



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT
ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA

Anti-Corruption Reforms in

UKRAINE

Round 3 Monitoring of the

Istanbul Anti-Corruption Action Plan

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Executive Summary

Dramatic events in the winter of 2013-2014 in Ukraine significantly effected country's anti-corruption policy. The kleptocratic regime of ex-president Viktor Yanukovich was toppled by the popular protests. Widespread corruption was one of the main reasons that instigated mass demonstrations. The new, post-Maidan administration pledged to eradicate corruption, but has so far failed to deliver convincing results going beynd revision of the legal framework. Although there are promising signs, notably with regard to radical overhaul of anti-corruption institutional landscape.

The third round monitoring report on Ukraine takes stock of the developments in the country since previous round of the Istanbul Action Plan monitoring (from beginning of 2011) with special focus on post-Maidan reforms. A number of new recommendations are given to Ukraine, in particular aimed at strengthening enforcement of anti-corruption legislation.

Anti-Corruption Policy

Ukraine updated its anti-corruption policy in 2011 and 2014. The latest policy document (Anti-Corruption Strategy for 2014-2017) was for the first time adopted as a law, which may facilitate its better implementation. Both policy documents were not based on substantive research and analysis of the previous efforts. The new strategy better sets priorities and includes indicators measuring its success. It was also developed in close cooperation with the civil society and was preceded by public consultations. The action plan to implement the new Strategy has yet to be approved by the Government.

No regular corruption surveys have been conducted to provide analytical basis for the monitoring of implementation of the anti-corruption strategy and its future updates. Public participation and awareness-raising prior to 2014 were largely formalistic and ineffective. The involvement of civil society in anti-corruption and other public policies after the Maidan events have radically evolved: main anti-corruption policy documents were developed with direct participation of NGOs, or were developed by NGOs and civil society experts themselves. This public participation was not formalised through any procedures or mechanisms and was very effective. The civil society became a driving force behind many reforms measures, e.g. the anti-corruption package of laws adopted in October 2014.

It will be important to develop a more structured mechanism for civil society participation with the focus on the monitoring of the implementation of the Anti-Corruption Strategy by the NGOs and on awareness raising and public education with the NGO participation.

Major overhaul of the institutional framework in the anti-corruption policy area was carried out in October 2014. Two new institutions are supposed to be established – the National Agency for Corruption Prevention under the Government and the National Council for Anti-Corruption Policy as an advisory body under the President. Both institutions are not functioning yet and it remains to be seen how effective they will be.

Criminalization of Corruption

After numerous revisions in 2013-2015 Ukraine has finally aligned its criminal law on corruption with applicable international standards. All corruption offences and their elements are now criminalised, including the crime of illicit enrichment. Ukraine also enacted in April 2014 quasi-criminal liability of legal persons, which however lacks autonomous nature and is dependent on prosecuton of natural offender. In February 2015 Ukraine introduced civil and criminal law extended confiscation of assets legal origin of which cannot be explained by the perpetrator of corruption crime. Main challenge now lies in the practical

enforcement of the new provisions. Capacity of law enforcement agencies, prosecutors and judges need to be strengthened in this regard through trainings, guidelines and additional resources.

Immunity of judges and parliamentarians remains an obstacle for effective prosecutions. However, the report concludes that the main reason for ineffective investigation and prosecution of corruption in Ukraine is not poor legislation but the lack of genuine political will to tackle systemic and high-level corruption. This may change with establishment of the new institutions – the National Anti-Corruption Bureau and the Specialised Anti-Corruption Prosecutor's Office as envisaged in the laws adopted in the end of 2014 – beginning of 2015. However, it is not clear whether the new institutions will be allowed to function independently and with sufficient resources. The first test for the Ukraine's authorities to pass is to ensure successful selection of the new institutions' leadership, which for the first time in Ukraine's history is to be conducted through an open public competition.

One of the examples where law enforcement system of Ukraine failed to produce tangible results is the recovery of assets allegedly stolen by the Yanukovich regime. Ukraine is recommended to step up efforts in obtaining mutual legal assistance in relevant cases, review procedures on assets recovery to ensure that they are effective and allow swift repatriation of stolen assets, raise capacity of the Prosecutor's General Office and other agencies (notably, the newly established National Anti-Corruption Bureau). It is also important to establish national mechanism for independent and transparent administration of stolen assets recovered from abroad to prevent embezzlement of the returned funds.

The report commends recent institutional reform and upcoming establishment of the National Anti-Corruption Bureau that is modeled on the best international practice and complies with the OECD/IAP recommendations. Swift establishment and genuine independence of the National Anti-Corruption Bureau should be ensured, in particular by excluding political bodies from the process of the Bureau's head selection, ensuring his job security, providing it with necessary resources. To prevent future legal challenges Ukraine should provide constitutional basis for functioning of the new independent anti-corruption agencies (law enforcement and preventive). The whole system of the anti-corruption repression should be safeguarded against illegal interference – it is therefore recommended to ensure operational and institutional autonomy of the specialized anti-corruption prosecutor's office and to come up with a solution to eliminate existing bottlenecks in the judicial system (e.g. through specialized anti-corruption courts or judges).

Prevention of Corruption

Civil service reform in Ukraine has long been overdue. The 2011 reform law – intended to replace the 1993 law – never enacted. The new draft legislation that is positively assessed by this report was sent to the parliament after significant delay only in March 2015. If adopted (and enacted without postponement) it will result in compliance with most of the recommendations of the IAP previous monitoring round, including with regard to the competitive merit-based recruitment and promotion of civil servants. For ensuring effective delineation of professional and political positions in the public service important amendments in the laws on the Government and ministries are also required. Another piece of legislation that has to be adopted without further delay is the law on administrative procedure.

Ukraine's legislation on conflicts of interests, gifts, incompatibilities and asset disclosure was revised twice – in 2011 and 2014. The latter reform (a new Law on the Corruption Prevention) will be enacted in April 2015 and, if properly implemented, will bring significant improvement in the system of public service integrity and prevention of corruption. The 2014 law will be supported by the National Agency for Corruption Prevention – a new institution that has yet to be established. The commendable comprehensive legal reform now has to transform into an effective system of enforcement.

In the area of **Public Financial Control and Audit** Ukraine achieved progress in determining the strategic directions of the reform and started its implementation. The new law on the Accounting Chamber (Ukrainian Supreme Audit Institution) is now pending in the parliament and should ensure effective independence of this important external audit institution and improve its transparency. The reform of the State Financial Inspection should be continued by improving the risk based approach, developing an intelligence function, training the staff in analysing expenditures for suspicions of fraud and corruption. The report also recommends adopting an internal audit law in order to strengthen the independent position of the internal audit units and consequently improve the quality of internal audit results in the public administration.

Dramatic changes to the legislative framework in **public procurement** and introduction of substantially new anti-corruption framework in Ukraine significantly improved the legal framework in this area since the previous round. However, a share of public contracts awarded via non-competitive process is still at unacceptably high level and continues to rise. The law on Public Procurement provides too broad list of exemptions, albeit it was reduced as compared to the previous edition of the law. The current high level of transparency in the public procurement should be maintained and further expanded, e.g. by mandatory publication of all key procurement information (including procurement contracts and publication in open data formats). An all inclusive e-procurement system shall be established as one of the first priorities.

The 2011 Law on **Access to Public Information** brought significant change in the legal framework and practice of exercising the access to information right in Ukraine. Main remaining deficiency is the lack of an effective oversight mechanism with adequate resources and independence. The newly adopted breakthrough law on openness of public funds should be implemented, including provisions on on-line access to information on Treasury transactions. Open data standards should be introduced, in particular by publishing in open formats information of public interest (e.g. asset declarations of public officials, state company register, normative legal acts).

No major **political parties' financing** reform has been conducted to date. Political corruption and murky influence of private interests over politics through political parties remains strong. Ukraine is recommended again to adopt, without further delay, comprehensive reform of the political party and election campaign financing in line with Council of Europe standards. To ensure balance between private and public funding, direct state financing of political parties should be introduced in line with best European practice. Ukraine should also reinforce rules on integrity and corruption prevention for officials holding political offices, in particular by establishing special regulations and enforcement mechanism for conflict of interests for the parliament and Government members.

Several laws were adopted since the previous monitoring round to revise legal framework on the **judiciary**. They have not yet resulted in genuine independence of courts; the level of judicial integrity remains low. Salaries of judges, court clerks and prosecutors are not adequate and incentivise corruption in the justice system. The recent reform (yet new law on the judiciary adopted in February 2015) introduced many important changes, but left a number of tools for political bodies (Parliament, President) to exert undue influence over judiciary. Judicial reform cannot be completed without revision of the Constitution of Ukraine.

While some measures were taken by the previous government before 2014 to launch dialogue with **business** and improve business environment, most of these measures were of a window-dressing nature, and corruption remains one of the main risks for companies in Ukraine. New 2014 Anti-Corruption Strategy contains a section on integrity in the private sector, which was developed together with the business representatives. Its implementation will be a real challenge, it would be essential to involve private sector in its implementation and monitoring. Introduction of responsibility of legal persons for corruption, if enforced properly, can become a powerful incentive for self-regulation by the private sector.

Third round of monitoring

The Istanbul Anti-Corruption Action Plan (IAP), adopted in 2003, is the sub-regional initiative of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). It targets such countries as Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan; other ACN countries participate in its implementation as well. The implementation of the Istanbul Action Plan involves systematic and regular peer review of legal and institutional framework for fighting corruption in the targeted countries.

The initial review of Ukraine's legal and institutional framework was carried out in January 2004, with resulting 24 recommendations. The first round monitoring report was adopted in December 2006; it assessed Ukraine's compliance with the initial recommendations and provided compliance ratings. The second round monitoring report was adopted in December 2010 and updated Ukraine's compliance ratings for the earlier recommendations, and included new recommendations. At the ACN plenary meetings in between of the monitoring rounds Ukraine regularly submitted progress updates on measures taken to implement the recommendations. Ukraine has been an active participant and contributor to other ACN activities. All monitoring reports are available on the ACN website at www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm.

