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ANTI-CORRUPTION
RESEARCH & EDUCATION
CENTRE



POLICY BRIEF

KEY RECOMMENDATIONS FOR RESTARTING THE NACP'S WORK ON WHISTLEBLOWER'S PROTECTION

**1 IMPROVEMENT OF THE FUNCTIONALITY AND WEB
CONTENT OF THE UNIFIED WHISTLEBLOWER
REPORTING PORTAL**

**2 IMPROVEMENT OF THE EXPLANATIONS
OF THE NACP**

**3 REVIEW OF THE MECHANISMS
OF INFORMING ABOUT THE UNIFIED
WHISTLEBLOWER REPORTING PORTAL
AND TRAINING ON ITS USE**

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CONTEXT AND CHALLENGES:

ONE OF THE KEY AREAS OF ACTIVITY OF THE NATIONAL AGENCY ON CORRUPTION PREVENTION (NACP) IS THE PROTECTION OF WHISTLEBLOWERS. THIS AREA IS AS IMPORTANT AS OTHER AREAS OF THE NACP'S ACTIVITIES AND REQUIRES SPECIAL ATTENTION.

The newly appointed Head of the NACP faces serious challenges in the area of whistleblower protection, as the last eight months have been characterized by the NACP's lack of effectiveness in this area and «self-promotion by the NACP,» which raises high public expectations and does not correspond to the real state of affairs. In view of this, the newly appointed Head of the NACP should immediately take measures to resolve the problems in the work with whistleblowers. These measures will help restore the trust of civil society and the expert community and support the Agency's effective work in whistleblower protection.

AREA 1.

IMPROVEMENT OF THE FUNCTIONALITY AND WEB CONTENT OF THE UNIFIED WHISTLEBLOWER REPORTING PORTAL

PROBLEM STATEMENT:

The functionality and web content of the Unified Whistleblower Reporting Portal (hereinafter – Portal) do not meet the best practices for comfortable reporting and feedback to the whistleblower. In addition, the Portal only partially complies with the Guidelines for processing personal information under the European Union Whistleblowing Procedure.

1. *Improve the technical specifications and functionality of the Portal so that it complies with the Guidelines for processing personal information under the whistleblowing procedure in the European Union.*

Justification: In accordance with EU standards, the Portal should provide for the whistleblower to control access to and retention periods for their personal data, as well as to guarantee the confidentiality of the personal data of the persons being reported, witnesses, etc.

2. *Provide a function that allows the person who reports the violation to choose which authorized persons in the institution the whistleblower wishes to make a report, for example, an authorized person, an acting manager, the head of the institution, etc.*

Justification: The availability of such an option will increase motivation to report possible acts of corruption, as the whistleblower will know that their report will be reviewed by an official whom the whistleblower trusts to safeguard their confidentiality and to handle the report competently, and will not be afraid to report possible violations.

3. *Place information on the Portal's home page that clearly and accessibly communicates its purpose as an internal communication channel to users.*

Justification: The absence of a clear and accessible explanation that the Portal is precisely an internal channel for reporting on the Portal's home page may create a false impression in a person planning to submit a report that the Portal can be used as a regular channel. Currently, the information that the Portal is an internal channel is only contained in the Frequently Asked Questions section.

4. *In the "Reporting Corruption" section, change the title of step 3 from "The source of information" to "The information became known to you in connection with" and remove the notice "The person submitting the report is personally responsible for the accuracy of the data on the source of information received by them. Please note that the determination of the fact that such data is unreliable will result in the deprivation of whistleblower status and the impossibility of exercising the rights and guarantees of protection of the whistleblower."*

Justification: The title of step 3 does not match its content, and the information about personal responsibility for data accuracy is irrelevant and creates moral pressure on the person who decides to make a report. The requirement in step 3 to fill in the field on the exact activity in connection with which the person became aware of the information is quite sufficient.

5. *Remove from the Portal the field that requires the whistleblower to indicate the legal qualification of the offense he or she is reporting.*

Justification: The whistleblower is not obliged to give a legal assessment of the information he/she reports because he/she reports about possible facts of corruption or corruption-related offenses or other violations of this law, and it is up to law enforcement agencies and the court to verify and establish whether these facts have signs of a specific offense and give a legal assessment of the offense. In addition, the vast majority of individuals who make reports do not have a legal background and lack the necessary knowledge to determine the legal qualifications for the possible offense they are reporting.

