

January 15, 2018
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Verkhovna Rada of Ukraine
5, Hrushevskiy Str.,
Kyiv, 01008, Ukraine

Mr. Ihor Rainin
Head
Presidential Administration of Ukraine
11, Bankova Str.,
Kyiv, 01220, Ukraine

Re: Draft Laws on the High Anti-Corruption Court

Your Excellencies,

The World Bank welcomes the submission to Parliament by President Poroshenko of Draft Laws 7440 and 7441 on the High Anti-Corruption Court (HACC) on December 22. As discussed during President Kim's visit to Ukraine in November, the creation of effective anticorruption institutions, including an independent HACC, is one of the most important pillars in Ukraine's reform agenda, and will help to strengthen confidence in Ukrainian institutions and deliver the accountability and justice that the people of Ukraine demand of their public officials.

While submission of the draft HACC Law to create an independent court and appellate chamber is a very positive step, we believe that the draft law requires the following revisions to bring it into alignment with the recommendations of the Venice Commission and satisfy the requirements of the World Bank's estimated \$800 million Policy-Based Guarantee (PBG) to support key reforms in Ukraine:

Jurisdiction: The draft Law sets out a jurisdiction for the HACC which is both broader than that recommended by the Venice Commission but also falls short of encompassing all of the cases under NABU and SAPO jurisdiction. We strongly encourage a revision of the draft Law to align the jurisdiction of the HACC with the jurisdiction of NABU and SAPO.

Qualification requirements for judges: The draft Law stipulates a broad and unrealistic set of qualifications for candidates to serve as judges on the HACC, including the requirement of both substantial experience in fighting corruption at international organizations or international judicial institutions and substantial experience in Ukraine. These requirements will have the effect of greatly limiting competition for anti-corruption judges. The qualification provision should be revised to encourage the "widest range of judges, lawyers and academics to compete" for positions on the HACC as noted in the international community's "Common Understanding on the HACC" cited in the Venice Commission recommendations.

Selection of judges: The draft Law's creation of a Public Council of International Experts (PCIE) needs to be better aligned with the Venice Commission's recommendation that international organizations and donors be given a crucial and binding role in the body selecting anti-corruption judges. Since the PCIE is provided only an advisory role, its decision that a candidate is unqualified could be overruled by a two-thirds vote of the High Qualifications Commission. A similar procedure used in the recent Supreme Court selection process resulted in about 60 percent of candidates found unfit by the Public

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Integrity Council being nominated. Such an advisory role (rather than a crucial and binding role) undermines the credibility and trust that international participation can bring to the selection process. The draft Law also unnecessarily restricts participation in the PCIE to “international organizations” rather than opening up participation to both “international organizations and donors” as recommended by the Venice Commission. We recommend that the PCIE provisions be revised to provide it a crucial and binding role in the selection of judges and to enable a broad cross section of international organizations and donors to participate.

In addition to the points noted above, the draft Law also contains the following provisions that could delay the start of operations of the HACC operations:

Number of judges not stipulated: The number of judges in the HACC is not stipulated by the draft Law but is instead left to be determined by the State Judicial Administration. The draft Law also provides no guidance on how this figure should be set, which could lead either to an unnecessarily large or insufficient number of judges, which would undermine effective operation of the HACC. We recommend that the draft Law be revised to remove this uncertainty by identifying the number of HACC judges, possibly by setting an upper limit on the number of investigative, first instance and appellate judges with the final decision to be made by the HACC itself.

Requirement to appoint two-thirds of judges: The draft law stipulates that two-thirds of all HACC judges and half of the appellate judges be appointed before the Court can become operational. This requirement, combined with the uncertainty over the total number of judges and the overly prescriptive list of judicial qualifications, could be used to delay the creation of the HACC by making it difficult to meet these numerical requirements.

Requirement to submit another law: The draft Law concludes with a requirement that the President of Ukraine submit a further draft law on the creation of the HACC. This requirement seems unnecessary in light of the detailed provisions in draft Law 7440 and the fact the HACC is already mentioned in the framework Law on the Judiciary and Status of Judges adopted in 2016.

We believe that the points noted above can be addressed through the legislative process provided there is strong leadership and guidance from the President and leadership of the Parliament. We would, therefore, encourage you to move forward expeditiously with the necessary revisions to the draft law, as well as to secure parliamentary approval at the earliest opportunity.

We stand ready to work with the Ukrainian authorities, the international community, and civil society organizations in supporting the creation of independent, effective, and credible HACC staffed with judges of the highest integrity and experience.

Sincerely,



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Copied to: H. E. Volodymyr Hroysman, Prime Minister, the Cabinet of Ministers of Ukraine
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