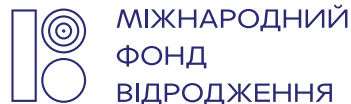


§§ SUMMARY

**OF THE MONITORING REPORT
ON THE IMPLEMENTATION OF THE
NORMS OF THE LAW OF UKRAINE
“ON PREVENTION OF CORRUPTION”
IN RESPECT OF PROTECTION OF
WHISTLEBLOWERS BY THE CENTRAL
EXECUTIVE BODIES AND REGIONAL
STATE ADMINISTRATIONS IN 2020**



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This research is devoted to the analysis of the state of implementation by central executive bodies and regional state administrations of the requirements of the Law of Ukraine «On Corruption Prevention» on the development of the whistleblowers protection system in 2020.

§§ INTRODUCTION

At the beginning of 2020, amendments to the Law of Ukraine “On Prevention of Corruption” came into force in respect of strengthening the protection of whistleblowers of corruption. In addition to securing a number of rights and guarantees for the protection of whistleblowers, such as the right to anonymity and confidentiality, the guarantee of protection from negative measures of influence in the workplace, the right to remuneration, the right to exemption from legal liability, these changes imposed a number of responsibilities on the authorities and their authorized divisions (authorized persons) on the prevention” and detection of corruption in the field of whistleblower protection. Among these responsibilities, a special mention should go to: establishing and operating internal/regular whistleblower reporting channels, introducing mechanisms to encourage and foster a culture of reporting, defining internal procedures and mechanisms for accepting and considering whistleblower reports, and assigning an individual person responsible for exercising the authority to protect whistleblowers. Control over the implementation of these requirements is entrusted to the National Agency on Corruption Prevention (NACP).

Due to the wide range of government bodies that are subject to the requirements of the Law of Ukraine “On Prevention of Corruption” for the protection of whistleblowers is quite wide, we decided to focus on the analysis of the activities of central executive bodies and regional state administrations in this area. Consequently, the purpose of our research is to analyze the state of implementation of the requirements of the Law of Ukraine “On Prevention of Corruption” in respect of the protection of whistleblowers of corruption by central executive authorities and regional state administrations in 2020, as well as to develop recommendations for revising policies in this area based on the analysis carried out.

RESEARCH METHODOLOGY

In preparing the monitoring report on the implementation of the law in the field of whistleblower protection, the following methodology was used:

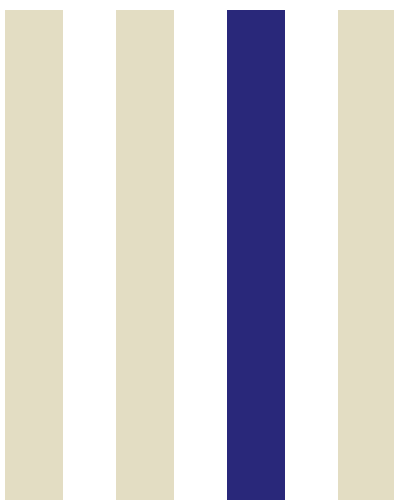
- ▶ general scientific methods (search for information in open databases, systemic and praxeological analysis, analytical generalizations based on the information received);
- ▶ analysis of quantitative indicators collected by means of requests to the Central Executive Bodies (CEB) and Regional State Administrations (RSA); content analysis of information from open sources;
- ▶ comparative analysis of the reporting channels used and leaders in the implementation of the law in the field of whistleblower protection among the analyzed government bodies;
- ▶ rating (ranking) of the bodies of authority depending on the state of the organization of work with whistleblowers.

In particular, as part of the preparation of this report, the implementation of the law in the field of protection of whistleblowers by the ministries of Ukraine, central executive bodies, central executive bodies with a special status, as well as regional state administrations was systematically analyzed.

