



STUDY OF CAPACITY, MANAGEMENT AND INTERACTION OF ANTI-CORRUPTION INFRASTRUCTURE



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The following is a study of capacity, management and interaction of agencies that make up Ukraine's anti-corruption infrastructure, conducted by Transparency International Ukraine. The research methodology has been developed on the basis of, and taking into account, the main approaches and methodology of the National Integrity Systems (further — NIS)¹, developed and implemented by the international anti-corruption network Transparency International. The NIS encompasses the entire system of governmental and non-governmental "pillars" (legislative, executive, and judicial agencies; public sector; law enforcement agencies; the media; political parties; anti-corruption agencies; institutions responsible for audit and elections; the Ombudsman, business, and civil society). When all "pillars" in the NIS function adequately, corruption remains under control. If all or some of them are unstable, they can let corruption thrive and harm the society.

TI Ukraine conducted a big NIS study back in 2011. Considering TI Ukraine's focus and Strategy 2019–2021, this research covers only the agencies of Ukraine's anti-corruption infrastructure.

The purpose of the study is to provide a comprehensive assessment of the institutional capacity and management of the main anti-corruption bodies of Ukraine, which include:

- *The National Agency on Corruption Prevention (hereinafter — NACP) — central body of executive power with a special status which ensures the development and implementation of the national anti-corruption policy;*
- *The National Anti-Corruption Bureau of Ukraine (hereinafter — NABU) — law enforcement agency responsible for the investigation and detection of corruption offenses;*
- *Specialized Anti-Corruption Prosecutor's Office (hereinafter — SAPO) — independent structural unit of the Prosecutor General's Office;*
- *National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes (hereinafter ARMA);*
- *The High Anti-Corruption Court (hereinafter HACC).*

The assessment of anti-corruption infrastructure agencies reflects the legal framework and actual performance of the institutions that make up this infrastructure. Each of the anti-corruption infrastructure agencies was assessed based on three vectors: (1) the overall capacity of the institution; (2) internal management in the context of its integrity, transparency, and accountability; (3) interaction with state and non-state actors (state bodies, civil society, foreign anti-corruption bodies with a similar mandate, international partners, etc.). Most indicators include two aspects: (a) the current legal framework which regulates the activity of these institutions ("legislation") and (b) the actual institutional development and practical activity

¹ National Integrity System Assessments: <https://www.transparency.org/whatwedo/nis>

(“practice”). This helps to avoid any gap between the legal framework and the actual possible practice in the assessment.

We should note that the “Role” aspect of the NIS assessment has been replaced with “Interaction,” and it contains only the practical component. Researchers wanted to find out how anti-corruption agencies interact in practice within the anti-corruption infrastructure and beyond. The research methodology focuses not only on individual institutions, but also on the relationships among them and with other agencies, as well as enables analyzing the context in which these agencies function. For example, we can see how the situation with the implementation of the judicial reform, the Prosecutor General’s Office reform, etc., affects the functioning of the anti-corruption infrastructure.

The research methodology aims to paint a holistic picture of the anti-corruption infrastructure and to assess the independence, integrity, accountability, resources, transparency, and interaction of these agencies among themselves and with other stakeholders. The research focused especially on analyzing external factors which influence the agencies under research directly or indirectly.

The study covers the period from January 2015 to August 1, 2020 (the end of interviews). This time interval was selected for certain reasons. Although the legislative framework for the activity of the NABU and the NACP was ensured by passing the respective laws and amendments to them back in October 2014, the active phase of preparation and formation of these agencies started only in early 2015. It was in January 2015 when, for the first time in Ukraine’s modern history, open competitive recruitment for the position of the head of a public authority was announced — the director of the NABU, formed under the Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine” passed on October 14, 2014. These events marked the formation of a completely new system of anti-corruption agencies in Ukraine.

It should also be noted that anti-corruption infrastructure bodies have been set up at different times over the last five years. Some of them (NABU/SAPO/NACP) have been working for 3–4 years now, while the HACC came into operation only on September 5, 2019.

