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HOW TO INCREASE THE EFFICIENCY OF THE NATIONAL CORRUPTION PREVENTION AGENCY



SUMMARY

During 2014-2017, several new institutions started operating in Ukraine, the activities of which are aimed at effectively preventing and combating corruption in Ukraine. However, not all of these institutions have fulfilled their powers properly. Perhaps the biggest criticism among these bodies is addressed to the National Agency for the Prevention of Corruption (NAPC). There seems to be a broad consensus in society concerning the political bias and inefficiency of this agency.

In this article, the author analyses how justified such accusations against the NAPC are, whether the agency really does not demonstrate the expected results both in its direct activities and in the institutional development of the agency, as well as whether there are reasons to speak about undue political influence on NAPC activities. Taking into account the results of the analysis of the agency work, the author analyses various alternatives of public policy that may affect the quality of the institution work, and identifies the strengths and weaknesses of each of them, formulating specific appropriate steps for public anti-corruption policy further.

Anton Marchuk,
expert of the Centre of Political and Legal Reforms;
Manager of the Group “Anti-Corruption Reform”
of Resuscitation Reform Package
Editorial board:
O.B. Nesterenko, M.V. Chaban



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the agency's activities. This official had tried to influence on the NAPC's operational activities, including – to influence on the conclusions of the full verification of electronic declarations.

Because of the above-mentioned information, the possible reboot of the NAPC is currently widely discussed in the expert community. It seems to be a necessary step for effective performance of the functions entrusted to the agency at this moment. Thus, the problem of policy is the inability to ensure the effective activity of the National Agency for the Prevention of Corruption.

The aim of the study is the investigation of the possible options for improving the effectiveness of the functioning which are currently assigned to the National Agency for the Prevention of Corruption.

For the purposes of this study, “effectiveness” will be understood as the measure of achieving of goals and objectives which were set for the NAPC, the actual result of the agency’s activities.

The following options will be considered as alternatives:

1. Preservation of the existing NAPC management and its staff with providing of the additional resources and powers;
2. Reboot of the NAPC in the way of a change of the procedure for holding a competition on the positions in the agency and a change in its management and staff;
3. Disbandment of the NAPC with the transfer of powers entrusted to the agency to other bodies and institutions.

The methodology of preparation of this analytical document will include several stages. On the first stage it will be conducted an inspection of the international standards of activities of specialised anti-corruption institutions, as well as identified crucial elements for ensuring both the effectiveness of the activity and maximum objectivity in the exercise of the body's powers.

The rationale for setting up a separate anti-corruption body with preventive functions will be analysed further, in particular by reviewing reports from independent monitoring mechanisms (GRECO, OECD Anti-Corruption Network for Eastern Europe and Central Asia), and analyzing Ukraine's international obligations concerning effective and independent NAPC functioning.

On the next stage an analysis of the current state of the agency activities will be conducted, in particular, through the analysis of statistic data, the study of analytical research and the study of reports of independent monitoring mechanisms. This is necessary to understand the essence of the problems faced by the NAPC and which are present in the structure of the agency.

Taking into account the previous stages, an analysis of the strengths and weaknesses of each of the alternatives of further NAPC policy will be made, a conclusion will be made and recommendations for increase of the effectiveness of this anti-corruption body will be provided.

As the issue of NAPC activities is to some extent politicised, which is

a significant limitation, it is important to focus on the most objective data, in particular on the statistical information and reports of independent monitoring mechanisms, experience of other countries and generally accepted international standards that must be adhered in the activity of specialised anti-corruption institutions for their independence and effectiveness.

For the purposes of this study, the author uses the following methods. The author uses **the formal-logical method** in order to determine the main categories and identify the logical legal nature of the NAPC activity. **The historical method** was used to determine the preconditions for the establishment of the National Agency for the Prevention of Corruption, the adoption of relevant regulations, as well as to review the activities of the agency in retrospect. The author uses **the comparative method** to compare the state of implementation of anti-corruption policy tasks, facing the NAPC, with other competent authorities that had such powers before. **The system-structural method** is used to focus on the analysis of the agency's activities as a holistic structure in a way of investigation of all areas of NAPC activity. The author used **the method of content analysis** to analyse media materials and information from other sources related to the activities of the National Agency and anti-corruption policy in Ukraine in general.

This analytical document was prepared as at April 2018. However, during the finalization of this work to the publication, the author added several important comments that are relevant as at August 2018.

