

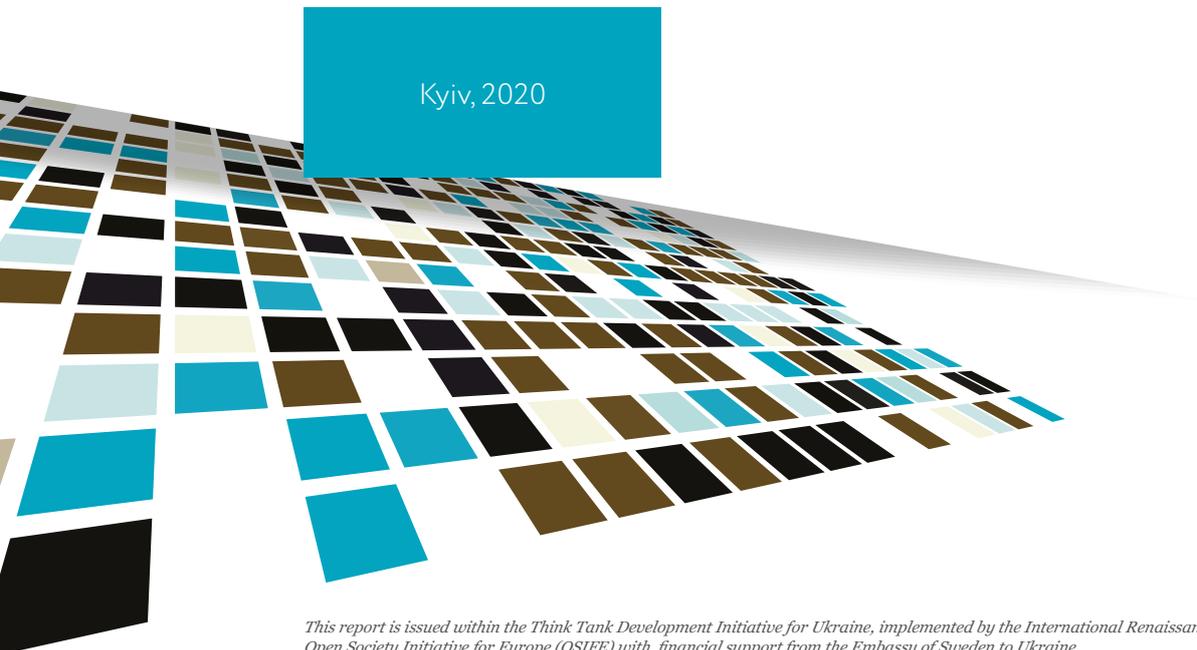
§§ LEGISLATIVE BASIS FOR THE *E-CASE MANAGEMENT SYSTEM*¹

The Electronic Criminal Proceedings Management System (eCMS) is designed to solve organizational problems that exist in the pre-trial investigation process, in particular, corruption offenses, and thus to make it more complete, faster and more impartial. In order to properly implement the system, it is necessary to create a new and change the current regulatory framework of Ukraine, since it does not fully ensure the functioning of the eCMS in the normative aspect. To this end, the Verkhovna Rada of Ukraine should take into account the key recommendations of the study:

1. The eCMS for the investigation of corruption offenses should be introduced through the adoption of *a law*, on the basis of which further changes will be made to the regulations governing the functioning of the bodies in which the system will function (NABU, SAP, HACC), and criminal procedural legislation;
2. The law, which will introduce the eCMS, must be coordinated with the judicial self-government bodies (HCJ), so that the implementation of the system will not be perceived as unlawful interference in the work of judges of the High Anti-Corruption Court.
3. It is necessary to amend the Constitution of Ukraine regarding the procedure for appointing the director of NABU. Since it is NABU that will act as the holder of the eCMS, the ruling of this body as unconstitutional can seriously affect the functioning of the system.

¹ These recommendations are based on the findings of the study "Legal aspects of implementation of the electronic system of management of criminal proceedings (e-Case Management System) into the criminal procedure for corruption offenses."

4. For the full functioning of the eCMS, the Code of Criminal Procedure of Ukraine requires minor amendments. Most of necessary changes are related to the *process of proving* (Art. 23 “Immediacy of the examination of evidence”, Art. 104 “Protocol”, Art. 105 “Appendices to the protocols”, Chapter 6 “Communications”, Art. 358 “Study of documents”), *submission of materials, complaints, statements, petitions and other procedural documents provided for by law and studying the materials of criminal proceedings in court* (Article 35 “Automated document circulation system of the court”, Article 221 “Studying the materials of the pre-trial investigation before its completion”, Article 290 “Disclosure of materials to the other party”, Article 317 “Materials of criminal proceedings (criminal case) and the right to study them”).
5. The current legislation allows processing information containing state secrets in information and telecommunication systems, therefore the eCMS, if technically feasible, may contain materials of covert investigative (search) actions. However, in the process of creating an integrated information security system for working with state secrets in the eCMS, it is worth paying attention to organizational problems.
6. In the process of amending the criminal procedural legislation, the Verkhovna Rada of Ukraine should clearly define the procedure for access of the defense party to the materials of criminal proceedings that will be contained in the eCMS. Indeed, in the conditions of access to such materials exclusively from specially equipped premises in NABU, SAP or HACC, the principle of equality before the law and the court may be violated (Article 10 of the Code of Criminal Procedure of Ukraine).
7. The eCMS is created for the system of bodies NABU, SAP and HACC. However, the question of the format in which the materials will be examined in the court of cassation remains open. It is recommended to bring in the Supreme Court (the Third Trial Chamber of the Cassation Court of the Supreme Court) to the process of developing appropriate changes to the legislation..



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