

REPLIES OF THE EUROPEAN COMMISSION AND THE EUROPEAN EXTERNAL ACTION SERVICE TO THE EUROPEAN COURT OF AUDITORS SPECIAL REPORT “REDUCING GRAND CORRUPTION IN UKRAINE: SEVERAL EU INITIATIVES, BUT STILL INSUFFICIENT RESULTS”

EXECUTIVE SUMMARY

I. Since the Revolution of Dignity, the EU has devoted considerable political capital and resources to pursue the anti-corruption agenda with Ukraine. In some areas, Ukraine has registered notable achievements, in others significant achievements are still lacking.

II. There is neither a universal definition of corruption nor clearly defined sub-categories. In its work with Ukraine on fighting corruption, the EU in its documents has not used the term “grand corruption”, but the more common term “high-level corruption”.

III. The complex societal phenomenon of corruption cannot be addressed in a linear way, through one unique strategy. It has to be tackled in a multi-dimensional way. A holistic, crosscutting approach in fighting corruption is indeed a globally recognised practice¹.

The EU has approached eliminating corruption through four major strands:

First, on the preventive side, through its macro-financial assistance (MFA) programmes, budget support, and the Visa Liberalisation Action Plan, the EU required the introduction of competition into various sectors. This, in turn, significantly limited opportunities and closed space for high-level corruption, for example in the gas and banking sectors, regarding the exchange rate, health, competition policy, public procurement and SOE governance.

Second, the EU played a major role, together with its international partners, in incentivising and setting-up the legal and institutional basis for the fight against high-level (grand) corruption: Ukraine introduced one of the most comprehensive asset declarations systems globally, and established specialised anti-corruption institutions. These are the National Anti-Corruption Bureau of Ukraine (NABU), the Specialised Anti-corruption Public Prosecution Office (SAPO), the High Anti-Corruption Court (HACC), as well as the National Agency for Corruption Prevention (NACP). The EU has provided expert support and capacity building to these institutions through its ongoing programmes, which have been developing a credible track record in complex high-level corruption cases, despite procedural complications due to the COVID-19 pandemic.

Third, the EU has invested heavily in empowering a vibrant civil society, investigative journalism and media, and businesses that promote a culture of integrity, both at central and regional levels.

Fourth, the EU has strongly supported the prosecutorial reforms, including through attestation of prosecutors at all levels, as well as the ongoing wider judicial reform. All of these elements are crucial for the EU’s multi-dimensional approach in tackling high-level (grand) corruption.

IV. The key EU documents related to Ukraine consistently highlight the fight against corruption as a key priority area of engagement in three important dimensions: first, through constant *policy dialogue*,

¹ e.g. see UN Convention against Corruption and technical guides; 2011 European Partners Against Corruption standards on Anti-Corruption Authorities; Council of Europe Group of States against Corruption 2019 annual activity report; 2018 OECD Strategic Approach to Combatting Corruption.

bringing up the fight against corruption in high-level engagements (e.g., summit declarations, high level visits), technical meetings and in key documents such as the Association Agreement and the EU Single Support Framework 2018-2020. Second, in terms of conditionality in *policy instruments* such as the MFAs, in the state budget support programmes and through the Visa Liberalisation Action Plan. Third, as part of *programming* that provided support to anti-corruption and judicial reforms.

Concretely, several EU MFA programmes included conditions related to the establishment of the anti-corruption institutions, including the High Anti-Corruption Court; the verification of asset declarations of high-level officials; introduction of competition in the banking and energy sectors, especially gas; streamlining judicial enforcement; the selection of the heads of anti-corruption agencies; and the operationalisation of the e-Case Management System for NABU and SAPO. Visa Suspension Mechanism reports regularly refer to the fight against high-level corruption and the need to ensure independence and effectiveness of institutions tasked to fight this particular type of corruption.