The analytical document is divided into four sections. **The first section** includes the general overview of the standards of activities of anti-corruption institutions. **The second section** provides an overview of the arguments in favour of creating a separate anti-corruption body with preventive functions in Ukraine. **In the third section**, the author provides an assessment of the current activities of the agency including the assessment of the NAPC's compliance with international standards of activities of anti-corruption institutions. **The fourth section** will have an analysis of each of the alternatives, their advantages and disadvantages, compliance with international standards and Ukraine's obligations to foreign partners. **The fifth section** provides conclusions and recommendations for improving the effectiveness of performing powers which the National Agency for the Prevention of Corruption have.

2. INTERNATIONAL STANDARDS OF ACTIVITIES OF ANTI-CORRUPTION INSTITUTIONS

The standards of activity of anti-corruption bodies are mentioned in many international legal documents. Moreover, it should be noted that the principles are defined more detailed in “soft law” documents, which are rather of a recommendatory nature, while “hard law” documents contain very general principles of operation of such institutions. Among the documents of “hard law” such standards are defined in the UN Convention against Corruption and in 20 principles of fight against corruption of the Council of Europe: both emphasise the need to ensure the independence of anti-corruption bodies and to free them from undue influence. The UN Convention against Corruption also highlights that member states shall ensure the necessary independence, in accordance with the fundamental principles of their legal system, to the body which pursues the anti-corruption policy and disseminates the knowledge concerning the prevention of corruption with the aim of providing opportunities to such a body or bodies to perform their functions effectively and in conditions of freedom from any undue influence. Also, it should be provided with the necessary material resources and specialised personnel, as well as such staff training as may be required to perform the functions assigned to it [18].

The standards of activity of anti-corruption bodies are defined more detailed in the Jakarta Declaration on the Principles of Work of Anti-Corruption Bodies ("Jakarta Principles") of 2012, essence of which lies in the need to ensure independence through special procedures for management selection of anti-corruption bodies and protection against unjustified early dismissal of management; ensuring accountability of agencies; providing them adequate material support and the opportunity to dispose of them; ensuring righteousness in the body itself through the adoption of codes of ethics and the monitoring of their compliance [61].

3. A SEPARATE PREVENTIVE ANTI-CORRUPTION BODY IN THE CONTEXT OF UKRAINE AND THE REASONS FOR ITS CREATION

The world practice of activities of anti-corruption bodies allows to identify three approaches to their creation:

- ▶ creation of an anti-corruption body that performs both preventive and law enforcement functions (for example, Hong Kong, Latvia or Lithuania);
- ▶ creation of a separate anti-corruption body that performs either preventive or law enforcement functions (for example, Slovenia or France);
- ▶ simultaneous creation of specialised anti-corruption preventive and law enforcement institutions (for example, Romania).

Ukraine has been developing the third model since 2014, when separate anti-corruption bodies are created, and each of which is responsible for its own field of activity. In this case, the architecture of anti-corruption bodies anticipated that The National Anti-Corruption Bureau will perform law enforcement functions, and the National Agency for the Prevention of Corruption will perform preventive functions, which will include, in particular, the formation and realization of anti-corruption policy in Ukraine, verification of information about public servants' assets and about conflict of interest in their activity.

One of the reasons for the establishment of the NAPC as a separate institution was the requirements of Ukraine's international obligations.

In 2010, the UN Convention against Corruption entered into force in Ukraine. Article 6 of the above-mentioned Convention provides that “Each Member State shall ensure, in accordance with the fundamental principles of its legal system, the existence of an authority or, in appropriate cases, authorities which prevent corruption by means of: (a) conducting of the policy mentioned in Article 5 of this Convention and, in appropriate cases, the supervision and coordination of the realization of such policy; b) expanding and disseminating knowledge concerning the prevention of corruption”.

It should also be noted that according to Article 22 of the Association Agreement between Ukraine and the EU, the parties to this Agreement, in particular, «are committed to the effective carrying out ... of the UN Convention against Corruption 2003 and other relevant international documents» [51]. Thus, the implementation of the provisions of the UN Convention against Corruption is an obligation of Ukraine within the framework of the Association

Agreement with the EU.

However, firstly the idea of creating such a body appeared much earlier. In 2007, a report was published on the results of the joint first and second rounds of GRECO assessment concerning Ukraine [60]. The first recommendation was “the establishment of a non-law enforcement body in order to oversee the realization of the national anti-corruption strategy and relevant action plans, as well as to propose new anti-corruption strategies and measures. This body should be represented by public authorities and representatives of civil society. The body shall be given the necessary level of independence to carry out an effective monitoring function”.