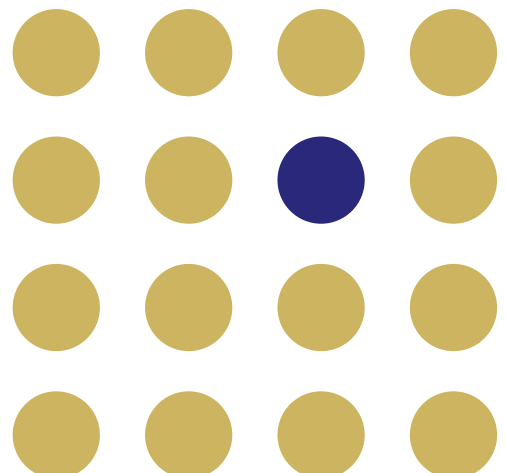
In the process of content analysis, the answers to the requests of the NACP received from CEBs and RSAs were examined, as well as the availability of the necessary information on the official websites of the government bodies, including the availability of information about reporting channels (online forms, secure e-mail boxes and special telephone lines) for possible facts of corruption or related corruption offenses. Concerning quantitative analysis: we processed statistical data on the number of received reports of corruption, the number of explanations provided to whistleblowers of corruption, etc.

In particular, the analysis of the implementation of the law in the field of whistleblower protection was carried out on the basis of the following criteria:

1. the creation and operation (via the official website, electronic reporting tools and a special telephone line) of internal channels for reporting possible facts of corruption or corruption-related offenses, other violations of the Law, provided for in part 4 of Art. 53, part 1 and paragraph 4 of part 2 of Art. 531 of the Law;



2. the creation and operation (via the official website, electronic reporting tools and a special telephone line) of regular channels for reporting possible facts of corruption or corruption-related offenses, other violations of the Law, provided for in part 4 of Art. 53, part 1 and paragraph 4 of part 2 of Art. 531 of the Law;
3. the total number of reports about possible facts of corruption or corruption-related offenses, other violations of the Law, received through internal and/or regular channels, including in the context of each channel separately;
4. the total number of reports on possible facts of corruption or corruption-related offenses received from the whistleblowers;
5. introduction of mechanisms for encouraging and fostering a culture of reporting on possible facts of corruption or corruption-related offenses, other violations of the Law, provided for in paragraph 1 of part 2 of Art. 531 of the Law;
6. the number of cases of providing employees and persons who undergo service or study or perform certain work with methodological assistance and advice on reporting of possible facts of corruption or corruption-related offenses, other violations of the Law, provided for in paragraph 2 of part 2 of Art. 531 of the Law;
7. determination of internal procedures and mechanisms for the acceptance and consideration of reports on possible facts of corruption or corruption-related offenses, other violations of the Law, verification and proper response to such reports, provided for in paragraph 3 of part 2 of Art. 531 of the Law;
8. the number of cases of providing the whistleblower with detailed written information about the results of the pre-screening upon his/her report in the manner provided for in paragraph 6 of part 3 of Art. 532 of the Law, and the period during which the said information was provided to the whistleblower;
9. the number of cases when the whistleblower has been provided with explanations about the competence of the government bodies or legal entities authorized to verify or investigate the relevant information on his/her reporting, if the information received does not fall within the competence of the body, in the manner provided for in paragraph 7 of part 3 of Art. 532 of the Law, and the period during which the said information was provided to the whistleblower;
10. the number of whistleblowers who have applied for protection to the authorized division (authorized person) for the prevention and detection of corruption;
11. assignment by the head of the authorized division for the prevention and detection of corruption of an individual person responsible for exercising the powers to protect whistleblowers, in accordance with paragraph 8 of part 2 of Art. 539 of the Law;
12. availability of opportunities for reporting: how easy it is to find information on how and where to report corruption;
13. comparison of the reporting channels, the most represented in the CEBs and RSAs.



EXECUTION OF THE LAW IN THE FIELD OF PROTECTION OF WHISTLEBLOWERS BY THE MINISTRIES OF UKRAINE

BASED ON THE ANALYSIS OF INFORMATION RECEIVED IN RESPONSE TO OFFICIAL REQUESTS, AS WELL AS INFORMATION POSTED ON THE OFFICIAL WEBSITES OF THE MINISTRIES OF UKRAINE, IT IS POSSIBLE TO MAKE GENERALIZATIONS REGARDING THEIR EXECUTION OF THE LAW IN THE FIELD OF WHISTLEBLOWER PROTECTION.