Similarly, there are multiple references to fighting high-level corruption in the programming documents of the EU Anti-Corruption Initiative Phase 1 and Phase 2, and it was also explicitly mentioned in the State Building Contract (the first expected result was: “serious progresses in the fight against corruption by setting up and ensuring effective functioning of a specialised anti-corruption investigative agency for high-level corruption crimes...”) and the 2015 Association Agenda.

V. A significant increase in transparency and investigative journalism activity since the Revolution of Dignity has contributed to the rise in the public’s negative perceptions about societal ills. This, in turn, impacts on the reliability of corruption perception indices, such as the Transparency International index.

VII. The EU has strongly supported wider judicial reform efforts as well as the development of the entire anti-corruption architecture. Trust in the above mentioned established anti-corruption institutions is comparatively high, and these have been developing a track record of cases, often resulting in convictions. That trust, is, however, affected by the national and regional media companies that are owned by vested interest groups, many of which are themselves subject to anti-corruption investigations.

The aim of setting up the anti-corruption institutions was to create a specialised institutional track that is operating in parallel to the ordinary criminal justice chain, which has been unwilling/unable to tackle corruption cases. This is best exemplified by the notorious Kyiv Administrative District Court which has consistently rendered judgments undermining the fight against corrupt practices. Currently, President Zelensky has registered a law that would abolish this court and transfer his jurisdiction to another judicial body.

The unreformed parts of the judiciary and the judicial governance bodies could be expected to exert some influence on the specialised anti-corruption institutions, however multiple safeguards exist that mitigate such risks. While the independent anti-corruption institutions are already fully operational and deliver results, the EU is in parallel supporting the comprehensive judicial and civilian security sector reforms.

VIII. The legal basis for the launch of the e-Case Management System for NABU and SAPO (one of the EU MFA V conditions) was adopted by the Ukrainian Parliament. It paves the way for the digitalisation of the entire criminal justice chain, which will boost transparency and efficiency.

The PRAVO-Justice project (component 4) is addressing the issue of inter-operability of databases and reliability of registers.

IX. The level of coordination, including cross-conditionality, among Ukraine's international partners has been exemplary. This has been the case for the anti-corruption architecture, the sectoral anti-corruption reforms and the reform of the prosecution and the judiciary.

X. It is generally acknowledged that practitioners and scholars in the field still face limitations and perennial challenges in measuring changes in corruption levels as well as whether anti-corruption efforts progress are having impact. The OECD Anti-Corruption Network, through the EU for Integrity Program to Fight Corruption, is piloting very detailed anti-corruption performance indicators that are being tested in several countries, including Ukraine. Still, this remains a complex and slowly progressing area due to the difficulty of measuring corruption directly. The current tendency is to rely often on indirect measurement through proxy indicators which are context-specific but more observable and actionable.

XI. Please see Commission's replies to ECA's recommendations below.

INTRODUCTION

05. There is neither a universal definition of corruption nor clearly defined sub-categories. In its work with Ukraine on fighting corruption, the EU has not used the term "grand corruption" in its documents, but has used the more common term "high-level corruption".

12. The EU approach to eliminating corruption has been developed in a tailor-made fashion for Ukraine. It is now being emulated in other countries. It includes incentivising competition in various sectors of the economy, thus limiting the opportunities for corruption to occur.

OBSERVATIONS

22. Root causes of grand corruption are generally known, i.e. would be considered in a Court of law as "a notorious fact" which would not require proof. Ample evidence of studies that expand on the root causes of grand corruption exists. EU services have commissioned studies and used a number of credible sources including meetings, public/media/official information, and statistics prior to programming technical assistance for Ukraine.

24. The key EU documents related to Ukraine consistently highlight the fight against corruption as a key priority area of engagement in three important dimensions: first, through constant policy dialogue, bringing up the fight against corruption in high-level engagements (e.g., summit declarations, high level visits), technical meetings and in key documents such as the Association Agreement and the EU Single Support Framework 2018-2020. Second, in terms of conditionality in policy instruments such as the MFAs, in the state budget support programmes and through the Visa Liberalisation Action Plan. Third, as part of programming that provided support to anti-corruption and judicial reforms.