In 2014, Ukraine intensified the realization of national measures necessary for liberalization of visa regime with the European Union. In particular, there was a need to implement “the relevant conventions of the UN and the Council of Europe, as well as GRECO in the fields of fight against organised crime, terrorism, corruption, human trafficking, drug addiction and drug trafficking”. Thus, in order to carry out the UN Convention against Corruption and the GRECO recommendations, it became necessary to establish an independent anti-corruption body, which would not have law enforcement functions and would be responsible for the formation and realization of anti-corruption policy and other preventive functions.

The European Commission drew attention to the progress in establishing a National Agency for the Prevention of Corruption in its reports concerning the

execution of the EU Visa Liberalization Action Plan for Ukraine in 2014-2015 by Ukraine. The final report (December 2015) noted that the Ukrainian authority, in particular, committed to “ensure the full functioning of the National Agency for the Prevention of Corruption in the first quarter of 2016” [54].

Currently, the effective functioning of this agency is among those requirements that are necessary to maintain the visa-free regime between Ukraine and the EU. The first report of the European Commission within the framework of the mechanism of suspension of the visa-free regime noted the need to “immediately restore confidence to the NAPC” [63].

The establishment of the NAPC was among the requirements for Ukraine to receive macro-financial assistance from the European Union [62].

In addition to Ukraine's international obligations, the need to establish this agency lay in the lack of effective mechanisms for the formation, implementation and coordination of anti-corruption policy; lack of effective financial control over the property and income of public servants, as well as control over the resolution of conflicts of interest and compliance with anti-corruption restrictions of public servants. It was highlighted in the Principles of State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014-2017 through the inclusion of "determination at the legislative level of the organization principles and activities of a specially authorised body for the prevention of corruption, responsible, in particular, for

4. CURRENT STATE OF ACTIVITY OF NAPC

The National Agency for the Prevention of Corruption began its activities on August 15, 2016 [32]. It was initially expected that the NAPC would start operating almost a year earlier, in August 2015 [40]. This delay was due to problems that arose at different stages of selection of agency members: an attempt to falsify the competition for the election of members of the public to the commission for the selection of the management of the body [1]; refusal of one of the selected candidates to take the position of a member of the agency [28]; inability to reach a compromise concerning the support of candidates among the members of the competition commission.

Every year, the National Agency for the Prevention of Corruption publishes annual reports on its activities, from which statistic data concerning agency activities can be taken for further assessment. Five main direction of activities of the NAPC can be distinguished:

a) anti-corruption policy

The National Agency is responsible for the formation and realization of state anti-corruption policy. In 2017, the NAPC prepared a national report on the state of realization of anti-corruption policy in Ukraine. In the same year, the agency had to develop and submit to the Government consideration, which, in turn, had to submit to the Verkhovna Rada a draft of a

new Anti-Corruption Strategy. However, although the agency prepared a draft of this document, it was hardly criticised by the expert community [4, 37], and the NAPC failed to properly revise the draft strategy. Low quality of the draft Anti-Corruption Strategy was also recognised by parliamentarians: members of the Verkhovna Rada Committee on Prevention and Combating Corruption recommended returning the draft Strategy for revision to the subject of the legislative initiative [45].

Another important task of the NAPC in the field of anti-corruption policy is study of the state of preventing and combating corruption in Ukraine. The fact that for the first time a sociological survey was conducted according to the methodology of the agency [44] in Ukraine in 2017 deserves a positive assessment. At the same time, there are a number of comments concerning the published results. For example, the results of the study do not specify a list of experts who were involved in the expert survey.

The Agency is also responsible for preparing an annual national report concerning the state of the realization of the principles of state anti-corruption policy. In 2017, such a report was prepared and submitted to the Verkhovna Rada for further approval¹. However, in 2018 the report even was not submitted to

1 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?p3511=61979

the Parliament, in particular because parliamentary hearings concerning the state of the state anti-corruption policy were not held. The NAPC was able to post such a report on its own website, but this was not done. In addition, in order to improve the quality of the report, it would be appropriate to hold additional discussions of its draft with the public, as well as with the scientific and expert communities, which can provide a more objective assessment of the state of preventing and combating corruption in Ukraine.

