



INTERNATIONAL MONETARY FUND  
WASHINGTON, D.C. 20431

January 11, 2018

Mr. Ihor Rainin  
Head of the Presidential Administration of Ukraine  
Kyiv, Ukraine

Dear Mr. Rainin,

As noted in the recent letter from our Managing Director and the World Bank President to President Poroshenko, the establishment of credible and independent anticorruption institutions is one of the most important reforms to improve Ukraine's economic prospects and deliver the transparency and accountability that the people of Ukraine demand of their public officials. The submission by the President of the draft law on the High Anti-Corruption Court (HACC; draft law 7440) was expected to be a positive step in this direction. However, we have serious concerns about the draft law that was submitted to Parliament on December 22, as several provisions are not consistent with the authorities' commitments under Ukraine's IMF-supported program and the recommendations of the Venice Commission of the Council of Europe. We specifically wish to bring the following concerns to your attention:

1. *Several provisions in the draft law related to the selection process, the eligibility requirements, and security are not conducive to the independence of the HACC and the transparent appointment of competent and trustworthy anti-corruption judges:*

- The role of the Public Council of International Experts (PCIE) in the selection of the HACC judges should be made crucial, not just advisory. The draft law allows the High Qualification Commission of Judges (HQCJ) to override decisions of the PCIE over ineligible candidates for HACC judges. However, this would severely undermine the credibility of the court right from the start. To ensure that the selection of HACC judges with impeccable reputation and integrity is seen as independent and trustworthy by the public, candidates that are considered ineligible by the PSIE should not be nominated for the HACC by the HQCJ. A negative decision about a candidate by the PCIE should be binding on the HQCJ.
- To ensure the broad and wide participation of experts, both international organizations and donors should be able to recommend PCIE members, in line with the Venice Commission's recommendations.

- The participation of the Public Integrity Council in the selection of HACC judges should be maintained, in line with the mechanism in place for other judges under the Law on the Judiciary.
- The need for competent HACC judges should not lead to the imposition of unrealistic eligibility requirements. Applicants to the position of HACC judges should have impeccable reputation, have high professional qualities and possess relevant specific skills necessary to adjudicate criminal cases related to corruption. The requirement, however, under the draft law for candidates to also have considerable anticorruption experience in foreign jurisdiction bodies or international court institutions is too restrictive and severely limits the pool of candidates. The prohibition against officials who previously served in law enforcement or prosecutorial agencies in the last ten years and the use of polygraphs also appear excessive and should be removed.
- The HACC should be provided with an independent security division, under its control, and its headquarters should be located in Kiev, in a separate and suitable building.

*2. The draft law opens opportunities for additional delays in establishing the HACC:*

- The draft law would not actually suffice to operationalize the HACC, contrary to earlier commitments. Instead, an additional law, to be submitted by the President at a later stage, would still need to be enacted to establish it. The commitments under the IMF-supported program will only be deemed to have been met after all legislative measures have been taken to ensure that the HACC can become operational.
- The minimum number of HACC judges to be appointed should be made explicit in this law. The draft law delegates to the State Judicial Administration the determination of the number of HACC judges and mandates the start of the HACC's operations after two-thirds of this number is appointed. To ensure the speedy establishment and operations of the HACC, the minimum number of HACC judges should be specified in the law. There should be at least a total of 50 first instance and appellate judges to start operations. Provisions should be made to allow additional HACC judges on top of the minimum number as the case load of the HACC increases in the future.

*3. The jurisdiction of the court envisaged by the draft law is inadequate and includes undue derogations for certain senior officials:*

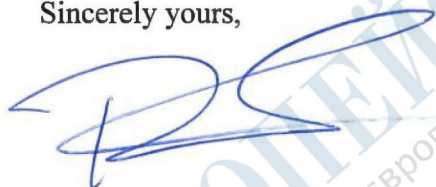
- The jurisdiction of the HACC should align with the investigative jurisdiction of NABU and SAPO. As a critical component of the new anticorruption infrastructure in Ukraine, it is important that the HACC's efforts are focused solely on corruption-related cases. Introducing into the HACC system other criminal cases that are not investigated or prosecuted by NABU or SAPO will clog up its docket and divert limited resources from its core judicial mandate. In addition, clear rules should be established in case of conflict of jurisdiction between the HACC and other courts.
- All corruption-related cases involving senior officials should be adjudicated by the HACC and the proposed exemptions of HACC jurisdiction should be removed.

Overall, the establishment and operation of the HACC is a key pillar of Ukraine's anticorruption agenda. There is high hope from the people of Ukraine that the expeditious



and effective functioning of the HACC (complementing the efforts of NABU and SAPO) will contribute to delivering greater accountability of senior officials. In its current form, however, we would not be able to support the draft law of the HACC. In this respect, IMF staff stand ready to support the Presidential Administration to revise the draft law in line with the authorities' commitments under the IMF-supported program and the Venice Commission's recommendations.

Sincerely yours,



Ron van Rooden  
Mission Chief for Ukraine  
European Department, IMF



cc: Volodymyr Groysman, Prime Minister of Ukraine  
Andriy Parubiy, Speaker of the Verkhovna Rada of Ukraine  
Ruslan Knyazevych, Chairman of the Verkhovna Rada Committee on Legal Policy and Justice  
Yuriy Savchuk, Acting Chairman of the Verkhovna Rada Committee on Corruption Prevention and Counteraction  
Pavlo Petrenko, Minister of Justice of Ukraine  
Oleksandr Danylyuk, Minister of Finance of Ukraine  
Oleksiy Filatov, Deputy Head of the Presidential Administration of Ukraine  
Dmytro Shymkiv, Deputy Head of the Presidential Administration of Ukraine  
Anthony de Lannoy, Executive Director, International Monetary Fund  
Vladyslav Rashkovan, IMF Alternate Executive Director