

**COMMON UNDERSTANDING ON THE BASIC PRINCIPLES FOR ESTABLISHING  
THE HIGH ANTI-CORRUPTION COURT IN UKRAINE**

The informal working group of interested international donors in Ukraine and civil society experts established by consensus of participants of a donor coordination meeting hosted by the OSCE Project Coordinator in Ukraine on January 18, 2017, including representatives of the Anticorruption Action Centre, EU Delegation to Ukraine, European Union Advisory Mission Ukraine, European Union Anti-Corruption Initiative, OSCE Project Coordinator in Ukraine, Reanimation Package of Reforms, United Nations Development Program, US Bureau of International Narcotics and Law Enforcement, and USAID New Justice Program, as well as the American Chamber of Commerce in Ukraine,<sup>1</sup>

**CONCERNED** about the seriousness of problems and threats posed by corruption to the stability and security of Ukraine, undermining democratic institutions and values, access to justice and compliance with ethical standards, and jeopardizing sustainable development and the rule of law,

**TAKING NOTE WITH APPRECIATION** that the amended Law on the Judiciary and Status of Judges envisages creation of the High Anti-Corruption Court (HACC),

**BEING CONVINCED** that the establishment of the HACC logically follows the establishment of the National Anti-Corruption Bureau of Ukraine (NABU) and the Special Anti-Corruption Prosecutor's Office (SAPO),

**BEING OF THE OPINION** that the HACC should be established in a transparent and prompt manner in line with international and European standards to complement existing institutions combating corruption without delay which would be detrimental to anti-corruption reform,

**HAVE AGREED ON THE FOLLOWING BASIC PRINCIPLES FOR ESTABLISHING THE HACC:**

**1. CONSTITUTIONAL AND LEGAL FRAMEWORK**

1.1. The HACC should be established in line with constitutional requirements both substantively and procedurally, including Art. 125 of the Constitution of Ukraine permitting the establishment of "high specialized courts".

1.2. The establishment of the HACC should be included into the overall Justice Sector Reform Strategy and become an integral part of the national judicial system.

**2. JURISDICTION**

2.1. The HACC should have exclusive jurisdiction over cases investigated by NABU and prosecuted by SAPO.

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<sup>1</sup> These recommendations constitute expert input developed by project implementers. Views expressed in this document do not necessarily reflect the views or positions of the enumerated organizations.

2.2. Amendments to criminal procedures should be developed to ensure a proper legal and procedural framework for the HACC.

### **3. SELECTION OF THE JUDGES**

3.1. HACC judges should be selected through an open competition, based upon fair, transparent, and merit-based criteria. Necessary guarantees should be in place to avoid any undue influence on the selection process and ensure respect for judicial independence. This will also include the mandatory participation of the Public Integrity Council in verifying the integrity and professional ethics of judicial candidates.

3.2. Specific timeframes for selecting HACC judges should be established by law to avoid abuse and delay.

3.3. In order to ensure public trust and confidence, the selection procedure should focus on assessing the professional competencies and integrity of candidates and ensuring that candidates have maintained high standards of ethical conduct in their professional, public and private lives.

3.4. Formal qualifications requirements for candidates should be developed in a way to allow the participation of the widest range of judges, lawyers and academics in the competition.

3.5. As the HACC will be adjudicating extremely sensitive cases, where significant external influence may be brought to bear, it is necessary to have for a limited time an extra filter with international participation in the process of selecting HACC judges to promote greater public trust and confidence in the process and ensure that candidates are of the highest integrity and professionalism.

3.6. Thus, for the purpose of selecting HACC judges, the High Qualifications Commission of Judges (HQCJ) should set up a special panel responsible for the selection process. The special panel should include a majority of members nominated by international donors active in providing support for anti-corruption programs in Ukraine. All members of the special panel should have equal voting rights. Decisions of the special panel should be made by simple majority.

3.7. Decisions of the special panel should be binding on the HQCJ, which may not recommend candidates who were not fully vetted and approved by the special panel.

3.8. Administrative and logistical support for the special panel should be provided by HQCJ staff.

### **4. HACC STRUCTURE AND APPEALS**

4.1. The place of the HACC in the judicial hierarchy should ensure the right to fair trial and equality before the law.

4.2. Any person brought before the HACC to stand trial should have the constitutionally guaranteed right to have his or her case reviewed by a court of appeal and, in cases prescribed by law, by a court of cassation.

4.4. Appellate review of HACC decisions should be conducted by an appellate chamber within the HACC, which should be physically housed in a separate location.

4.5. Cassation review should be conducted by the Criminal Cassation Court of the Supreme Court.

## **5. ADDITIONAL GUARANTEES AND SAFEGUARDS**

5.1. The level of remuneration for HACC judges should be commensurate with the increased demands of the position as they will consider high profile corruption cases and face the risk of undue influence related to such cases.

5.2. HACC judges should also have access to additional security measures, including but not limited to special guarantees for physical protection of judges and members of their families.