

Map of **ANTICORRUPTION** **CONDITIONALITIES**

IMF

IMF LOANS On 30 April 2014, after the Revolution of Dignity, in order to support the new government the International Monetary Fund approved a new stand-by loan (SBA) for Ukraine amounting USD 16.5 bn. Under this program, Ukraine received two tranches amounting USD 3.2 bn on 7 May 2014, and USD 1.3 bn on 29 August 2014. On 11 March 2015, the IMF replaces the above standby program with the new four-year program “Extended Fund Facility” (EFF). The first tranche within EFF program amounting USD 5 bn was granted to Ukraine immediately upon approval of the program on 11 March 2015. The second tranche of USD 1.7 bn was approved by the Executive Board of the IMF on 31 July 2015. The third tranche of USD 1 bn was approved on 14 September 2016. The latest tranche of USD 1 bn was approved on 3 April 2017. Both SBA and EFF required Ukraine to implement comprehensive reforms in banking, budgeting, and anti-corruption spheres. All the tranches are preconditioned with a number of requirements set up in the respective memorandums of understanding between Ukraine and the IMF.

The IMF pays special attention to fulfilment of anti-corruption conditionalities, which are crucial to receive next tranches.

IMF memorandums contain anti-corruption conditionalities, which have different status and leverage, specifically:

1. **Commitment:** a promise of the government to conduct a certain specific reform step.
2. **Benchmark:** a promise of the government to conduct a certain specific reform step with a clearly set up deadline, which is being rigidly assessed by the IMF staff prior disbursing the next tranche.
3. **Prior action:** a measure that a country agrees to take before the IMF’s Executive Board approves financing or completes a review. Prior actions ensure that the program has the necessary foundation to succeed, or is put back on track following deviations from agreed policies.

Often, the top-priority conditionalities undergo transition from the status of commitment towards the status of benchmark and then if not implemented to the status of a prior action.

IMF conducts regular review missions to Ukraine, within which IMF staff assesses the level of implementation of the reforms and sometimes updates commitments, benchmarks and prior actions.

Standards

Corruption investigation and prosecution

- [NABU](#) director and staff selection
- [NABU](#) separate funding and high salaries for its staff
- [NABU](#) external audit
- [NABU](#) exclusive jurisdiction
- [NABU](#) wiretapping powers

- [NABU](#) public statistics and reports
- [NABU](#) access to information
- [SAPO](#) head selection
- [Anticorruption court](#) establishment
- [Anticorruption court](#) judges selection
- [NABU-FIU](#) cooperation
- Public statistics on [NABU-FIU](#) cooperation
- Strengthening AML framework
- Three-tier reporting system

Access to information

Asset recovery

Corruption Prevention

- Beneficial ownership in [E-declarations](#)

Public procurement

- Outsourcing of [Medicines procurement](#)

Documents

"By end-April 2017, the President, Parliament, and the Cabinet of Ministers will each nominate one expert for the commission of external control, in line with Article 26.6 of the NABU Law. The commission will approve the terms of reference for the annual external audit of NABU by end-June 2017, in agreement with IMF staff. Based on the analysis conducted by the auditors, the audit report will include clear and prioritized recommendations for improvements of the bureau's operations, in line with international best practices. In case auditors unanimously conclude that the criteria referred to in Article 6.4.11 of the NABU Law are met, they will include a detailed rationale and recommendation in their report. The audit report will be finalized by end-October 2017 and appended to the subsequent NABU bi-annual report." para 26.b.

Full doc: <https://www.imf.org/~media/Files/Publications/CR/2017/cr1783.ashx>

"Looking ahead, we will maintain NABU's exclusive authority to investigate acts of corruption by high-level official" para 26

Full doc: <https://www.imf.org/~media/Files/Publications/CR/2017/cr1783.ashx>

"Parliamentary approval of legislation ensuring that the NABU has: (i) the use of a wide range of

investigative techniques, including undercover operations, intercepting communications, accessing computer systems and controlled delivery, without having to rely on other agencies' infrastructure; and that (ii) the registration of pre-court cases and of investigative judges' rulings pertaining to NABU should be protected from leakage of information related to ongoing investigations, by restricting access to the information to NABU and SAPO officers until the investigation of the case is completed, or the case is closed" Table2

