

Enhancing Ukraine's anti-corruption measures to safeguard the recovery



Institutional capacity of anti-corruption ecosystem

- Enhance the institutional autonomy of SAPO and expand the authority of its leadership.
- Give NABU capabilities for autonomous wiretapping and access to high-quality and impartial forensic examinations.
- Reinstate the requirement for public officials to declare assets and reopen the public register of the declarations.
- Reinstate the requirement for political parties to submit financial reports, which should be subsequently verified by the NACP.
- Select the head of the ARMA and address urgent operational and legislative challenges.



Judicial and Constitutional Court reform

- Fully implement recommendations of the Venice Commission in the legislative framework concerning the selection of the CCU's judges.
- Create and sufficiently resource an alternative venue for the effective adjudication of cases previously under consideration by the dissolved Kyiv District Administrative Court.



Asset recovery and confiscation

- Finalise and adopt the Asset Recovery Strategy and Action Plan.
- Criminalise the circumvention of sanctions in Ukraine.
- Improve the current confiscation mechanisms on the national level while providing sufficient opportunities for defendants to appeal confiscations.
- Consolidate efforts in the field of asset recovery and confiscation with the international community.



Developments in public procurement

- Improve effectiveness of official bodies charged with monitoring the compliance of procurement legislation.
- Improve transparency at all stages of the procurement process.
- Complete the development of electronic tender documentation, electronic contracts and integration of PROZORRO with the electronic reconstruction management system and other information systems.
- Reduce the grounds for non-competitive procurement methods and ensure the possibility of appealing them, and eliminate factors that unnecessarily eliminate bidders, restricting competition.
- Ensure consistent application of procurement legislation.

Building back better

As of April 2023, the documented direct damages inflicted upon Ukraine's infrastructure by Russia's illegal full-scale invasion amount to EUR 134.6 billion (at replacement cost).¹ The destruction of residential buildings, enterprises, educational institutions and agro-sector infrastructure remains ongoing.

Ukraine faces a significant undertaking: rebuilding the country according to the "build back better" principle, with the aim of surpassing its previous state. At the same time, Ukraine's need for military support remains crucial in its fight against Russian aggression, to protect its people and restore territorial integrity.

Reconstruction takes place in parallel to defensive military actions and is under tremendous scrutiny from citizens and donors alike. The success of the recovery effort hinges upon the government's complete commitment to the Reconstruction's integrity.

For this to happen, all processes must be conducted with utmost transparency and openness. The active involvement of civil society, including the RISE Ukraine coalition to which both our organisations belong, is an essential safeguard in this respect. It also requires the implementation of necessary reforms and the fortification of the anti-corruption ecosystem.

A positive step

Despite the challenges faced during the most difficult year in the country's history, Ukraine managed to improve its score in Transparency International's Corruption Perceptions Index (CPI) by one point, reaching 33 points and ranking 116th out of 180 countries.² This is Ukraine's highest ever score in the CPI.

During the past decade, Ukraine has improved its score by eight points and entered the list of 15 countries that have shown the most remarkable progress in the CPI, such as the Czech Republic and South Korea. While this progress may not be considered a significant surge, it is undoubtedly a confident step forward. However, with the perceptions rating still significantly lower than the EU average of 64 points, there is clearly still much work to be done.

In anticipation of the upcoming London Ukraine Recovery Conference, we present the following observations and recommendations since our last policy paper prepared for the International Anti-Corruption Conference in December 2022.³



Institutional capacity of anti-corruption agencies

Notable developments: State Anti-Corruption Programme adopted

In March 2023, the State Anti-Corruption Programme was approved by the Cabinet of Ministers, and the selection of the Head of the National Anti-Corruption Bureau of Ukraine (NABU) was finally completed.⁴ The programme encompasses many new and important measures. However:

- It is crucial to enhance the institutional autonomy of the Specialised Anti-Corruption Prosecutor's Office (SAPO) and expand the authority of its leadership.
- Issues persist regarding NABU's access to high-quality and impartial forensic examinations, and NABU still lacks effective capabilities for autonomous wiretapping.
- The current number of personnel in anti-corruption agencies remains inadequate to effectively address the challenges posed by wartime reconstruction.

