

# Progress in Ukraine's anti-corruption and judicial reform efforts

## June 2024 update

This document takes stock of recent progress (July 2023 to June 2024) in strengthening Ukraine's anti-corruption ecosystem. It provides an update to a [previous report](#) and is published ahead of the Ukraine Recovery Conference in Berlin in June 2024. It covers a tumultuous period in Ukraine, with numerous rapid developments on the battlefield impacting the entire country. In spite of all this, Ukraine continued to display a remarkable commitment in the realm of anti-corruption. Our report highlights the key developments contributing to consistent progress – although not without challenges – towards combating corruption. The report covers:



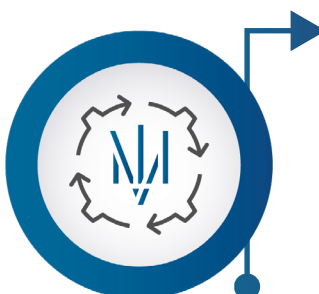
### Strengthening of the institutional capacity of Ukraine's anti-corruption agencies, including:

- Significant progress in high-profile corruption-related investigations and arrests.
- Establishment of a separate legal entity for the Specialised Anti-Corruption Prosecutor's Office (SAPO).
- Approval of the 2023–2025 Asset Recovery Strategy.
- Updated regulation on the sale of seized assets.
- Completion of the first independent audit of the National Agency for Corruption Prevention (NACP).
- Appointment of the new head of NACP.
- Re-opening of the asset declarations register.



### Developments as part of judicial reform, including:

- Creation of the Public Integrity Council and the qualification assessment of judges.
- Adjustments to the competition procedure to select Constitutional Court judges.
- Creation of the Kyiv City District Administrative Court.



### Developments within the High Anti-Corruption Court (HACC)

- Increased number of judges.
- Competition for vacant positions announced and candidate admission underway.
- Adoption of a law regarding partial single-person consideration of HACC cases.

Of note: In October 2023, Transparency International Ukraine published its second [study](#) of the capacity, management and interaction of anti-corruption infrastructure bodies of Ukraine. According to the results, over the past three years, anti-corruption bodies have improved their average overall score from 3.4 to 3.9 points on a scale of 1 to 5, but there are significant differences in the maturity of individual institutions, which we address below.

This document is a joint publication of Transparency International Ukraine and the Basel Institute on Governance. A recent [sister publication](#) providing an overview of anti-corruption progress and gaps specifically related to Restoration efforts is available on the institutions' websites.



## Developments at Ukraine's anti-corruption agencies

### Important changes:

- Strengthened cooperation between the National Anti-Corruption Bureau of Ukraine (NABU) and SAPO, leading to intensified investigations of high-level corruption cases.
- Legislative changes that significantly enhance SAPO's institutional independence.
- Competition for the head of the Asset Recovery and Management Agency (ARMA) completed and new head appointed.
- 2023–2025 Asset Recovery Strategy approved.
- Updated regulation on the sale of seized assets.
- First external independent audit of NACP by international experts.
- New Head of NACP appointed.
- Asset declarations register re-opened.

### We are monitoring:

- Necessary but pending legislative changes to create an independent body responsible for conducting forensic analysis in high-level corruption cases.
- Implementation of the newly adopted law on SAPO and adoption of further legislative changes to ensure SAPO's full independence and efficiency.
- Performance of ARMA under its new leadership.
- Implementation of the recommendations from the external audit of NACP.
- Submission and verification of public officials' asset declarations for 2021–2023.
- Implementation of the State Anti-Corruption Programme.

### National Anti-Corruption Bureau of Ukraine (NABU)

Since March 2023, NABU has strengthened its cooperation with the SAPO and has continued to significantly intensify the investigation of corruption cases at the highest level. This is especially noteworthy as a number of high-profile sting operations took place in November 2023, related to attempted bribery by members of parliament (MPs), state-owned enterprises (SOEs) and private company representatives of top officials in the Ministry of Infrastructure and Agency for Restoration.

Building on the work commenced before the arrival of the current leadership, we see a notable increase in case numbers.

