

# Monthly anticorruption overview - October 2017

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October was rich on both positive news and challenges Ukraine was facing in the course of its anticorruption reform. Vital step was President Poroshenko's reversal of his stance regarding anticorruption court under the influence of Venice Commission's opinion. Positive news include NABU pursuing investigations against the "untouchables" and Ukraine having been rewarded for progress in beneficial ownership disclosure. In addition, certain progress has been made in the area of asset recovery with the new Agency having received first assets for management. Worrying tendencies show up in continuous inactivity of the Agency for corruption prevention and its failure to ensure e-declarations verification, legitimization of hidden e-declarations of the Security Service of Ukraine (SBU) top-management by the court, and numerous attacks on reforms drivers.

## *Anticorruption Court as a Key Battlefield*

Key anticorruption victory of the month was doubtlessly the opinion of the Council of Europe's Venice Commission. It supported the establishment of the **separate anticorruption court**. In addition, the Commission stated that international involvement in the selections is important:

*"Additional safeguards should be introduced to ensure that the decision-making body in the appointment procedure of judges is sufficiently independent of the executive and legislative powers. This could be achieved, for example, by giving a non-political agency such as the High Qualifications Commission of Judges (HQC) the right to nominate members to that body, in addition to the members proposed by international donors. Another option would be not to create an additional body such as the proposed Competition Commission but, as a temporary measure pending completion of the judicial evaluation, to include experts proposed by international donors as supernumerary members of the HQC to participate in the selection procedure for judges in the anti-corruption courts and to give them a crucial role in that procedure."*

The Venice Commission strongly recommended that the President submits his draft law with their recommendations taken on board to the Parliament. In addition, the EU announced readiness to assist Ukraine with judges' selections.

In addition, the IMF confirmed anticorruption court to be prior action for the next tranche of the loan.

Though the President came to terms with anticorruption court establishment, certain roadblocks remain on the way forward of the reform. Poroshenko's further tactics foresees postponement that shows up in the attempts to shift the responsibility for drafting the law to the senseless Parliamentary working group. Simultaneously, the second approach to ensure delay is enacted with the President claiming the last obstacle for his draft law being submitted to the Parliament is non-withdrawn draft #6011 on anticorruption court. The irony is that MPs of the Poroshenko Bloc, who are in the majority, failed to vote for this withdrawal, thus ensuring the President can continue to use this argument.

Putting aside all the pretexts, the President has to submit his draft law to the Parliament without any further delays.

## *Legitimation of Hidden Declarations of SBU Top-Management*

Failure of the month is definitely NACP's continuous inactivity that allowed court to **legitimize classification of all SBU stuff's e-declarations**. NACP was tasked by the law to adopt the special procedure for secret agents' e-declarations submission but has been failing to complete this for more than a year already. Using the absence of the special procedure as a pretext, the SBU launched their own parallel secret e-declarations system and hid the declarations of all their staff, including the senior officials, who do not work undercover at all. Moreover, the verdict articulates that no violations were done by the Agency, as lawmakers did not set any deadlines for special procedure adoption, thus allowing this process to be everlasting.

But even more dangerous conclusion is that the court finds all of the investigation, intelligence and counterintelligence staff to be secret. This allows a number of other state agencies, part of whose personnel does investigation or intelligence to establish their own declaration systems and ignore e-declarations register. [More details](#).

## *Other highlights of the month: Positive Trends*

**NABU continues to investigate the "untouchables"**. Over the last month NABU has carried out a number of headline-making cases. The investigation into corruption of fuel procurements for the Ministry of Defense was marked with detention of the Deputy Minister of Defence, as one of the suspects in embezzlement of 149 million UAH. He was put under home arrest for 2 months. In the course of the second so-called 'backpacks case' investigation into procurements for the Ministry of Interior was done with the Minister's son having been detained by NABU and released by the court with the electronic bracelet as pre-trial measure.

In addition, NABU delivers some of the very tangible results: the detectives found and successfully returned radiological equipment for childhood cancer treatment to key Pediatric Clinic "Okhmatdyt". It was bought at the expense of state budget back in 2012, but it was first – never installed in the clinic, and then hidden.

Ukraine is imposing some revolutionary changes that have the chance to become role models for other countries. One of the areas is **beneficial ownership disclosure**. During the EITI Global Conference in October 2017, Ukraine received a reward for substantial progress in beneficial ownership disclosure. Ukraine was the first country in Europe that legislatively obliged all companies to report their beneficial owners to the public registry.

October 2017 was also marked with certain progress in **asset recovery**. Prosecutor General's Office informed that assets seized in the course of investigation into activity of former Yanukovich ally and Minister of Income Oleksandr Klymenko were already transferred for management to the Asset Recovery and Management Agency (ARMA). These are the first assets newly established institution received for management. Among them there are 154 real estate properties, including fancy apartments in Kyiv downtown as well as houses in Kozyn – luxurious Kyiv suburbs.

## *Other highlights of the month: Worrying Trends*

Just 55 out of 1,3 million officials' **electronic asset declarations** have passed full verification by the Agency on Corruption Prevention. No signs of illicit enrichment or false statements have been detected. Nobody should have any illusions regarding willingness of the Agency to pursue this reform. Due to the

pressure from the EU the Agency is pretending to introduce automatic system of verifications, but this is not working. In order to get real and tangible outcomes, we are convinced that the powers to conduct full verification of e-declarations of top officials who are under NABU jurisdiction should be transferred to NABU – as an interim measure. In a strategic perspective it is important to reboot the Agency and its current selection panel to make sure new independent and professional Agency commissioners take over.

Unfortunately, the **attacks on reformers** go on and enlarged their scale. A number of reputable NGOs that work on the healthcare reform including the “Patients of Ukraine”, were accused by the PGO, the National Police and the SBU in embezzlement of money of the international organization “The Global Fund to Fight AIDS, Tuberculosis and Malaria” in especially big amount, as well as even in financing terrorism on the occupied territories. They regard these steps of the law enforcement authorities exclusively as pressure on the patients’ anticorruption organizations. Their NGOs are regularly audited and all their financial documents are in open access on the websites.

In addition, late October, the apartment of pro-reform MP Svitlana Zalishchuk’s brother was searched allegedly in the course of investigation into ex-Minister of income Klymenko’s corruption schemes. Prosecutors seized her brother’s documents, belongings, and communications devices not related to her father’s work at all. Moreover, some of the documents, specifically an expired permission for her brother to work in Russia, were leaked on Facebook in order to discredit Zalishchuk’s family. He indeed managed Russian representation of the Ukrainian company before Maydan, but after the war started he handed over the work to his successor and came back to Ukraine. Zalishchuk is considering this as a pressure on their family.