Regarding the creation and operation of internal and regular channels of reporting on possible facts of corruption or corruption-related offenses, it is worth noting that most ministries of Ukraine do not differentiate channels of reporting corruption into internal and regular ones. In particular, most of the official websites of ministries have a separate "Report Corruption" section where general contacts for reporting corruption can be found in the form of electronic means, a dedicated telephone line and a postal address. It is also a common practice to post an online form to fill out information on corruption offenses online. Predominantly, such forms are not differentiated into regular and internal ones. Internal and regular reporting channels are differentiated on the websites of the Ministry of Digital Transformation of Ukraine, the Ministry of Social Policy of Ukraine, the Ministry of Health of Ukraine and the Ministry of Foreign Affairs of Ukraine. The websites of these ministries have separate telephone lines as well as e-mail boxes for reports from citizens or government officials.

Not all ministries have provided information on the total number of reports on possible facts of corruption or corruption-related offenses, other violations of the Law received through internal and/or regular channels, and the number of reports on possible facts of corruption or corruption-related offenses received from whistleblowers. According to the responses to requests for information, about half of the ministries either did not provide information on the number of messages received in 2020, or this number was no more than 5. The leaders in terms of

the number of reports were the Ministry of Justice of Ukraine (533 reports were received in 2020), the Ministry of Defense of Ukraine (212 reports) and the Ministry of Youth and Sports of Ukraine (8 reports).

Regarding the introduction of mechanisms to encourage and foster a culture of reporting possible facts of corruption or corruption-related offenses, most ministries point out the existence of such mechanisms in the form of posting information about the opportunity to report facts of corruption on their official websites.

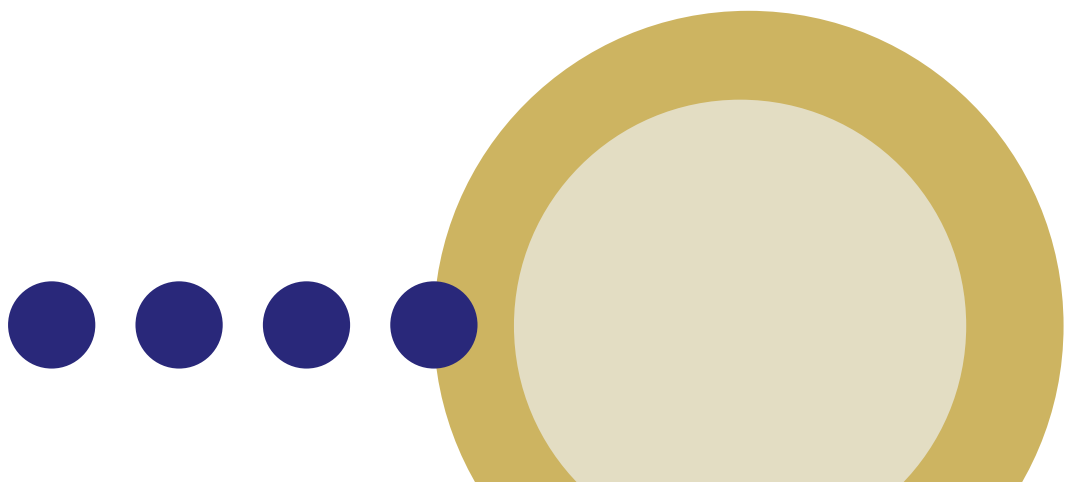
Regarding the number of cases of providing employees and persons who undergo service or training or perform certain work with methodological assistance and advice on the implementation of reports on possible facts of corruption or corruption-related offenses, it is worth noting that in most ministries, the emphasis is on conducting special trainings and webinars. At the same time, only the Ministry of Foreign Affairs of Ukraine provides statistical information on such events (in 2020, 2 trainings were held, in which 110 people took part; more than 250 people were trained). Several ministries are in the process of developing these mechanisms.

Most ministries have developed or are determining/developing internal procedures and mechanisms for accepting and considering, checking and responding to reports. The leader in the number of received reports of corruption, including from whistleblowers, was the Ministry of Justice of Ukraine (533 reports). At the same time, the Ministry of Defense of Ukraine became the leader in providing methodological assistance and advice on submitting reports, as well as providing whistleblowers with information based on the results of a pre-screening and explanations on the competence of another government body (76 – methodological assistance, 10 – information on the results of a pre-screening and 23 explanations, respectively).

Regarding such an indicator as the number of cases where the whistleblower was provided with detailed written information on the results of a preliminary check according to his/her report, practically all ministries do not provide statistical data. Also, almost no information is provided on the number of whistleblowers who applied for protection to the authorized division (authorized person) for the prevention and detection of corruption.

