

PGG II ANNUAL REPORT

ANNUAL REPORT 2019 - YEAR 1 OF IMPLEMENTATION

PROJECT INFORMATION

Project reference and title:	EU-JP/2351 - PGG II : 14. Strengthening measures to counter money laundering and financing terrorism in Ukraine
Project type:	Bilateral
Target country:	Ukraine
Project planned starting date:	01/01/2019
Project effective starting date:	01/01/2019
Project duration:	36 months
National partners:	
Target groups and/or final beneficiaries:	Verkhovna Rada/Parliament of Ukraine (Верховна Рада України); Ministry of Justice (Міністерство юстиції України); National Academy of the Public Prosecutor's Office of Ukraine; National Bank (Національний банк України); Ministry of Internal Affairs (Міністерство внутрішніх справ України); National University of the State Fiscal Service of Ukraine (Національний університет державної фіскальної служби України); Ministry of Finance (Міністерство фінансів); Public Prosecutors' Office (Прокуратура України); State Fiscal Service of Ukraine (Державна фіскальна служба України); State Financial Monitoring Service (Державна служба фінансового моніторингу України); National School of Judges (Національна школа суддів України); Security Service (Служба Безпеки України); National Academy of Security Service of Ukraine (Національна Академія Служби безпеки України)
Date of report:	31/12/2019
Project team:	
Project Manager in Council of Europe Headquarters:	Zahra AHMADOVA
Project supervisors:	Mustafa FERATI

I. EXECUTIVE SUMMARY – OVERALL ASSESSMENT

During the reporting period the most significant advances occurred in the legislative area. In particular, new Anti-money laundering/Counter terrorist financing (AML/CFT) Law was approved by the Parliament in December 2019 and shall enter into force at the end of April 2020. This piece of legislation is aimed at transposing provisions of the 4th EU AML Directive into Ukrainian legislation, fulfilment of FATF and MONEYVAL recommendations with an overall goal of making Ukrainian AML/CFT system more efficient.

In addition a new draft Law On the Bureau of Financial Investigations has been registered with the Verkhovna Rada of Ukraine and the Project contributed to its elaboration. The overall idea behind this legislative initiative is to replace currently existing Tax Militia which has indefinite legal status since 2017 as well as take over powers to investigate economic, financial and tax crimes from the Security Service of Ukraine and National Police of Ukraine. The draft Law was pending for the second reading which was scheduled for mid-January 2020. However, the draft has been unexpectedly rejected by the Parliament in the early 2020 and the new version is expected to be submitted to the Parliament shortly by the President. Once established and operational the new agency is expected to become one of the key partners for the Project.

Significant developments has also touched an anti-corruption area. In particular, after the Constitutional Court ruled the provisions of the Criminal Code on illicit enrichment unconstitutional in February 2019, Parliament adopted a new Law on 31 October 2019 reinstating illicit enrichment as a criminal offence. This was even reinforced by introduction of civil forfeiture (non-conviction based confiscation) for top corruption cases. Furthermore, legislation on the re-launching of the National Agency for Prevention of Corruption and on the protection of whistle-blowers were also adopted.

On operational level the Project held two training activities for over 50 representatives of law enforcement and financial intelligence agencies on money laundering investigation and prosecution; on financial investigations and confiscation of proceeds from crime. Moreover, the Project commenced review and revision of the training course for judges on adjudication of the money-laundering related cases; development of guidelines on financial investigations; development of concept for beneficial ownership verification and preparatory work for the training on identification of money laundering and terrorist financing (ML/TF) risks associated with corporate entities.

When it comes to challenges it should be mentioned that for major project partner institutions 2019 has been marked as a period of intense reforming process. In particular, the Prosecutor General's Office of Ukraine and State Fiscal Service of Ukraine has been in active phase of reforming during the second half of 2019, while the Security Service of Ukraine is pending for reform which is about to start with adoption of the new legislation. The State Bureau of Investigations as well as National Agency for Prevention of Corruption as a result of recent legislative amendments are being "rebooted" at present time. In addition to this Presidential and Parliament elections led to changing of leadership of almost all project partners (except for the Financial Intelligence Unit and Ministry of Internal Affairs), which has some impact on the project implementation pace as well.