Concretely, several EU MFA programmes included conditions related to the establishment of the anti-corruption institutions, including the High Anti-Corruption Court; the verification of asset declarations of high-level officials; introduction of competition in the banking and energy sectors, especially gas; streamlining judicial enforcement; the selection of the heads of anti-corruption agencies; and the operationalisation of the e-Case Management System for NABU and SAPO. Visa Suspension Mechanism reports regularly refer to the fight against high-level corruption and the need to ensure independence and effectiveness of institutions tasked to fight this particular type of corruption.

26. The Commission has indeed used a multi-dimensional approach to fighting corruption. Consequently, the EU has approached eliminating corruption through four major strands: eliminating space for corruption through conditionality and policy dialogue, setting up and capacity building of independent anti-corruption institutions, support to civil society and investigative media, and judicial /prosecutorial reform.

27. The complex societal phenomenon of corruption has to be tackled in a multi-dimensional way. A holistic, crosscutting approach in fighting corruption is indeed a globally recognised practice.

The EU has approached eliminating corruption through four major strands:

First, on the preventive side, through its macro-financial assistance (MFA) programmes, budget support, and the Visa Liberalisation Action Plan, the EU required the introduction of competition into various sectors. This, in turn, significantly limited opportunities and closed space for corruption, for example in the gas and banking sectors, regarding the exchange rate, health, competition policy, public procurement and SOE governance.

Second, the EU played a major role, together with its international partners, in incentivising and setting up the legal and institutional basis for the fight against high-level (grand) corruption: Ukraine introduced one of the most comprehensive asset declarations systems globally and set up specialised anti-corruption institutions. These are the National Anti-Corruption Bureau of Ukraine (NABU), the Specialised Anti-corruption Public Prosecution Office (SAPO), the High Anti-Corruption Court (HACC), as well as the National Agency for Corruption Prevention (NACP). The EU has provided support to institutions and capacity building to these institutions through its ongoing programmes, which have been developing a credible track record in complex high-level corruption cases, despite procedural complications due to the COVID-19 pandemic.

Third, the EU has invested heavily in empowering a vibrant civil society, investigative journalism and media, and businesses that promote a culture of integrity, both at central and regional levels.

Fourth, the EU has strongly supported the prosecutorial reforms, including through attestation of prosecutors at all levels, as well as the ongoing wider judicial reform. All of these elements are crucial for the EU's multi-dimensional approach in tackling high-level (grand) corruption.

29. Project 12, with a budget of €14,5 million is in fact the largest Commission project in the area of anti-corruption.

32. The EU has addressed eliminating the space for corruption and economic influence of oligarchic structures also through the MFA conditionality: for example by pushing for the unbundling of Naftogaz, eliminating arbitrage in fixed exchange rate, and cleaning up the banking sector. In addition, the asset declaration system the EU supported played a major role in exposing those corrupt officials that oligarchs have been using to promote their interests.

34. It is indeed the Council that adopts legal acts concerning sanctions. EU foreign policy decisions require unanimity among Member States.

The Council is making every effort to ensure that listings meet all legal requirements as defined by the EU Courts, taking into account the evolving case law, so that the designations are not successfully challenged in EU courts.

It is for the Council to adopt legal acts introducing asset freezes and other restrictive measures and for EU Member States to implement those measures. This regime aims at facilitating asset recovery by

the Ukrainian State by asset freezes and preventing money transfers to other countries. Visa bans, on the other hand, serve a different purpose which falls outside the scope of the misappropriation sanctions regime.

36. The project does not focus on grand corruption but on the civilian security sector reform. The project has been able to get into full speed recently. EUAM Ukraine has delivered several trainings and project equipment in conjunction with Pravo Police's capacity building activities.

