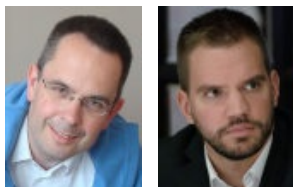


Combating corruption in Ukraine: Are the country's parliament and anti-corruption agency up to the task?



Countries in transition increasingly count on anti-corruption commissions and agencies in the fight against corruption. [Franklin De Vrieze](#) and [Luka Glušac](#) examine the case of Ukraine, assessing the role of the country's parliament and anti-corruption agency in combating high-profile corruption.

The establishment of an anti-corruption commission or agency (ACA) is often central to a country's strategy for tackling corruption or developing institutional integrity. However, the effectiveness of ACAs depends on the ability and will of governments to provide them with [authority, powers, and resources](#). ACAs must be independent, particularly from government, and so it is the responsibility of national parliaments to provide them with strong mandates, guarantees of independence and security of tenure, but also to hold them accountable for their activities.

The effective functioning of an ACA is therefore contingent on the correct relationship between it and the parliament. In a [new comparative study](#) covering Lithuania, Ukraine and Serbia, we present four parliamentary functions as key criteria for analysing the appropriateness of the relationship. These include, first, establishing the legal framework and mandate of the ACA; second, the selection and appointment of the leadership of the ACA; third, approving or reviewing the budget allocated to an ACA; and finally, follow-up actions to annual and other reports of the ACA.

The investigation and prosecution of high-profile corruption

Our study delves into the situation in Ukraine, where corruption is well recognised as [one of the most important problems facing society](#). Since the 2014 'Revolution of Dignity', Ukraine has undertaken significant legislative reforms to address corruption in public life and fight the culture of impunity for high level corruption. The establishment of new autonomous bodies for pre-trial investigation and prosecution – the National Anticorruption Bureau of Ukraine (NABU) and the Specialized Anti-corruption Prosecutor's Office (SAPO) – was a vital step forward in fighting high-profile corruption in Ukraine.

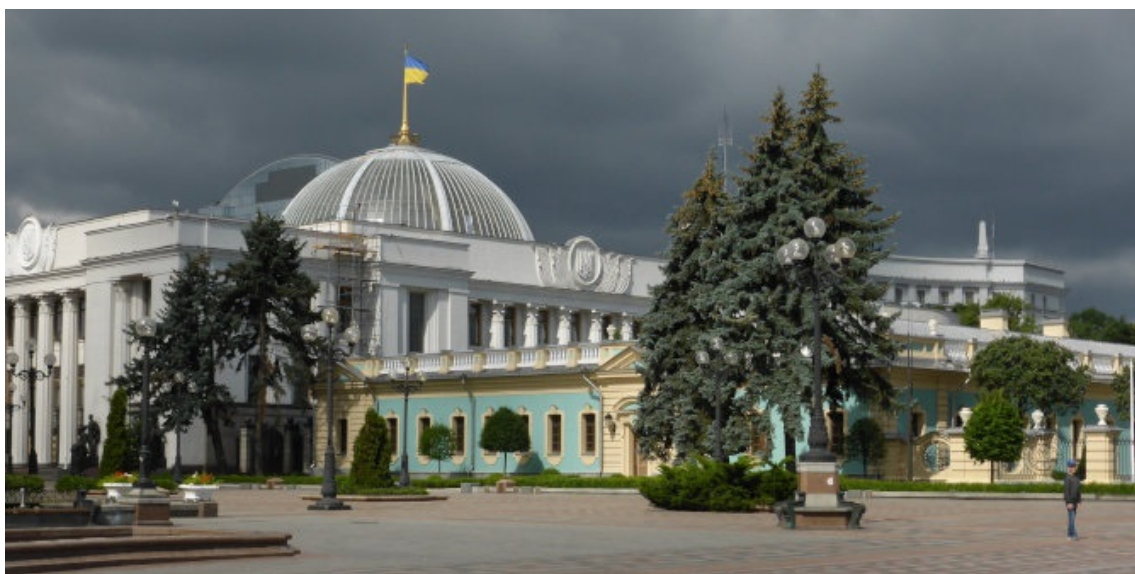
The NABU's independence is guaranteed in the following ways. First, the special procedure for the competitive selection of the Director of the NABU is provided for by the law, as well as an exhaustive list of reasons for terminating his/her powers. Second, the competitive bases of selection of other employees of the NABU, their special legal and social protection and proper wage conditions are all stipulated by law. Third, the procedure for the financing and logistics of the NABU is clear and established by law. Finally, there is the means to ensure the personal security of the NABU employees, their close relatives and property, [as determined by law](#).