In its [report](#) on Ukraine as a candidate country, the European Commission separately pointed out the need to increase the number of NABU employees, specifically detectives, analysts and technical staff working on investigations. On 8 December 2023, the Verkhovna Rada (Parliament) adopted [Law No. 3502-IX](#), expanding NABU's workforce from 700 to 1,000. One hundred vacancies will be filled each year from 2024 to 2026, necessitating extensive training and additional resources to accommodate the newly hired staff.

As of May 2024, a widely discussed investigation is being conducted by NABU's Internal Control Department and SAPO about an alleged information leak from NABU, related to one of its criminal cases. While leaks are not uncommon in law enforcement, this is one of the biggest scandals in NABU's history. Its future reputation will depend on the Agency's response. Currently, the long-standing Deputy Director of NABU has been suspended pending investigation.

The following challenges remain relevant in the work of NABU:

- The lack of an independent body responsible for conducting forensic analysis in high-level corruption cases.
- Persisting insufficient capabilities of NABU to conduct autonomous wiretapping.

Despite the remaining challenges, NABU is proving itself to be a stable and effective institution. It is demonstrating growth and the implementation of best practices, acting as a locomotive for the entire anti-corruption system.

### **Specialised Anti-Corruption Prosecutor's Office (SAPO)**

On 1 January 2024, [Law No. 3509-IX](#) on "Amendments to the Criminal Procedure Code of Ukraine and other legislative acts of Ukraine to strengthen the independence of the Specialised Anti-Corruption Prosecutor's Office" came into force. We assess this Law as a positive development, though we note that additional changes would ensure the authority of the head of SAPO is increased to match the institution's responsibility.

This Law provides for the creation of a separate legal entity for SAPO, which will significantly enhance the body's institutional independence (until recently, it existed as a unit of the Prosecutor General's Office). The Law also amends the procedure for the competitive selection of candidates for the positions of the SAPO head and their deputies, as well as for the positions of heads of departments and prosecutors. It proposes the engagement of experts nominated by international partners in the selection commissions to ensure the transparency of the competition and reduce political influence.

However, the Law also contains some drawbacks. For example, the SAPO head and their first deputy still have a [narrower range of powers](#) than is necessary to ensure the body's procedural independence, especially in regard to the extradition of suspects and the prosecution of members of parliament.

Furthermore, the current legislation requires judges to automatically close criminal cases when the preliminary investigation exceeds timelines (maximum 12 months from notice of suspicion in a case registration in case of especially serious offences). This has not been modified in recent changes and means high-profile cases will continue to be closed without a substantial review of the strength of their ev-

idence. While setting a time limit on investigations is a good practice, the current time limits do not reflect the realities of investigating high-profile corruption during wartime.

Some outstanding challenges in the work of SAPO could be resolved through the following reforms:

- Empowering the head of SAPO to independently initiate criminal cases against MPs and coordinate investigative actions against them.
- Cancelling the obligation of the court to close criminal proceedings upon the expiration of pre-trial investigation.

### **Asset Recovery and Management Agency (ARMA)**

Since our last report, which coincided with the appointment of the new head of ARMA in June 2023, there has been only modest progress in much-needed reforms to improve the Agency's work.

On 1 August 2023, the Cabinet of Ministers approved the [Asset Recovery Strategy](#) for 2023–2025, developed last year under ARMA's coordination. This is an important step to further strengthen Ukraine's systems and mechanisms for recovering stolen assets.

However, certain provisions of the strategy are quite general, making a detailed implementation plan critical. This should include setting concrete objectives and timelines. Most importantly, it needs to clearly define roles and responsibilities of the different government agencies assigned with implementing the strategy, in order to ascertain accountability for its implementation and avoid duplication of powers and tasks. Expectations will also need to be managed, considering the complexity of the issue.

In late August 2023, the ARMA head announced that public access to the Unified State Register of Assets Seized in Criminal Proceedings has finally been opened. However, the register is incomplete and contains numerous shortcomings in the quality of the information published. As of May 2024, there are 1,240 entries in the Unified State Register of Assets Seized in Criminal Proceedings.