According to the Law, the head of the authorized division for the prevention and detection of corruption must assign a separate person responsible for exercising the powers to protect whistleblowers, but in most ministries such a person has not been assigned. These duties are performed by the sector manager and/or chief specialist.

Regarding the accessibility of the opportunity for reporting, it should be noted that most ministries have a fairly transparent and convenient system for posting the information on official websites. In most cases, information about the channels for reporting corruption is located at the bottom of the main page or in a separate "Report Corruption" section. Thus, if information is available on the website, then ordinary citizens can easily find it and use it to report corruption.



EXECUTION OF THE LAW IN THE FIELD OF WHISTLEBLOWER PROTECTION BY OTHER CENTRAL EXECUTIVE BODIES

THIS SECTION ANALYZES THE EXECUTION OF THE PROVISIONS OF THE LAW OF UKRAINE "ON PREVENTION OF CORRUPTION" IN RESPECT OF THE PROTECTION OF WHISTLEBLOWERS BASED ON THE STUDY OF THE WEBSITES OF GOVERNMENT BODIES AND INFORMATION PROVIDED BY OTHER CENTRAL EXECUTIVE BODIES (36 CEBS, EXCLUDING SPECIAL CEBS).

All analyzed CEBS have at least one channel for reporting corruption (telephone, special e-mail, electronic form on the website), but at the same time the lion's share of CEBS do not separate channels into regular and internal ones (only 5 out of 36 CEBS mention such a division on their websites). The most common reporting channels are telephone and e-mail, while electronic forms for reporting corruption have been created by 20 CEBS (in two more cases there is a link to the form, but the form itself does not work).

After analyzing the total number of reports on possible facts of corruption or corruption-related offenses received through internal and/or regular reporting channels, as well as the total number of reports received from the whistleblowers, it can be concluded that most of the CEBS lack understanding of the classification of reports and distinguishing reports from whistleblowers from all other reports. For example, the Administration of the State Border Guard Service of Ukraine informs about 107 reports of corruption, the State Emergency Service of Ukraine – about 44 reports, while 13 out of 36 CEBS did not receive reports of corruption offenses (or information was not provided).

Regarding the mechanisms for encouraging and fostering a culture of reporting possible facts of corruption or corruption-related offenses, all CEBS pointed out that information and explanatory work was carried out among their employees and those who serve or study there or perform certain work.

At the time of submitting this monitoring

report, all of the CEBS reviewed (except for those that did not provide a response to the request) already had internal procedures and mechanisms for submittance and consideration of the reports on possible facts of corruption or corruption-related offenses or such procedures and mechanisms were under development.

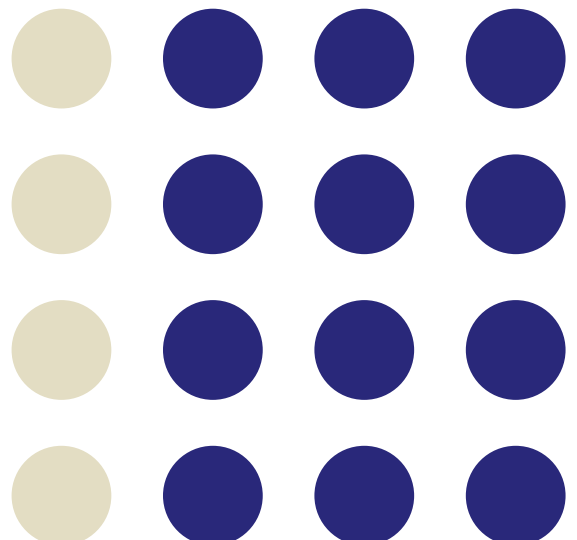
The situation with providing the whistleblower with detailed written information about the results of the pre-screening on his/her report cannot be called particularly comforting. Only two government bodies (the State Service of Education Quality of Ukraine, the State Service of Ukraine for Transport Safety) pointed out the provision of feedback on appeals (without detailed information on further actions on the appeal).

Regarding the assigning an individual person responsible for exercising the powers to protect whistleblowers, according to the information provided, in 5 out of 36 reviewed CEBS, such a person was not assigned at the time of submission of the monitoring report or information about her/him was not available on the official website of the institution.