What we're watching: Time to require declarations and re-open registers; need to get the Asset Recovery and Management Agency working properly

Asset declarations

The absence of a requirement to declare assets, together with the closure of the public register of the declarations, creates a conducive environment for corrupt activities and emboldens dishonest officials. This is unacceptable even in times of peace, let alone during war.

Ukraine's international partners are also closely monitoring this issue. In the latest memorandum between Ukraine and the IMF, Ukraine committed to enacting a law by the end of July 2023, reinstating the obligation for public officials not directly involved in mobilisation and hostilities to declare their assets.⁵ It also committed to recommence the function of the National Agency on Corruption Prevention (NACP) to verify these declarations.

Critics argue that public registers aid the enemy, but they fail to bring convincing arguments. Our view is that information should be public unless it can be specifically clarified that it presents a national security threat.

There is also a need to reinstate the requirement for political parties to submit financial reports, which should be subsequently verified by the NACP.

Furthermore, all governmental registers that are currently closed should be made accessible. Some transparently explained exceptions for war-related sensitive data could be made.

Asset Recovery and Management Agency (ARMA)

The head of ARMA has not yet been selected, despite the process going on for over three years. This affects the agency's work. The guarantees of independence that the legislation provides for the permanent head are not fulfilled properly in the case of an acting head.

Additional high-priority problems that hinder the full-fledged work of the ARMA are:

- Lack of coherent pre-seizure planning of assets before the property is transferred to ARMA.
- Unresolved procedure for the competitive selection of an asset manager.

- Non-transparent sale of seized assets, which enables insider dealing and reduces opportunities for competitive participation.

In addition, the Unified State Register of Assets Seized in Criminal Proceedings has only recently begun to operate and is not public, reducing ARMA and other stakeholders' accountability. Nor does it contain information about property managers, which means potential conflicts of interest cannot be effectively monitored.



Implementation of judicial and Constitutional Court reform

Notable developments: High Council of Justice and High Qualification Commission of Judges launched; Kyiv District Administrative Court finally dissolved

Judicial reforms

The key achievement in the field of judicial reform was the launch of the High Council of Justice (HCJ), which is responsible for appointing and transferring judges. On 12 January 2023, the Congress of Judges of Ukraine elected eight members under its quota, and thus the HCJ became authorised.

The HCJ appears quite active in its current work. For example, it resumed consideration of complaints from judges regarding interference with justice, which positively influences the guarantee of judicial independence. The HCJ also unblocked long-awaited disciplinary complaints against judges, which has not happened for two years.

The High Qualification Commission of Judges (HQCJ) evaluates the qualifications of judges. In May, open interviews with the final 32 candidates for the HQCJ began. On 1 June 2023, the HCJ approved 16 candidates who became members of the HQCJ. Although not a single representative of relevant non-governmental organisations was among them, there were concerns about the integrity of only two candidates. This is a significant improvement from earlier stages in the selection process. In addition, the HCJ meeting was broadcast, the voting was open, and therefore anyone could track this process.

The relaunch of this judicial authority was crucial for two reasons:

1. The full functioning of the judicial branch of power.
2. To fulfil the second of the seven conditions set by the European Commission when adopting a decision on Ukraine as a candidate for EU membership.

District Administrative Court of Kyiv

On 13 December 2022, the District Administrative Court of Kyiv was finally dissolved. This crucial measure, which we had raised in previous iterations of this paper, in turn unearthed new challenges.

In particular, the consideration of cases that were in the proceedings of this Court has currently stopped. These cases were supposed to be transferred to a different court,

which was supposed to consider these cases during the transition period. The transfer of cases, however, has stopped due to an excessive workload at the transition court.

What we're watching: Constitutional Court judge selection

In the reform of the Constitutional Court of Ukraine (CCU), significant challenges remain.

In December 2022, the President signed the Law on Candidates for the Position of Judge of the Constitutional Court of Ukraine on a Competitive Basis, which received a negative opinion from the Venice Commission.

In particular, the main comments related to the Advisory Group of Experts, which would check candidates for positions:⁶

- Ukraine was recommended to include a seventh, international, member, who would have a decisive vote. The adopted draft law, however, provides for only six members of the Advisory Group: three Ukrainian and three international.
- The Venice Commission insisted that the Advisory Group's decisions should be binding so that a candidate who received a negative result during the verification process could not become a judge of the CCU.