The National Police of Ukraine has received in December 2020 two EU-funded state-of-the-art modular data centres, networked with existing NPU telecommunications infrastructure. The new data centres will support operations and more than 45,000 police officers across Ukraine, at national and community levels, including 102 Police emergency lines.

38. The EU strongly supported corporate governance reforms in SOEs and the restructuring/unbundling of NAFTOGAZ, both through MFA conditionality. We have also supported restructuring and governance improvements for a number of SOEs and SOBs, through by the far largest contribution to an EBRD multi-donor account.

40. First, the EU introduced enforcement reform-related conditions into the EU MFA V programme. Secondly, the Commission implemented Project 17 (Pravo Justice) that has been carrying out in-depth analysis of the challenges related to the enforcement policy and moratoria and is providing extensive policy advice for the continuation of reforms. Challenges in this area are complex and multi-faceted, requiring a longer-term response strategy, along with political will.

41. To the factual update on Naftogaz Supervisory Board:

On 19 May 2021, the Cabinet of Ministers re-appointed for 1 year 5 current members of the company's supervisory board until the competitive selection of a new independent supervisory board is completed, dismissed Robert Bensch from the SB of Naftogaz and announced the competitive selection for 4 independent SB members.

42. The EU-supported SOE corporate governance reforms included numerous anti-corruption measures directly related to good corporate governance, sound financial management, transparency and accountability. Our efforts were channelled through the SOEs reform-related conditions in multiple EU Macro-Financial Assistance Programmes, high-level policy dialogues/meetings, interventions under the EBRD multi-donor account, participation at the privatization working group and observation of selection processes for the supervisory board members in SOEs and funding the reform support teams in the Ministry of Economy and other Government entities.

43. State aid and competition are complex reform areas. In EU countries, reforms in this area took many years to be completed. This reform agenda will also take time in Ukraine. Ukraine has made some progress in recent years, including on strengthening the institutional independence of AMCU and improving the legislative and enforcement framework to align with EU state aid and competition rules. The EU provided support to both the legislative framework and the enforcement capacity. EU projects, namely projects 10 and 19 the Court scrutinized, provided support to the institutional capacity with a focus on the ability to enforce.

As regards independence of ACMU, while some challenges and risks remain, significant progress has been made to strengthen the independence of AMCU in recent years as outlined in the OECD SME Policy Index report. The reference to the independence of AMCU in the Association Implementation Report refers to a specific issue related to the selection process of the head of the public procurement appeal body (that in Ukraine is one of the AMCU commissioners).

44. Common reply to para 44 and Box 1:

Given that it is generally acknowledged that practitioners and scholars in the field still face limitations and perennial challenges in measuring changes in corruption levels as well as whether anti-corruption efforts progress and are having impact, the OECD Anti-Corruption Network, through the EU for Integrity Program to Fight Corruption, will develop very detailed anti-corruption performance indicators with clear and tailored benchmarks, that are being tested in several countries, including Ukraine. Still, this remains a complex and overall slowly progressing area due to the difficulty of measuring corruption directly. The current tendency is to rely often on indirect measurement through proxy indicators which are context-specific but more observable and actionable.

46. It is not clear what the added value of a further, specific report should be. SSF has specific priorities and objectives with clearly identified indicators. As a CSDP Mission, EUAM Ukraine is an instrument agreed by the Council, which has its own monitoring and evaluation system. Benchmarking was introduced as a means for more rigour and accountability in the Mission mandate delivery. Targeted benchmarks are identified during the planning phase to allow the missions and CPCC to conduct monitoring and assessment on the implemented activities. EUAM Ukraine follows reporting guidelines agreed by EU Member States. The Mission's impact and achievements are reported every six months to the EEAS/CPCC and endorsed by EU Member States in the form of formal reports based on benchmarks and against the Mission's mandate.

47. The annual External Action Management Report (EAMR) includes the progress achieved in the priority areas mentioned in the Single Support Framework 2018-2020. The EAMR is an important management tool to monitor the implementation of programmes and the key performance indicators. However, it does not systematically refer to the indicators included in the SSF 2018-2020.