The third round of monitoring under the Istanbul Action Plan was endorsed by the participating countries in December 2012 and started for Ukraine in 2013. The Government of Ukraine submitted its responses to the country-specific questionnaire for the third round of monitoring in July-August 2013. The on-site visit to the country was originally planned for December 2013 but had been twice postponed due to Euromaidan events in Kyiv in November 2013 – February 2014. The updated replies to the questionnaire were submitted by the Government of Ukraine in October 2014 and the on-site visit to Kyiv took place in November 2014.

According to the methodology of the third monitoring round, replies to the questionnaire were obtained also from non-governmental partners – a coalition of NGOs coordinated by Transparency International – Ukraine, which prepared a 'shadow' report in October 2013.

The country visit to Kyiv took place on 17-21 November 2014 and consisted of 10 thematic sessions with representatives of public authorities, including: Ministry of Justice, Parliament's Anti-Corruption Committee, President's Administration, National Agency on Civil Service, State Financial Inspection, Ministry of Finance, Accounting Chamber, Ministry of Economy, Prosecutor's General Office, Ministry of Interior, Security Service, State Service of Financial Monitoring, Ministry of Revenues, Cabinet of Ministers Secretariat, State Committee on TV and Radio, Higher Specialised Economic Court, State Court Administration, High Council of Justice, High Qualification Commission of Judges, National School of Judges and others.

The OECD Secretariat arranged for separate meetings with representative of civil society (a general meeting and a meeting on public procurement issues), business and international organisations. Meeting with NGOs was hosted and co-organised by the International Renaissance Foundation; meeting with business – by the American Chamber of Commerce; meeting with internationals – by the EU Delegation in Ukraine.

Ukraine's national coordinator for the monitoring was the Ministry of Justice of Ukraine; in Ukraine the monitoring was co-ordinated and supported by: the then Deputy Minister of Justice Mr Ruslan Riaboshapka; officials of the Ministry's Department on Anti-Corruption Legislation: Mr Robert Sivers, Mr Andriy Kukharuk, Mr Bogdan Shapka.

The monitoring team for the third round of monitoring of Ukraine consisted of: Mrs Ekaterine Zguladze-

Glucksmann, Former Deputy Minister of Interior, Georgia, team leader (Mrs Zguladze-Glucksmann ceased her role as team member when she was appointed to the position of First Deputy Minister of Interior of Ukraine in December 2014); Mrs Airi Alakivi, Senior Adviser, Civil Service and Administrative Legal Framework, EU-OECD Programme SIGMA; Mr Peter Koski, Deputy Chief, Public Integrity Section Criminal Division, Department of Justice, USA; Mr Joop Vrolijk, Senior Adviser, Public Finance and Audit, EU-OECD Programme SIGMA; Mr Evgeny Smirnov, Senior Advisor, Procurement Policy Department, EBRD; Mr Dmytro Kotlyar, Consultant, OECD/ACN Secretariat; Mrs Olga Savran, ACN Manager, OECD/ACN Secretariat.

The monitoring team would like to express their gratitude to the Government of Ukraine for effective co-operation during the third round of monitoring and, in particular, to officials of the Ministry of Justice of Ukraine. The monitoring team is also grateful to Ukrainian authorities and non-government organisations for open and constructive discussions that took place during the country visit; to the International Renaissance Foundation, the American Chamber of Commerce and the EU Delegation in Ukraine for assistance in organisation of the on-site visit.

This report was prepared on the basis of answers to the questionnaire and findings of the on-site visit, additional information provided by the government of Ukraine and NGOs and research by the monitoring team, as well as relevant information received during the plenary meeting.

The report was adopted at the ACN/Istanbul Action Plan plenary meeting in Paris on 24 March 2015. It contains the following compliance ratings with regard to recommendations of the second round of monitoring: **out of 19 previous recommendations Ukraine was found to be not compliant with 1 recommendation, partially compliant with 10 recommendations, largely compliant with 5 recommendations and fully compliant with 3 recommendations. 19 new recommendations were made as a result of the third monitoring round; 2 previous recommendations were recognised to be still valid.**

The report will be made public after the meeting, including at www.oecd.org/corruption/acn. Authorities of Ukraine are invited to disseminate the report as widely as possible. To present and promote implementation of the results of the third round of monitoring the ACN Secretariat will organize a return mission to Ukraine, which will include a meeting with representatives of the public authorities, civil society, business and international communities. The Government of Ukraine will be invited to provide regular updates on measures taken to implement recommendations at the Istanbul Action Plan plenary meetings.

Third round of monitoring under the OECD/ACN Istanbul Anti-Corruption Action Plan is carried out with the financial support of the United States, Switzerland and the United Kingdom.

Country background information

Economic and Social Situation

Ukraine covers an area of 603.000 sq. km. and has a population of 45.4 million; the population has been on significant decline over the last decade due to low life expectancy and low birth rate. The GDP (2014 estimate) is 134.8 billion USD (USD 2,978 per capita). After several years of steady growth following 2008-2009 crisis, Ukrainian economy plummeted in 2014 due to annexation of the Crimea and military conflict in the Eastern Ukraine, with real GDP reduction estimated at least at 8% in 2014 and with forecast of further recession.¹

Formerly an important industrial and agricultural region of the Soviet Union, Ukraine is dependent on Russia for most energy supplies, especially natural gas, although lately it has been trying to diversify its sources. The lack of significant structural reform has made the Ukrainian economy vulnerable to external shocks. Ukrainian economy is dominated by wealthy individuals (oligarchs) with significant political clout, which feeds corruption and prevents free entrepreneurship.²

All Ukrainian Governments have been pledging to conduct broad reforms, in particular to reduce the number of government agencies, streamline the regulatory process, create a legal environment to encourage entrepreneurs and enact a comprehensive tax overhaul. These pledges, however, have not yet resulted in significant changes in practice. Politically sensitive structural reforms and land privatisation are lagging behind as well. Outside institutions—particularly the IMF and the EU—have encouraged Ukraine to quicken the pace and scope of reforms and have threatened to withdraw financial support.

Since 2008 Ukraine has been negotiating an Association Agreement (AA) with the EU. The treaty was initialled in March 2012 and was supposed to be signed in 2013 after fulfilment of a number of conditions by the Ukrainian Government. The process was suspended by the Government and President Yanukovich in November 2013 leading to events that became known as Euromaidan (see below). The political provisions of the AA were signed in March 2014 after the said events and ousting of President Yanukovich; the economic part of the treaty, including the Deep and Comprehensive Free Trade Agreement, was signed in June 2014. Part of the AA agreement has been applied provisionally since November 2014 (pending ratification of the AA by the EU member-states), with some trade-related parts of the agreement postponed till 1 January 2016.³

Political structure

Ukraine is a republic under a parliamentary-presidential system with separate legislative, executive, and judicial branches. The President of Ukraine is elected by popular vote and is the head of state, not formally belonging to the executive branch. Following the controversial constitutional reform of 2004, the powers of the President were significantly reduced in favour of the Parliament. However, in October 2010 the Constitutional Court of Ukraine quashed the constitutional amendments, thus effectively reinstating the 1996 Constitution and making the President responsible for appointment and dismissal of the Government.

During 2010-2013 the power was centralized in the hands of the then President Viktor Yanukovich

¹ Source: <http://country.eiu.com/ukraine>, IMF World Economic Outlook (www.imf.org/external/pubs/ft/weo/2014/02/weodata/index.aspx).

² See, e.g., www.cfr.org/democratization/ukraine/p30818?co=C042001.

³ See, in particular, http://europa.eu/rapid/press-release_STATEMENT-14-349_en.htm, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/ukraine>.

(elected in 2010) and his allies with checks and balance almost absent, with judiciary and prosecution service placed under tight political control. Massive corruption, human rights violations and police brutality, allegedly ordered by President Yanukovich and his close allies, after what started as peaceful protests in November 2013 resulted in a popular uprising and overthrow of the Yanukovich administration in late February 2014. During these events in Kyiv more than 100 protesters were killed by police forces. Viktor Yanukovich himself and many of his allies fled to Russia or elsewhere, while being prosecuted in Ukraine for numerous criminal offences, including corruption-related.

Constitution was amended on 21 February 2014 and the balance was again shifted in the favour of the parliament. Early presidential elections were held in May 2014 and were found by international observers to be in line with international standards.

Dramatic events of the beginning of 2014 and resulting change in power brought a lot of hope of country's quick transformation, including progress in anti-corruption efforts. As noted in the 2015 Heritage Foundation's Economic Freedom report: Pro-Western Ukrainians hoped their 2014 Euromaidan revolution would dismantle the oligarchic politics and deeply rooted cronyism that allowed business owners to amass wealth by exploiting their access to those in power rather than through efficient management, but that corrupt system is still largely in place under the Poroshenko government. The judiciary remains weak, and contracts may not be well enforced.⁴

Verkhovna Rada (Parliament) consists of one chamber with 450 seats. The Parliament gives assent to appointment of the Prime Minister (upon President's proposal) who then proposes the Cabinet for appointment by the Parliament (except for ministers of defence and foreign affairs who are proposed by the President).

According to the November 2011 law, parliamentary elections are based on a mixed system: half of the parliament is elected through a proportional system according to the closed lists of candidates proposed by political parties, another half – by first past the post system in single-mandate constituencies. Ukraine has a large number of political parties, many of which have tiny memberships and are unknown to the general public. Ukraine held parliamentary elections in 2012 and then early elections on 27 October 2014. According to the OSCE/ODHIR election observation mission, the latest elections “marked an important step in Ukraine's aspirations to consolidate democratic elections in line with its international commitments”.⁵ As a result of 2014 elections six party factions and two groups of MPs were formed in the parliament; a coalition called “European Ukraine” was instituted in November 2014 by five political parties and included 302 MPs. A new Government of Ukraine led by Prime Minister Arseniy Yatsenyuk was formed.