In this area, the agency also prepares draft regulations, including draft laws. It is possible in advance to access with them on the official NAPC website. The public usually analyses these draft laws and gives them, as a rule, a very critical assessment. For example, in April 2018, experts of the “Centre for Combating Corruption” reasonably assessed critically the draft amendments to the Law of Ukraine “On Prevention of Corruption” and some other laws [33]. During expert discussions, no less negative assessment was received by the draft Law of Ukraine “On Protection of Whistleblowers of Corruption” developed by the NAPC [46]².

b) control over the resolution of conflicts of interest and compliance with restrictions on anti-corruption legislation

In this area, the agency provides

clarification on the existence of a conflict of interest and ways to resolve it; conducts inspections in case of violation of the requirements concerning the resolution of conflicts of interest; conducts inspections in case of violation of the restrictions determined by the anti-corruption legislation on simultaneous work in several agencies, receipt of gifts, use of information obtained during the public service, management transfer of corporate rights to third parties, etc.; draws up reports on administrative offences in case of confirmation of such facts during inspections, etc. [11].

As reflected in the agency's activity report for 2017, NAPC officials received 1,577 reports on violations of requirements concerning the resolution of conflict of interest, according to which 530 inspections were initiated. 1,545 monitoring and control measures are held concerning the violations of anti-corruption restrictions, 392 of which were initiated at the request of third parties. In total, last year, 159 reports on administrative offences were drawn up concerning the violation of the requirements for resolving conflicts of interest and concerning the restrictions imposed by anti-corruption legislation [12].

Providing a significant amount of clarification concerning the presence or absence of a conflict of interest in specific cases, or on ways to resolve it can be considered as positive actions – more than a thousand have been provided. The approach to information dissemination about conflicts of interest through an online course on the “Prometheus” platform is progressive [39].

2 In particular, this draft law was discussed during a meeting of the Anti-Corruption Group of the Resuscitation Reform Package and received negative feedback from two experts who are specialised at the protection of whistleblowers of corruption.

It should be noted that most of the persons against whom reports on administrative offences are drawn up, belong to the lower categories of officials. Only 5 protocols were drawn up against deputies, one against the former Deputy Minister of Justice, and one against the director of the National Anti-Corruption Bureau.

At the same time, as for the other directions of NAPC activities, there are specific cases in which the authorised persons were guided by political expediency rather than by objective circumstances and norms of the law.

The story of People's Deputy and the flat he bought became perhaps the most famous. The agency checked the presence of an illegally received gift (discount in the amount of 1.8 million hryvnias), which cost more than the maximum allowable according to anti-corruption legislation, during the purchase of the flat by him in 2016. Authorised persons of the agency found violations of restrictions concerning the receiving gifts (discount) and drew up a report on a commitment of administrative offence by Leshchenko. However, according to journalists of the well-known publication "Mirror of the Week", the instruction to draw up a report on Leshchenko was given to NAPC officials by the Presidential Administration [58]. It is known that above-mentioned deputy has a very critical position concerning the activities of the current President of Ukraine.

However, even such attempts to bring Leshchenko to administrative responsibility were unsuccessful: the

court of first instance ruled that the event and the composition of the administrative offence are absent in the actions of the deputy [41]. Later, prosecutors, contrary to the provisions of the Code of Ukraine on Administrative Offences, tried to appeal the court's decision in the appellate court, but the court decided to return the appeal [42].

Later, NAPC officials began to send requests to the entities from which the deputy received income concerning the providing them with additional documents and information. Employees of the agency allegedly checked it for compliance with restrictions on simultaneous work in several agencies [29]. A civil society organization “Centre for Combating Corruption” was one of these entities, to which requests for information were sent. However, the organization refused to provide information because the request was made improperly. Because of it the authorised persons of the agency drew up a report on an administrative offence on the executive director of the “Centre for Combating Corruption” Daria Kalenyuk [25]. This organization is also known for its critical assessment of the agency and its management³.

Another loud case in this area of the agency's activity was the verification of the existence of a conflict interests on the part of the director of the National Anti-Corruption Bureau Artem Sytnyk [47] and the former detective of the bureau Igor Semak [24].

3 https://24tv.ua/korchak_na_vihid_koli_vidbudetsya_vidstavka_golovi_nazk_i_shho_tse_zminit_n895345

In the first case, the circumstances were as follows: in the summer of 2017, the agency received a request concerning the existence of real conflict of interests on the part of Sytnyk during his decision-making. It is spoken about the fact that Sytnyk's interests were entrusted to represent to Ihor Yarchak, the head of the NABU legal department, at one of the court hearings. However, this check was only intensified in the autumn of that year [47]. Moreover, as the author of these lines knows, the NAPC conducted an inspection in the summer, did not detect circumstances that would indicate a violation of anti-corruption legislation, but in autumn began to conduct an inspection again and require NABU to provide separate documents. Although the report on the administrative offence concerning the committing of actions in the conditions of a real conflict of interest wasn't drawn up on the director of NABU, he was accused of another offence – not compliance with the lawful requirements of the agency [14]. There is currently no information concerning the results of the trial on this administrative offence.

