Key Political Finance Reform Priorities

Background

On October 8, 2015, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Prevention and Counteraction of Political Corruption” (hereinafter – the Political Finance Reform Law), which launched political finance reform in Ukraine. This was the result of coordinated efforts of various stakeholders in Ukraine, including members of parliament, civil society and national experts, and was positively assessed by international organizations, such as the Group of States against Corruption (GRECO), the Council of Europe’s Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR). The Political Finance Reform Law introduced new political finance rules for political parties and candidates in elections, including public funding for political parties, establishing limits on donations to political parties and candidates, determining financial reporting requirements for political parties, and strengthening public oversight of political finance.

Since the adoption of the Political Finance Reform Law, significant progress has been made to increase political finance transparency by obliging political parties to submit quarterly financial reports. The National Agency for Prevention of Corruption (NAPC) plays an important role in the implementation of the Political Finance Reform Law and is tasked to analyze financial reports of political parties and perform oversight functions. The NAPC made some progress in analyzing financial reports of political parties and documenting political finance violations.

However, in the run-up to the 2019 presidential and parliamentary elections, the regulator faced numerous significant challenges in: countering shadow funding of political parties; verifying the data reflected in financial reports of political parties and candidates against their actual incomes and expenditures; preventing funding of campaigns by entities who are not eligible to make donations; combating excessive dependence of political parties and candidates on big corporate donors; and in reducing the overall cost of election campaigns. In the period between 2017–2019, unfortunately, the quality of the NAPC’s performance decreased and its political independence was compromised. This resulted in the inability of the NAPC to address the above-mentioned challenges effectively and even led to some deterioration in the reform implementation process.

The degradation of the NAPC’s institutional capacity resulted in calls to replace its management and improve its internal structure. On October 2, 2019, following the snap parliamentary election, the Law of Ukraine “On Amending Certain Legislative Acts of Ukraine to Guarantee Effectiveness of the Institutional Mechanism of Corruption Prevention” was adopted, which laid the foundation for the renewal of the leadership of the anti-corruption body by selecting a new Head of the NAPC through an open competition, involving Ukrainian and international anti-corruption experts. The competition was held in late 2019, and the Cabinet of Ministers appointed the new NAPC Chair on January 15, 2020.

The reboot of the NAPC actualizes the need to identify key priorities of political finance reform in Ukraine. This document presents an analysis of the key barriers for an effective implementation of
political finance reform and outlines measures needed to remove these barriers. The recommended steps are addressed mostly to the renewed NAPC, but other stakeholders, including the Central Election Commission (CEC), the Verkhovna Rada, political parties, non-governmental organizations and the media, should also play important roles.

Key Political Finance Priorities

Political finance reform in Ukraine aims to increase transparency of political finance and decrease the dependence of parties and candidates on big corporate donors. To reach these goals, both legal reforms and better compliance with and enforcement of political finance rules are required.

Legal reforms

Although the current legislation regulating political finance is quite progressive, many gaps and shortcomings have been identified over the past few years and need to be addressed. Ukrainian and international observers have repeatedly reiterated the need to introduce amendments to the current political finance legislation. The main drawbacks of the political finance legislation include the following:

- Unreasonably high limits on donations to political parties by individuals and companies and the lack of any correlation between the amount of donation and the level of a donor’s income;
- Lack of proper regulation of third-party expenditures in favor of political parties and candidates and in-kind donations;
- An unreasonably high threshold for receiving public funds, i.e. non-eligibility of non-parliamentary parties for public funding;
- Lack of regulation for what purposes political parties can spend public funds;
- Lack of procedures determining how local party organizations can receive public funds;
- Unclear procedures for the conduct of external independent audit of political parties;
- Absence of effective, proportionate and dissuasive sanctions for political finance violations;
- Unjustifiably burdensome procedures for documenting administrative offenses and short statutes of limitations for legal proceedings.

To address these shortcomings, it is necessary to develop and approve comprehensive changes to the legislation that regulates political finance.