Using the turmoil during the Euromaidan events, in March-April 2014 the Russian Federation illegally annexed part of the Ukrainian territory⁶ and instigated a military conflict in the Eastern Ukraine, which still continues and has resulted in thousands of casualties, including many among civilian population⁷, and about one million internally displaced persons and refugees⁸.

⁴ 2015 Index of Economic Freedom, Heritage Foundation, www.heritage.org/index/country/ukraine.

⁵ Source: www.osce.org/odihr/elections/ukraine/132556.

⁶ See e.g. UN General Assembly Resolution no. 68/262, adopted on 27 March 2014, available at: www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262; EU documents: http://europa.eu/newsroom/highlights/special-coverage/eu_sanctions/index_en.htm.

⁷ See, among many other accounts, EU Council Conclusions of 29 January 2015: www.consilium.europa.eu/en/press/press-releases/2015/01/council-conclusions-ukraine.

⁸ Source: www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/figures-analysis.

Trends in corruption

Corruption in Ukraine has been a significant obstacle to doing business and investment since the country gained independence. It is widely believed to be pervasive and permeate all areas of life and economic activity. The main economic areas where corruption is noted as frequent are: business licences and permits, tax collection, customs, public procurement, energy sector, land and other natural resources allocation.

With a score of 26 (2.6 under the previous methodology; 1 - the most corrupt, 10 - the least) Ukraine ranked 142nd out of 175 countries in the 2014 Transparency International Corruption Perception Index.⁹ Ukraine's score in 2005 was 2.6, in 2006 – 2.8. and then fell to 2.2 in 2009 and 2.4 in 2010. See also below results of the TI Global Corruption Survey conducted in 2013 in Ukraine.¹⁰

Table 1. Ukraine in 2013 Global Corruption Barometer

Over the past two years how has the level of corruption in this country changed? Percentage of respondents			To what extent do you believe corruption is a problem in the public sector of your country?	In your dealings with the public sector, how important are personal contacts and/or relationships to get things done?	To what extent is this country's government run by a few big entities acting in their own best interests?	How effective do you think your government's actions are in the fight against corruption?		
Decreased	Stayed the same	Increased	On a scale of 1 to 5 (5 = a very serious problem)	Important or very important (% respondents)	To large extent or entirely (% respondents)	Effective	Ineffective	Neither effective nor ineffective
5%	36%	59%	4.6	82%	84%	4%	80%	16%

Table 2. Corruption perception in Ukraine by institutions, 2013 Global Corruption Barometer

Percentage of respondents who felt these institutions were corrupt/extremely corrupt in the country											
Political parties	Parliament	Military	NGOs	Mass media	Religious organisations	Business	Educations system	Judiciary	Medical and health care services	Police	Public officials/civil servants
74	77	52	42	48	37	65	69	87	77	84	82

⁹ Source: www.transparency.org/cpi2014/results.

¹⁰ Source: www.transparency.org/gcb2013/in_detail.

Table 3. Corruption experience by public sectors, 2013 Global Corruption Barometer

Have you or anyone in your household paid a bribe to one of these eight services in the last 12 months? (results shown for those who came into contact with a service)							
Education	Judiciary	Medical and health services	Police	Registry and permit services	Utilities	Taxes and/or customs	Land services
31	29	28	54	21	2	6	36

Table 4. Reasons for corruption, 2013 Global Corruption Barometer

What was the most common reason for paying the bribe? (% responses)			
As a gift or to express gratitude	To get a cheaper service	To speed things up	It was the only way to obtain the service
39	8	33	19

Table 5. Civic activism in fighting corruption, 2013 Global Corruption Barometer

“Would you be willing to do one of the following?” (percentage of those willing to do the following)				
Sign a petition asking the government to do more to fight corruption	Take part in a peaceful protest or demonstration against corruption	Join an organization that works to reduce corruption, as an active member	Pay more to buy good from a company that is clean/corruption-free	Spread the word about the problem of corruption through social media
44	29	19	29	41

Table 6. Corruption experience, 2013 Global Corruption Barometer

Refusing to pay a bribe			
Have you ever been asked to pay a bribe?		Have been asked, have you refused to pay a bribe?	
Yes	No	Yes	No
35	65	53	47

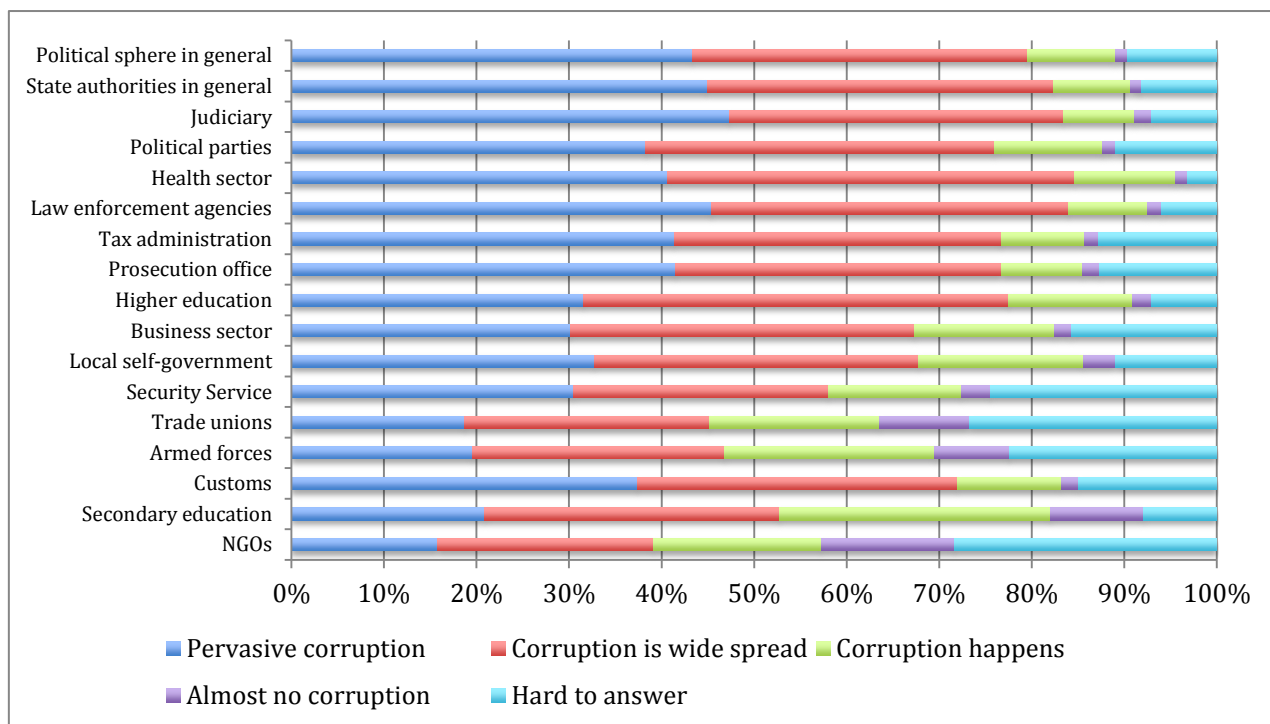
Table 7. Corruption reporting, 2013 Global Corruption Barometer

Would you report an incident of corruption? (%)		If yes, will report to ... (%)					If no, will not report because... (%)			
Yes	No	Directly to the institution	General government hot line	Independent NGO	News media	Other	Don't know where to report	Fear of reprisals	It wouldn't make any difference	Other
70	30	29	42	10	19	1	11	37	49	3

Additional data on corruption trends in Ukraine is provided in the surveys conducted by reputable national polling organisations. In December 2014 public recognised corruption to be the fourth main issue (34%) to

be addressed after normalisation of the situation in Donbas and achieving peace (79%), improving financial situation of people – increasing salaries (48%) and ensuring economic growth (43%).¹¹

Figure 1. How wide spread is corruption in different areas



Source: Survey by Razumkov Centre, September-October 2013, www.razumkov.org.ua/ukr/poll.php?poll_id=903.

During last several years Ukraine has improved its rank in various indexes on conditions for doing business, but did not progress much in governance rankings (see table below). Corruption still remains the most problematic factor for doing business and undermines the rule of law.

Table 8. Ukraine in international governance and doing business ratings

Index and organisation	Ukraine's ranking	Countries in the index
Doing business, 2015, World Bank	96 (145 in 2011)	189
Economic Freedom Index 2015, Heritage Foundation	162 (164 in 2011)	178
Global Competitiveness Index 2014-2015, World Economic Forum	76 (82 in 2011-2012)	144
- Burden of government regulation	115 (130)	
- Property rights	135 (137)	
- Transparency of government policy making	104 (116)	
- Illicit payments and bribes	118 (134)	
- Independence of the judiciary	140 (134)	
- Favouritism in decisions of government officials	116 (95)	
- Burden of customs procedures	118 (136)	
International Property Rights Index 2014	86 (117th out of 129 countries in 2011)	97
Worldwide Governance Indicators, 2013, World Bank	12 ¹² (17.1 in 2010)	215

¹¹ Survey by Ilko Kucheriv Democratic Initiatives Foundation, source: www.dif.org.ua/ua/publications/press-relizy/gromadska-roku.htm.

