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Istanbul Anti-Corruption Action Plan

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UKRAINE

Progress Report

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To ensure efficient implementation of the Act of Ukraine “On main principles of prevention of and countering corruption” (hereinafter referred to as the Act) the President of Ukraine signed Decree “On priority measures on implementation of the Act of Ukraine “On main principles of prevention of and countering corruption” of 5 October 2011 # 964. In compliance with Art. 1 of the Decree, the functions of the specially authorized agency with regard to matters of anti-corruption policy were temporarily assigned to the Ministry of Justice. Art. 3 of the Decree tasks the Ministry of Justice to submit, following the established procedure, a bill on the specially authorized body on matters of anti-corruption policy. Pursuant to the above provision, the Ministry of Justice crafted and submitted on 26 December 2011 for the President’s consideration a draft Act of Ukraine “On introducing amendments to the Act of Ukraine “On main principles of prevention of and countering corruption” with respect to the specially authorized body on matters of anti-corruption policy”. The draft Act provides for clauses regarding the mission and main functions of such a body.

An equally important development was the approval by the President of Ukraine of the National Anti-Corruption Strategy for 2011-2015 (Decree of 21 October 2011, #1001). The Strategy provides for main avenues of implementation of the national anti-corruption policy over the period in question.

The Main avenues of the Strategy are:

- Reforming the public administration system and administrative procedures;
- Lowering administrative pressure on businesses;
- Ensuring the civil service and local self-government service’s integrity;
- Improving conditions of access of private individuals, legal entities and non-incorporated public associations to information about public agencies and local self-government bodies’ operations;
- Improving the system of use of public property and budget funds;
- Optimizing funding of political parties and electoral campaigns by establishing strict rules of their financing, as well as ensuring the conduct of an efficient independent oversight of such funding;
- Improving anti-corruption evaluation by introducing a multi-stage methodology of assessment of corruption risks in the national law;
- Mobilizing public support to government’s anti-corruption activities;
- Improving the system of specially authorized agencies;
- Upgrading judges, prosecutors and law enforcement staff’s qualifications;
- Preventing corruption manifestations in law-enforcement agencies;
- Improving the institution of liability for corruption offences;
- Lowering the level of corruption in the private sector;
- Lowering the level of corruption in areas with a greater propensity to high corruption risks, including law-enforcement, medical, land, educational, tax, customs, public-procurement and civil service ones, among others;
- Bolstering international cooperation in the anti-corruption area.

Plus, by its Resolution of 28 November 2011 № 1240, the Cabinet of Ministers of Ukraine approved the State program on prevention of and countering corruption for 2011-2015 (hereinafter referred to as the Program). The document provides for concrete measures on implementation of the established by the Strategy avenues and by its structure and content fully conforms with the latter document.

More specifically, the Program provides for ministries and other bodies of executive power annually updating the specially authorized agency on matters of anti-corruption policy on progress in

the Program implementation for generalization of the information and inclusion it in a report on results of implementation of anti-corruption measures. The said report is to be published annually, per Art. 19 of the Act of Ukraine "On main principles of prevention of and countering corruption".

The Program provides for a series of measures to be implemented together with the community. Specifically, the Ministry of Justice was tasked to monitor the consideration by the Supreme Rada of Ukraine of a bill "On introducing amendments to some Acts of Ukraine regarding the community's contribution to shaping and implementation of the public policy, making decisions of local significance". As well, the list of measures under the Program comprises granting the community access to draft normative-legal documents for familiarization with them, improvement of the mechanism of organization and conduct of public anti-corruption evaluation of such bills, creation of a system of monitoring of the impact the anti-corruption law has on the state of affairs in the country corruption-wise, and development, with the community's engagement, of respective amendments to the legislation, etc.

The Program also provides for the Ministry of Justice, acting in the capacity of the specially authorized agency on matters of corruption policy, annually running sociological research in the anti-corruption area across different regions with attraction of public organizations (NGOs).

For example, in November 2011, the Ministry of Justice in tandem with the Kharkiv Institute of Applied and Humanitarian Research presented findings of large-scale research into the level of corruption and its perception (across 14 areas in total). Co-sponsored by the Ukraine-Canada project "Combat with corruption", the research findings were presented in 8 regions of the country.

One of the tasks provided for by the Program is development and submission for consideration of the Cabinet of Ministers of proposals on improvement of the system of agencies responsible for fighting corruption. In addition, on 13 January 2012, the President submitted for consideration by the Supreme Rada the draft Criminal-Procedural Code of Ukraine which provides for a strict division of law-enforcement agencies' powers, in particular, with respect to corruption cases. The Code was passed in the first reading on 9 February 2012.

The Program also commissions the Ministry of Justice to develop proposals with regard to amendments to the Regulation of the Supreme Rada of Ukraine for the sake of reducing to a minimum the procedure of granting consent on bringing to criminal responsibility, detaining or arresting persons enjoying immunity, where such persons have been caught in the act of felony, including corruption.

The program also comprises development of a bill which would imply amendments to the legislation regarding external independent audit with respect to exercise of oversight of the use of local budgets funds and the Accounting Chamber's monitoring of efficiency of spending of the state budget funds in the course of implementation of nationwide economic, research and technical, social and ethnic and cultural development programs.

Yet another provision therein provides for mass media raising awareness of results of inspections and examinations of budget spending and the use of public and communal assets.