Looking ahead to 2020, the main focus will be on (1) assistance to beneficiary institutions with implementation of the new AML/CFT legislation as it introduces a number of novelties. Moreover, the project will support partners with (2) building their AML/CFT capacities covering preventive, enforcement and judicial aspects.

II. RESULTS ASSESSMENT

Intermediate outcome 1

Legislative framework on AML/CFT aligned to European and international standards

During the reporting period, a new Anti-Money Laundering and Financing of Terrorism (AML/CFT) law was approved by the Parliament in December 2019 and shall enter into force at the end of April 2020. This piece of legislation aimed at transposing provisions of the 4th EU AML Directive into Ukrainian legislation, fulfilling FATF and MONEYVAL recommendations with an overall goal of making Ukrainian AML/CFT system more effective.

Adoption of the new legislation paves the way for further stages of the Project through assistance with implementation of provisions of the new AML/CFT Law into practice.

Output 1.1.1

Legislative proposals available to address gaps identified in MONEYVAL evaluation

The Project provided input to the drafting process and contributed to the discussions that led to the adoption of the new AML/CFT legislation. The new Law was approved by the Verkhovna Rada of Ukraine on 06 December 2019 and subsequently signed by the President of Ukraine on 27 December 2019. Based on the Final and Transitional Provisions of the Law it shall enter into force within 4 months from the day of the official publication (28 April 2020).

This piece of legislation is aimed at transposing provisions of the 4th EU AML Directive, fulfilment of FATF and MONEYVAL recommendations into Ukrainian legislation with an overall goal of making Ukrainian AML/CFT system more efficient.

Key novelties envisaged by the new legislation:

- Bringing definitions and terms used in the Ukrainian national legislation in line with international analogues as well as introducing a number of new terms, including "freezing of assets", "source of funds related to the financial transaction(s)", "related parties", "source of wealth (wealth)", "politically exposed persons", "risk-based approach", "virtual asset", "shell bank" etc.;
- Simplification of reporting procedures through decreasing a number of indicators for financial transactions to be reported by reporting entities to the FIU (from current 17 to 4). Hence, reporting entities will be obliged to inform on financial transactions related to cash, transfer of funds abroad, PEPs and clients from jurisdictions which do not follow the AML recommendations by international, intergovernmental organizations;
- Increasing the threshold (from current UAH 150,000 to UAH 400,000) for financial transactions to be reported by reporting entities to the FIU;
- Expanded list of reporting entities. In particular tax consultants, entities providing services for the creation, maintenance or management of legal entities and virtual assets service providers have been added thereof;
- Introducing a risk-oriented approach;
- Diversification of sanctions which could be applied to reporting entities for non-compliance with AML/CFT legislation;
- Procedure for identification and verification of the ultimate beneficial ownership (UBO) is improved;
- Mechanism of targeted financial sanctions improved in accordance with the requirements of 6 and 7 of the FATF Recommendations and UN Security Council Resolutions 1267 and 1373. In particular asset freezing procedure introduced and provisions on international cooperation in this area strengthened;
- Procedure for establishing the list of persons related to terrorist activity or subject to international sanctions revised;
- Mechanism for relying on third parties for proper due diligence is introduced;
- Requirements are set up to support transfers with information about the originator and the recipient of funds (travel rule);
- Mechanism for identifying PEPs and financial monitoring of their operations is changed;
- Amendments to the Criminal and Criminal Procedure Codes are introduced, in particular the new version of the ML offence (Article 209 of the Criminal Code of Ukraine).

Since the new AML/CFT legislation brings significant novelties into the legal framework, substantial work to develop relevant regulatory framework is expected with a view to implement all necessary provisions. In regards to this the Project is expected to be actively engaged with assistance to relevant supervising authorities with development and implementation legal mechanisms and procedures.

Intermediate outcome 2

Comprehensive measures on prevention and detection of money laundering/terrorist financing

In order to enhance capacities of Ukrainian designated authorities to prevent, detect and investigate effectively the money laundering offence, the Project delivered capacity building actions focusing on money laundering investigation and prosecution, financial investigations and confiscation of proceeds from crime. The project is also providing technical assistance to the inter-agency working group comprised of representatives of all LEAs and led by the FIU to develop the domestic Guidelines on financial investigations, which is expected to provide longstanding and sustainable effect in this area.