Acronyms

ACN	Anti-Corruption Network for Eastern Europe and Central Asia
AmCham	American Chamber of Commerce
AMCU	Anti-Monopoly Committee of Ukraine
AML/CTF Law	Anti-Money Laundering and Counter-Terrorism Financing Law
API Law	Access to Public Information Law
DEC	district election commission
CAO	Code of Administrative Offences
CAP	Code of Administrative Procedure
CEC	Central Election Commission
CC	Criminal Code
CPC	Criminal Procedure Code
CPI	Corruption Perception Index
EBRD	European Bank of Reconstruction and Development
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EITI	Extractive Industries Transparency Initiative
EOM	Election Observation Mission
EU	European Union
EUR	Euro currency
FIU	financial intelligence unit
GPO	General Prosecutor's Office
GRECO	Council of Europe Group of States against Corruption
HAC	High Administrative Court
HQCJ	High Qualification Commission of Judges
HCJ	High Council of Justice
IAP	Istanbul Anti-Corruption Action Plan
ICAR	International Centre for Asset Recovery
IFES	International Foundation for Electoral Systems
IMF	International Monetary Fund
INTOSAI	International Organization of Supreme Audit Institutions
MLA	mutual legal assistance
MoJ	Ministry of Justice
MONEYVAL	Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MoU	memorandum of understanding
MP	member of parliament

¹² Percentile ranks indicate the percentage of countries worldwide that rank lower than the indicated country, so that higher values indicate better governance scores. Source: <http://info.worldbank.org/governance/wgi/index.aspx>.

NAB	National Anti-Corruption Bureau
NAC	National Anti-Corruption Committee
NGO	non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OGP	Open Government Partnership
OSCE/ODIHR	Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe
PEP	politically exposed person
PPL	Public Procurement Law
SBI	State Bureau of Investigations
TI	Transparency International
UAH	Ukraine's currency Hryvnya
UNCAC	UN Convention against Corruption
UNDP	United Nations Development Programme
US	United States
USAID	United States Agency for International Development
VAT	Value Added Tax
WGB	OECD Working Group on Bribery

I. Anti-corruption policy

1.1.-1.2. Political will to fight corruption, anti-corruption policy documents

Second Round Recommendation 1.1.-1.2.

- *Implement the declared resolve to fight corruption through practical steps, such as necessary legal reform without delay, empowering the institutions such as the Agent on Anti-corruption Issues and the Bureau on Anti-corruption Policy, as well as strengthening of law-enforcement anti-corruption efforts.*
- *Ensure that national anti-corruption policy is based on evidence provided by surveys and statistics; that it clearly establishes main priorities, that a link is established between the activities foreseen in the strategy and action plans and state budget, that the coordination mechanism for implementation of the strategy and the action plan is precisely defined, and that reports on implementation are made public.*

Legal reform

Since adoption of the Law of Ukraine on the Fight against Corruption in 1995, the anti-corruption legislation of Ukraine remained without significant changes till late 2000s. The Council of Europe Civil Law Convention on Corruption was ratified in 2005; it allowed Ukraine to join the Group of States against Corruption (GRECO) in 2006.

In 2006 the Ukrainian parliament ratified the UN Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption which, however, came into force only in 2009 when the so-called first “anti-corruption package of laws” was adopted: the Law On Principles for Preventing and Counteracting Corruption, the Law On the Liability of Legal Persons for Corruption Offences and the Law On Amendments to Certain Legislative Acts of Ukraine regarding the Liability for Corruption Offences. Entering into force of this package was postponed twice and, finally, all three laws were revoked on 21 December 2010. This was explained by political reasons, as the previous laws were submitted and supported by the previous Government and new President and Government were installed in 2010.

At the same time, the delay in signing and publishing of the 21 December 2010 law allowed the three anti-corruption laws to come into force on 1 January 2011 and remain effective for 5 days. One of the laws introduced a number of amendments in the definition of criminal and administrative corruption offences. This caused a number of legal issues and resulted in significant legal uncertainty. The latter, itself an unacceptable situation under the rule of law, may have also created opportunities for corruption. It was a stunning example of chaotic and irresponsible law-making.

Finally, a new wording of the Law On Principles for Preventing and Counteracting Corruption and the Law On Amendments to Certain Legislative Acts of Ukraine regarding the Liability for Corruption Offences were approved in April 2011 and entered into force on 1 July 2011. The drafts of the above laws were introduced by the then President Yanukovich. At the same time no replacement for the liability of legal persons law was proposed.

The Law on Principles for Preventing and Counteracting Corruption, adopted in April 2011, replaced the 1995 Law on the Fight against Corruption and established basic notions and principles for corruption prevention and counteraction in public and private areas. The Law aligning other legislative acts with the

Law on Principles was adopted in May 2012. The Law on Rules of Ethical Behaviour, which determined rules of conduct for “persons authorised to perform functions of the State or local self-government” (i.e. public officials) was adopted in June 2012. The new Criminal Procedure Code was adopted in April 2012 and entered into force in November 2012, and the Law on Administrative Services entered into force in October 2012. Access to Public Information Law was adopted in January 2011 and entered into force in May 2011.

By 2013 a broad political consensus was reached around necessary legislative amendments, which allowed Ukraine to achieve further progress in aligning its anti-corruption legislation with international standards and recommendations, including those of the OECD/ACN monitoring. Incorporation of the anti-corruption commitments in the requirements for development of Ukraine’s relations with the EU served as a major incentive and boost for relevant legislative reforms.¹³ At the same time these amendments, while directed towards aligning Ukrainian law with the anti-corruption standards, were incremental and did not provide for comprehensive vision of the reform, but rather gradual adjustments to receive EU endorsement.

The following laws were passed:

- *On amendments in some legislative acts of Ukraine to harmonise the national legislation with the standards of the Criminal Law Convention on Corruption (Law no. 221-VII, adopted on 18.04.2013, entered into force on 18.05.2013).* Amendments concerned criminal and administrative offences related to corruption
- *On amendments in the Criminal Code and Criminal Procedural Code of Ukraine with regard to the EU-Ukraine Visa Liberalisation Action Plan implementation (Law no. 222-VII, adopted on 18.04.2013, entered into force on 15.12.2013).* Amendments introduced new provisions on confiscation of corruption instruments and proceeds;
- *On amendments in some legislative acts of Ukraine as to implementation of the state anti-corruption policy (Law no. 224-VII, adopted on 14 May 2013, amendments entered into force by parts - on 9 June 2013, 1 July 2013 and 1 January 2014).* Amendments in a number of laws were mainly technical, except for important changes in the Law on Principles;
- *On amendments in some legislative acts of Ukraine as to the EU-Ukraine Visa Liberalisation Action Plan implementation relating to the issue of liability of legal persons (Law no. 314-VII, adopted on 23.05.2013, was supposed to come into force on 01.09.2014 but another law later changed the date of enactment and amendments entered into force on 27 April 2014).* Amendments in the Criminal Code re-introduced liability of legal persons for corruption in the form of criminal law measures applied to legal persons (quasi-criminal liability).

The most recent legal reforms were implemented in March-October 2014, when the Parliament adopted several important acts. A package of comprehensive measures passed in October 2014 provide for establishing new anti-corruption institutions and introduce new procedures, such as integrity testing, lifestyle monitoring, on-line submission and publication of asset declarations. New laws were developed and advocated jointly by the civil society and the government and are considered to be one of the most

¹³ See, in particular, the Action Plan on Visa Liberalisation offered to Ukraine by the EU in December 2010 (<http://register.consilium.europa.eu/pdf/en/10/st17/st17883.en10.pdf>; see also the third progress report on the Action Plan implementation, November 2013: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131115_3rd_progress_report_on_the_implementation_by_ukraine_of_the_apvl_e_n.pdf); EU-Ukraine Association Agenda (updated in June 2013, http://eeas.europa.eu/ukraine/docs/eu_ukr_ass_agenda_24jun2013.pdf); criteria for signing EU-Ukraine Association Agreement (see report on fulfillment of relevant criteria prepared by the Ukrainian NGOs and experts: www.irf.ua/files/ukr/programs/euro/report_eng.pdf).

important reforms since the Euromaidan revolution in November 2013 – February 2014. It is worth noting the following laws:

- *On Amendments in Certain Legislative Acts in the Area of State Anti-Corruption Policy with regard to Implementation of the EU-Ukraine Visa Liberalisation Action Plan* (adopted on 13 May 2014, enacted on 4 June 2014). The Law revised provisions on some criminal offences (in particular, finally introducing liability for request and promise of unlawful benefit), on special criminal confiscation and criminal fines for legal persons, introduced administrative liability for submitting false information in asset declarations and new procedure for verification of asset declarations (by tax authorities), improved provisions on protection of whistle-blowers.
- *New wording of the Public Procurement Law* (adopted on 24 April 2014) and *amendments on transparency of procurement by public companies* (adopted on 25 March 2014). The new wording of the Public Procurement Law reduced the number of exemptions, introduced new anti-corruption provisions and publication of the main procurement-related information on the central government web-portal (see relevant section of this report for more details).
- *On amendments in 57 legislative acts to align them with the Access to Public Information Law* – the draft law was pending in the parliament since 2012, was adopted in March 2014 and entered into force in April 2014.
- *On Principles of State Anti-Corruption Policy (Anti-Corruption Strategy) for 2014 – 2017* (adopted on 14 October 2014, enacted on 26 October 2014).
- *On the National Anti-Corruption Bureau of Ukraine* (adopted on 14 October 2014, enacted on 25 January 2015).
- *On the Prevention of Corruption* (adopted on 14 October 2014, to be enacted on 26 April 2015).
- *On amendments to certain legislative acts of Ukraine regarding identification of final beneficial owners of legal entities and politically exposed persons* (adopted on 14 October 2014, enacted on 25 November 2014). These amendments introduced mandatory disclosure of beneficial ownership by all legal persons during their registration in Ukraine in the public company's register, on-line access to information in the public register of immovable property and extension of the Politically Exposed Persons (PEPs) definition and regime in the anti-money laundering legislation to Ukrainian public officials and officials of international organisations.
- *On Amendments to the Criminal and Criminal Procedures Codes regarding the inevitability of punishment for certain types of crimes against the foundations of national security and public safety and for corruption crimes* (adopted on 7 October 2014, enacted on 31 October 2014). The amendments introduced procedures for criminal investigation and trial *in absentia* which is supposed to allow prosecution of Yanukovich regime's public officials who fled the country after Maidan events.
- *The new Law on Public Prosecution Offence* (adopted on 14 October 2014, to be enacted on 25 April 2015).
- *The new Anti-Money Laundering Law* (adopted on 14 October 2014, enacted on 6 February 2015).