49. As a civilian CSDP Mission, EUAM Ukraine follows reporting guidelines agreed by EU Member States. The Mission's impact and achievements are reported every six months to the EEAS/CPCC and endorsed by EU Member States in the form of formal reports based on benchmarks and against the Mission's mandate. In addition, prior to the extension of each mandate, a comprehensive Operational Assessment and Strategic Review are carried out. These processes serve as basis for the extension of the mandate. EEAS is currently working on an impact assessment methodology on the medium and long term-effects of the activities of CSDP Missions.

53. Another key achievement was the support to the highly transparent and merit-based selection of the High Anti-Corruption Court judges with the involvement of international experts, and subsequent support to the Court becoming fully functional.

56. The Commission considers that it made technical assistance conditional. The Commission has, for instance, temporarily suspended EUACI (Project 12) support to one of its key institutions (the NACP) when its leadership's integrity was compromised. For similar reasons, support was also substantially reduced to the High Council of Justice within the EU Pravo Justice programme (Project 17).

58. EUAM contributed with strategic advice to the law signed in September 2019 to reform the prosecutor's office. The Mission was also deeply involved in the subsequent attestation of the prosecution service that led to 2/3 passing the knowledge, competence, and integrity tests.

Box 4 - The Commission and EUAM contributions to re-assessing and selecting prosecutors

To date, out of some 12000, only 7700 prosecutors passed the attestation. Some 1800 cases challenging the attestation are pending in courts. The attestation reform was based on the October

2019 law that introduced a 2-year interim reform period during which the ordinary prosecutorial bodies, including QDCP, had to be suspended, so that the entire prosecutorial system can be rebooted.

Moreover, in May 2021, the Prosecutor General adopted a new Regulation for the appointment to administrative positions (MFA V condition), which will apply for the interim reform period and work is underway to improve the procedure for the permanent period starting in autumn 2021.

59. Trust in law enforcement and prosecutorial systems in Ukraine is difficult to achieve quickly. It is also difficult to measure, since it depends on the quality of surveys and it is affected by multiple factors, not least the media. The trust in law enforcement agencies remains low, but has – with some exceptions and decrease in 2020 – increased over the years. In addition to the EUAM commissioned polls, it is important to look at the trends of other widely recognised polls, such as the ones conducted by the Razumkov Centre² on trust of law enforcement agencies and prosecution¹. EUAM always compares multiple sources and includes also data on experience and efficiency of LEAs when assessing developments in citizens' views on LEAs in Ukraine.

61. The 2016 reform package (which formed the basis of assessment for State Building Contract compliance) were positive and sufficient. Indeed, the Venice Commission positively assessed the constitutional changes and the complementary legislative rules. Critical analyses that the Court refers to, were only made later and thus could not serve as basis for assessment, *ratione temporis*. The SBC only provided for the adoption of legal changes, but not for their full implementation. Indeed, given the time such deep change in the judicial system requires, requiring full implementation would have defeated the entire purpose of the SBC, which was to deliver quick support for the initial time post-Maidan.

62. The Ukrainian Parliament adopted on 29 June 2021 the law to re-establish the HQCJ. The law introduces a new transparent and merit-based selection procedure for its members, including a voting model allowing for a decisive role of internally nominated independent experts, in line with the Venice Commission recommendations. For technical reasons, the law will need to be re-voted in mid-July. A draft law providing for the vetting/integrity check of current/future HCJ members is scheduled for adoption in mid-July.

Box 5 - Commission support for the e-case management system

In June 2021, the Ukrainian Parliament adopted the law that created the legal basis for the e-case management system in the anti-corruption agencies and in all other law enforcement agencies in Ukraine. The e-case management system will boost transparency and efficiency in criminal investigations and reduce corruption risks.