Full doc: <https://www.imf.org/~media/Files/Publications/CR/2017/cr1783.ashx>

"To monitor progress made in verifying asset declarations of high-level officials, NACP will publish statistics on a quarterly basis starting on a webpage freely available to the public" para 26

Full doc: <https://www.imf.org/~media/Files/Publications/CR/2017/cr1783.ashx>

"To ensure that prosecution of acts of corruption by senior officials receives a specialized and prioritized judicial response, we will operationalize the anticorruption court established by the June 2016 Law on the Judiciary, consistent with the European Convention of Human Rights and other standards of the Council of Europe. To this end, by mid April 2017 we will submit relevant legislation to parliament, and we expect this legislation to be adopted by parliament by mid-June 2017 . This legislation will include provisions to ensure budgetary autonomy and adequate security of the anticorruption judiciary framework and establish the selection process for anticorruption judges" (structural benchmark) para 26

Full doc: <https://www.imf.org/~media/Files/Publications/CR/2017/cr1783.ashx>

Building upon the experience with NABU and SAP, it is critical that the selection process is seen as independent and trustworthy by the public. In line with Article 33.2 of the Law on the Judiciary, specific requirements will be introduced in the proposed legislation to ensure that applicants to the position of anticorruption judges are not only of impeccable reputation, and have high professional qualities, but also possess relevant specific skills necessary to adjudicate criminal cases related to corruption. In this regard, the legislation will set out the procedure, including tests and tasks, for the assessment of the specific professional skills of applicants, which will be based on a transparent evaluation of candidates by the High Qualification Commission of Judges with the support from respected experts with recognized ethical standards and experience in anticorruption prosecution or adjudication, including potential engagement of experts with relevant experience in other countries. This procedure should be in line with the Ukrainian Constitution and the standards of the Council of Europe. The assessment of high integrity and ethical standards shall be conducted with the participation of the Civic Integrity Council as provided by the Law on the Judiciary. In line with Article 81 of the Law on the Judiciary, this selection process will ensure that for each available position, an applicant of impeccable reputation, relevant specific skills, and high professional qualities is timely selected by the High Qualification Commission of Judges, and presented by the High Council of Justice to the President of Ukraine for appointment by mid-January 2018 (benchmark).

Full doc: <https://www.imf.org/~media/Files/Publications/CR/2017/cr1783.ashx>

"In the context of amendments to the AML legal framework, we will also ensure, in agreement with Fund staff, that the definition of the persons related to PEPs is consistent with the risk-based approach encouraged by the FATF standard, and that proportionate and dissuasive sanctions can be implemented by the NBU in case of breaches of compliance with the AML framework." para 26

Full doc: <https://www.imf.org/~media/Files/Publications/CR/2017/cr1783.ashx>

"To monitor its contribution to anticorruption efforts, the FIU will continue publishing quarterly statistics on the information it disseminates to the NABU" para 26

Full doc: <https://www.imf.org/~media/Files/Publications/CR/2017/cr1783.ashx>

" In particular, we will adopt amendments to the legal framework to ensure a three-tier reporting system: (i) suspicious transaction reports as defined by the FATF, (ii) threshold-based reporting of cash transactions and international funds transfers, and (iii) mandatory reporting of transactions related to high-risk jurisdictions and politically exposed persons, and we will strengthen the operational capacity and integrity of the Financial Intelligence Unit (FIU). " para 26

Full doc: <https://www.imf.org/~media/Files/Publications/CR/2017/cr1783.ashx>

"We will submit legislation to parliament, for adoption by end-November 2016 (a new structural benchmark) to ensure that (i) the NABU has the use of a wide range of investigative techniques, including undercover operations, intercepting communications, accessing computer systems and controlled delivery, without having to rely on other agencies' infrastructure" para 36

Full doc: <https://www.imf.org/external/np/loi/2016/ukr/090116.pdf>

"The National Anti-Corruption Bureau (NABU) will publish on a website freely available to the public quarterly data, no later than at the end of the month following the quarter, on the number of persons indicted, the number of persons convicted by a first instance court decision, and the number of persons convicted pursuant a final court decision" para 96

Full doc: <https://www.imf.org/external/np/loi/2016/ukr/090116.pdf>

"We will adopt a law ensuring the establishment of a specialized anticorruption court, as provided in the new law on the judiciary" (commitment) para 36

Full doc: <https://www.imf.org/external/np/loi/2016/ukr/090116.pdf>

"We will also ensure that the NAB is fully operational by end-January 2016 (structuralbenchmark). In this regard, steps will be taken to ensure: Allocation of necessary infrastructure (e.g., hardware; software; access to administrative, law enforcement, and commercial databases; vehicles; special tools; investigative material),supported by the appropriate budgetary allocation if necessary

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/072115.pdf>

"Agreement on technical details to ensure NAB's direct electronic access to administrativeand law enforcement databases it deems relevant for its activities, particularly from the Ministries of Interior and Justice, and from the tax and customs administrations."