Agency name	Date of establishment	Basis of establishment	Law governing its activities	Comments
National Agency on Corruption Prevention	March 18, 2015	Resolution of the Cabinet of Ministers of Ukraine of March 18, 2015, No. 118	Law of Ukraine “On Corruption Prevention” of October 10, 2014, No. 1700-VII	Based on the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Effectiveness of the Institutional Corruption Prevention

				Mechanism” of October 2, 2019, No. 140-IX the agency was effectively rebooted by changing the management structure and re-election of the agency’s leadership.
The National Anti-Corruption Bureau of Ukraine	April 16, 2015	Decree of the President of Ukraine of April 16, 2015, No. 217/2015	The Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine” of October 14, 2014, No. 1698-VII	
Specialized Anti-Corruption Prosecutor's Office	September 22, 2015	Order of the Prosecutor General of September 22, 2015	The Law of Ukraine “On Prosecution” of October 10, 2014, No. 1697-VII	
National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes	February 24, 2016	Resolution of the Cabinet of Ministers of Ukraine of February 24, 2016, No. 104	The Law of Ukraine “On the National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes” of November 10, 2015, No. 772-VIII	
The High Anti-Corruption Court	June 21, 2018	The Law of Ukraine “On the Establishment of the High Anti-Corruption Court”	The Law of Ukraine “On the High Anti-Corruption Court” of June 7, 2018, No. 2447-VIII	The court went into operation on September 5, 2019

		of June 21, 2018, No. 2470-VIII		
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Analysts used the following sources of information in the study: available legal framework and official documents, open sources of information (research, reports, articles in the media, etc.), information obtained from interviews with employees of institutions and experts, and information obtained from public agencies in response to requests for public information.

NACP: conducted interviews with employees — 7; with experts — 4; answers received to requests for access to public information — 8;

NABU: conducted interviews with employees — 5; with experts — 4; answers received to requests for access to public information — 7;

SAP0: conducted interviews with employees — 6; with experts — 4; answers received to requests for access to public information — 4;

HACC: conducted interviews with employees — 5; with experts — 5;

ARMA: conducted interviews with employees — 5; with experts — 5; answers received to requests for access to public information — 7.

All the interviews were conducted by analysts involved in the research based on the standard questionnaire adapted to the mandate of a specific agency. For more information, see applications with questionnaires and research methodology.

The evaluation was based on integrity, objectivity, transparency and independence. The assessment for each indicator is based on the information collected during the study and shown in the questionnaire. Based on the information obtained during the study, analysts rated each of the indicators on a scale from 1 to 5 points, where 1 is the lowest score, and 5 is the highest score. Scoring criteria are described in detail for each indicator separately in the questionnaires of anti-corruption institutions. More information is available in the Research Methodology.

It should be noted that, according to the research methodology and in order to avoid errors and / or misinterpretations of information obtained from interviews or other sources, the draft study was provided to the anti-corruption infrastructure agencies for preliminary review, comments, and remarks. Such comments and remarks were not accepted if they pertained to the assessment under the proposed methodology. In addition, an external reviewer provided comments to the study. Such comments were either taken into account before the report was finalized, or included in the “comment” section. All scores assigned by analysts to certain sections of the study will be tested during additional consultations with the Board of Transparency International Ukraine.

The **beneficiaries** of this study are: 1) anti-corruption agencies themselves, which may use the report and the provided recommendations to improve the business processes of their institutional development and operational activity, as well as the interaction among themselves and with other stakeholders; 2) other stakeholders, such as the Verkhovna Rada of Ukraine, the

Cabinet of Ministers of Ukraine, the Presidential Office, etc., which can use the research to initiate the improvement of anti-corruption legislation and regulatory framework, which may increase the effectiveness and efficiency of the anti-corruption infrastructure; 3) the public and investigative journalists as anti-corruption agencies may improve the interaction with these stakeholders; 4) experts and professionals in the anti-corruption sector, international partners, who can obtain a holistic picture and an additional source of information on the capacity, management, and interaction of anti-corruption agencies.