Another occasion that allowed to speak about the bias of NAPC officials is the case of receiving the prize by Yulia Marushevska. Thus, the agency accused her of violating the requirements for resolving conflicts of interest when Marushevska was still the head of the Odessa customs and signed bonuses to all women officials for the holiday in the amount of UAH 500, including her. However, at the court hearing, the prosecutor did not support the position

of the agency's representatives, and the court ruled that there was no administrative offence in Marushevskaya's actions.

Thus, in this area, despite the presence of quite good quantitative indicators of work, there are also cases that allow us to talk about a certain motivated misuse and bias of the authorised persons of the agency during the carrying out of their activities.

c) financial control and monitoring of lifestyle

This area of the agency's activity is perhaps the most problematic. The NAPC has the authority to organise the work of the register of electronic declarations, to carry out financial control over the property and income of public servants, which is expressed in the verification of declarations and monitoring of the lifestyle of public servants.

The first problem here is the improper functioning of the register of electronic declarations. In March 2017 – in the last month of annual declarations submitting – the declaring subjects could not submit declarations for a long time, the register did not work for a long time. This has even become a pretext for Prime Minister Groyzman’s public “advice” to the head of the agency Korchak to resign [6].

The NAPC and the system administrator – SE “USS” – were unable to provide an independent technical audit of the registry during the year. Attempts to organise it were not realised due to not allowance of the experts to the system, and the organization of the

tender for its holding was opaque and contained discriminatory terms [7].

For a long time, the NAPC activity concerning full conducting of inspections of declarations was not organised. During more than three months after the completion of the first stage of submitting e-declarations, the NAPC could not fully verify the declarations, as the verification procedure approved by the agency was not registered by the Ministry of Justice due to alleged non-compliance with legislation. Instead, even after its adoption in February 2017, the version of the procedure does not allow conducting inspections properly [48].

By the end of 2017, the NACP approved 143 conclusions on the results of full verification of e-declarations, only 7 of them consisted signs of declaring inaccurate information. Checks are conducted in a “manual” mode in a way of sending requests to other authorities. It should be noted that automated verification modules, which would help to avoid manipulation and significantly increase the effectiveness of the NACP in conducting inspections, have not been put into operation. The agency has refused from these modules at least twice. At the end of November 2017, these modules were still transferred to the NACP, but due to technical difficulties have not yet been put into operation [30]. Moreover, for more than 1.5 years of its full operation, the agency has not been able to access to all registers required for verification of declarations: automated verification of declarations requires access to 29 registers and databases, but currently the agency has access to only

13 of them [31]. It is worth noting that the difficulties with the exchange of information between different registers and databases are caused not only because of the low effectiveness of the agency's management, which could not agree on cooperation with other public authorities for a long time, but also due to technical reasons, in particular the lack of interoperability between state registers and databases.

Currently, as of August 2018, the National Agency has received two modules on its balance sheet that will be used for carrying out of logical and arithmetic control, as well as for cross-checking information from declarations with data contained in other state registers and databases [34]. These modules were obtained after their refinement by UNDP in Ukraine. However, although this step deserves a clear positive assessment, there are still a number of other important measures that are necessary for the proper functioning of automated declaration verification. In particular, it is a question of receiving the certificate of CIPS that will guarantee proper protection of personal data, and also of the establishment of an exchange of data with all necessary registries and databases.

Particular attention should be paid to the facts voiced by the former head of the department of financial control and monitoring of lifestyle Anna Solomatina. According to her, no measures were taken to verify the data from the declarations of certain individual officials [15]. After conducting inspections, the conclusions about their results are not always

approved. According to Solomatina, the inspections and their conclusions were influenced by a “curator” from the Presidential Administration. Currently, SSU investigators are inquiring into possible falsifications during full inspections and special inspections [52].

Lifestyle monitoring is not carried out at all. Although the NAPC approved the monitoring procedure, it was not registered by the Ministry of Justice and is therefore not conducted by the agency's authorised persons.

d) control over the finances of political parties

In 2016-2017, the NACP provided state funding to parliamentary political parties for statutory activities, as well as inspected quarterly financial reports of the parties [12]. Based on the results of inspections, the NACP sent to law enforcement agencies materials according to which 14 criminal proceedings were initiated regarding the possible submission of knowingly unreliable information in the reports of political parties. Also, 260 protocols on detected administrative offences were also sent to the court.