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/072115.pdf>

" We will ensure the establishment of a specialized anti-corruption prosecution function in charge of overseeing NAB's investigations, in accordance with the Law on the Prosecutor's office and enable NAB to timely access relevant information from other public institutions by end-September 2015 (structural benchmark)" para 29

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/072115.pdf>

"Appointment of the head of the anti-corruption prosecutors and allocation of appropriate premises to the anti-corruption prosecutor's office. To ensure a timely, fair, and balanced appointment process, we will make the following amendments to the Law on Prosecutor Office: At least five members of the Selection Committee for the head of the Anti-Corruption Prosecutor Office and his/her deputies will be nominated by a decision of parliament, in order to eliminate the risks of challenging the results of the selection. These persons will be of impeccable reputation, high professional and moral qualities, and authority in the society; As an interim measure, until the qualification commission for prosecutors is established, no more than five members of the above-mentioned Selection Committee will be nominated by the general prosecutor; □ The

Selection Committee will be chaired by a widely recognized and well-respected expert with rich experience in the prosecution of corruption, elected by parliament as an additional member of the committee; □ The committee will submit one candidate for each of the three positions (head and two deputies) to the general prosecutor; □ There will be no amendments to the Law on Prosecutor Office concerning the selection procedure for the head of the Anti-Corruption Prosecutor Office and his/her deputies, other anti-corruption prosecutors, and non-prosecutorial staff, other than the ones specified above, unless otherwise agreed with the IMF.(structural benchmark)” para 29

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/072115.pdf>

Shortcomings in the selection process for the leadership of the anti-corruption prosecution office such as the lack of objective track-record criteria for the nomination of the members of the selection committee and the candidates, highlighted the need for the relevant legal and institutional framework to be further improved in order to fully ensure the office's independence and integrity. To this end, the selection, appointment and dismissal procedures for the office's leadership and staff must follow stricter independence and integrity safeguards.

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/072115.pdf>

“Implement asset disclosure requirements for high-level officials. By end-December 2015, the Ministry of Justice will ensure that applicants and newly appointed officials to high-level positions under the NAB's jurisdiction file their asset disclosures electronically. The disclosures will be directly and freely available to the public on a single website shortly after the submission. In line with legislation, all high-level officials will report their assets electronically by end-April 2016” (commitment) para 29

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/072115.pdf>

“Institutional and operational independence from any external influence will be guaranteed and realized, in particular, through appropriate procedures for appointment; term limits and dismissal of the head of the agency; the power to recruit and dismiss its own staff”

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/072115.pdf>

“Institutional and operational independence from any external influence will be guaranteed and realized, in particular, through....special procedures for budgetary allocations; and competitive remuneration for the head and staff of the agency.”

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/072115.pdf>

“External Oversight. Provision for an independent external oversight process that will entail an annual published report on the NAB's operational performance, independence and institutional conditions. The report will focus on general issues and will not comment on specific, ongoing cases. The oversight will be conducted by a panel of respected experts with international experience in the work of specialized anti-corruption investigative agencies. The Law will ensure that panelists: (1) have recognized ethical standards and experience in anti-corruption investigations in other countries that can bring to bear their international experience; (2) act independently and are not subject to instructions from any source; and (3) have the ability to obtain from the NAB any information on investigations, if relevant for the performance of its functions and without interfering in the conduct of investigations in progress (prior action)” para 32

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/022715.pdf>

“The NAB will be able to investigate all high-level officials, including former Presidents (prior action)” para 32

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/022715.pdf>

““Proper arrangements will be put in place to facilitate the cooperation between the NBU, the FIU, and the NAB. The latter should include implementation of procedures requiring the FIU to report financial institutions’ potential breaches of compliance with AML/CFT requirements to the NBU, and for the NBU to report to the FIU suspicious transactions which have not been reported by financial institutions when it discovers them in the course of inspections. It should also include measures by the NAB and the FIU to formalize and facilitate their cooperation, in particular to ensure that the FIU disseminates information and the results of its analysis to the NAB when there are grounds to suspect corruption offenses or related money laundering offenses, and that the NAB is able to request all relevant information held by the FIU (in line with the Financial Action Task Force (FATF) standard).”(structural benchmark) ” para 32

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/022715.pdf>

“An electronic mechanism will be agreed between the NAB and the financial intelligence unit (FIU) to enable the FIU to promptly respond to NAB’s information requests. In cases when the FIU deems dissemination of information from its databases inappropriate, it will provide justification to the NAB.”