On 10 June 2023, the Venice Commission issued an opinion⁷ on draft law 9322⁸ concerning the competitive selection of candidates for the position of judge of the CCU. Although this draft law does not take into account the previous recommendation of the Venice Commission regarding the introduction of seven members to the Advisory Group of Experts, significant progress is nevertheless noticeable. Therefore, in general, the Venice Commission gave a favourable opinion to this draft law. Despite this positive assessment, we believe it is crucial to fully implement the original recommendations from the Venice Commission's opinion.



Asset recovery as an effective instrument for post-war reconstruction

Effective instruments of confiscation of assets that will meet international standards are one of the key conditions for the post-war reconstruction of Ukraine.

In Ukraine, assets are confiscated through criminal proceedings, civil forfeiture, the forcible seizure mechanism and the sanctions mechanism. The latter two were adopted in response to the Russian invasion.

Criminal confiscation

Criminal confiscation is the most common form of the confiscation of assets following a conviction for a criminal offence. Ukraine law allows for two forms of criminal confiscation:

1. The confiscation of assets as a penal measure under the Criminal Procedural Code, imposed as part of the sentence following conviction. This form of confiscation requires no assessment of whether the offender has obtained a material benefit from their offending.
2. "Special confiscation", a form of confiscation focused on establishing the proceeds that have been obtained as a result of the convicted criminal's behaviour. It is this form of confiscation which forms the basis of mutual legal assistance in relation to asset recovery under many multilateral treaties such as the United Nations Convention Against Corruption and the United Nations Convention against Transnational Organised Crime.

There have been several cases where the property of suspects in criminal proceedings has been seized. For example:

- The court seized all the property of the Head of Security of the fugitive president Viktor Yanukovich, worth more than UAH 50 million (appr. EUR 1.24 million).
- Based on the materials of the Security Service investigators and with the assistance of the State Financial Monitoring Service, all the assets of both the President of Motor Sich JSC and the Head of the company's Foreign Economic Activity Department, who are suspected of collaborating with Russia, were seized (worth almost UAH 1 billion or EUR 24.8 million).

Civil forfeiture

Civil forfeiture is another legal tool to confiscate illegally acquired assets. This mechanism applies to assets acquired after 28 November 2019. A claim can be filed if the difference between the value of assets and the legal income of an official exceeds UAH 1,003,500 (appr. EUR 25,000) but does not exceed UAH 6,243,250 (appr. EUR 200,000). Compared to criminal confiscation procedures, a lower standard of proof applies to these cases.

For example, on 13 July 2022, the High Anti-Corruption Court of Ukraine (HACC) partially upheld SAPO's claim to declare as unjustified assets worth UAH 3.6 million (appr. EUR 89,000), whose legality was not confirmed by the head of one of the district courts of the Kyiv region. The prosecutor sought to recover UAH 5.7 million (appr. EUR 141,000) in questionable assets from the defendant (the judge). Later, the SAPO prosecutor and the Head of the Vasylkiv City District Court Kovbel filed appeals. The Appeals Chamber of the HACC upheld the decision.

Notable developments: Sanctions and forcible seizure mechanisms

In response to the Russian invasion, Ukraine has further adopted two different mechanisms for the seizure of assets by the State:

Sanctions mechanism

Most assets that could be used for post-war reconstruction of Ukraine were confiscated under the sanctions mechanism (Law No. 7194).⁹ As of June 2023, there are 21 cases of asset confiscation by the HACC under this mechanism, including the assets of Oleg Derypaska, Mikhail Shelkov and Vladimir Yevtushenkov.

Amendments on sanctions effectiveness ([Law No. 2257](#)) were adopted in reaction to the February 2022 Russian military invasion.¹⁰ The amendments introduced the possibility of recovering assets in favour of the state and can only be applied *“to individuals and legal entities whose actions have created a significant threat to the national security, sovereignty or territorial integrity of Ukraine (including through armed aggression or terrorist activity) or significantly facilitated (including through financing) the commission of such actions by other persons”*.

This includes Russian residents as defined in the below-mentioned Law of Ukraine *“On the Basic Principles of Forcible Expropriation in Ukraine of Objects of Property Rights of the Russian Federation and its Residents”*.

It is important to stress that this mechanism may be applied while martial law applies, and following the imposition of a sanction in the form of the *“blocking of assets”*.