In general, all CEBS are trying to comply with the provisions of the law, but they have certain problems. The names of the sections on the websites of the CEBS, in which you can find information about the channels of reporting, differ from each other and are located in different structural parts of the websites. Majority of the CEBS does not separate channels for reporting corruption into internal and regular ones. One of the reasons may be a lack of understanding of the difference between these types of channels, as well as of the importance of having separate reporting channels – separately for citizens and separately for employees of the relevant government agency. Also, taking into account the responses to requests provided by the CEBS, activities to inform employees are carried out at an insufficient level; the number of methodological explanations and

cases of providing information/consultations is often low or such activities are not carried out at all (or they are not properly recorded and not reflected in the reports of the relevant government bodies). This may be due to the lack of understanding of the conditions of whistleblower status and of what this status entails.

Most of the CEB websites indicate the person in charge, although their contact details are not always provided; sometimes such information is posted in sections other than the section of the corruption reporting, making it difficult for users to search and navigate the website if someone wants to find complete information for the reporting. In general, we can conclude that part of the CEBs does not fully comply with the requirements for creating reporting channels, including creating sufficient channels for reporting corruption, both internal and regular, and for conducting anti-corruption educational activities and informing their employees.



§§ EXECUTION OF THE LAW IN THE FIELD OF WHISTLEBLOWER PROTECTION BY CENTRAL EXECUTIVE BODIES WITH A SPECIAL STATUS

After analyzing the data contained on the websites of the CEBs with a special status, and those provided directly by the Antimonopoly Committee of Ukraine and the State Property Fund of Ukraine, it should be noted that most CEBs with a special status are trying to diversify the internal and regular channels without properly communicating and reflecting all the information on their websites. (In particular, it was possible to learn about the existence of an internal reporting channel of the Antimonopoly Committee of Ukraine only from the response to the request). Each of the CEBs operates at least one common channel for reporting possible facts of corruption or corruption-related offenses: in the form of a hotline or e-mail; at the same time, not a single CEB implemented a channel for reporting corruption as an electronic form, which significantly narrows the anonymity factor (it should be noted that the Antimonopoly Committee of Ukraine provided information on the number of requests received through the online form, but there was no such a form on their website). Only the Antimonopoly Committee of Ukraine and the State Property Fund of Ukraine, at the request of the NACP, provided information on the total number of reports of possible corruption. It was the Antimonopoly Committee of Ukraine that received the largest number of such reports through regular channels – 51 (of which 40 – by e-mail, 11 – via the online form).

After analyzing the official websites of the CEBs, it can be argued that it was not difficult to find the appropriate section “Report Corruption”, etc.; also, most of these sections contained detailed information on the attributes of a report on corruption, the required details, a sample form of a written report on corruption, requirements for anonymous reports on corruption and the procedure for their consideration in accordance with the current provisions of the Law of Ukraine “On Prevention of Corruption”; however, taking into account the reports provided by

the CEBs, it can be argued that provision of explanatory and methodological assistance to its employees by holding events, explanatory sessions, and the like is insufficient. (The exception is the National Council of Ukraine for Television and Radio Broadcasting, which, in its anti-corruption program for 2021–2023, provides for training events and activities to disseminate information on anti-corruption programs for 2021–2023). It is noteworthy that only the State Property Fund of Ukraine has instructions that regulate internal procedures and mechanisms for accepting and considering reports on possible facts of corruption offenses.

The CEBs provided almost no information on the number of cases where the whistleblower was provided with detailed written information on the results of the pre-screening (with the exception of the State Property Fund of Ukraine, which recorded 1 such case). As for the number of cases when the whistleblower was explained about the competence of the bodies or legal entities authorized to verify or investigate the relevant information on his report, there is no such data or such services were not provided. There is also no information on the number of whistleblowers who applied to the authorized division for protection.

All CEBs, except for the State Property Fund of Ukraine, assigned the persons who are responsible for exercising the powers to protect whistleblowers, but contact information about this person is not always fully stated (full name of the person is not indicated, only one reporting channel is indicated, etc.) suggesting the insufficient number of means of communication with this person or division.