Overall in 2013-2014 Ukraine achieved significant progress in aligning its anti-corruption legislation with applicable standards and recommendations, including those of the OECD/ACN monitoring. The reform process was messy, with hasty drafting and lack of proper public discussion. This chaotic and irresponsible law-making process caused a number of legal issues and resulted in significant legal uncertainty. This practice is unacceptable under the rule of law, and may create opportunities for corruption. Even after adoption of different laws the Government had to propose new amendments as the adopted texts were insufficient and full of deficiencies. In its November 2013 report on implementation by Ukraine of the Visa Liberalisation Action Plan the European Commission stressed that “frequent fragmented legislative changes as opposed to a coherent strategic approach to legislative reforms pose serious risks to legal certainty and can render the implementation of anti-corruption policies more difficult”. The Commission

called for making more efforts “to improve the quality of the legislative process, build a comprehensive strategic approach based on sound impact assessments and raise awareness of on-going legislative changes”.¹⁴

This trend continues, as there have already been several proposals to amend anti-corruption laws adopted on 14 October 2014. The reason is that a number of laws were passed on the same day and were not properly co-ordinated, some of their provisions are mutually exclusive or contradictory. Due to hasty preparation a number of amendments were introduced in the relevant draft laws on the eve of the vote, which affected quality of the laws. There is, therefore, a real need to introduce corrections in the adopted laws (some of which have yet to come into force). After consideration of several draft laws a consolidated one (No. [1660-d](#)) was adopted on 12 February 2015 (see description of its provisions in the different parts of this report).

The implementation of the new Anti-Corruption Strategy will also require adoption of further anti-corruption laws and regulations. The Coalition Agreement endorsed in the new Parliament in November 2014 contains a section on anti-corruption that includes a list of further legislative reforms to which the ruling coalition has committed. The Coalition Agreement can be regarded as the expression of the political will of the political leadership of the country to fight corruption. It can also serve a roadmap for further legal reform.

It should be noted that the most active driver in the anti-corruption reform after the Maidan Revolution became civil society, in particular NGOs and experts who formed the so-called Reanimation Package of Reforms. The latter proposed a detailed action plan for immediate reforms including in anti-corruption. The government (Ministry of Justice, President’s Administration and Anti-Corruption Committee in the Parliament) and the civil society in close co-operation developed a package of anti-corruption legislation that was ultimately passed in October 2014.

National anti-corruption policy

At the time of the second round of monitoring the anti-corruption policy of Ukraine was embedded in the Concept for Eradicating Corruption in Ukraine “On the Road to Integrity” for 2006-2011, adopted by the President Yushchenko in September 2006. The Government of President Yanukovich that took office in 2010 decided to develop its own anti-corruption policy.

In October 2011 the President approved National Anti-Corruption Strategy for 2011-2015 and in November 2011 the Government adopted the State Programme for Corruption Prevention and Counteraction for 2011-2015 (an action plan to implement the Strategy). The State Programme was developed in a very short period of time: President’s Decree launching the Strategy was issued on 21 October 2011 and the State Programme was approved by the Government on 28 November 2011. No meaningful consultations were organised with the stakeholders during this process.¹⁵ According to NGOs,

¹⁴ Third report on the implementation by Ukraine of the Action Plan on Visa Liberalisation, Report from the European Commission to the European Parliament and the Council, 15.11.2013, COM(2013) 809 final, available at: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131115_3rd_progress_report_on_the_implementation_by_ukraine_of_the_apvl_en.pdf.

¹⁵ Second Progress Report on the implementation by Ukraine of the Action Plan on Visa Liberalisation, Joint Staff Working Document, Brussels, 9.2.2012, SWD(2012) 10 final, page 17, available at: http://ec.europa.eu/dgs/home-affairs/news/intro/docs/20120209/ua_2nd_pr_vlap_swd_2012_10_final.pdf

civil society and experts had opportunity to examine the State Programme only after its approval, despite the claim of the Ministry of Justice that it was subject to “intensive consultations” with the civil society organisations.

The results of the research project “Corruption in Ukraine: Perception and Reality” commissioned by the Ministry of Justice and carried out by the Kharkiv Institute of Applied Humanitarian Studies was the only analytical basis used for the development of the Programme.¹⁶ However, as the full results of the research have never been made public, it is difficult to assess how it was used in preparation of the policy document.

The 2011 Programme included 15 main directions which covered many areas of anti-corruption efforts from prevention to criminalisation. While the range of topics was broad, it failed to establish clear priorities for actions, and missed some important activities, such as the specialisation of law-enforcement actions against corruption.¹⁷

The European Commission report on progress in implementation by Ukraine of the Visa Liberalisation Action Plan noted in February 2012 that the National Anti-Corruption Strategy is a rather general document, which sets out a number of areas for further action. “It is not clear whether any consultation with stakeholders has taken place. It is also not clear what were the criteria on the basis of which the directions for future action were chosen and what are the specific targets envisaged for the end of the implementation period. Key issues such as the establishment of an independent anti-corruption body, specialisation and clearer distribution of tasks among law enforcement agencies, verification of asset declarations and conflict of interests, were not covered. ... there are very few references to the monitoring and evaluation mechanisms, and no precise indication of the methodology to be followed.”¹⁸

The financing of the Programme was provided through state and local budgets within general expenditures allocated to the public institution. The Programme also included its own funding in the amount of UAH 820.5 million (about EUR 80 million). The bulk of the funding (UAH 810 million or 98%) was allocated to the ministries of health and social policy for introduction of the system of the electronic medical files management, i.e. measures with little relevance to anti-corruption agenda. According to the NGO monitoring of the Programme, no actual funding was provided under the Programme in 2012-2013.

Measures not covered by the above mentioned funding commitments were supposed to be funded from the regular budgets of the public institutions, as implementation of the anti-corruption measures was a part of their functions. Such approach affected effectiveness of implementation of the relevant measures, as no additional funding was allocated to public institutions and their existing budgets were insufficient to ensure proper implementation of the State Programme. Anti-corruption measures therefore remained without support of dedicated financial resources.

To implement the State Programme during 2012-2013 several state institutions developed their own implementation plans, including the Security Service; National Civil Service Agency; Ministry of Infrastructure; Ministry of Agriculture and Food Policy; State Agency of Land Resources; State Agency on

¹⁶ In Ukrainian: www.minjust.gov.ua/file/23456.

¹⁷ See also assessment of the Programme by the Council of Europe, www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/Technical%20Paper/2524-EaP-TP%201_2012_%20UA-APMarch2012x.pdf.

¹⁸ Second Progress Report on the implementation by Ukraine of the Action Plan on Visa Liberalisation, Joint Staff Working Document, Brussels, 9.2.2012, SWD(2012) 10 final, page 17, available at: http://ec.europa.eu/dgs/home-affairs/news/intro/docs/20120209/ua_2nd_pr_vlap_swd_2012_10_final.pdf.

State Corporate Rights and Property Management; State Agency on Investment and National Projects Management; State Agency of Automobile Roads. Besides, 15 regional anti-corruption programmes were adopted by the regional councils or regional state administrations; in 5 regions anti-corruption measures were included in the regional crime prevention programmes. However, NGOs interviewed during the on-site visit, noted that anti-corruption programmes at the local level often included useless measures like competition of pictures for children and did not contain meaningful measures, while the main corruption risks were often related to the use of public funds at the local level.

The Programme assigned the role of monitoring to the National Anti-Corruption Committee under the President. In October 2011 the President assigned temporally the function of anti-corruption policy coordination to the Ministry of Justice. In July 2013 the Cabinet of Minister also created a position of the Government Agent on Anti-Corruption Policy to direct and co-ordinate the executive authorities in their anti-corruption work. Therefore, several institutions were involved in the co-ordination, with overlapping mandates and roles. None of them proved to be a functioning institution capable of ensuring proper co-ordination of the anti-corruption policy.

Assessment of the 2011 State Programme. After its approval the State Programme was evaluated by Council of Europe experts, which provided in general a positive assessment. The evaluation noted that the Action Plan (the State Programme) was well structured and broadly in line with the Strategy. Actions were sufficiently detailed; where descriptions were vague, the exact meaning could be derived from the context. Performance indicators were kept simple; however, they seemed sometimes too brief or one-dimensional. Bodies responsible for implementation were identified, with the lead institution not in all cases obvious. Timelines were sufficiently divided schematically into five consecutive years and appeared unclear in respect of some activities. The Action Plan foresaw – a laudable novelty in the region – exact estimates of funding, the absence of which had been criticised in the past by Council of Europe Projects in other countries. The Action Plan opted for a somewhat simplistic approach without a refined system of progress indicators.¹⁹

The Ukrainian NGOs were less positive in their assessment of the State Programme.²⁰ They noted several obvious mistakes in the text which reflected on the quality of its preparation. The Programme covered only executive authorities, leaving out local self-government bodies and a number of state authorities which are not included in the executive system (e.g. Central Election Commission, Accounting Chamber, courts, prosecution service). The Programme lacked links with other relevant reforms which were important for eliminating pre-conditions for corruption or establishing effective tools for its prosecution: reform of the law enforcement system, judiciary, external audit, etc. The State Programme also lacked clear, measurable, achievable, relevant and time limited indicators for implementation of its tasks. NGOs noted that certain tasks were not matched with adequate measures: e.g. transparency of the public authorities was planned to be achieved by means of covering in the media of inspections of the use of budget funds and public property; transparency of public procurement was to be achieved by two measures - introduction of the system of electronic procurement and external audit; elimination of corruption risks from land resources management was to be achieved only by establishing rules for land privatisation.