The rigorous staff selection procedures and the efforts of civil society, backed by international partners, to ensure its institutional independence have produced an agency made from a different fabric to the rest of the law enforcement system. The NABU's main impediment to success is the lack of a properly functioning judicial system to try its cases. By April 2020, the NABU, in cooperation with the SAPO, had initiated 892 pre-trial investigations in high-level corruption cases, including against public figures in Ukraine. However, the [conviction rate](#) of these cases remains very low at 38 cases. According to the [European Commission](#), the vast majority of cases are blocked in Ukraine's ordinary courts. So far, no high-level official has been convicted of corruption.

The High Anti-Corruption Court of Ukraine

In June 2018, the parliament, the Verkhovna Rada of Ukraine (VRU), adopted legislation to establish a High Anti-Corruption Court (HACC). In April 2019, The HACC judges and those of the Appeals Chamber took the oath, while the court started working in September 2020. The HACC is now in charge of all cases under the NABU's jurisdiction.

With the start of work of the HACC, the problem of the low success rate of convictions is expected to improve. Indeed, there are great expectations that the HACC, widely perceived as the missing link, will guarantee that the NABU cases receive proper and efficient judicial follow up. The judicial outcome of the NABU's cases would also serve to assess not only its own work, but also that of the HACC as well.



Verkhovna Rada of Ukraine, Credit: [Hans Birger Nilsen \(CC BY-SA 2.0\)](#)

As [noted by some observers](#): “the HACC’s success depends on the quality of work conducted by NABU and SAPO; the HACC can convict only if investigators uncover, and prosecutors present, evidence of guilt beyond a reasonable doubt”. To that end, it is the NABU’s main task to ‘feed’ the HACC with well-investigated and evidence-rich cases. On the other hand, the HACC needs to be able to process these cases efficiently, objectively, and thoroughly. Therefore, the HACC constitutes a critical step in ensuring greater judicial efficiency, integrity, and independence in addressing corruption cases, especially those involving political elites.

The experience of the past five years in Ukraine has shown that it is far easier and more effective to [shrink the space for corrupt practices](#) than to punish corrupt individuals. Yet the culture of corruption and the negative public perception about state efforts to tackle it can only start to change when important officials are sentenced for corruption in high-profile cases.

Therefore, successful anti-corruption efforts cannot be reduced to simply passing laws and creating institutions, but also depend on the effective implementation of the reforms passed, a view emphasised by [GRECO](#), the Council of Europe’s Group of States against Corruption. Likewise, the independence and impartiality of anti-corruption institutions must be ensured not only in law, but also in practice.

Parliamentary oversight

While the Verkhovna Rada of Ukraine has adopted the legislation that establishes the anti-corruption institutions and has been approving their budgets, it has [limited itself to a legislative role](#), and has been less successful in fulfilling its other functions in regards to overseeing the work of these bodies.

First, the VRU is required to discuss the anti-corruption reports. The NABU provides the President, the VRU and the Cabinet of Ministers with a written report on its activities twice a year for the previous six-month period. According to the NABU legislation, the VRU Committee on Corruption Prevention needs to conduct, at least once a year, a public hearing on the activities of the NABU. However, there were no annual parliamentary hearings on NABU reports during recent years. Only in April 2019 did the Committee hold a first hearing regarding the work of the NABU for the previous four years.

Second, every year, an independent, external assessment or audit of the effectiveness of the NABU and its operational and institutional independence needs to be conducted. The assessment should be carried out by an external three-member commission. The President, the VRU and the Cabinet of Ministers each year should appoint one member of the commission. While the VRU has established the most developed procedure in selecting the member of the commission [through an open competition](#), no audit has been performed yet, despite pressure from the [international partners of Ukraine](#). Still, there is progress in strengthening the internal audit function of the NABU, as stated in the NABU's [Strategic Plan](#), adopted in May 2020.

There is, therefore, room for improvement of the VRU's practice in discussing the NABU's reports and a more proactive role in ensuring that an external annual audit is performed and properly followed up. With such improvements, the VRU would be in a better position to not only protect the NABU's independence, but also make it more accountable. This is even more necessary at the current moment in time, when the NABU has the right to freely access citizens' electronic communications. As the NABU becomes more powerful, it must act according to the idea that with more rights comes more responsibilities.

Ultimately, there is [no quick solution](#) for building a functioning anti-corruption system, even with political will. The issue of corruption touches upon all aspects of the state and measures to address it must similarly draw on many aspects of broader state reform issues, including civil service reforms, institutional capacity development, building integrity systems and upgrading policy capacities. With a strong mandate and leadership, independent anti-corruption agencies are an invaluable institutional feature for both prevention and law-enforcement.

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Note: This article gives the views of the authors, not the position of EUROPP – European Politics and Policy or the London School of Economics.

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