§§ EXECUTION OF THE LAW IN THE FIELD OF PROTECTION OF WHISTLEBLOWERS BY REGIONAL STATE ADMINISTRATIONS

After analyzing the information received in response to official requests, as well as information posted on the official websites of regional state administrations, it can be argued that the majority of regional state administrations (17), although they have created channels for reporting information about possible facts of corruption or corruption-related offenses, other violations of the Law of Ukraine “On Prevention of Corruption”, did not differentiate them into internal and regular ones. The point is, first of all, that only phone numbers, e-mail boxes, online forms for filling out are available on the official websites, with the help of which it is proposed to report the revealed facts of corruption or corruption-related offenses. However, it is not specified whether these means of reporting are internal or regular reporting channels. Separate internal and regular channels have been properly created and operate only in 7 regional state administrations: in Donetsk, Kirovohrad, Odesa, Ternopil, Kharkiv, Chernivtsi Regional State Administrations. It should be noted that in Kirovohrad Regional State Administration, despite the creation of both reporting channels, the website only contains contacts of regular channels; information on internal channels is contained only in the order of the chairman of the Kirovohrad Regional State Administration No. 61-p dated January 27, 2021. In the Ternopil Regional State Administration, only an electronic mailbox is used as the internal channel, which may suggest the imperfection of the functioning of this reporting channel.

Most regional state administrations, upon request from the National Agency for the Prevention of Corruption, provided information on the number of reports of corruption received through reporting channels and the number of reports of corruption from whistleblowers. The largest number of reports of corruption via reporting channels was received by the Kyiv City State Administration (790), Sumy Regional State Administration (66) and Donetsk Regional

State Administration (30). The leaders in terms of the number of reports from whistleblowers are Donetsk Regional State Administration (30), Ivano-Frankivsk and Kirovohrad Regional State Administrations (both received 14 requests from whistleblowers in 2020).

In most regional state administrations, as of the end of 2020, there was no formal document on the introduction of mechanisms for encouraging and fostering a culture of reporting corruption (only the Volyn and Chernivtsi Regional State Administrations have such documents). However, according to information on the websites of the RSAs, in 2021, decisions on the introduction of mechanisms for encouraging and fostering a culture of reporting corruption were also approved in the Vinnytsia and Kirovohrad RSAs. Other regional state administrations practiced providing methodological explanations, consultations, holding information events for employees, publishing leaflets on basic rights and guarantees for the protection of whistleblowers.

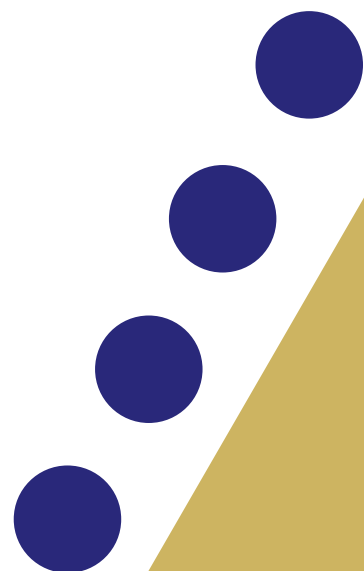
15 out of 24 regional state administrations have approved instructions and/or methodological recommendations for the acceptance and consideration, verification and appropriate response to reports of corruption.

Regarding the direct work of regional state administrations with whistleblowers, the following should be noted: only Lviv (1), Poltava (4), Odesa (7) regional state administrations and Kyiv city state administration (1) provided whistleblowers with information based on the results of pre-screening their appeals; Ivano-Frankivsk (7), Odesa (2), Sumy (1) regional state administrations and Kyiv city state administration (1) provided whistleblowers with explanations about the competence of another body of authority; the Sumy Regional State Administration is the only one of RSAs to which a whistleblower applied for protection. The work with whistleblowers in other regional state administrations was either not carried out (since there were no

Виконання закону про захист викривачів

reports or appeals), or the corresponding statistical information was not available/was not provided in response to a request.

Almost in all regional state administrations, except for Volyn, Mylolaiv and Rivne (there is no information about this in the responses that were provided to the request, as well as on the official websites), a person responsible for exercising the powers to protect whistleblowers has been assigned.