Context

Proper and independent functioning of anti-corruption agencies is a necessary prerequisite to achieve a high level of effectiveness in combating corruption and to implement the international standards of integrity, accountability, and transparency in Ukraine, which are among the conditions for an inflow of foreign investment into Ukraine, provision of macrofinancial assistance and Ukraine's further European and Euro-Atlantic integration. The anti-corruption infrastructure in Ukraine was created under the pressure of the public and international partners. Over the past five years, on the one hand, these agencies have undergone institutional development, built the capacity to exercise their powers within their mandates; on the other hand, there have been multiple attempts to politicize these agencies by amending the legislation; management and certain institutional mechanisms have changed, as well as teams of some agencies (NACP, ARMA); there have been numerous attempts to render these agencies ineffective through legislative amendments or constitutional petitions (on the constitutionality of the illicit enrichment provision, appointment of Artem Sytnyk as NABU director, the functioning of the HACC, the obligation to declare assets, etc.), appointment of (in)dependent auditors, delegating politically biased representatives to selection boards for management of these agencies, etc.

As of the moment when the study was completed, the draft Anti-Corruption Strategy 2020–2024 was filed with the Parliament of Ukraine and awaited consideration; a selection commission to select the new head of the SAPO after Nazar Kholodnytskyi's resignation was appointed; certain provisions of the Law "On the NABU" were ruled unconstitutional and the Parliament was yet to review them; the Constitutional Court was going to consider a petition on the constitutionality of the HACC; the ARMA was headed by a temporary chair, and a new one was yet to be appointed, etc.

As a result of the study, the following steps have been identified as priorities and need to be implemented as soon as possible:

The High Anti-Corruption Court:

- settle the issue of permanent premises of the HACC;
- resolve the issue of funding the implementation of the guarantee on providing HACC judges with round-the-clock security detail, especially beyond the court;

- prevent the practice of other courts interfering with proceedings under the jurisdiction of the HACC in violation of the Criminal Procedural Code of Ukraine;

- amend the Law of Ukraine “On the High Council of Justice” to change the mechanism of its formation, in order to transform it into a truly independent and professional agency and to avoid risks of undue influence of HACC judges or insufficient guarantees of their independence;

- ensure the unity of case law in all corruption crimes through the Supreme Court, including both cases considered by the HACC and cases considered by other courts under the same articles.

The National Anti-Corruption Bureau of Ukraine:

- prevent legal and political pressure on the bureau, as well as attempts to put pressure on the NABU by illegally withdrawing complaints about the actions of the agency from under the jurisdiction of the HACC and by the obligation to transfer criminal proceedings from the jurisdiction of NABU to another pre-trial investigation agency;

- prepare the relevant legislative and regulatory framework for conducting an external independent audit of the bureau's activities and conduct such an audit;

- settle the issue of appointment and dismissal of NABU director, as well as other uncharacteristic powers of the president of Ukraine in relation to the bureau's work in order to maintain the principle of checks and balances.

Specialized Anti-Corruption Prosecutor's Office:

- amend the legislation, since the current model for selection of head of the SAPO is not adequate in terms of depoliticization of this selection;

- ensure transparent, independent and politically unbiased selection of candidates for the position of head of SAPO;

- enshrine the minimum number of SAPO prosecutors in law;

- define a clear and transparent mechanism for the formation of personnel / disciplinary commissions within the Prosecutor General's Office. Consider the issue of composition and formation procedure of the agency which carries out disciplinary proceedings concerning prosecutors; the transparency of its activity; compliance with the principles of objectivity and impartiality in disciplinary proceedings concerning prosecutors, etc.

The National Agency on Corruption Prevention:

- conduct transparent and open competitive recruitment for job openings;

- introduce a Case Management System and a system for monitoring and evaluating the effectiveness of the agency and its employees;

- harmonize the tasks set for the internal control directorate with the legislation;

- conduct an assessment of corruption risks in the NACP and prepare an anti-corruption program of the agency consulting the public, effectively implement this program, including measures aimed at elimination (mitigation) of the identified corruption risks;

- publish drafts and approved documents on the website; hold open public consultations prior to their approval.

National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes:

- eliminate the threat to the agency's independence due to the possibility of arbitrary dismissal of the head of the ARMA.

- provide greater transparency in the management and especially the sale of assets to help restore confidence in the ARMA;

- form the commission for selecting the head of ARMA based on professionalism, openness, and integrity, and conduct competitive recruitment of the Agency's head as soon as possible;

- determine the status of ARMA in criminal proceedings as a participant in criminal and judicial proceedings;

- conduct an assessment of corruption risks in the ARMA to prepare an anti-corruption program of the agency consulting the public, effectively implement this program, including measures aimed at elimination (mitigation) of the identified corruption risks.