The agency has begun preparations for the implementation of an electronic reporting system for political parties, but no significant progress has been made so far, and parties still submit paper reports.

At the same time, there are doubts about the agency's impartiality during the consideration of possible violations in the financing of political parties. Thus, at one time, the "Honestly" movement revealed facts that could indicate the

expenditure carrying out on political advertising in various media by the political party “Narodniy Front”, which is part of the ruling coalition in parliament. Such expenses were not reflected in the submitted to the agency financial reports of the above-mentioned party [35]. However, during the verification of the facts revealed by the “Honestly” movement, the NAPC did not detect any unreliable information in the reports of the “Narodniy Front” [27].

Similar to the above-mentioned case, the National Agency for the Prevention of Corruption behaved rather strangely after detection of the violations of another political party from the ruling parliamentary coalition – “Petro Poroshenko Bloc”. Activists of the “Eidos” civil society organization in 2017 found out that the Nikolaev party branch of PPB received from LLC “V-Centre” the contribution in the amount of 40,000 UAH. At the same time, the founder of this company was a legal entity registered in Cyprus, and the ultimate beneficial owner (controller) was a Cypriot citizen Eliana Haralambus. The Law of Ukraine “On Political Parties” after its amendments in 2015 clearly declares that it is prohibited to make contributions in favour of political parties by legal entities, the ultimate beneficial owners (controllers) of which are foreigners. After the activists’ appeal, NAPC did not take active steps to bring the party management to administrative responsibility, which would include the confiscation of the contribution, and the PPB branch quickly returned the contribution to “V-Centre” LLC [2].

Instead, the agency conducts monitoring of the opposition parties funding much more active. In particular, the NAPC actively responded to the identified false information provided by the political party “Batkivshchyna” concerning the making in its favour contributions of almost the same amount from many retirees of Kyiv region [20]. In that connection, agency sent materials to the National Police for further pre-trial investigation of the submission of false information in the financial report of the political party “Batkivshchyna” [19].

One of the leading Ukrainian think tanks – “the Centre for Political and Legal Reforms” – has been monitoring the NACP’s activities in this area since the commencement of the legislation on the prevention of political corruption. In its reports, CPLR notes that in the field of financing political parties, the NACP has not established effective cooperation with other state institutions (National Police, NABU, Accounting Chamber, CEC, etc.), and there is an open confrontation with some entities at all (Ministry of Justice) [21].

The CPLR report also mentions that the agency has never decided to suspend state funding of political parties, although civil society representatives are convinced that there are grounds for this in the cases of individual political parties. There is also a lack of transparency in the agency regarding the publication of conclusions on the results of the analysis of party financial reports: currently only a few paragraphs are published, which contain the operative part of the decision without a more detailed description and

argumentation [21].

Thus, although the NACP exercises its powers in the field of preventing political corruption, there are questions about the complete impartiality of the agency's officials during the consideration of the identified signs of violations by political parties. The lack of confidence in the agency's impartiality allows political party representatives to interpret persecutions for identified violations as politically motivated [50].

e) organization of work on prevention and detection of corruption

The essence of this area of activity of the National Agency for the Prevention of Corruption lies in conducting inspections of public authorities for their compliance with anti-corruption legislation, execution of internal anti-corruption programs, assistance to authorised persons (units) in preventing and detecting corruption in government, processing reports about corruption and corruption-related offences, preventing corruption in the private sector.

According to the agency's report about its activity for the last year, the NAPC conducted 18 scheduled and 12 unscheduled inspections concerning compliance with anti-corruption legislation by the authorities, processed 748 reports about corruption and corruption-related offences, provided methodological support to authorised persons (units) on the prevention and detection of corruption. Also, the agency was working on the development of the bylaws and methodological recommendations.

However, even in this direction abuses of authorised persons of agency were revealed. In particular, in March of this year, the media received the results of the agency's internal official investigation concerning the activities of the relevant department, which is coordinated by NAPC member Oleksandr Skopych.

According to the published materials, the employees of the department did not draw up reports on the revealed administrative offences related to corruption: so, 346 violations of the requirements of the financial control (submission of electronic declarations and notifications about significant changes in property status) were found, but only 17 protocols were drawn up on them.

It also follows from the report about the results of the inspection that the commission that carried out inspections in the authorities did not respond properly to the facts of intentional non-submission of declarations. During 30 conducted inspections for 2017, 348 cases of intentional non-submission of declarations were revealed, but according to these facts no materials were sent to the pre-trial investigation bodies, which have the authority to investigate the crimes provided for in Article 366-1 of the Criminal Code of Ukraine. Instead of sending the materials to the authorised law enforcement bodies, the commission that carried out inspections limited itself to proposing requirements to the heads of the bodies that were inspected [56].