Output 2.1.1

Reinforcing capacities in financial investigations and investigative techniques and enhancing information sharing for the law enforcement authorities.

Activities in this area could be divided into strategic and operational level.

On operational level two comprehensive 2-day trainings were conducted in the 2nd part of 2019:

A two-day workshop on money laundering investigation and prosecution targeting the Law Enforcement Agencies and the FIU took place in October 2019. The workshop provided 24 participants with in-depth understanding and knowledge regarding following aspects: ML/FT typologies; operational issues and investigative strategies; prosecution strategy including evidentiary aspects of ML investigations and prosecutions (direct and indirect evidence, level of proof regarding mental element and the predicate offence); inter-agency and international cooperation, cooperation with the FIU; investigative recording and techniques. Extensive multi-stage case study contributed greatly to operationalization of the workshop and getting practical skills. Participants discussed with international experts not only legislative aspects (including existing challenges) of ML investigations and prosecutions but also issues, which could be applied in their practical day-to-day activity (cooperation with foreign jurisdictions, getting expert assistance in certain cases etc.). As a side but not less important outcome of the event the workshop facilitated networking between different LEAs involved in the area of AML in Ukraine.

A two-day training on financial investigations and confiscation of proceeds from crime for law enforcement and judiciary was held in December 2019 in Kyiv, Ukraine. The event brought together 28 practitioners from key LEAs (National Police, Security Service, National Anti-Corruption Bureau, Prosecutor General's Office, State Tax Service, State Bureau of Investigations), FIU as well as justices from the Supreme Court and district court. The training covered such aspects as definition, principles, objectives and benefits of financial investigation; strategy, planning, methods, techniques and instruments of financial investigations; sources of information, data processing and analysis, converting intelligence into evidence; intra- and inter-agency cooperation, interaction with private sector. In addition to the above mentioned the topic of assets recovery and its importance from a judicial perspective has been presented. Asset recovery poses a significant challenge both in Ukraine and overseas, which urges both LEAs and judiciary to prioritize this area. And financial investigation is an integral part and crucial prerequisite for successful assets recovery. Apart from theoretical part the training also comprehended several case studies with a view to provide participants with hands-on skills of conducting financial investigations. In particular, representatives of different agencies mixed in small groups worked together to solve multistage case using previously gained knowledge regarding basics of financial investigations.

On strategic level support to local stakeholders is being provided in terms of developing a **Guidelines on financial investigations**. Following MONEYVAL recommendations the FIU in 2018 started the process with establishment of extensive working group with representatives of all key national stakeholders. In 2019 the Project has been requested by the FIU to support the initiative with national and international experts. As soon as the national expert compile together inputs from different agencies and fill in missing information the draft Guidelines will be reviewed by the CoE international expert against international standards and best practices. Once the Guidelines is ready and approved by all LEAs the guidelines could become a solid background for building law enforcement capacities in the area of financial investigations.

Intermediate outcome 3

Effective legal and institutional framework enforcing beneficial ownership regime

The Project contributes to the work of a working group which consists of the representatives of public institutions (State Tax Service, National Bank, Ministry of Justice, FIU etc.), NGOs and private sector with a view to facilitate the process of developing new mechanism of beneficial ownership (BO) verification. The working group is currently developing the draft Concept of the BO verification and an Action Plan for implementation for 2020 – 2023. At the operational level, the Project has prepared a training on identifying ML/FT risks associated with corporate entities, to be delivered in January 2020.

Output 3.1.1

Enhanced regulatory framework and operational regime for verification of beneficial ownership of corporate entities

National stakeholders acknowledging the existent problem with the BO verification have started working on addressing the shortcoming on this subject. Among recent developments an extensive Memorandum of understanding (MoU) on cooperation to improve mechanism of BO verification was signed between key players such as Ministry of Justice, Ministry of Finance, National Bank, State Financial Monitoring Service, State Fiscal Service, Asset Recovery and Management Office, State Agency for E-Government of Ukraine, Government Office on Coordination European and Euro-Atlantic Cooperation, State Enterprise “National Information Systems” and a number of NGOs, which focus on anti-corruption and open data areas.