Key priorities should include the following:

- Decrease and limit the annual ceiling on donations from individuals and companies so that it would correlate with the income of the donors in the given period;
- Legally oblige third parties to inform about their intention to make a donation to a party;
- Restore the right of non-parliamentary parties to receive public funding;
- Enhance the system of allocation of public funding among parties so that smaller parties will be given more than their proportional share (introduce a mixed system for the allocation of funds from the state budget);
- Allow parties to use public funding for election-related activities and simultaneously abolish the reimbursement of campaign expenditures to parties;
- Provide an exhaustive list of the items on which parties cannot spend public funds;
• Oblige local party organizations to open separate accounts for receipt of public funding;
• Specify the procedures for conducting independent external audit of parties’ financial reporting;
• Provide the NAPC with real-time access to registers and data bases necessary for the effective control of financial reports and give the NAPC the ability to receive bank accounts information on its written requests;
• Restrict the right of parties that systematically violate the laws governing financial reporting to contest elections;
• Extend the statutes of limitation for courts considering administrative cases in the area of political finance;
• Simplify the procedures for drawing up administrative protocols for political finance violations;
• Enhance the capacity of law enforcement agencies to investigate criminal cases in the area of political finance;
• Provide NAPC officials with the right to participate in court proceedings;
• Introduce effective, proportionate and dissuasive sanctions for party and campaign finance violations.

To ensure an open and inclusive discussion of the necessary legal changes in the area of political finance reform, a working group which includes Members of Parliament, representatives of the NAPC, the CEC and lower level election commissions, as well as representatives of other state authorities, political parties, international and Ukrainian non-governmental organizations, should be established. Once the respective draft law is submitted to the Verkhovna Rada, it is worth sharing it with the OSCE/ODIHR for an expert opinion. The draft law text should be subject to inclusive consultations involving key stakeholders. It is also important that the parliament holds a meaningful debate prior to the final adoption of the Law.

**Enforcement and implementation**

Although reforming the legislation could give an important impetus to the revival of political finance reform, further progress in this area depends on several other, non-legislative improvements. It is important to keep in mind, however, that some of the measures outlined below will require amendments to the legislation.

The current system of financial reporting has been repeatedly criticized by political parties and the NAPC. The obligation of political parties to submit financial reports to the NAPC in a paper-based format imposes unjustified burden on central and local party organizations, as well as complicates their verification by the NAPC and hinders access to the reporting data for the public and the media.

**To solve this problem, an electronic reporting system for political parties that would enable them to publish reports in an open data format should be developed.** This will significantly simplify the process of reporting by political parties and make it easier for the NAPC to analyze them. It will also help non-governmental organizations and media to monitor published data and simplify the average citizens’ access to the information. The Law “On Amending Certain Legislative Acts on the Prevention and Counteraction of Political Corruption” adopted by the Rada in December 2019 laid the foundation for the introduction of such system, but its development requires time. The electronic reporting system needs to be developed in consultation with various stakeholders, including political party representatives, to ensure its user-friendliness.
At the same time, it is possible to optimize the current political party reporting system before a new electronic system is introduced. In order to do so, it is necessary to improve the current political party reporting format by creating a template based on a Microsoft Excel document, which will make it easier for political parties to complete reports and for the NAPC to analyze them. Civil society organizations (CSOs) have already developed such report templates, which the NAPC could use for developing a new reporting format. In addition, attention should be given to amending the procedures for submission of party financial reports by harmonizing it with the current legislation, which would also streamline the financial reporting process for political parties.

The paper-based format of financial reports, as well as the lack of access of the NAPC to all registers and databases, makes it difficult for the anti-corruption body to verify the reports. In order to enhance the capacity of the NAPC to verify report data which is currently done manually, the new electronic reporting system shall be connected to all necessary registers and databases to ensure automatic verification of the reported data. Additionally, following the introduction of the electronic reporting system, the NAPC should develop and implement an automatic system for the verification of political party reports, as well as an electronic case management system for the random distribution of cases between officials authorized to perform the verification.