There are problems with ensuring the protection of whistleblowers, which is referred to the powers of the NAPC

in accordance with the provisions of the Law of Ukraine "On Prevention of Corruption". In particular, the officials of the agency did not take any measures aimed at providing guarantees to whistleblowers in the National Agency for the Prevention of Corruption, although such guarantees are given to these persons in accordance with Art. 53 of this Law. The reaction of the agency's officials in another situation related to the protection of whistleblowers L. Holnyk and S. Bondarenko also seems to be insufficient. If in the case of Golnyk the NAPC at least issued an order to the chairman of the High Council of Justice concerning the chairman of the court who took negative measures of influence concerning the judge-whistleblower [23], the situation regarding pressure on Judge Bondarenko remained out of the agency's attention.

Another authority to be exercised by the agency in this direction is maintenance of the Unified State Register of Persons who have committed corruption or corruption-related offences. Currently, this register is still maintained by the Ministry of Justice, but in 2018 the NAPC announced the procurement of goods, services and works that are necessary for the launch of this register with its maintenance and administration by the agency's officials. As of the end of August 2018, the agency is still not maintaining this register.

In this area, the agency coordinates individuals and units that prevent and detect corruption in state institutions. Although the agency conducts training for such persons and

develops methodological materials, methodological recommendations and other documents for them, the quality of carrying out of the key action by these persons and units – preparation and realization of anti-corruption programs of state institutions – does not seem effective enough.

It is also worth noting the presence of persons with questionable compliance with the criteria of integrity of a civil servant. So, one of the leading positions in the financial control department which carries out checks of declarations and special checks of candidates for positions in government belongs to Tatiana Shkrebko. In September 2016 the court ruled that she was involved in illegal acts committed by a criminal group of former President Yanukovich and a former minister Klymenko, when Mrs. Shkrebko headed the district administration of the tax inspection in Kyiv [16]. Another employee with a dubious biography is Acting Chief of Staff of the Agency Alexander Pisarenko: at one time he, according to journalists of the publication "Our Money", could be involved in the peculation in a significant amount in favour of Yuri Ivanyushchenko – close person to former President Yanukovich [36].

There are also doubts about compliance with the legislation requirements and compliance with the criteria of integrity of NAPC member and former head of the agency N. Korchak. Detectives from the National Anti-Corruption Bureau are investigating criminal proceedings concerning possible declaration of unreliable

information in the annual declaration of the person authorised to perform state or local government functions. However, journalists revealed that the head of the Specialised Anti-Corruption Prosecutor's Office is taking measures that actually block further pre-trial investigation of this criminal case. Later, the media disclosed that detectives had prepared a notification on Korczak's suspicion of committing a crime, but it was not handed over.

Thus, in almost every key area of the agency's activity there are significant problems that have arisen either due to low effectiveness and irrelevant managerial qualities of the management of the agency, or because of the bias and motivated misuse of the authorised persons of the agency. Obviously, it is necessary to consider options under which the existing problems can be solved, and the agency will be able to become significantly more effective in exercising its powers and achieving its goals.

As for the sufficiency of the agency's powers, they, despite the presence of certain point problems, seem quite sufficient to achieve the tasks set before the agency. Of course, there is a need to make some legislative amendments that would facilitate the proper execution of the agency's powers (for example, the ability to draw up a report on an administrative offence related to corruption, without the mandatory arrival of a person to the agency; or giving the agency broader powers to coordinate the activities of authorised persons (units) on the prevention and detection of corruption in government, etc.). However, even after granting such powers, the agency will not be able to exercise them properly, effectively and impartially. The above-mentioned examples show that even in areas where the agency has sufficient rights and powers, they are sometimes used in a biased manner for persecution of individual persons.

Therefore, this option is not optimal for today and will not be able to lead to the expected increase of the effectiveness of the agency.

Prospects for rebooting the NAPC in a way of a change in the procedure for holding a competition on the positions in the agency and a change in its management and staff

From the very beginning of the agency's activity, after the choice of the first NAPC members, accusations in their motivated misuse started to appear [55]. Therefore, compliance with all guarantees of the agency's independence was called into question.

