

Strengthening Ukraine's anti-corruption and judicial infrastructure to safeguard the recovery

As 2022 is drawing to a close, we have to accept the reality that 2023 will likely see the continuation of Russia's war of aggression against Ukraine. Few had expected that the war could last this long, and we ought to thank the Ukrainian nation for its unrivaled resilience. As the realization of a protracted war settles in, we will undoubtedly see more Ukrainian heroism and more desperate efforts by Russia to obliterate civilian infrastructure further. As of September 30, 2022, the total damage caused to Ukraine's infrastructure [amounts to more than \\$127 billion](#), with totals certain to far exceed this sum.

Reconstruction, especially when it takes place in an active war zone, is always accompanied by exceptionally high corruption risks. In this regard, Ukraine will be no different from any other country which has seen a massive influx of funds as a result of natural disasters or war.

Ukraine continues to need military support to fight back against Russian aggression, save its people and regain its territorial integrity. But Ukraine also needs anti-corruption weapons so that it can fight the kleptocratic Kremlin in its parallel war. If corruption is allowed to go unchecked, Ukraine's reconstruction would hand a massive victory to those who benefit from this subversive kleptocratic war.

Anti-corruption reform has been underway in Ukraine since 2014. Before the full-scale war, Ukraine managed to create a full-fledged ecosystem of bodies and a legal framework for fighting corruption. The results of the [Corruption Perceptions Index](#) show that, over the past ten years, Ukraine has significantly improved its score. Numerous reforms make Ukraine one of the most active countries in the region in terms of tackling corruption. The candidate status, received from the EU, is a chance to transform Ukraine, and this chance should not be wasted due to corruption or weak governance.

In July, ahead of the Lugano Reconstruction Conference, [we highlighted our concerns](#) about the insufficiently robust corruption infrastructure in Ukraine to mitigate these risks. Since then, attacks on infrastructure have intensified, and reconstruction efforts have begun in earnest, despite the ongoing security challenges. At the occasion of the International Anti-Corruption Conference, we take stock of progress made in the last six months:



Competitions for the heads of anti-corruption agencies

In a significant achievement, after the appointment of the head of the SAPO, effective investigations into top-level corruption has improved significantly. However, two key agencies (ARMA and NABU) remain without permanent leadership. Systematic power outages are making already delayed selection processes even more slow-moving. According to the Cabinet of Ministers, the ARMA Selection Commission must complete a new competition by the middle of January 2023. Considering that to date, the ARMA Selection Commission has only recently approved its Terms of Reference and started the process of collecting documents from candidates; it is unlikely to meet the deadline. The NABU Selection Commission, on the other hand, has announced a call for candidates, and we are hopeful that NABU will have a permanent director by the beginning of 2023.



Institutional capacity of anti-corruption agencies

For effective top-corruption investigations, anti-corruption agencies must be provided with the necessary operational resources and authorities. For example, SAPO needs broader institutional autonomy and expansion of the powers of its leadership. [Changes](#) to the institution of parliamentary immunity mean that now, all key decisions in criminal proceedings are made by the Prosecutor General which was a negative development. NABU still lacks the de facto ability to utilize autonomous wiretapping. Problems with NABU's access to high-quality and impartial forensic examination also continue. The number of employees in anti-corruption agencies remains insufficient to tackle wartime reconstruction challenges. The independent and comprehensive performance audit of ARMA, NABU, and

SAPO we called for has not yet commenced, limiting the agencies' ability to chart a clear path forward to ensure they live up to their full potential.



Improving the legislative framework

Marital law has curtailed the application of numerous anti-corruption requirements and procedures. This is not a sustainable solution for a protracted war and requires a more balanced approach. For instance, the suspended obligation for state officials to submit their public asset declarations should be restored and the NACP should re-commence its verification of these reports as mandated by law. Parties should again be required to submit financial reports. The Cabinet of Ministers should speedily approve the State Anti-Corruption Programme, now being developed by the NACP in close collaboration with the public. All still closed governmental registers should be open, except for sensitive and/or personal data. The institute of integrity checks should be introduced into the law. Whistleblowers, who will be crucial to address corruption in the reconstruction process as well as environmental violations, etc. need to receive appropriate legal protections. The SSU continues to have atypical powers that do not correspond to the best Euro-Atlantic practices and create significant corruption risks. The latest amendments with a fixed duration of the PEP status contradict the FATF standards and EU Directives and must be changed to a risk-based approach. The much-heralded anti-oligarch law has come into force, and procurement for the oligarch register was announced, despite the absence of the Venice Commission's conclusion on the law. In our opinion, the law does not correspond with the Constitution of Ukraine, lacks transparency and legal protection mechanisms, and contains risks of political influence. We suggest the government instead prioritize the completion of key existing institutions, such as the Antimonopoly Committee. Serious unanswered questions remain about the distribution of functions for the implementation of the confiscation mechanisms among Ukraine's institutions and their compliance with the standards of the European Court of Human Rights. The growing case precedent load is yet untested in European courts.



Implementation of judicial and Constitutional Court reform

On the High Council of Justice, responsible for judicial appointments, only one additional position has been filled, with 14 remaining vacant. At least eight more appointments are required for the HCJ to become functional. The expert community has significant questions about the integrity of a recent appointment by legal scholars. More members are expected to be appointed as the Ethics Council has recommended 16 candidates for eight vacancies under the quota of the Congress of Judges. However, the public has no questions for only four candidates regarding their integrity. The selection committee for the HCJ will only analyze the candidates at the beginning of 2023.

The obstructionist Kyiv District Administrative Court still operates, despite the relevant Presidential draft law decreeing its suspension, and its head has been re-elected for the fifth time. The law on the reform of the Constitutional Court is adopted in the first reading but without proper civil society representatives' participation in the Advisory Group of Experts, which will elect judges (as Venice Commission's recommendation provided before).

We have recently noticed a concerning trend: in several instances, one of the sacrifices of the war appears to be opportunities for active civil participation in the development of crucial reforms, including the development of the reconstruction system. Together with the RISE Ukraine coalition, we have highlighted that the continued collaboration from civil society is conditional on access and the ability to provide input.

To prevent corruption during the recovery process, we have to develop and adopt balanced decisions that will empower Ukraine's impressive anti-corruption and judicial infrastructure. TI Ukraine has repeatedly called on representatives of the authorities to implement relevant anti-corruption changes provided in the [recommendations](#) of the Corruption Perceptions Index. At the same time, combating corruption must comply with all international obligations. Otherwise, we will allow kleptocrats to profit off of millions of Ukrainians, and we will lose the chance to join the European family.



Transparency International Ukraine is an accredited chapter of the global movement Transparency International, helping Ukraine grow stronger since 2012. The organization takes a comprehensive approach to the development and implementation of changes for reduction of corruption levels in certain areas.



The Basel Institute on Governance is an independent not-for-profit organisation dedicated to countering corruption and other financial crimes and to improving standards of governance.