§§ CONCLUSIONS AND RECOMMENDATIONS

AFTER ANALYZING THE ORGANIZATION OF WORK OF CENTRAL EXECUTIVE BODIES AND REGIONAL STATE ADMINISTRATIONS IN THE FIELD OF PROTECTION OF WHISTLEBLOWERS OF CORRUPTION IN 2020, THE FOLLOWING CONCLUSIONS CAN BE DRAWN:

1. The large majority of the government bodies in question (as of the end of 2020) only fragmentarily complied with the requirements of the Law of Ukraine “On Prevention of Corruption” regarding work with reports of whistleblowers and their protection. In particular, there is a tendency to fulfill only certain requirements of the law. So, for example, a government body has created channels for reporting information whistleblowers, but the procedures for accepting and considering these reports have not been developed or approved; either the person responsible for exercising the powers to protect whistleblowers has not been assigned, or internal and regular channels for reporting corruption have not been separated. Indeed, one can welcome the first steps in introducing certain elements of the whistleblower protection system in government bodies, but efforts should be directed towards creating a comprehensive and effective whistleblower protection system;
2. The official websites of the government bodies in question, mainly on the main page, contain links to the “Report Corruption” section, which contains all the necessary information for the implementation of the report: the available reporting channels and methods of communication. However, the government bodies do not differentiate between internal and regular reporting channels, and there is also no indication that these channels meet the Requirements for the Protection of Anonymous Reporting Channels through which reports are made about possible facts of corruption or corruption-related offenses, other violations of the Law of Ukraine “On Prevention of Corruption” approved by the Order of the National Agency for the Prevention of Corruption dated April 2, 2020 No. 127/20, and therefore properly ensure the anonymity and confidentiality of the whistleblowers;
3. Analysis of the statistical information received from the government bodies shows that there is no relationship between the number of reports received and methodological/informational work with whistleblowers. For example, a government body can receive about a hundred reports of corruption through reporting channels, but provide methodological assistance only on a small number of them. This may suggest either the low quality of incoming reports (there is no factual data or the data not confirmed, the applicant considers himself/herself a whistleblower mistakenly, there is an abuse of his/her own right), or the low level of qualifications, skills and abilities in working with whistleblowers of the relevant employees of the authorized divisions (authorized persons) for the prevention and detection of corruption;
4. Most of the government bodies under review have established internal procedures and mechanisms for accepting and reviewing, pre-screening and responding to whistleblower reports, and have introduced mechanisms to encourage and foster a culture of reporting. However, taking into account the Clarification of the NACP “On mechanisms for encouraging and fostering a culture of reporting on possible facts of corruption or corruption-related offenses, other violations of the Law of Ukraine “On Preventing Corruption”, the instructions for whistleblowers that are annexes to this Clarification should be used in the work of government bodies.

Taking in consideration the above said, we are submitting the following recommendations:

1. To National Agency for the Prevention of Corruption:

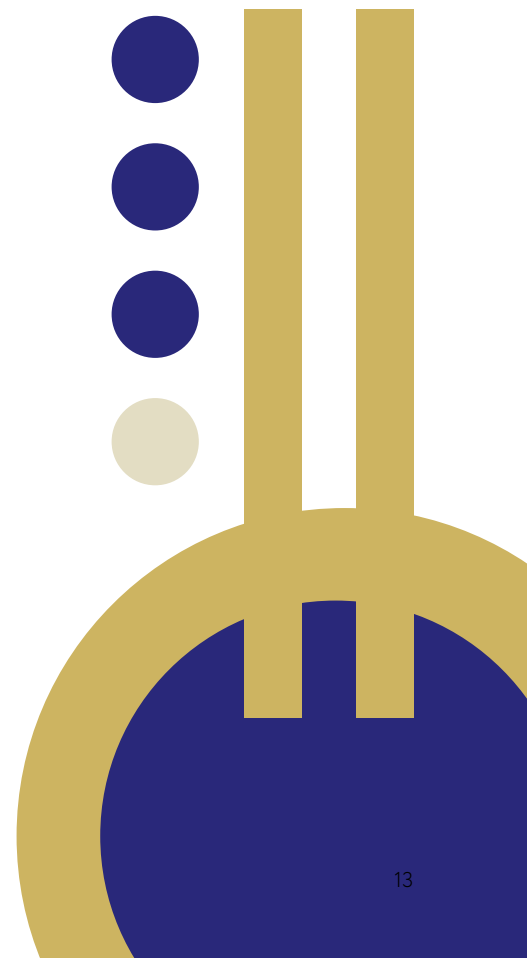
- strengthen control over the execution by the central executive bodies and regional state administrations of the requirements of the Law of Ukraine “On Prevention of Corruption” in respect of the protection of corruption whistleblowers by carrying out the information and explanatory work among authorized divisions (authorized persons) on the prevention and detection of corruption in these bodies; publication of monitoring reports on the state of implementation of the law in the field of whistleblower protection;
- create a communication platform to promote guidelines for authorized divisions (authorized persons) on the prevention and detection of corruption in relation to working with whistleblowers;
- if necessary, involve civil society organizations to carry out public monitoring and control over the implementation by the government bodies of the requirements of the Law of Ukraine “On Prevention of Corruption” in respect of the protection of whistleblowers of corruption;