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/022715.pdf>

“The Law will empower the NAB to obtain all relevant information to perform its functions, from public authorities and private persons, including information covered by banking secrecy, without restriction or court order requirement. (prior action) ” para 32

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/022715.pdf>

“By end-March 2015, the relevant legal framework will be revised to ensure that asset disclosures for the high-level officials subject to NAB’s jurisdiction include information on beneficial ownership and control of any funds or other assets (as defined by the FATF), and that the NAB can use its powers to ensure the reliability of these assets disclosures at any point in time.” para 32

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/022715.pdf>

“The Financial Intelligence Unit (FIU) will assist financial institutions and other reporting entities in identifying domestic PEPs (in particular, by issuing relevant guidance and conducting training events). (structural benchmark)” para 32

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/022715.pdf>

“Change public procurement regulation to allow purchasing medicines and medical supplies through direct, multi-year procurement involving UN based organizations” para 24

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/022715.pdf>

“To guarantee the professional integrity of staff, the NAB Law ...will ensure that applicants and holders of positions at the NAB consent to having thorough background checks performed (criminal records, analysis of disclosures of assets beneficially owned and of potential conflicts of interests) beyond those required for all public servants”.

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/022715.pdf>

“To guarantee the professional integrity of staff, the NAB Law will ensure competitive and stable remuneration for the Director and personnel hired, commissioned and seconded at the NAB” ...

Full doc: <https://www.imf.org/external/np/loi/2015/ukr/022715.pdf>

“Submit to Parliament by September 1, 2014 (structural benchmark) and adopt by end October, 2014

(structural benchmark) enabling legislation for the establishment of an independent anti-corruption agency with broad investigative powers...In particular, we will ensure that the agency will be: (i) operationally and institutionally independent from any external influence guaranteed and realized; (ii) accountable and transparent; (iii) adequately resourced in terms of budget, staffing and expertise; and (iv) able to obtain all relevant information domestically and to engage in international cooperation with regard to its area of competency." par.24

Full doc: <https://www.imf.org/external/np/loi/2014/ukr/042214.pdf>

"The agency (NABU) will have powers of asset recovery (freezing, seizing and executing confiscation orders of assets) related to its own investigations"

Full doc: <https://www.imf.org/external/np/loi/2014/ukr/042214.pdf>

"The agency will prepare semi-annual public reports of its activities, including summary and data on its investigations and their outcomes"

Full doc: <https://www.imf.org/external/np/loi/2014/ukr/042214.pdf>

"The respective provisions of the Criminal Code of Ukraine pertaining to illicit enrichment will be brought in line with the UN Anticorruption Convention" para 24

Full doc: <https://www.imf.org/external/np/loi/2014/ukr/042214.pdf>

"Submit to Parliament by September 1, 2014 (structural benchmark) and adopt by end-October, 2014 (structural benchmark) amendments to the AML law and the criminal code that will introduce key elements of the FATF standard to support the government's anti-corruption effort" para 24

Full doc: <https://www.imf.org/external/np/loi/2014/ukr/042214.pdf>

"Strengthen our AML framework. In this respect, relevant laws, will be revised in line with international standards by end-September 2014, in consultation with IMF staff as needed, to ensure that: (i) banks are required to conduct enhanced due diligence on business relationships with domestic politically exposed persons; (ii) the laundering of the proceeds of tax crimes is criminalized; and (iii) financial secrecy laws do not inhibit AML implementation." para 26

Full doc: <https://www.imf.org/external/np/loi/2014/ukr/081814.pdf>

Prior actions:"Parliament will pass a new public procurement law to strengthen governance and checks and balances, including reducing exemptions from regular competitive procedures. "

Full doc: <https://www.imf.org/external/np/loi/2014/ukr/081814.pdf>