The effective oversight of political party finance is also hampered by flawed by-laws. The Law “On Political Parties in Ukraine” obliges the NAPC to approve a methodology for determining the value of in-kind donations to political parties, so that political parties can properly reflect such donations in their financial reports. However, the methodology approved by the NAPC did not provide a clear algorithm for determining the value of in-kind donations, leaving parties with no instruments to declare such donations. Therefore, there is a pressing need to update or adopt a new methodology for determining the value of in-kind donations, which shall include clear guidelines on how to evaluate and reflect such donations.

In addition, a number of other issues related to the NAPC oversight functions remain unaddressed in by-laws, which also complicates effective state control in this area. In particular, the NAPC failed to adopt separate procedures for the verification of financial reports of political parties, the use of public funds by political parties and the verification of information about illegal donations. To ensure that the NAPC effectively performs its oversight functions, it is necessary to develop and adopt the mentioned by-laws and regulations.

The effectiveness of public oversight in the area of political finance depends not only on the capacity of the NAPC to verify the reported data, but also on its ability to reveal what was not reflected in party financial reports. Monitoring carried out by CSOs, such as CHESNO Civic Movement, Civil Network OPORA and the Committee of Voters of Ukraine, shows that advertising and other means of communication in media constitute the largest share of undeclared party spending. Hence, there is a need to ensure regular monitoring of media, including online media, as well as outdoor advertising, in order to identify undeclared donations in support of political parties and their expenditures on media. In line with the recently adopted Election Coder, to perform such media monitoring, the NAPC may use materials provided by CSOs that deal with election observation and monitoring. In addition, the NAPC should be provided with access to audio and video recordings of all broadcasts that include campaigning materials and are owned by TV and radio organizations.
At the same time, it is worth paying attention to other expenditures of political parties that are not reflected in their financial reports and are more difficult to identify. Such expenditures include the remuneration paid to political party staff, political technologists, spin doctors, campaigners, members of election commissions, etc. To effectively monitor such expenditures, it is essential to establish cooperation between the NAPC and other state institutions, including the State Fiscal Service and the National Police.

The capacity of the NAPC to monitor party activities in the regions is essential to ensure effective control over the actual spending of political parties. The Law entitles the NAPC to establish up to six regional branches, but such branches have not been created yet. If the renewed NAPC management decides to establish such regional branches, it will be necessary to ensure that they have the capacity to ensure its fully-fledged operation when it comes to the verification of data on political party incomes and expenditures at regional and local levels, as well as to ensure their cooperation with local civil society activists.

The inability of the NAPC to effectively perform its oversight functions derived largely from the poor performance of its Department on the Prevention of Corruption. Since its establishment in 2016, the Department encountered a number of challenges, in particular the lack of staff (the number of employees never reached 25 as stipulated in the staff list) and a high staff turnover. In addition, the delineation of responsibilities between the employees of the Department was not quite clear, resulting in poor interaction between them. In order to address the above challenges, it is necessary to identify what caused the said problems by conducting an audit of the Department’s activities. Based on the results of the audit, additional staff should be hired or, if necessary, the present staff shall be renewed, ensuring transparent selection of the new employees, as well as proper delineation of responsibilities among the new employees.

To enhance the NAPC capacity to perform its oversight functions, it is necessary to strengthen the skills and knowledge of its employees. This task becomes even more relevant, should the oversight functions and capabilities of the NAPC be expanded, as stated above. Therefore, the new NAPC management should continuously develop the professional skills (through training sessions, workshops, learning opportunities, etc.) of the employees responsible for the verification of financial reports of political parties and for documenting offenses, including on how to effectively work with open registers, requests for information, conducting verifications, etc.