As the year and a half of the agency's fully fledged activity in all five areas of activity has shown, doubts about the agency's impartiality and especially about the impartiality of its management have only significantly increased. An investigation is currently conducting concerning the possible corruption abuses by the agency's management. Thus, one of the court rulings states the following: "The investigation detected that in the period from 2016 to the present, the Chairman and members of the NAPC... in order to obtain wrongful benefits committed a number of wrongful actions, namely organised making of decisions by NAPC members on the absence violations based on the results of special and full inspections of declarations of persons authorised to perform the functions of the state or local self-government, or their failure to conduct them"[53].

to Perform the Functions of the State or Local Self-Government? Who should perform managerial functions in the agency during the transition period? Should the agency remain under collegial management? Without answers to these questions, it is impossible to imagine the implementation of an effective reboot of the agency, which will increase its effectiveness.

However, according to the author, even the existing of these unanswered questions is not an obstacle to the implementation of this option for further development of public policy. It only emphasises the need for sufficiently detailed planning of all steps to be taken in the NAPC reboot process.

Prospects for the disbandment of the NAPC with the transfer of powers entrusted to the agency to other bodies and institutions

The second section describes the preconditions due to which in 2014 it was extremely important for Ukraine to create a basis for the establishment of a separate preventive anti-corruption body. In general, these reasons can be reduced to the following: international requirements must be met (in particular, in order to liberalise the EU visa regime for Ukraine); inability to ensure political independence and objectivity during the performance of relevant functions within the old structures; low effectiveness of preventive anti-corruption activities.

which is now attributed to the NAPC powers.

It should be borne in mind that monitoring concerning Ukraine's compliance with its anti-corruption policy commitments is constantly carried out within the framework of the suspension mechanism of the visa-free regime. Therefore, the disbandment of the agency and the transfer of its powers to other subjects of power will serve as a basis for the suspension of the visa-free regime, which does not seem a realistic option for now in the current political realities.

In addition, the transfer of powers to other bodies will again lead to the division of preventive functions between many structures at the same time and to insufficient coordination of actions, and thus will negatively influence on the effectiveness of conducting such powers. It should also be recalled that in this case, anti-corruption powers will again be in the hands of the bodies that are not considered completely independent of political influence: for example, anti-corruption policy will be formed and implemented by a political executive body, the Ministry of Justice; inspections of compliance with anti-corruption restrictions and resolution of conflicts of interest will be conducted in cases of administrative offences by members of the National Police, whose independence is questionable; declarations of property and income of public servants will be verified by authorised persons of the State Fiscal Service, which also does not have sufficient guarantees of independence and is subject of considerable undue political influence.



6. CONCLUSIONS AND RECOMMENDATIONS

Taking into account the conducted analysis, the most sufficient and acceptable policy option is to reboot the NAPC by changing the procedure of the competition for positions in the agency and a change in its management and staff. However, in view of the current political realities and the reluctance of the political elite to continue implementation of the anti-corruption reform⁴, this option requires a clear understanding of how the agency should be rebooted step by step, from the ways of adoption of necessary legislative changes to understanding the features of the agency's work during the transition period. Exactly after this, the above-mentioned option can be successfully realised.

In practice, it is recommended to implement the following changes:

1) the commission of competition should not include persons authorised to perform the functions of the state or local self-government. NAPC members must be chosen by persons who have an impeccable reputation and significant social authority;

2) in case of prohibition of participation in the work of the competition commission of the persons authorised to perform the functions of

the state or local self-government, it is expedient to consider the possibility to change the composition of the competition commission;

3) all NAPC staff members should be recruited exclusively through competitive selection, which will be attended by representatives of civil society with significant social authority. Transfer of persons from other authorities to the agency should be prohibited;

4) it is advisable to introduce a periodic independent institutional audit of the agency's activities, as it is carried out in the Romanian National Integrity Agency. First such an audit should be conducted after a change in the agency's management to understand the current functional status of the agency;

5) the staff of the agency and the authorised persons of the NAPC who carry out inspections must have an autonomous status and sufficient guarantees of independence from interference in the course of inspections.

If all the outlined recommendations are implemented, it will be possible to reformat the agency. It will significantly increase the effectiveness of the NAPC through the practical ensuring of its independence. As the practice of the activities of foreign anti-corruption bodies shows, on the basis of which the recommendations of the activity of such institutions are formed, exactly the independence of the bodies is the cornerstone of their effectiveness.

4 This refers, first of all, to the implementation of such measures
anti-corruption reforms that lead to practical results rather than are
declarative and formal in nature. According to the author, the conclusion
about the unwilling of the political elite to continue anti-corruption
reform comes from a clear delay in the establishment of the Supreme
Anti-Corruption Court and a refusal to cancel the mandatory declaration
of assets of the representatives of anti-corruption CSOs.

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