ensure they are in open data format and integrate them with other governmental organisations when possible. For example, if the NACP asset declaration registry is interoperable with the unified registry of organisations and enterprises, beneficial ownership checks could be done for the companies registered in Ukraine and owned by public officials. The same principle applies to the asset recovery and management registry, if published in open data format and interoperable with other registries, it could be a step in the verification of beneficial owners.

- **Introduction of e-tools for the operations of anti-corruption bodies in Ukraine**

E-case management should be introduced to improve the functioning of the anti-corruption infrastructure, namely the National Anti-Corruption Bureau, the Specialized Anti-Corruption Prosecution Office (SAPO) and the High Anti-Corruption Court. Paperwork may slow the process of investigating corruption as some documents may be lost and communication between the agencies may be less efficient.<sup>77</sup> An e-case management system would improve efficiency and coordination among the organisations.

- **Strengthen the institutional capacity of the anti-corruption bodies**

The anti-corruption bodies in Ukraine started operating around five years ago. They are relatively young, and only one or two have agency heads. So far, the head of the agency has proven to be important as opponents of reform try to discredit or influence the agencies through their heads. The anti-corruption agencies should establish better procedures and communicate to the public, so that even if there is no head of the agency (as in the cases of ARMA and SAPO) or the head is subjected to a smear campaign, it does not influence the result and impartiality of the work in the agency itself. Also, HACC should have a permanent location and suitable security for the judges.

- **Strengthen the distribution of powers among executive, legislative, judicial branches and the president**

When the constitution of Ukraine is changed, the acting president often gains more power, including over the anti-corruption bodies. Informally, the public sees that most top level decisions, even those not within the presidential mandate, are taken by the Office of the President rather than as prescribed by the law. Any changes should therefore be done through a clear outlining of the mandate and responsibilities of the president and be accountable to the public before any changes are completed.

- **Launch a judicial reform**

A major threat to anti-corruption reform is through opposition MPs appealing to the Constitutional Court of Ukraine (CCU) on the grounds that the anti-corruption reforms are unconstitutional. Some

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<sup>77</sup> NABU, *ECase MS Will Help Detectives to Shorten the Duration of the Pre-Trial Investigation*, 27 July 2020 <https://nabu.gov.ua/en/novyny/ecase-ms-will-help-detectives-shorten-duration-pre-trial-investigation>

of these appeals have grounds, but the CCU has made some of decisions that disrupt the work of the anti-corruption agencies. Some of these decisions are not explained or the agencies do not get the time to improve the situation. For example, the decision made by the constitutional court of Ukraine in February 2019 regarding illicit enrichment clauses in Ukrainian legislation being unconstitutional, closed 65 cases that anti-corruption agencies were working on. The decision on the asset declarations and the NACP in October 2020 closed more than 100 cases. This decision itself was named shameful and defiant <sup>78</sup> by society and international partners, among others. We are expecting the ruling on the constitutionality of the HACC in November 2020. To improve the quality of work of Ukraine's judiciary, a full judicial reform should be conducted, with changes to the CCU's operations and the setting some safeguards to counter their decisions if they are against the rule of law and principles of justice.

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<sup>78</sup>Ukrainska Pravda, *Kill the Fight against Corruption. How the Constitutional Court Returns the Gangster 90s, Antac*, 29 October 2020. <https://www.pravda.com.ua/articles/2020/10/29/7271610/>

# ANNEX 1: LIST OF INTERVIEWEES

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## Persons interviewed during the commitment monitoring – Kyiv, Ukraine, October 2020

	Position	Organisation
1	Head of administration	High Anti-Corruption Court
2	Deputy head of National Agency on Corruption Prevention	National Agency on Corruption Prevention
3	Head of international unit	Asset Recovery and Management Agency
4	Project manager	Government-civic initiative: Together against Corruption

# ANNEX 2: STAKEHOLDERS CONSULTED

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## Persons engaged during consultation on monitoring findings – Kyiv, Ukraine, October 2020

	Position	Organisation
1	Co-head of Dostovirno working group	Multi-stakeholder working group on beneficial ownership established by the Ministry of Justice
2	Anti-corruption expert	Anti-Corruption Action Center

Contact us!

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