So far, the NAPC has focused primarily on minor violations of political finance rules, such as making and receiving donations from persons with tax debts or non-compliance with technical reporting requirements. At the same time, the process of documenting violations and legal proceedings, and, in some cases, applying sanctions have imposed an unnecessary burden on the NAPC, the political parties and their donors which was often disproportionate to the nature of the violations. Therefore, the NAPC should better focus on preventing such minor violations instead of trying to prosecute all offenders. The NAPC should consider carrying out awareness raising campaigns on a regular basis to inform political parties about the most typical violations and to prevent such violations in future. In addition, the NAPC should consider issuing compliance notices for political parties to correct their wrongdoings (in accordance with Article 20 of the Law of Ukraine “On Political Parties in Ukraine”), should they fail to comply with the legal requirements, before applying sanctions.
The Election Code empowers the NAPC with oversight functions in presidential and parliamentary elections. In both cases, the NAPC shares its mandate in campaign finance oversight with the CEC; however, the delineation of responsibilities between the NAPC and the CEC is not clear and may lead to duplication of efforts and blurring the lines of responsibility. In the 2019 presidential and parliamentary elections, the CEC and NAPC managed to establish cooperation to fulfil their functions, but such cooperation was set up quite late. Furthermore, according to the OSCE/ODIHR election observation mission, the control exercised by the two oversight institutions was “largely technical” and neither of them “accepted responsibility or had investigatory powers to determine any circumvention of transparency regulations, including third-party financing and in-kind donations, or misuse of state resources”. Therefore, the NAPC and the CEC should prepare for the next national elections well in advance and work to strengthen their ability to identify undeclared income and expenditures of political parties and candidates.

In the period 2016-2019, CSOs and investigative journalists played an important role in monitoring the financial activities of political parties and candidates against the backdrop of ineffective public oversight of political finance. In some cases, they identified potential violations that served as a basis for further analysis by the NAPC or investigations by the National Police. Hence, representatives of CSOs interested in the implementation of political finance reform may become reliable partners for the renewed NAPC. The new leadership of the anti-corruption institution should establish effective communication with civil society activists and investigative journalists in terms of recording and documenting identified offenses, analyzing provided information, as well as developing and implementing joint initiatives in the field of political finance oversight.

Conclusions

The NAPC reboot opens a window of opportunities for further progress in the implementation of the political finance reform in Ukraine. To that end, it is very important to ensure smooth coordination of efforts by all stakeholders, including the parliament, the NAPC, the CEC and other state authorities, political parties and CSOs. Such cooperation should lay the foundation for the implementation of key political finance priorities that include both legislative and non-legislative measures.

To reform the political finance legislation, it is necessary to:

- Develop comprehensive changes to the political finance legislation that would address all gaps and shortcomings of the current legal framework;
- Ensure that the proposed changes are discussed within a broad working group that should include all relevant stakeholders;
- Ensure that the parliament holds a proper debate on the proposed changes prior to the final adoption of the comprehensive draft law.

Other political finance reform priorities include the steps to:

- Introduce the electronic reporting system for political parties to ensure that the information reflected in financial reports of political parties is published in an open data format; such a system should be automatically connected to all registers and databases required for the analysis and verification of reported data;
- Simplify and bring the financial report template and the procedure for its submission in
• Develop and approve the new methodology for evaluating in-kind donations that would provide clear and comprehensive guidelines for determining their value and reflecting them in financial reports;
• Adopt new by-laws and regulations governing the procedures for the verification of party financial reports, the use of public funding by political parties and the verification of information on illegal donations;
• Conduct regular monitoring of media and outdoor advertising to identify undeclared donations to political parties and their expenditures on advertising and media;
• Ensure the fully-fledged operation of the NAPC regional branches (if established) and their cooperation with regional and local stakeholders;
• Recruit new staff and, if necessary, renew the current staff of the Department for the Prevention of Political Corruption;
• Provide capacity building opportunities for employees of the NAPC through their participation in workshops, training courses, etc.;
• Carry out awareness raising campaigns for political parties to prevent the most widespread violations;
• Ensure continued cooperation between the NAPC and the CEC to strengthen their capacity to analyze and identify undeclared expenditures of political parties and candidates in elections;
• Establish effective coordination of the NAPC with CSOs and investigative journalists to identify and document violations and elaborate further ways to facilitate the political finance reform.

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