Forcible seizure mechanism

Aside from the sanctions law amendment, in the immediate aftermath of the Russian invasion the Law of Ukraine *“On the Basic Principles of Forcible Expropriation in Ukraine of Objects of Property Rights of the Russian Federation and its Residents”* was introduced. This allows for the forcible seizure of assets from the Russian federation and its residents in Ukraine. Such seizures require a Decision of the Council of National Security and Defence of Ukraine and a decree of the President of Ukraine.

Under this law ([Law No. 2116-IX](#)),¹¹ in May 2022 Ukraine was granted ownership of the financial assets of the subsidiaries of two Russian banks. So far that is the only case of confiscation under this mechanism. It is currently being challenged by the affected banks.

What we're watching: Asset Recovery Strategy; criminalisation of sanctions evasion, improvements to confiscation mechanisms

Considering the ongoing armed conflict in the country and the need to urgently replenish the resulting budgetary shortfall, several steps should now be taken to ensure this happens in a legally sound manner.

First, the long-overdue Asset Recovery Strategy and Action Plan should be finalised and adopted, taking into account wartime risks and priorities.

It is also important to criminalise the circumvention of sanctions in Ukraine. This will make it possible to confiscate the assets of sanctioned persons who attempt to circumvent the imposed restrictions. It will also be in line with emerging international standards.

The current confiscation mechanisms should be further improved. It is necessary to increase the terms of consideration of a case by the first and appellate instance and the term for appealing the decision, as well as to ensure due procedural rights for the defendants and third parties.

In addition, it is still relevant to consolidate efforts in the field of asset recovery and confiscation in line with international standards. More attention should be paid to the initiatives currently being implemented at the international level, in particular to the issue of expanding the scope of application of the non-conviction based confiscation



Developments in the public procurement system

Competitive and transparent procurement procedures are key to the effective reconstruction of Ukraine. These procedures cover the selection of suppliers and conclusion of contracts for reconstruction works, which will need to cover an unprecedented number of projects, services and goods. Preventing and combating corruption in the procurement sector is of particular importance and should be a priority. Key to this is PROZORRO, Ukraine's award-winning e-procurement system.

Notable developments: PROZORRO returns, even in the scandal-ridden defence sector

The Parliament and Government have already taken several steps in this direction. Despite the Government's permission at the beginning of the full-scale invasion to conclude direct contracts without competitive procedures in public procurement, competitions have largely been reintroduced since October 2022, when new rules for public procurement during martial law were adopted by the Cabinet of Ministers.¹²

- The list of grounds for concluding direct contracts (i.e. outside of PROZORRO) is periodically revised and reduced.
- From May 2023, such contracts are subject to monitoring by the State Audit Service.
- The obligation of procuring entities to publish contracts in PROZORRO extends to an increasing share of procurements.
- The Ministry of Economy is constantly improving procedures, communicating with the professional community.

According to PROZORRO, in April 2023 more than 70 percent of procurement transactions (in terms of cost) were announced in a competitive manner.

The Antimonopoly Committee of Ukraine continues to give procurement participants the opportunity to appeal discriminatory conditions of tenders, procuring entities' decisions and cancellation of tenders. The Antimonopoly Committee has formed new commissions to consider complaints.

Defence spending has been subject to much scandal and scrutiny. In response, considering the significant volume and closed nature of defence procurement, the Verkhovna Rada (Ukrainian Parliament) amended Law No. 808-IX.

- From March 2023, procuring entities in the field of defence must report on the prices to PROZORRO, and in some cases, publish parts of contracts (specifications).

- The Government has obliged defence-procuring entities to publish procurement contracts in full after the end of martial law (except for the procurement of weapons and other confidential transactions).
- Competitive and open procedures for selecting suppliers through PROZORRO are also being introduced for the defence sector.

What we're watching: Blind spots, too many direct contracts without appeal, too little competition and primacy of PROZORRO for reconstruction efforts

The main problems in the field of procurement that need to be addressed are:

1. Shortcomings in the monitoring mechanism for public procurement and difficulty in enforcing court decisions in the field of public procurement, especially after the implementation of the contract.
2. Insufficient transparency in the stage of preparation for procurement, as well as the stage of implementation of the contract.
3. A wide list of grounds for concluding direct contracts for above-threshold amounts. Such procurement transactions are not subject to appeal to the Antimonopoly Committee, which creates space for abuse.
4. Low average number of participants in competitive procedures. Currently, only 30-45 percent of bids have more than one participant. This is partly due to the destruction of enterprises by Russian troops and the occupation of the territories where they are located.