¹⁹ Assessment of the Ukrainian "State Programme for Prevention and Combating Corruption 2011-2015", March 2012, prepared by Mr Tilman Hoppe and reviewed by Ms Vera Devine, Eastern Partnership Project on "Good Governance and Fight against Corruption" funded by the EU and implemented by the Council of Europe. Available at (in English):

www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/Technical%20Paper/2524-EaP-TP%201_2012_%20UA-APMarch2012x.pdf.

²⁰ Available at: http://ti-ukraine.org/system/files/research/zvit_0.pdf.

In addition to critical comments of NGOs, the following issues can be raised. The State Programme's indicators for implementation of the set tasks were not quality based and were formalistic ("a report and proposals", "relevant legal act", "conducted seminars", "annual reports", etc.), they were process-orientated and in most cases their full implementation could not result in any substantive changes and achieve goals pursued. There was a separate annex to the State Programme, called "Expected outcomes of the State Programme implementation", which included four tasks that were not correlated with the tasks included in the Programme's specific measures. These four tasks were: improvement of the legal framework; spreading knowledge about new anti-corruption legal provisions; reporting by state authorities responsible for anti-corruption policy implementation; and aligning anti-corruption policy of Ukraine with international standards. Indicators for their implementation were: number of documents (44 overall); number of events (25); number of reports (29 overall) for the last two. Such formulation of the tasks is highly formalistic, can hardly lead to substantive changes in the situation with corruption and may even be considered as an imitation of the real fight against corruption.

The Ministry of Justice prepared and published on its web-site annual reports about the Programme implementation for 2011, 2012 and 2013.²¹ These reports were based on the submissions from other ministries, central executive authorities and local state administrations. The Law on Principles also required that agencies authorised to "counteract" corruption (that is to detect corruption offences and bring offenders to responsibility) should also publish annual reports on their relevant activity (by 10 February). However, according to the Government information, such reports were published only by the prosecutor's office.

From measures planned for 2012, according to the Government, out of 118 measures included in the Programme, 41 measures were implemented, 28 measures were being implemented on permanent basis, partly implemented – 10 measures and implementation of 6 measures was pending. From measures for 2013, 10 measures were fully implemented, 20 were being implemented on permanent basis, three measures – partially implemented and implementation of 6 measures was pending. According to independent assessment by NGOs, about 54% of the Programme was implemented. Government itself acknowledged that most of the measures were implemented in formalistic manner and did not result in significant changes.

Overall, despite the adoption of these anti-corruption policy documents and implementation of some of the planned measures, the level of corruption in the country remained extremely high. Indeed, corruption was one of the key factors that triggered massive public protests against President Yanukovich and his administration in November 2013 and resulted in his ousting from power in February 2014.

Developments since February 2014. The new Government of Prime Minister Arseniy Yatsenyuk that was appointed by the Parliament after dramatic events of Euromaidan revolution and President Petro Poroshenko elected in May 2014 declared the fight against corruption as one of their main priorities. This declaration was reflected in the adoption of the new Anti-Corruption Strategy for 2014-2017 in October 2014 (see text of the Strategy in the Annex). The Strategy is a concise policy document that identifies main problems and directions of anti-corruption policy in Ukraine, including: creating an effective institutional framework for anti-corruption policy; prevention of corruption in the elected bodies; ensuring integrity in the public service; prevention of corruption in the executive bodies and state owned enterprises, judiciary and law-enforcement bodies; prevention of corruption in public procurement and in the private sector; ensuring public access to information; effective criminalization of corruption and law-enforcement; and public awareness raising.

²¹ Reports are available in Ukrainian at: www.minjust.gov.ua/file/23456, www.minjust.gov.ua/file/25706 and www.minjust.gov.ua/section/421.

As in the past, the new Strategy is not based on in-depth study and analysis of corruption situation. It refers to several perception studies which confirm that corruption is seen as one of the key problems and is wide spread. No evaluation of the implementation of the previous strategy was conducted as a basis for the new Strategy. However, the monitoring team agrees that the main directions established in the Strategy may be sufficient at the present time of rapid changes in Ukraine.

According to the Strategy, the Action Plan to support its implementation should be developed within 3 months after its adoption; the Ministry of Justice is responsible for this task before the new Agency for Corruption Prevention is established. In the view of the monitoring team this time period is too short to allow the development of a good quality Action Plan for the whole Strategy for 2014-2017 that should contain specific actions, schedule and performance criteria. It may be practical to develop only a short-term plan in the beginning, for instance for 1 year, in order to ensure that the implementation of the Strategy can start without delay.

The Strategy does not contain its own budget, and the public officials interviewed during the on-site visit did not have a clear view as to how the budget of the Strategy will be developed and allocated. They suggested that various state bodies would be invited to propose their own indicators and funding estimates for the implementation of the Strategy in their sectors. The donors interviewed during the on-site visit expressed their willingness to support the implementation of the anti-corruption measures in Ukraine, e.g. the UNDP indicated its willingness to support the implementation of the Strategy, but they noted that for now there is no clear expression of priority needs by the Government of Ukraine. The monitoring team was concerned that the lack of clear budget estimate and direct budget allocations for the Strategy can undermine its implementation in practice.

New coordination mechanism for the implementation of the Strategy is approved but not in place yet: National Agency for Corruption Prevention will coordinate policy development and implementation in the anti-corruption area, assess situation with corruption and prepare annual reports. The Agency should be established by 26 April 2015; however, during the on-site visit the monitoring team did not receive clear information about practical steps that were taken to prepare for the creation of this new body.

Anti-corruption institutions

At the time of the second round of monitoring, the office of the Government Agent on Anti-Corruption Policy was established in Ukraine as the coordinator for anti-corruption policy, and the monitoring report recommended strengthening this institution. However, this position was abolished in February 2011; the Ministry of Justice was assigned temporarily functions of a specially authorised institution on anti-corruption policy issues.

President Yanukovich established the National Anti-Corruption Committee (NAC) in February 2010. This institution, however, turned out to be dysfunctional. Since its establishment it had held only three meetings. The NAC was abolished by President Poroshenko on 14 October 2014 and replaced with a similar advisory body – National Council on Anti-Corruption Policy, which is supposed to provide a high-level forum for coordination of the anti-corruption measures. However, since October 2014 the composition of the new Council was not approved and it has not started functioning.

As noted by the NGOs, the Ministry of Justice was assigned a temporary role of anti-corruption policy coordinating institution, despite GRECO recommendation that such institution should be independent. Coordinating role of the MoJ was also weakened by the fact that co-ordination of law enforcement agencies in the fight against corruption was carried out by the Prosecutor General and subordinated prosecutors. Ministry of Justice lacked necessary powers to perform the co-ordination function. Its role was thus limited

to preparation of draft legal acts in the anti-corruption area, anti-corruption screening of draft legal acts, receiving and summarising data on implementation of the State Programme.

In July 2013 the Cabinet of Ministers of Ukraine re-established the position of Government Agent on Anti-Corruption Policy. Regulations on the Government Agent were adopted only in December 2013. As before, this institution lacks adequate powers and has no effective independence from the Government. In July 2014 the Government updated regulations on the Agent, giving it additional powers, which however did not address deficiencies of this office. Despite increase in formal powers of the Government Agent office the last person holding this position resigned shortly after that (in September 2014). The position remains vacant since then. With the establishment of the new anti-corruption specialised agencies (see below) there will be no need to keep the office of the Government Agent (it could be transformed into position of an official responsible for anti-corruption measures within the Government Secretariat).

As mentioned earlier, it is expected that the National Agency for Corruption Prevention will take over the function of the co-ordinator of the anti-corruption policy in Ukraine once it is established according to the Law that enters into force on 26 April 2015. Besides, the Law on National Anti-Corruption Bureau, adopted in October 2014, foresees the establishment of a specialised investigative agency to deal with high-level criminal corruption. Establishing the legal basis for these two bodies presents a major breakthrough in the reform of anti-corruption institutions in Ukraine. However, as neither of these bodies is created in reality yet, it is too early to assess the effectiveness of this reform. Detailed analysis of the anti-corruption institutions is provided further in section 1.6.

Law enforcement efforts

During the second round of monitoring, Ukraine was recommended to strengthen law-enforcement efforts against corruption. Rigorous investigation and prosecution of corruption offences is crucial for effective fight against corruption; anti-corruption policy and preventive measures are futile without strong law-enforcement. This is especially true for high-level corruption – only by showing zero tolerance to corruption of current senior officials the governing administration can prove its genuine resolve to combat corruption. Over the past four years in Ukraine there were numerous credible allegations of corruption at various levels and types of public authorities including high level political, administrative and judicial officials. These allegations were often voiced by the independent mass media and investigative journalists. However, the official response to such allegations was non-existent. As is shown by examples provided in section 2.8, law enforcement authorities in most cases turned a blind eye to such allegations.

The new leadership that came to power in Ukraine in 2014 realised that the public was expecting from them a strong effort to clean up the state from corrupt officials. In response, the Parliament adopted the Law on Lustration (“Cleansing of Authorities”), and measures to “restore trust in the judiciary” which requires the heads of state bodies to dismiss the officials that were serving under the previous regime and/or have been implicated in in the human rights violations during the Maidan events. While the Law on Lustration can be justified by the demand of the society, it is controversial in many respects. Its application may lead to important loss of capacity in the public administration as many honest and experienced officials may be fired or forced to leave due formal requirements. The Law on Lustration is further analysed in section 3.2. on civil service integrity.