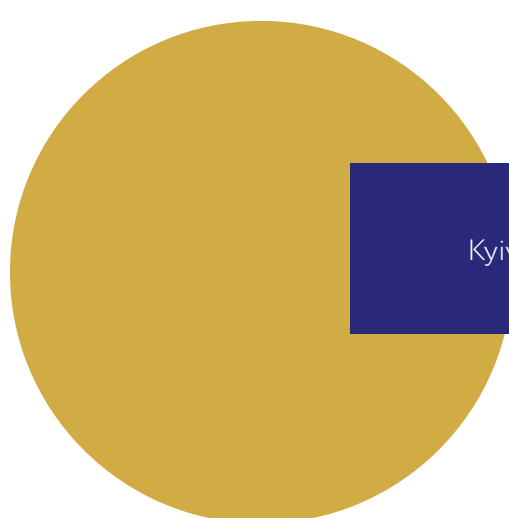
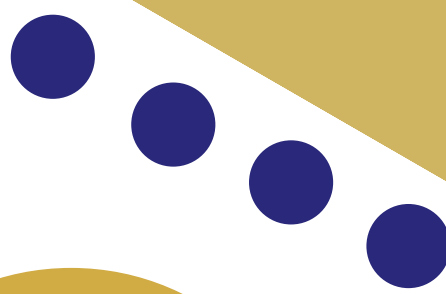
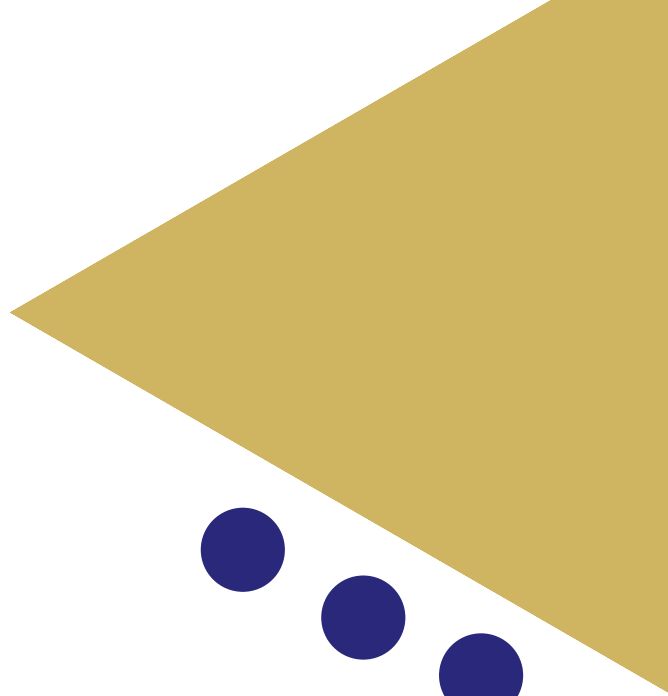
2. To central executive bodies and regional state administrations:

- bring its activities in the field of protection of whistleblowers in accordance with the norms of the Law of Ukraine “On Prevention of Corruption”;
- cooperate more actively with the NAPC as a body authorized to form and implement anti-corruption policies, including in the local level;
- take into account in practical work that

until the launch of the Single Portal of Whistleblowers Reports, the reports on corruption are received through the reporting channels and are considered in the manner that was in force before the adoption of the Law of Ukraine No. 1502-IX “On Amendments to the Law of Ukraine “On Prevention of Corruption” regarding the streamlining of certain issues of protection of whistleblowers” dated June 1, 2021;

- monitor their own activities in the field of the whistleblowers protection; involve local public organizations and/or initiatives in the implementation of public monitoring of such activities.





Kyiv, 2021