A priority that is common to all anti-corruption agencies, which has only become more urgent during the coronavirus pandemic, is preventing temporary restrictions on the salaries of NABU, SAPO, ARMA, and NACP staff members as well as and judicial remuneration of HACC judges, as this is seen as pressure that affects the independence of these agencies. The preparation of high-quality anti-corruption programs for anti-corruption institutions merits special attention, including careful assessment of corruption risks in these agencies and ensuring effective implementation of such programs.

1. THE NATIONAL ANTI-CORRUPTION BUREAU OF UKRAINE

Agency name total score 3.6 / 5²			
<i>Sector</i>	<i>Indicator</i>	<i>Legislation</i>	<i>Practice</i>
Capacity 3.5 / 5³	<i>resources</i>	4	4
	<i>independence</i>	3	3
Governance 4.3 / 5	<i>transparency</i>	5	5
	<i>accountability</i>	3	3
	<i>integrity</i>	5	5
Interaction 3/5		3	

2. SPECIALIZED ANTI-CORRUPTION PROSECUTOR'S OFFICE: LEGISLATION AND PRACTICE

THE SAPO: total score 3.3 / 5⁴			
<i>Sector</i>	<i>Indicator</i>	<i>Legislation</i>	<i>Practice</i>
Capacity 3.5 / 5⁵	<i>resources</i>	4	4
	<i>independence</i>	3	3
Governance 3.5 / 5	<i>transparency</i>	4	4
	<i>accountability</i>	3	2

² The total score is a mean of the scores for each sector (rounded to one decimal point).

³ The score for a sector is a mean of the scores for the indicators of this sector (rounded to one decimal point).

⁴ The total score is a mean of the scores for each sector (rounded to one decimal point).

⁵ The score for a sector is a mean of the scores for the indicators of this sector (rounded to one decimal point).

	<i>integrity</i>	4	4
Interaction 3/5			3

3. THE HIGH ANTI-CORRUPTION COURT: LEGISLATION AND PRACTICE

THE HACC: total score 4 / 5⁶			
<i>Sector</i>	<i>Indicator</i>	<i>Legislation</i>	<i>Practice</i>
Capacity 3.8 / 5⁷	<i>resources</i>	4	4
	<i>independence</i>	4	3
Governance 4.3 / 5	<i>transparency</i>	5	4
	<i>accountability</i>	-	-
	<i>integrity</i>	4	4
Interaction 4/5			4

4. THE NATIONAL AGENCY ON CORRUPTION PREVENTION LEGISLATION AND PRACTICE

THE NACP: total score 3.3 / 5⁸			
<i>Sector</i>	<i>Indicator</i>	<i>Legislation</i>	<i>Practice</i>
Capacity 3.3 / 5⁹	<i>resources</i>	4	3
	<i>independence</i>	4	2
Governance	<i>transparency</i>	4	3

⁶ The total score is a mean of the scores for each sector (rounded to one decimal point).

⁷ The score for a sector is a mean of the scores for the indicators of this sector (rounded to one decimal point).

⁸ The total score is a mean of the scores for each sector (rounded to one decimal point).

⁹ The score for a sector is a mean of the scores for the indicators of this sector (rounded to one decimal point).

3.7 / 5	<i>accountability</i>	5	3
	<i>integrity</i>	4	3
Interaction 3/5		3	

5. NATIONAL AGENCY OF UKRAINE FOR FINDING, TRACING AND MANAGEMENT OF ASSETS DERIVED FROM CORRUPTION AND OTHER CRIMES: LEGISLATION AND PRACTICE

THE ARMA: total score 3 / 5¹⁰			
<i>Sector</i>	<i>Indicator</i>	<i>Legislation</i>	<i>Practice</i>
Capacity 3 / 5¹¹	<i>resources</i>	4	3
	<i>independence</i>	3	2
Governance 3.7 / 5	<i>transparency</i>	5	3
	<i>accountability</i>	4	4
	<i>integrity</i>	3	3
Interaction 2/5		2	

¹⁰ The total score is a mean of the scores for each sector (rounded to one decimal point).

¹¹ The score for a sector is a mean of the scores for the indicators of this sector (rounded to one decimal point).