71. AC institutions have judges, prosecutors and investigators selected following a rigid procedure, including integrity check. They also have an exclusive jurisdiction to adjudicate high-level corruption cases and special investigative tools. Thanks to this, robust capacity building and IT support, these agencies became operational and started building a credible track record.

Since the start of HACC operation at the end of 2019, more than 34 verdicts were already rendered, including effective prison sentences. Many more cases are coming to an end and verdicts are expected soon.

² Source for the Razumkov poll for 2019-20 and only in Ukrainian: <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/otsinka-sytuatsii-v-kraini-dovira-do-instytutiv-suspilstva-ta-politykiv-elektoralni-orientatsii-gromadian-berezen-2021r>

Building a track record in complex corruption cases takes time. Moreover, COVID-19 delayed many proceedings.

It should also be recognised that thanks to the asset declaration system becoming operational (part of EU conditionality under MFA and SBC), hundreds of judges decided to resign from their positions in 2016-2018 rather than undergoing the qualification evaluation or submit asset declarations (eg. https://hcj.gov.ua/sites/default/files/field/file/zvit_2016.pdf)

73. The decision was taken both on the basis of existing progress and on the basis of the commitment by the Ukrainian authorities. Thanks to the anti-corruption benchmarks, the EU support to anti-corruption in Ukraine received increased attention from the Ukrainian authorities and increased engagement.

Box 6 - Examples of anti-corruption conditions/benchmarks with assessment issues

The assessment was based on a combination of progress achieved and firm commitments taken by Ukraine. At the time of assessment, there had been a positive track record regarding implementation of the adopted anti-corruption legislation, notable NABU was set up, the Head appointed, the agency staffed and trained and NAPC's board was elected and the SAPO head appointed. With these foundations in place, implementation was imminent.

Indeed, the Sixth Progress report on the Implementation by Ukraine of the Action Plan on Visa Liberalisation mentions a number of positive developments as regards the fight against corruption. It clearly states that "The progress noted in the fifth report on anti-corruption policies, particularly the legislative and institutional progress, has continued." For more details see also the staff working document accompanying the report SWD(2015) 705 final - pages 14 to 16. The report mentions the commitments made by Ukraine. The Sixth report mentions "Based on these commitments, the anti-corruption benchmark is deemed to have been achieved" with the aim of incentivising Ukraine to fulfil these commitments. However the conclusion that the benchmark is fulfilled is based also on the progress achieved mentioned on pages 5-6 (and detailed in the staff-working document on pages 14-16).

The key term regarding the fulfilment of this condition was whether in November 2016 (*and not in 2018 when the decision on MFA III was taken*), the system was "effective". Given the complexity of the system, the question whether the overall system was effective could not be answered in a straightforward way and with mathematical precision, but required a subjective appreciation. In other words, there was a certain margin of discretion in that appreciation. Based on the facts that the electronic system was launched on 1st September 2016 and on 30th October 2016 103.268 yearly declarations were already submitted to the system and that declarations were publicly available on the website of the National Agency for Prevention of Corruption (NAPC) remaining within the remit of its discretion, the Commission considered that the system was effective. This appreciation was not taken lightly, but, in addition to the above facts, was based on the assessment of external experts. There was no factual indication in November 2016 that would have led to the conclusion that the Commission or any other actor involved in the decision-making overstepped its margin of discretion.

The condition focuses on the establishment and independent operation of NABU, SAPO and NAPC. At the time of assessing compliance, all three institutions were established and had functional independence. Their independence from political interference could not possibly be assessed at a point of time and needs to be re-affirmed on an on-going basis.

76. The Commission considers that not enough credit is given to the asset declaration system. Asset declarations (AD) are a powerful tool for prevention of corruption. They do not only serve as a basis

for possible criminal investigations. Thus, the ECA's assessment underestimates the indirect impact and positive effect which the AD system has as a preventive tool: for example, the publicly available AD served as a main source for the work of the (internationalised) selection panels when assessing the integrity of the candidates (Public Council of International Experts/HACC judges 2018; NACP head selection in 2019 and ongoing SAPO head selection in 2020/2021). Furthermore, already the obligation to file the AD publicly made hundreds of judges to resign from their positions in 2016 and later years. Also, the civil society and investigative journalists often use the available AD in their work for disclosing corruption and organised crime schemes.