Moreover, since the arrival of the new leadership, no serious effort was made by the law-enforcement to strengthen the prosecution of corruption offences committed by the previous and current officials using the criminal justice means. During the on-site visit, the NGOs stressed that in the past 8 months, the Office of the Prosecutor General failed to pass any major corruption cases related to the previous or new government officials to the court. The continued lack of law-enforcement actions may lead to two serious problems. Firstly, the funds and property that were gained through corrupt means by the previous administration and

that were frozen by many foreign countries or remain in Ukraine cannot be legally arrested and confiscated. Secondly, failure to apply zero-tolerance policy by the new administration from the very beginning will undermine the implementation of anti-corruption policy in the short- and long-term, and will lead to the public rejection of the new administration.

A lot of hope is put into the new law enforcement institution – the National Anti-Corruption Bureau, which will be set up according to the Law that came into force on 25 January 2015. The new Bureau's model is based on best international practice and has significant powers to perform its tasks. It will be supported by specialised anti-corruption prosecutors. However, no institution by itself can automatically lead to changes in the situation with prosecution of corruption – it will also require political will, which has been lacking so far.

Conclusions

Ukraine was recommended to implement the declared resolve to fight corruption through practical steps, such as: 1) necessary legal reform without delay, 2) empowering the policy co-ordination institutions and 3) strengthening of law-enforcement anti-corruption efforts. From the three areas mentioned above progress (and quite significant one) was achieved only as regards the legal reform, since a number of laws have been passed, notably in 2013 and 2014. At the same time anti-corruption legislation is subject to too frequent changes and revisions.

Policy co-ordination mechanism remains weak; National Anti-Corruption Committee was not a functioning institution and finally disbanded in October 2014. In October 2011 the Ministry of Justice was assigned – “temporarily” – the co-ordinating role, but it lacks necessary powers and resources. Government Agent on Anti-Corruption Policy and its support secretariat were disbanded 2 months after the OECD/ACN Second Round Monitoring report recommended to strengthen it; the Government later reinstated this institution, but it failed to produce any results due mainly to inherent deficiencies of this office. New coordination body established by President Poroshenko in October 2014 – the National Council on Anti-Corruption Policy – has yet to start working.

As to law enforcement efforts, the Ukrainian media and NGOs produce enormous amount of credible allegations of corruption, including with regard to high-level public officials. However, very few of such reports have been investigated and ended with convictions. Law enforcement agencies do not pursue allegations of high-level corruption.

Anti-corruption reform was boosted after the Maidan events in 2014. The parliament coalition agreement that includes important anti-corruption provisions, adoption of the Anti-Corruption Strategy, decisions to establish prevention and law-enforcement anti-corruption bodies, and adoption of other key anti-corruption laws confirm the strong political will of the new Ukrainian leadership to fight corruption. The main challenge now lies in the effective implementation. So far policy, legislative and institutional measures were not supported by strong and practical measures and enforcement in the area of anti-corruption remains very poor. There has been no effective investigation into high-level corruption, a number of cases have been launched but without any tangible results. There is a risk that assets of former officials frozen abroad unilaterally by some countries will be released because of lack of cooperation and inaction from the Ukrainian law enforcement side. Effective investigation into corruption was replaced with such popular measures as “lustration” and “restoring trust in the judiciary”.

The 2011 anti-corruption strategy and action plan were not developed based on surveys and analysis of statistics. They were also not broadly discussed with stakeholders and the action plan (the State Programme) was drafted hastily. The strategy included no clear priorities; while covering various broad areas of reform, it failed to cover important specific anti-corruption reform directions, like specialised

institutions, asset disclosure. The direct budgetary funding in the anti-corruption action plan was provided only for a very limited number of measures, most of them having very little relevance for anti-corruption agenda.

The new Anti-Corruption Strategy for 2014-2017 was, for the first time, enacted by a law. This may help its implementation and allows covering broader scope of institutions. The new Strategy, however, was also not based on substantive research and analysis of the previous policy documents implementation. It has better priority-setting and includes indicators measuring its success. The action plan to implement the new Strategy has to be approved by the Government and was not available at the time of report preparation.

Ukraine is partially compliant with recommendations 1.1.-1.2.

New recommendation 1.1.-1.2

- *Develop and adopt without delay an action plan for the 2014 Anti-Corruption Strategy with effective measures and measureable performance indicators.*
- *Allocate proper budget for the Anti-Corruption Strategy and its action plan implementation.*

1.3. Corruption surveys

Second Round Recommendation 1.3.

- *Conduct regular corruption surveys, both nationwide and sector-specific, with focus on public trust and perception of corruption, to demonstrate long-term developments.*
- *Such surveys should be commissioned by the government, through an open and competitive tender.*
- *Independent findings from such surveys should become the basis for drafting, amending and monitoring the implementation of anti-corruption policies.*
- *The Government Agent for Anti-Corruption Policy Issues should take an active part in coordinating such research.*

The Government Agent on Anti-Corruption never became fully functioning, and never conducted any anti-corruption research. The National Anti-Corruption Committee that was responsible for facilitating methodological research on the anti-corruption issues, conducting analytical studies, preparing methodological recommendations in this area, was not functioning either. The Ministry of Justice was assigned the temporary role of the anti-corruption policy coordinating institution it is also in charge of the anti-corruption research.

The Government referred to only one survey mentioned above – the one commissioned by the Ministry of Justice to the NGO “Kharkiv Institute of Applied Humanitarian Studies” within the technical assistance project implemented in 2008-2012 by the ministries of justice of Ukraine and Canada (“Fight against corruption in Ukraine”). The survey “Corruption in Ukraine: Perception and Realities” covered 14 directions mentioned above. As was noted above this survey was not published; some of its findings were

included in the annual anti-corruption report for 2011 prepared and published by the Ministry of Justice of Ukraine.

The research conducted by the Kharkiv Institute had a relatively narrow scope and covered 14 topics, including: capacity of the mass media and NGOs to promote anti-corruption initiatives; corruption in the private sector; population's attitude to covert voluntary reports of corruption incidents; public coverage of elected officials' views on corruption; remuneration of civil servants and economic situation influences on the level of corruption. Selected findings of the research were published in the 2012 annual report on implementation of anti-corruption measures prepared by the Ministry of Justice.

The survey included two sections – perception of corruption and actual corruption experience in various areas. The section on perception was based on surveys conducted by different organisations at different time and showed the general level of perception of how corrupt the society was (83% considered corruption a usual phenomenon) and perception of the most corrupt areas/institutions (with leading positions held by the road police – perceived by 64.4% as very corrupt, judiciary – 60.3%, health sector – 60.3% and police- 59.1%). The section on actual corruption experience was based on surveys conducted in 2007, 2008, 2009 and 2011 by the UNITER project funded by the USAID.²² The results showed that level of corruption decreased only in three areas (in 2011 compared with 2009): among management and faculty of universities (from 49% to 47%), in the area of state provided housing (from 40% to 38%) and registration or privatisation of real property (from 35% to 33%). The most significant increase was noted in health services (from 54% to 60%), customs procedures (from 38% to 42%), recruitment to public authorities (from 31% to 36%) and receiving of social benefits (from 16% to 20%).

The full results of the research have never been made public and it is difficult therefore to fully assess its relevance and how it was used in preparation of the 2011 Programme.²³ Similarly no statistical data was used during preparation of the Programme. Statistical section in the annual anti-corruption reports provided only limited data, for instance no information on the convictions for corruption offences was provided; information was broken down by various law enforcement agencies and was not aggregated; annual reports published so far contained different sets of data which made it impossible to compare results and see any trends; there is no analysis of statistical information.

The Ministry of Justice and Ministry of Economic Development, by their joint decision of 30 September 2013 (No. 2055/5/1153), approved “Conceptual principles of the national system for evaluation of the corruption level”. Such evaluation was foreseen in the State Programme and National Action Plan for implementation in 2013 of the President's Economic Reforms Programme for 2010-2014. The evaluation had to be based, in particular, on a comprehensive survey of the spread of corruption by polling both citizens' perception and experience of corrupt practices. The Ministry of Justice was instructed to carry out in 2014 a pilot survey with advice from the State Statistics Service. Based on the results of the pilot survey a working group established under the Ministry of Justice had to finalise the methodology for survey. Other data to be employed in the national system for evaluation of the corruption level were: statistical reports by the specially designated agencies combating corruption, information on implementation by public authorities of anti-corruption measures, information on the spread of corruption obtained from other sources (e.g. expert opinion, thematic academic studies). The results of the evaluation should have been incorporated in the annual progress reports on implementation of the anti-corruption measures. No specific

²² Corruption in Ukraine. Comparative analysis of national surveys: 2007-2009, 2011. Kyiv, 2011.

Prepared by the European Research Association in co-operation with Kyiv International Institute of Sociology in the framework of the USAID funded project «The Ukraine National Initiatives to Enhance Reforms (UNITER)» implemented by Pact Inc. Ukraine. Available at (in English): http://uniter.org.ua/data/block/corruption_in_ukraine_2007-2009_2011_engl.pdf.

²³ In Ukrainian: www.minjust.gov.ua/file/23456.

budgetary allocations were provided for the pilot survey. The planned comprehensive survey within the national system for evaluation of the corruption level to be implemented in 2014 as a pilot project also did not provide for an open and competitive selection of the research/polling decision. The above “Conceptual principles of the national system for evaluation of the corruption level” mentioned that the pilot survey should involve an academic or polling institution with experience of conducting opinion polls, but there were no requirements as to the open call for proposals and competitive transparent selection.

Public officials interviewed during the on-site visit could not provide any further information about this project and it appears that the survey has not been carried out.