In November 2023, the Cabinet of Ministers modified the process of selling seized assets managed by the Asset Recovery and Management Agency. An analysis of the new procedure has shown that, as a result of the efforts of many stakeholders, the regulation is a significant improvement.

An [analysis](#) of ARMA's first annual report, covering 2023, indicates that the Agency's performance is still found wanting. A thorough and independent external audit could provide important information regarding the actual state of play at ARMA.

The main issue with ARMA stems from the process of selecting its leadership, which does not adhere to Ukraine's high standard of involving independent selection commissions, and thus led to the [politicisation](#) of the process.

Several of the following recommendations were raised in [previous iterations](#) of this document and remain on the to-do list:

- Update the regulation on the selection of the head of ARMA and base it on

the existing best practices.

- Introduce the independent external audit of ARMA to the existing legal framework.
- Provide coherent planning before transferring assets to ARMA under national legislation, including a general assessment of the asset, legal and financial analysis of the asset and joint development of strategies and recommendations to reduce identified risks.
- Significantly improve the quality of the current register of seized assets and, with it, transparency and accountability in ARMA's work.
- Bring the confiscation of property in line with generally accepted international standards regarding proportionality and legal certainty.
- Provide for extended confiscation of property in the Criminal Code of Ukraine.

### **National Agency on Corruption Prevention (NACP)**

On 26 July 2023, the Cabinet of Ministers of Ukraine published the [results of the external audit](#) of NACP for 2020–2021, which stated that NACP's activities "were not ineffective" during the audit period. At the same time, the auditors expressed concerns about:

- insufficient transparency in the Agency's work;
- mistakes in the legal approaches to staff management;
- weaknesses in the organisational structure and staffing decisions;
- the operation of its internal control function.

The Agency partially disagreed with the auditors' recommendations regarding the regulation of lifestyle monitoring. Although a new procedure for the monitoring was adopted, replacing the previous non-binding methodology, it failed to consider stakeholders' concerns about significant privacy interference. Also, NACP did not follow the auditors' views on the publishing of the logical and arithmetical control rules, and on the refraining from automated full checks of declarations.

In a welcome development to increase transparency, NACP presented an [information portal](#) for monitoring the implementation of the State Anti-Corruption Programme in August 2023. The useful information on the portal is to be updated quarterly as public authorities are obliged to publicly report on the measures taken to prevent and counter corruption.

On 10 December 2023, NACP re-opened the Unified State Register of Declarations of public officials following a heavy political battle with significant opposition from parliament. The long-awaited legislative prerequisite was adopted in September through draft [law 9534](#) including the President's proposals after his initial veto. Unfortunately, a separate draft [law 9587-d](#) was not vetoed, allowing officials to avoid being listed in the Register of Corrupt Officials when misdeclaring less than UAH 1,342,000 (approx. EUR 30,500).

The pushback against transparency continues, however. During the re-opening of the Register of Declarations, MPs proceeded to adopt a number of [amendments](#) that complicate, skew, and weaken the declaration rules.

Two issues were highlighted by the European Commission as recommendations for Ukraine before opening negotiations on EU membership: to allow NACP to a) repeatedly check previously verified declarations and b) check assets and property of declarants and their family members that they had acquired even before

the obligation to submit declarations. The corresponding draft [law 10262](#), which eventually addressed both issues, was adopted by MPs on 8 December 2023. In February 2024, following a lengthy and highly-scrutinised competition, the selection commission decided to choose as the new head of NACP Viktor Pavlushchuk, a senior detective and head of department at the National Anti-Corruption Bureau. He was officially appointed by the government a few days later.

Among the many priorities of the new head, we hope that the implementation of the international auditors' recommendations remains near the top, considering the next external audit (covering 2022–23) is to be commenced soon.



## Judicial reform

### Important changes:

- Creation of the Public Integrity Council.
- Update of the competition procedure to select Constitutional Court judges.

### We are monitoring:

- Qualification assessment of judges.
- Creation of the Kyiv City District Administrative Court.