As for the effectiveness of the AD system, there were some recent upgrades to the system and the rules of verification which have made it more effective. Moreover, the NACP leadership was selected with international expert involvement, which ensured NACP's independence and pro-activeness in the recent period, inter alia as regards the AD verifications.

77. Regarding the anti-corruption strategy 2018-20, that strategy, despite a number of shortcomings, would have brought progress, which is why it encountered strong resistance from vested interests. Under these circumstances, the EU decided, even if the strategy was considered as far from being perfect, to support it. The overall assessment of a strategy can be positive even if not all and every recommendations is taken into account.

However, even that support and insistence was not strong enough to ensure adoption.

There are limits to which the EU can influence the strategies of a sovereign third country.

78. The EU temporarily suspended EUACI support to one of its key institutions for support (the NACP when the (also reputational) risk became too high).

79. In fact, project 12 (EUACI) directly supported the re-structuring process for the NACP through legislative advice on the adopted law as well as nominating international experts and establishing a full-fledged secretariat support for the selection commission.

80. On 29th of June 2021, the Ukrainian Parliament adopted the law that restored a deterrent sanction regime for failure to submit asset declarations and false declarations.

82. NABU relies on the analytical service of SFMS and the inter-agency cooperation between the two has been strengthened with the support of EUACI (see EUACI final results report, page 38).

As regards the Security Service of Ukraine, with strong support from the EU, a draft law profoundly reforming this institution is currently under consideration in the Ukrainian Parliament.

83. SAPO is legally and operationally independent from the Office of the Prosecutor General. It is empowered to carry out its mandate autonomously. At the moment, however, due to the absence of a Head of SAPO, a limited number of the head's functions are carried out by the Prosecutor General.

The Commission is supporting the ongoing selection process for a new SAPO head through nomination of international experts to the selection commission as well as secretariat support for the commission's experts provided by EUACI.

84. The HACC was finally created mainly due to the relentless political pressure from the EU and other international partners, particularly the IMF and the G7.

To date, the HACC has given 38 verdicts (33 convictions and 5 acquittals) and over 200 cases are pending. This is a significant increase of adjudication of high-level cases when compared to the situation before the HACC became operational.

86. As of June 2021, the HACC rendered 38 judgements, of which 33 are convictions and 5 acquittals.

CONCLUSIONS AND RECOMMENDATIONS

89. Over the last 5 years, the EU played a major role in setting up the legal and institutional framework that is a necessary requirement for the fight against high-level (grand) corruption, operationalising this framework in practice, upgrading and making more transparent the public procurement system, empowering a vibrant civil society and investigative journalism community. All these elements are crucial for the fight against high-level (grand) corruption. Specialised AC institutions have also started developing a credible track record in complex high-level corruption cases, even though the specialised judicial chain was completed only at the end of 2019 and COVID-19 had a negative impact on proceedings.

90. Please see our replies to paragraph IV and other paragraphs in the Executive Summary section above, as well as to paragraphs 22-37 above. As regards “a model for restricting entry”, the Union introduced the Ukraine misappropriation restrictive measures in 2014 in order to facilitate asset recovery by freezing the funds of persons who are subject to criminal proceedings in Ukraine for the misappropriation of Ukrainian State funds. The scope of the regime is targeted and covers cases where public funds or resources were misappropriated and a financially quantifiable harm was caused to the State.

Measures do not include a travel ban as it falls outside the scope of the misappropriation sanctions regime.

91. EUACI largely focused on the fight against grand corruption. Most of anti-corruption institutions it supported deal exclusively with grand corruption. Please see also our replies above (eg. 29).