Based on the Roadmap which is an Annex to the above mentioned MoU the Concept for the mechanism of verification data on beneficial owners for 2020-2023 was supposed to be developed by the end of 2019. Through participation in discussions of the working group, the Project contributed to activities of the working group, which elaborated the draft Concept. Mechanism for verification of beneficial ownership constitutes and integral and the most important part of the draft Concept.

Once the package (draft Concept, Action Plan) is finalized, which now is expected by mid-end February 2020 the Project will provide support to the national stakeholders with recommendations for it before the documents are submitted approved by the Cabinet of Ministers of Ukraine.

Intermediate outcome 4

Improved adjudication of cases involving economic crimes

The project has commenced its cooperation with the National School of Judges of Ukraine. In particular, a scoping visit of international expert has been arranged in order to contribute to review and revision of the training course for judges on adjudication of the money-laundering related cases.

Output 4.1.1

Improved capacities of the National School of Judges to provide judicial training in relation to adjudication and criminal proceedings against economic crime

In December 2019, the project organised a scoping mission for the purpose of preparing review and revision of the training course for judges on adjudication of the ML related cases (including special confiscation). In the framework of this visit the meeting with the National School of Judges of Ukraine (NSJ) was organized and a number of aspects have been considered and discussed. In particular:

- previous course on adjudication of ML cases, developed in 2018 with assistance of CoE, is regarded as basic and could be used as a basis for designing of advanced course. There is still a long way ahead and a lot of work to be done due to recent approval of the new legislation on AML/FT by the Verkhovna Rada of Ukraine;
- confiscation remains a significant challenge for judges. The upcoming course should cover both “classic” and non-conviction based confiscation. The latter is a novelty for Ukraine and there is high demand for relevant materials;
- international expert explained in details system of judicial training in England and Wales, where judges (both full (salaried) and part-time (fee-paid) are obliged to take one two-day course on various subject per year. Judicial college is responsible for delivering training though it does not even have its own training facilities. Instead all the trainings are being conducted

in the University of Warwick. Detailed training course materials are available for judges in England and Wales online;

- during the training of judges in England and Wales each presentation is followed by practical exercise, when judges are requested to answer specific questions related to the topic working in groups. Tutors play an important role in this process when working in small groups as they facilitate and manage discussions;
- the system of training justices in England and Wales is pretty much similar to the one in Ukraine.

Representatives of the NSJ presented the concept of judicial training in Ukraine. The main problem outlined by the NSJ is lack of relevant case-law. This poses both challenge (making the course practical with including best practices) and opportunity (a chance to direct case-law in the right direction). In order to fill in the above mentioned gap international experience is much welcomed and hence international expert has been requested to share all relevant materials.

Following issues have been brought forward for consideration:

- Decide on the course promoter. This could be respectful and influential judge of the Supreme Court who could promote the course among judges.
- Agree on the course duration: whether 2-day is enough, or the course should be extended to 3 days.
- Involve one of the few judges who have already considered ML cases in Ukraine. S/he could share practical experience of challenges posed by this category of cases and possible ways to solve them.
- Engage investigators and prosecutors, who could contribute to an overall success of the course. Modular system could be a good solution as it makes the course flexible. For instance, judges of ordinary courts do not need extensive training on NCBC, while this is crucial for judges of the High Anti-Corruption Court.

III. CROSS-CUTTING ISSUES

- Gender mainstreaming

Gender statistics were collected for all events conducted under the Project. Of total participants in the project events, 60% were men and 40% were women representing national stakeholders and partner institutions.

IV. SUSTAINABILITY AND STAKEHOLDERS' OWNERSHIP

During 2019 effective working relations have been established with all key stakeholders of the Project.

Proactive and result-oriented approach by the FIU, which is the main beneficiary of the project, contributes greatly to successful implementation of the project activities.

