

Draft Resolutions on Anti-corruption Policy Government Agent of Ukraine

Expert comment

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NOTE: *I have been requested by the OECD to review and submit brief written comments on the the draft Draft Resolutions on Anti-corruption Policy Government Agent of Ukraine. The basis of my opinion is the English translation of the draft Resolution provided to me by the OECD. Results of different monitoring and review papers on Ukraine (e.g. GRECO's Evaluation Report of 2006 and various other Council of Europe's project and monitoring reports; OECD's Istanbul Action Plan reports, etc.) as well as my personal experience with past in-field technical assistance and monitoring missions were also taken into account.*

Views and opinions expressed in this document are author's own, and do not necessarily reflect official views or positions of the institutions I'm affiliated with, nor official positions of the OECD.

I. General comments

- In short, the draft resolution brings an important and timely policy, institutional and legal decision to institute a focal anti-corruption preventive body by assigning important policy and co-ordination functions to a newly created body within the Ministry of Justice - the Government Agent on Anti-Corruption Policy Issues (hereinafter: the AC Agent). Furthermore, the accompanying draft Regulations prescribe main tasks, functions, rights and duties of the Agent.

(a) *Creating specialised anti-corruption preventive body and its institutional placement*

- The sources of international standards (UN, Council of Europe, OECD, ...), although different in scope, depth and aim, define a clear international obligation for countries to ensure institutional specialisation in the field of corruption. With the introduction of the UN Convention in 2005 and various recent hard and soft-law of the Council of Europe there is now also a clear international standard requiring countries to ensure specialisation in two areas: **prevention** (including implementing of the anti-corruption policies referred, overseeing and coordinating the implementation of those policies, awareness raising etc.) and **law enforcement**.
- It is indisputable that at present Ukraine falls short of meeting these standards and that past and current efforts in this area were and are - for various reasons - less than satisfactory (e.g. *Interdepartmental Commission for the comprehensive solution of the problems in the area of prevention of and fight against corruption* within the Secretariat of the National Security and Defence Council; Ministry of Interior as the co-ordinating and reporting agency for the A-C Action Plan of 2007).
- It is my understanding that the general policy decision in Ukraine (which is also in line with GRECO's recommendations of 2006) is not to establish a single multipurpose (repressive & preventive) AC agency, but rather to separate these functions. I see merits in this decision and in line with it the draft Resolution follows GRECO's recommendation: "*to establish a body, distinct from the law enforcement functions, with the responsibility of overseeing the implementation of the national anti-corruption strategies and related action plans as well as proposing new strategies and measures against corruption...*"
- **As for the institutional placement of the Agent within the Ministry of Justice I'm of the opinion that such a decision is logical and advisable.** Even more so in a country in transition like Ukraine which is undergoing a deep reform of its legal system; reform of legislation normally directly or indirectly falls under the prerogatives of the MoJ and must be closely linked with AC preventive functions in the legal drafting process. Apart from an institutional solution where an AC preventive service is a fully independent body (which I believe is not a good solution in the current Ukrainian reality, would cause various legal and institutional obstacles and

significantly protract the process of establishing such a body and make it operational) creating a body within the MoJ is a sound solution. It also brings an important symbolic gesture - making a clearer line between prevention and repression by giving due highlight to the former (placing it within the MoI or the NSC gave an overly strong image of corruption as predominately a law enforcement problem).

- Finally, this is a solution not unknown to other European countries (e.g. France).

(b) Tasks, functions, duties and rights

- The draft Regulation outlining the tasks, functions, duties and rights of the Agent and its secretariat within the MoJ seems comprehensive and in line with international recommendations. While there is room for further improvements, it is acceptable as such since it covers all main functions - from policy coordination, identification of systemic and legal vulnerabilities, analysis of legislation, international cooperation increasing and disseminating knowledge about the prevention of corruption, to the involvement of civil society, academia etc..
- It is also important that draft Regulations institutes a number of additional personnel posts (20 seems sufficient for the beginning). Comparative experience shows that such offices when established to often linger with only a few overburdened staff.

II. Conclusion

- **I'm off the opinion that both, the draft Resolution to establish the AC Agent within the Ministry of Justice and the draft Regulation on the AC Agent's (and its Secretariat) tasks, functions and rights represents, represents a decent basis for the creation of a focal specialised non-law enforcement anti-corruption body in Ukraine. Its a logical step in the right direction and in line with international standards.**
- Possibly, the documents could be further improved (as to adding new or streamlining current tasks, functions and "powers" of the Agent). I'm of the opinion, however, that the Regulation is in line with international recommendations and offers a good starting point for actual work; I would see it as a unnecessary protraction of time to focus at this point on further improvements of the details of the legal basis for the Agent and advice instead on focusing on how to implement the Resolution and make the office of the Agent "operational" as soon as possible.