Recommendation 1 – Design and implement specific actions that target grand corruption

- a) The EEAS and the Commission accepts the recommendation.
- b) The EEAS and the Commission accepts the recommendation.
- c) The EEAS and the Commission accepts the recommendation

Recommendation 2 – Assess and adjust the scale of its support for civil society organisations and investigative journalism

- a) The Commission accepts the recommendation
- b) The Commission accepts the recommendation

Recommendation 3 – Contribute to removing impediments to free and fair competition

- a) The Commission accepts the recommendation.
- b) The Commission accepts the recommendation.
- c) The Commission accepts the recommendation.

94. It is generally acknowledged that practitioners and scholars in the field still face limitations and perennial challenges in measuring changes in corruption levels as well as whether anti-corruption efforts progress are having impact. The OECD Anti-Corruption Network, through the EU for Integrity Program to Fight Corruption, is piloting very detailed anti-corruption performance indicators that are being tested in several countries, including Ukraine. Still, this remains a complex and slowly progressing area due to the difficulty of measuring corruption directly. The current tendency is to rely often on indirect measurement through proxy indicators which are context-specific but more observable and actionable.

EUAM Ukraine follows reporting guidelines agreed by EU Member States. The Mission's impact and achievements are reported every six months to the EEAS/CPCC and are endorsed by EU Member States. In addition, prior to the extension of each mandate, a comprehensive Operational Assessment and Strategic Review are carried out. EEAS is currently working on an impact assessment methodology on the medium and long term-effects of the activities of CSDP Missions.

Recommendation 4 – Improve monitoring and reporting in order to inform and take corrective action where needed

a) The Commission partially accepts the recommendation: the suggested pre-defined (quantifiable) targets and indicators can only be included in the reporting whenever this is feasible.

Indeed, reporting and monitoring is already done intensively, requiring substantial administrative resources. Reporting and monitoring (eg. Association Implementation Reports or other reports within the agreed governance of the Association Agreement, e.g. within the framework of the Justice and Home Affairs sub-committee) follow generally agreed rules/methodologies for Neighbourhood countries (and beyond) that cover all reform areas in detail, including those of relevance in the fight against high-level corruption. There is little flexibility (nor would there be added value) to introduce a specific monitoring system for Ukraine in such cases.

As regards the monitoring under the visa suspension mechanism, the Fourth Report on Visa Suspension Mechanism, expected to be adopted in 2021, will use a different methodology, including the contributions of Member States and making an increased effort to assess the continuous fulfilment of the visa liberalisation benchmarks in more detail for Eastern Partnership countries.

b) The Commission accepts the recommendation.

97. The High Qualification Commission of Judges is expected to be set up through legislation currently pending in the Rada in second reading. That body will have the task of vetting the remaining judges.

98. The fact that a constant battle to preserve the high-level anti-corruption institutional framework is ongoing means that this framework is effective and has the capacity to challenge vested interests.

Recommendation 5 – Emphasise integrity and commitment to reform when providing capacity-building support for institutions

a) The Commission accepts the recommendation.

b) The Commission accepts the recommendation.

99. As noted in our reply to Box 5 above, in June 2021, the Ukrainian Parliament adopted the law that created a clear legal basis for the launch of the e-case management system in the anti-corruption

agencies and in all other law enforcement agencies in Ukraine. The e-case management system will boost transparency and efficiency in criminal investigations and reduce corruption risks.

Recommendation 6 – Support the digitalisation of registers

The Commission accepts the recommendation.

Recommendation 7 – Stipulate stricter conditions for Commission support

a) The Commission accepts the recommendation.

Judiciary reform, prosecution reform and governance of the anti-corruption institutions have been integral part of the structural policy conditionality attached to Macro-financial assistance programmes to Ukraine. Given the remaining challenges, it is expected that these elements of reform will remain part of any future MFA-related conditionality.

b) The Commission accepts the recommendation