There is high likelihood that in 2020 landscape of stakeholders will be changed due to establishment of specialized law enforcement agency (Bureau of Financial Investigation) to investigate economic, financial and tax crimes. In addition to this, the newly adopted AML/CFT Law added the Ministry of Digital Transformation of Ukraine to the list of subjects of financial monitoring when it comes to the virtual currencies and Virtual Assets Service Providers (VASPs).

V. COMPLEMENTARITY

Effective and regular communication has been established with EUDEL in order to provide donor with state of play of the project implementation and address potential challenges.

There are a number of donor and technical assistance organizations and projects active in the AML/CFT field in Ukraine. In particular, these relate to the activities of the Project resonate with OSCE PCU, PRAVO Police, PRAVO Justice, EU Anti-Corruption Initiative, EU Action against Drugs and Organised Crime, EU Advisory Mission in Ukraine, INL section of the US Embassy, International

Monetary Fund. With a view to avoid any possible overlaps, the Project coordinate its activities with the above mentioned actors.

VI. RISK AND RISK MITIGATION MEASURES

- As a result of the current legislative work in the field of money laundering, the new institution - the Bureau of Financial Investigations - may be established which may lead, on one hand, to delays in the project implementation and, on the other hand, bring new opportunities for the project implementation. If established, the Bureau of Financial Investigations will replace the existing tax police and will take over the investigations of economic crime from the Security Service and National Police. The project follows closely the developments concerning the setting up of the new agency in order to react rapidly to the institutional changes by proposing new activities. The project will include the new beneficiaries (e.g. the Bureau of Financial Investigations) in the project activities and adjust the work plan.
- The continuous institutional reforms may have an impact on the ability of beneficiary institutions to fully absorb the project assistance and this could influence the level of spending and achievements of the objectives.
- The new AML/CFT Law shall bring substantial changes in the area of AML/CFT. If adopted, the new Law will most likely affect the project implementation setting a new framework for the AML/CFT policy. The project closely follows on the legislative developments. After the adoption of the new legislation, the project will analyse the new provisions and, when relevant, adapt its support and activities to the new framework and requirements in order to strengthen the AML/CFT system in line with international and European standards.

VII. COMMUNICATION AND VISIBILITY

Visual identity of the Project follows the PGG Communications Strategy, agreed between the European Union and the Council of Europe, and is applicable to all programmatic outputs, including official communication, technical papers, activity agendas and presentations, news/media feeds, and project visibility kits (i.e. banners, folders, notepads, and pens).

A project specific Communication and Visibility Plan was developed with the objectives to:

- Improve understanding about the areas of intervention as they relate to implementation of the national priorities in the fight against ML/TF and highlight the results produced through the project;
- Inform about the role of the Council of Europe and the European Union in supporting the reforms and capacities to effectively combat ML/TF;
- Foster donor awareness of the project outcomes and ensure coordination with other EU-funded projects in the region.

In line with the Communication and Visibility Plan, the Project carried out visibility actions for its interventions. List of key project documents and information on programmatic events and deliverables (e.g. technical papers) can be found on the webpage of the Council of Europe Economic Crime Cooperation Division and the dedicated webpage to the Project.

VIII. KEY DELIVERABLES (publications, etc.)

1. Major reports and documentation produced:

- Advisory note on illicit enrichment and civil confiscation provisions of the draft amendments to the Criminal Code and the Civil Code of Ukraine compatibility with international standards, previous draft legislation, and the practice of the European Court of Human Rights.

2. List of activities:

- First Steering Committee Meeting, 02 October 2019 in Kyiv, Ukraine, 14 participants: 11 men/3 women;
- Workshop on “Investigating and Prosecuting Money Laundering”, 03-04 October 2020 in Kyiv, Ukraine, 24 participants: 17 men/7 women;

- Scoping visit of the international expert to Kyiv, Ukraine with a view to assist the National School of Judges of Ukraine in the review, development and delivery of the training course for judges on adjudication of the ML related cases (including special confiscation), 16 December 2019, 7 participants: 3 men/4 women;
- Training on financial investigations and confiscation of proceeds from crime for law enforcement and judiciary, 16-17 December 2019 in Kyiv, Ukraine, 28 participants: 16 men/12 women.