Having solved these problems, it is necessary to ensure that all procurement transactions for the current and post-war reconstruction of Ukraine, whether conducted at the expense of the state budget or initiated by international donors, go through PROZORRO (considering donor procedures and internal practice).

Acronyms

ARMA	Asset Recovery and Management Agency
CCU	Constitutional Court of Ukraine
HACC	High Anti-Corruption Court of Ukraine
HCJ	High Council of Justice
HQCJ	High Qualification Commission of Judges
NABU	National Anti-Corruption Bureau of Ukraine
NACP	National Agency on Corruption Prevention
SAPO	Specialised Anti-Corruption Prosecutor's Office

Endnotes

- 1 Kyiv School of Economics. '\$147.5 billion – the total amount of damages caused to Ukraine's infrastructure due to the war, as of April 2023.' 17 May 2023, <https://kse.ua/about-the-school/news/147-5-billion-the-total-amount-of-damages-caused-to-ukraine-s-infrastructure-due-to-the-war-as-of-april-2023/>
- 2 Transparency International Ukraine. 2023. Corruption Perceptions Index 2022 – Anti-corruption pendulum in Ukraine: a step forward after a step back. <https://cpi.ti-ukraine.org/en/>
- 3 Transparency International Ukraine and Basel Institute on Governance. 'Strengthening Ukraine's anti-corruption and judicial infrastructure to safeguard the recovery.' 6 December 2023, <https://ti-ukraine.org/en/news/strengthening-ukraine-s-anti-corruption-and-judicial-infrastructure-to-safeguard-the-recovery/>
- 4 Transparency International Ukraine. 'Cabinet of Ministers adopts state anti-corruption program: details.' 27 March 2023, <https://ti-ukraine.org/en/news/cabinet-of-ministers-adopts-state-anti-corruption-program-details/>
- 5 International Monetary Fund. 'Ukraine: Request for an Extended Arrangement Under the Extended Fund Facility and Review of Program Monitoring with Board Involvement-Press Release; Staff Report; and Statement by the Executive Director for Ukraine.' 31 March 2023, <https://www.imf.org/en/Publications/CR/Issues/2023/03/31/Ukraine-Request-for-an-Extended-Arrangement-Under-the-Extended-Fund-Facility-and-Review-of-531687>
- 6 Council of Europe. 'Ukraine – Opinion on the draft law "On Amendments to Certain Legislative Acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a Competitive Basis", adopted by the Venice Commission at its 133rd Plenary session (Venice, 16-17 December 2022).' CDL-AD(2022)054-e. 19 December 2022, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)054-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)054-e)
- 7 Council of Europe. Ukraine: Follow-up Opinion.' CDL-AD(2023)022. 10 June 2023, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)022-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)022-e)
- 8 Draft Law on Amendments to Certain Legislative Acts of Ukraine to Clarify Provisions on Competitive Selection of Candidates for the Position of a Judge of the Constitutional Court of Ukraine. <https://itd.rada.gov.ua/billInfo/Bills/Card/41978>
- 9 Proposals of the President of Ukraine to the Law "On Amendments to Certain Laws of Ukraine on Improving the Effectiveness of Sanctions Related to Assets of Individuals". <https://itd.rada.gov.ua/billInfo/Bills/Card/39275>
- 10 On Amendments to Certain Legislative Acts of Ukraine to Improve the Effectiveness of Sanctions Related to Assets of Individuals. <https://zakon.rada.gov.ua/laws/show/2257-IX#Text>.
- 11 On the Basic Principles of Compulsory Seizure in Ukraine of Property of the Russian Federation and its Residents. <https://zakon.rada.gov.ua/laws/show/2116-20>
- 12 On Approval of the Peculiarities of Public Procurement of Goods, Works and Services for Customers Provided for by the Law of Ukraine "On Public Procurement" for the Period of Martial Law in Ukraine and within 90 Days from the Date of Its Termination or Cancellation. <https://zakon.rada.gov.ua/laws/show/1178-2022-%D0%BF>



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.



Transparency International Ukraine is an accredited chapter of the global movement Transparency International, with a comprehensive approach to development and implementation of changes for reduction of the corruption level.