In order to improve the law on public procurement procedures, to ensure transparency of the public procurement process the Program emphasizes introduction of a system of e-procurement of goods, works and services for public funds and a system of external audit of public procurements.

One of the Sections of the Program provides for a series of measures aimed at ensuring improvement of conditions of access for the community at-large to information about government structures' activities.

Thus, it is planned to evaluate the practice of enforcement of the Act of Ukraine "On access to public information" and, basing on the respective findings, to develop a draft document on improvement of the mechanism of enforcement of the Act. As well, it is envisaged to introduce an efficient feedback mechanism to ensure receipt reports by the community at-large on facts of corruption offenses in the regions.

The Program comprises tasks to ensure optimization of financing of political parties and electoral campaigns, as well as the respective oversight.

To this end, suffice it to refer to development of a bill on introducing amendments to the Act of Ukraine "On political parties in Ukraine", which concerns funding of political parties' activities and pursues the goal of introduction of rules that establish caps on the amount of donations to political parties.

As well, the Program provides for an examination of the matter of appropriateness of revision of types of sanctions applicable to political parties with respect to their adequacy and efficiency of their imposition.

The Program also comprises development of proposals on introduction of amendments to the national law concerning imposition of sanctions in the form of the publicity of a notice of nonadmission of political parties' illicit activities, as well as concerning posting political parties' financial reports on revenue, expenses, and assets, on the web-site of the Ministry of Justice.

It is also envisaged to consider liability of managers of electoral funds for violating procedures of reporting to electoral commissions, as well as mass-media's responsibility for abusing the requirement to post political advertisement only after it has been paid for from electoral funds.

In August 2011, the Ministry of Justice crafted a draft Act of Ukraine "On introducing amendments to the Criminal and Criminal-Procedural Codes of Ukraine with respect to improvement of the procedure of exercise of seizure of assets". The bill was submitted for consideration to the Cabinet of Ministers of Ukraine. The Cabinet of Ministers subsequently submitted it to the Supreme Rada on 22 September 2011. The bill was passed in the first reading on 18 October 2011.

Provisions of the Act allow enforcing special seizure of assets where it has been established that cash, valuables or other assets acquired resulting of commitment of a crime constitute income from such assets; were designated for financing and/or material backing of crimes or formed an award for their commitment; were used as a means or a tool of commitment of a crime or constituted its subject. The bill also provides for applying special seizure of assets even where cash, valuables or other assets were converted, in full or in part, into other forms of property.

It should be noted that Ukraine is vigorously implementing the civil service reform. In March 2011, the President of Ukraine submitted to the Parliament a draft Act of Ukraine "On civil service" which was passed on 17 November 2011 and due to take effect as of 1 January 2013.

The Act contains provisions regarding civil servants' political impartiality, which consists of their nonprejudicial exercise of duties regardless of political stance.

The Act establishes fundamentals of the civil service, conditions of entering public office, procedures of exercise and termination of duties in public office, the legal status of civil servants, principles of their social and legal protection.

More specifically, the Act establishes a uniform approach to employment in the civil service, that is, holding an open competition. The only exception shall be made for the executive positions in public service that fall under Group I: the head, deputy heads of a government body, members of a state collegial body whose jurisdiction encompasses the whole territory of Ukraine, their staff, the executive body of the Autonomous Republic of Crimea and its staff, deputies to chairmen of the local state administrations. These categories of civil servants are appointed following the procedure established by the Constitution of Ukraine and the national law without a mandatory conduct of the competition for filling in vacant positions in the civil service.

The Act also establishes new guarantees of a fair labor compensation for civil servants, in particular, by linking most of the payments due to the level of minimal salaries and wages.

The Cabinet of Ministers also submitted for consideration by the Supreme Rada a bill "On introducing amendments to some legislative acts of Ukraine due to the adoption of the Act of Ukraine "On main principles of prevention of and countering corruption" (№ 9473). The bill aims at bringing a string of legislative acts in line with the basic anti-corruption Act. Specifically, the bill provides for introduction of respective amendments to 45 legislative acts that regulate activities of various public institutions. The list of proposed amendments comprises, *inter alia*, universal ways to regulate the conflict of interests (e.g. assignment of a task to another staff member or his/her immediate senior fulfilling the task on his/her own).

The Supreme Rada is also set to consider the revised bill "On rules of ethical behavior" (№ 4420-d), which was passed in the first reading on 8 February 2012. The bill provides for establishment, on the legislative level, of uniform guidelines of behavior for individuals authorized to exercise public or local self-government functions in the course of exercise of the said functions. Once enacted, the Act should form a legal base for development of agency-specific, ie. with account of a given agency's operational peculiarities, rules or codes of behavior.

With its Resolution of 2 November 2011 № 1126 the Cabinet of Ministers of Ukraine introduced amendments to, as well as recognized null and void, a series of Acts of the Government, to bring them in consistency with the Act “On main principles of prevention of and countering corruption”. With the said Resolution amendments were likewise introduced in the Model Statute on the division of the executive agency for prevention and identification of corruption approved by Resolution of the Government of 8 December 2009 № 1422. According to the amendments, the mission of such divisions is:

- 1) Preparation for, provision of, and control over implementation of anti-corruption measures;
- 2) Rendering methodological and consulting assistance on matters pertaining to compliance with the anti-corruption law;
- 3) Contribution to information and research backing to implementation of measures on prevention and identification of corruption, as well as to international cooperation in the said area;
- 4) Holding organizational and awareness raising activities on prevention, identification of, and combat with, corruption.