6. *Provide a function for checking (previewing) information before submitting the report.*

Justification: The function of previewing information before submitting it plays an important role in ensuring the accuracy and reliability of information, as well as user satisfaction with the Portal. In particular, the pro-

vision of a preview function allows the whistleblower to check their data before it is submitted, to identify possible errors, inaccuracies, or deficiencies in the information before it enters the Portal system. This is especially important in cases of reporting possible facts of corruption, where incorrect information can provoke negative consequences. The preview feature also enhances the user experience. The user can verify that their data is correct before its submission. If the user notices an error during the preview, they can make the necessary changes before submitting the information.

7. *Ensure that only the person who directly reviewed the report can access the reports that have already been reviewed. Exclude the ability of the organization's head to access all previously reviewed reports through the "Archive" section.*

Justification: This will maintain the confidentiality of information and ensure limited access to the reports only to persons directly involved in their consideration.

8. *Expand the functionality of the Portal by introducing a personal account for the whistleblower.*

Justification: Having a whistleblower account is an essential step in improving the efficiency of the Portal and strengthening the protection of the whistleblower's rights. This tool will allow the whistleblower to constantly communicate with the authorized person reviewing the report. In addition, the whistleblower will be able to provide additional information or documents, receive operational information on the progress of the communication, and be notified if information is shared with third parties. This will promote transparency and protect the whistleblower's privacy by encouraging them to trust and actively cooperate with the whistleblowing system.

9. *Place on the home page of the Portal information indicating the presence of a certificate of compliance with the IISS, including a notice on the use of cryptographic and technical methods to ensure anonymity of the IP address, the presence of an end-to-end encryption certificate and other measures to ensure information security.*

Justification: Providing information about security measures on the Portal's home page has several significant benefits: it helps build user trust in the Portal by showing them that the web resource is security compliant and has an IISS compliance certificate; it helps raise users' awareness of how their data is protected and how privacy is ensured on the Portal.

10. *When selecting a contractor to improve the Portal, preference should be given to companies that specialize and have sufficient experience in developing software for whistleblower reporting portals or Compliance Management Systems and whose products comply with ISO 37002, ISO 37001, and GDPR standards.*

Justification: Selecting a contractor to improve the Portal is a key step in ensuring its efficiency and compliance with standards. Companies specializing in software development for whistleblower reporting portals or Compliance Management Systems are best suited to meet these requirements; their ISO 37002, ISO 37001, and GDPR-compliant products guarantee high quality, ensuring compliance with legal requirements, and international standards on corporate ethics, anti-corruption measures, and personal data protection. Careful selection of a contractor will contribute to the qualitative improvement of the Portal's functionality that meets the requirements of security, ethics, and confidentiality.

AREA 2.

IMPROVEMENT OF THE EXPLANATIONS OF THE NACP

PROBLEM STATEMENT:

The NACP Explanation dated 06/12/23 No. 2 “On the legal status of a whistleblower” narrows the guarantees of protection of whistleblower rights provided by the Law of Ukraine “On Corruption Prevention”, while at the same time failing to provide proper clarification of the understanding of the institution of whistleblowing provided by the current legislation. Certain parts of the explanation are just a citation of the Law and do not provide an interpretation of its provisions. The explanation is not well structured, and some provisions are unclear and require interpretation. The NACP Explanation dated 06/12/23 No. 2 “On the legal status of a whistleblower” has already caused ambiguous law enforcement practice and may lead to the formation of erroneous case law, as well as a narrowing of the whistleblower protection guarantees provided by the Law of Ukraine “On Corruption Prevention”. This may lead to an increase in the number of cases of violations of whistleblower rights. Such circumstances could significantly undermine public confidence in the institution of whistleblowing and lead to an aggravation of the situation with the tolerance of corrupt practices in society.

1. Amend the NACP Explanation dated 06/12/23 No. 2 “On the legal status of a whistleblower” regarding the interpretation of the provisions of the law on the conditions for a person to acquire the rights and guarantees of a whistleblower: in particular, change the legal position of the NACP that a person acquires the rights of a whistleblower only if he/she has reported the possible facts of committing a criminal offense of corruption and/or a criminal offense related to corruption, and the pre-trial investigation body, based on the results of the report, has entered information into the Unified Register of Pre-Trial Investigations specifically about the corruption offense. Provide a clear explanation that acquiring the status of a whistleblower is not tied to the legal fact that the subject of authority provides the legal qualification of the information contained in the report. To acquire whistleblower status, it only matters that the person who reports is really an “insider” (working, studying, serving, volunteering, etc. in the relevant organization) and has really reported in any possible way information about likely facts of offenses.