In our [last report](#), we noted the reboot of the High Qualification Commission of Judges (HQCJ). Currently, the new HQCJ has started to actively assess the qualification of judges. In August 2023, the [Public Integrity Council](#) was established under the HQCJ, consisting of representatives of civil society, lawyers, journalists, and other stakeholders. The Council actively participates in the work of the HQCJ and presents conclusions on the integrity of judges. Upon the proposal of the HQCJ, the High Council of Justice has already dismissed two so-called "Maidan judges" (judges who made questionable decisions during the Ukrainian Revolution of Dignity). Meetings of the HQCJ are publicly broadcast, which contributes to the transparency of the body's work.

As for the Constitutional Court of Ukraine (CCU), in August 2023, the Parliament adopted [Law No. 3277-IX](#), which eventually considered the main recommendations of the Venice Commission concerning the competitive selection of candidates for the position of judge of the CCU. The Venice Commission [assessed it](#) as generally positive. In September 2023, the Advisory Group of Experts commenced its work and announced the competition for three vacant CCU judgeships.

On 13 May 2024, the Advisory Group submitted to the Verkhovna Rada Committee on Legal Policy and the Council of Judges of Ukraine the ranking lists of all five assessed candidates and the reasoned decisions on each of them. However, the Advisory Group of Experts also informed the Parliament on the need to re-announce competitions for two vacant positions of CCU judges.

On 24 May 2024 the Verkhovna Rada of Ukraine appointed one judge of the Constitutional Court of Ukraine based on the Advisory Group's ranking.

Unfortunately, problems persist in the work of the newly created Kyiv City District



Administrative Court (Київський міський окружний адміністративний суд), designed to replace the compromised and abolished District Administrative Court of Kyiv City (Окружний адміністративний суд міста Києва). In July 2023, the provisional staff list of the court was approved, and a competition for 51 judicial positions was announced. In practice, however, the court is still not operating, with cases under its jurisdiction being transferred to the Kyiv Region District Administrative Court (Київський окружний адміністративний суд). This leads to a case overload, which negatively affects the adherence to reasonable time limits, thereby jeopardising the success of cases.

In May 2024, the Parliament voted in favour of a first reading of a draft law that would distribute court cases transferred to the Kyiv Region District Administrative Court in accordance with the provisions of [Law No. 2825-IX](#) among all district administrative courts of Ukraine.



## High Anti-Corruption Court (HACC)

### Important changes:

- Decision about the increased number of judges adopted.
- Competition for vacant positions announced.
- Members of the Public Council of International Experts appointed.
- Decision about the admission of the candidates to the competition adopted.
- Law regarding partial single-person consideration of cases in the HACC adopted.

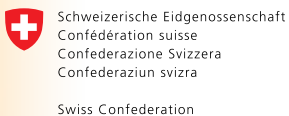
### We are monitoring:

- Competition for judges of the High Anti-Corruption Court.

In September 2023 the High Council of Justice determined the new number of judges in the High Anti-Corruption Court, totalling 63 positions, including 21 positions of judges of the Appeals Chamber. At the initial stage of the creation of the court, the High Council of Justice had only approved 39 positions of judges, including 12 positions of Appellate Chamber judges.

On 23 November 2023, a competition was announced for 25 vacant positions of judges of the High Anti-Corruption Court and the HACC Appeals Chamber. On 29 April 2024 the High Qualification Commission of Judges of Ukraine appointed six new members to the Public Council of International Experts, which assists the HCCJ in the qualification assessment of candidates for the positions of judges of the HACC. As of May 2024, the HCCJ admitted 160 participants in the competition for the vacancies. We continue to closely monitor the progress of the competition.

On 24 April 2024, the Parliament of Ukraine adopted the Law on partial single-person consideration of cases in the HACC. It [removes the mandatory collegial consideration](#) of some of its cases. We consider this a positive development as it increases the court's efficiency. However, there is a list of exceptions, meaning that collegial consideration may still apply to criminal cases involving high-ranking officials. The list of exceptions to a single-person consideration is unclear and may be subject to political bargaining and negotiation.



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