Justification: Amendments to the NACP Explanation dated 06/12/23 No. 2 “On the legal status of a whistleblower” are necessary to ensure consistency with the standards and principles of whistleblower protection. Changes in the interpretation of the conditions for a person to acquire whistleblower status are essential to address shortcomings in the NACP approach. Emphasizing the importance of the information itself about possible acts of corruption and the status of “insider” will ensure that the whistleblower’s rights are protected regardless of the future legal qualification of the information provided. This approach will contribute to the development of the Portal as a transparent and

effective mechanism for detecting corruption in accordance with legislation and international standards.

2. Clearly outline the powers of the Agency, as provided for in paragraph 5 of Section I of the Procedure for maintaining the Portal, to use the Portal data for the purpose of verifying compliance with legislation on the protection of whistleblowers, organizing work to prevent and detect corruption, monitoring the implementation of the law in the field of protecting whistleblowers, etc.

Justification: Clearly defined powers of the NACP will reduce the Agency’s discretion in this matter. This, in turn, will help to increase the accountability, validity, and consistency of decisions made since the activities of the NACP will be based on clear, pre-defined criteria. In addition, it will strengthen whistleblower confidentiality guarantees by reducing the risk of third parties accessing reports on the Portal.

3. In the by-laws, particularly in the Procedure for maintaining the Portal, define mechanisms for identifying violations that serve as grounds for the Agency to exclude an authorized user from the Portal independently.

Justification: This will reduce the discretion of the NACP in this matter and promote greater accountability, validity, and consistency in the decisions made, as the NACP’s activities will be based on clear, pre-defined criteria.

AREA 3.

REVIEW OF THE MECHANISMS OF INFORMING ABOUT THE UNIFIED WHISTLEBLOWER REPORTING PORTAL AND TRAINING ON ITS USE

PROBLEM STATEMENT:

The NACP did not conduct a proper awareness campaign among authorized persons and potential whistleblowers. As of 2023, both target groups either have little or no knowledge of the full functionality of the Portal. The information campaign was largely chaotic and focused on informing about the launch of the Portal and the benefits of its launch.

1. *Develop and implement a comprehensive communication campaign aimed at two target audiences, namely potential whistleblowers and anti-corruption commissioners. The campaign should be based on expert suggestions and include informing potential whistleblowers about the guarantees of anonymity and protection of their rights when using the Portal.*

Justification: A comprehensive communications campaign is a critical step in promotion and efficient usage of the Portal, as it will build the trust of potential whistleblowers. Providing them with the information they need about anonymity and the protection of their rights will encourage greater engagement and reporting of offenses.

2. *Place on the Portal all developed useful information for commissioners and whistleblowers, including instructions for connecting bodies of authority to the Portal and tips for the commissioners and whistleblowers on how to use the Portal. Also, provide convenient access to all these materials on the official NACP website.*

Justification: Placing complete information and instructions on the official website and the NACP Portal is an important component of ensuring the accessibility and ease of use of the platform by the commissioners and whistleblowers. This will help improve performance and confidence in the system.

3. *Prioritize training activities for commissioners, such as webinars and training on using the Portal.*

Justification: Conducting training events, such as webinars and trainings, is a crucial element for the successful operation of the Portal. Obtaining detailed instructions and practical skills for working with the Portal by commissioners helps avoid misunderstandings and errors in use and helps increase the level of confidence in use, as well as the efficiency of working with the Portal.

4. *Develop and implement an effective feedback mechanism with the Portal users in order to provide high-quality support and explanations on the system operation, as well as to promptly respond to suggestions and comments on the Portal functioning.*

Justification: Establishing an effective feedback mechanism with organizations connected to the Portal is important to ensure their support and successful integration into the system and its improvement. Since thousands of organizations are planned to be connected to the Portal in the near future, NACP will not be able to provide direct communication with each connected organization, at least due to the limited number of the Agency employees. The system of getting feedback should be organized in such a way that users who have questions about the work of the Portal can easily find all possible materials and instructions. Users who either have not found an answer to their question or have suggestions or comments on the work of the Portal will have a convenient way to express them (for example, through the feedback form on the Portal itself, so that the sent questions and suggestions are stored and efficiently processed).



THE POLICY BRIEF IS BASED ON THE RESULTS AND RECOMMENDATIONS OF ACREC RESEARCH:

1) Nesterenko, O. Compliance of the legislation and the Unified Whistleblower Reporting Portal with international standards and best practices in terms of guaranteeing anonymity and confidentiality of whistleblowers. Kyiv: Red Zet LLC, 2024

2) Hlomb, M, Nesterenko, O, Sobol, A, Tsapok M. Unified Whistleblower Reporting Portal: Assessment, Risks and Recommendations / edited by O. Nesterenko Kyiv: Red Zet LLC, 2023

**LINK TO THE MATERIALS
ON WHISTLEBLOWERS PROTECTION**



Kyiv, 2024

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<https://acrec.org.ua>