The Government mentioned other surveys related to corruption which were conducted during past few years (only one commissioned by the state institution). While it is not known if any of these studies had any impact on the development and monitoring of anti-corruption policies and measures, it is still worth mentioning the following studies:

- Ministry of Ecology and Natural Resources carried out an opinion poll on the corruption in licensing and permit system in the Ministry’s area.
- Democratic Initiatives Foundation jointly with the Ukrainian Sociology Service company in March-April 2011 carried out a poll on practical experience with corruption in education sector.
- Project UNITER conducted a series of polls on perception and experience of corruption in 2007-2009 and 2011 (referred to above).
- Transparency International included Ukraine in its Global Corruption Barometer surveys in 2010 and 2013 (see section on Country Information above).²⁴
- In 2012 European Research Association conducted national expert poll of construction companies on the impact on corruption of the Law on Urban Planning Regulation adopted in 2011 (project was funded by donor – International Renaissance Foundation).
- NGO Razumkov Centre in 2012 carried out a survey on whether the system of land registration was corrupt.

In October 2014, in its progress update to the ACN, the Ministry of Justice reported about a joint project with the OSCE Project Coordinator for Ukraine to conduct sociological surveys of the level of corruption in the country on annual basis. The research was supposed to cover both corruption practices and the perception of corruption. However, this project was put on hold at the time of the on-site visit; it was expected that it would be passed on to the new Agency for Corruption Prevention when it is established. After the on-site visit, the Ministry of Justice informed that the project would be launched in 2015 and would focus on implementing the methodology for evaluating the level of corruption in Ukraine that was developed by the NGO Kharkiv Institute of Applied Humanitarian Research.

As was noted above, the current Anti-Corruption Strategy adopted in 2014 was not based on surveys or statistics either. It is expected that the action plan for the implementation of the Strategy should contain performance indicators. It will be crucial to conduct regular corruption surveys in the future to ensure credible monitoring of the Strategy. It is equally important that the Government takes the lead and commissions such regular surveys and that it also uses the surveys conducted by the non-governmental organisations in its monitoring process.

²⁴ Available at: www.transparency.org/research/gcb/overview. In 2013 the 59% of respondents stated that the level of corruption in Ukraine increased (a lot or a little), 36% - that it stayed the same and only 4% that it decreased a little. Also only 4% believed that government’s actions against corruption were effective (the rest that it was very ineffective – 37%, just ineffective – 43% and neither effective not ineffective – 16%).

Conclusions

The Ministry of Justice commissioned one corruption study in 2011; that study had a limited impact on the development of the 2011 Anti-Corruption Programme. No further studies were commissioned by the Government to support the monitoring of the previous Programme, or the development of the new Strategy adopted in 2014. In 2013 the Government launched preparation of the national system of corruption level assessment that was supposed to include relevant surveys, but it was not carried through.

Ukraine is **not compliant** with recommendation 1.3.

New recommendation 1.3.

- *Conduct regular corruption surveys to provide analytical basis for the monitoring of implementation of the Anti-Corruption Strategy and its future updates.*
- *Such surveys should be commissioned by the government, through an open and competitive tender.*
- *Use surveys conducted by non-governmental organisations for the monitoring of the Anti-Corruption Strategy implementation and adjustment of the anti-corruption policy.*

1.4.-1.5. Public participation in anti-corruption policy work, raising awareness and public education

Second Round Recommendation 1.4.-1.5.

- *Enhance cooperation with civil society in addressing the corruption phenomena, including working more closely with a wide range of NGOs, the business community and academia on anti-corruption and good governance.*
- *Step up efforts to promote active and meaningful involvement of civil society in defining, implementing and monitoring anti-corruption strategy and action plan, including sector-specific programmes and regulations.*
- *Establish clear policy as well as transparent and not formalistic procedures for involving civil society representatives in the decision-making process.*

Between 2011 and 2013, the Ministry of Justice organised with NGO involvement several trainings and public events, round-tables, discussions and conferences, often with the support of donor and international organisations. Other public authorities also organised relevant discussions.

In October 2012 President amended Regulations on the National Anti-Corruption Committee to provide that at least one fifth of the NAC's composition should be representatives of NGOs and that such representatives should be proposed by the Civil Society Council at the NAC (which has never been set up). As the National Anti-Corruption Committee remained dysfunctional, civil society representatives were not included in its composition after all.

The Government reported about several formal mechanisms to involve civil society representatives in the decision-making process:

1. On 3 November 2010 the Cabinet of Ministers adopted Procedure for conducting consultations with the public on the issues of public policy development and implementation, such as public discussions on: draft legal acts of high public significance related to constitutional rights, freedoms, citizens' interests and obligations; draft regulatory acts; draft national and regional programmes.
2. In November 2010 the Cabinet of Ministers by its resolution instructed all ministries and central executive authorities, as well as local state administrations, to set up new public councils at each of the authority as "a standing collegial elected consultative advisory body formed for ensuring citizens' participation in state governance, exercising public control over activity of the executive authorities, establishing effective interaction of the aforementioned authorities with the civil society, taking public opinion into account during state policy formulation and implementation". The Government reported that in 2012-first half of 2013 relevant public councils held 750 meetings. During the same period central and local executive authorities conducted about 5,600 public consultation events, discussed more than 4,200 issues of state policy and about 1,750 draft legal acts. 60% of overall number of public consultations were held through electronic means.
3. In September 2011 Ukraine joined Open Government Partnership (OGP) initiative committing to ensure transparency of public governance, engaging civil society in policy development and implementation, and counteracting corruption. A Co-ordination Council established for the OGP implementation in Ukraine included a number of civil society representatives. A number of measures included in the OGP Action Plan are implemented in cooperation with the civil society.
4. In January 2012 the President of Ukraine established an advisory body – a Consultative Council on Civil Society Development and in March 2012 approved Strategy of State Policy for Promoting Civil Society Development in Ukraine.

No assessment of the effectiveness of available mechanisms for civil society involvement in the decision-making process was conducted by the Government.

NGOs were critical of the government's efforts. They noted that the State Anti-Corruption Programme was developed and approved without civil society involvement. As to the NAC they noted that originally only one NGO representative (head of Ukrainian TI chapter) was included in its composition; he withdrew from the NAC in August 2012 in protest against President's decision to sign a corruption-prone law; since then there has been no NGO representatives in the NAC. The system of public councils at the executive authorities was seen as ineffective; there were several examples when such bodies were "hijacked" by a large number of fake or affiliated with authorities NGOs which took over the councils to promote their own agenda.

NGOs stated that they themselves initiate and carry out policy-related activities, for example conducted an independent assessment of the State Anti-Corruption Programme in 2013. NGOs, with donor support, also conduct various discussions, seminars, conferences which are sometimes not attended by the government representatives. Similarly, on the local level only very few regional authorities (in Kyrovograd, Vinnytsya, Kyiv and Dnipropetrovsk regions) are actively promoting civil society involvement in development and implementation of anti-corruption initiatives. As the only positive example NGOs noted co-operation within the Open Government Partnership initiative where civil society representatives have been directly involved in the development, implementation and monitoring of the relevant action plan. But its impact on the anti-corruption efforts is limited.

Both the Government and NGOs also mentioned the public expert council functioning at the Parliament's Committee on Fighting Corruption. NGOs noted it as a useful platform for discussion of relevant draft legislation, but with limited possibilities in terms of influencing decision-making. One of the activities within the public expert council at the parliament's committee was anti-corruption assessment of draft laws carried out since October 2013 by civil society experts and presented to the Committee and MPs as recommendations, which, however, have not so far affected adoption or rejection of any draft law.

There are some exceptional examples when the so called civic examination (expertise) of state authorities resulted in some real changes in the procedures and policies after significant pressure from the civil society. For example, in 2013 the Ministry of Regional Development declassified general plans of cities as a category of documents, which may significantly facilitate access to these important documents for local communities and prevent corruption in urban development. However, some of the NGOs interviewed during the on-site visit noted that the impact of the civil society assessment was limited.

The Maidan events have radically changed relations between the government and the civil society. NGO representatives interviewed during the on-site visit confirmed that civil society participation became very effective due to several factors: high public expectations from the new leaders of the country, including the pressure on the decision-makers that was created by the presidential and parliamentary election campaigns and anti-corruption conditions attached to the funding by international organisations and donors. Besides, the NGOs themselves have reached a good level of professionalism and new people in the government were good allies of the NGOs. Many civil society leaders actually joined politics by entering the parliament elected in October 2014.

Main anti-corruption policy documents in 2014 were developed with direct participation of NGOs, or often were developed by NGOs and civil society experts themselves. This public participation was not formalised through any procedures or no legal mechanisms were used for this purpose. The most active in this regard was civic coalition Reanimation Package of Reforms that developed its own agenda of priority reform measures, including on anti-corruption, and actively promoted it. The new administration often follows the lead of the civil society and due to significant public pressure and high expectation of reforms takes on board many of the reform measures developed by the NGOs, e.g. the anti-corruption package of laws adopted in October 2014.

However, some NGOs also provided examples of difficulties in cooperating already with the new government, and especially at the local level. For instance, the Mayor of Kyiv has declared his resolve to work with the civil society, but in practice NGOs faced serious obstacles, e.g. during the recent adoption of the city development plan. The city administration did not announce its meetings in advance; there were no procedures that would allow NGOs to take part in the working groups; while many NGOs were against the urban plan presented by the administration, the published protocol of the meeting referred to their support.

NGOs interviewed during the on-site visit voiced their concerns that after the elections the newly adopted laws may remain unimplemented, as in the past. In this respect, they expressed their wish that the international pressure is maintained, and that sufficient funding and other resources are provided to the new anti-corruption bodies – the Anti-Corruption Bureau and the Agency for Corruption Prevention – which should lead the anti-corruption work in the country. At the same time, the NGOs did not have a clear view as to how they could strengthen their own watchdog role in the future and how to create an effective system of public monitoring of the implementation of the Anti-Corruption Strategy and other policy documents. Some NGOs were reluctant to accept any formal legal public participation mechanisms, while others recognised the need in a more structured and institutional approach. They suggested that possibly a hybrid model that would combine formal and informal public participation could be created.

Some of the options were mentioned in the NGO replies to the monitoring questionnaire, e.g.:

- designate a permanent public authority responsible for development and implementation of the anti-corruption policy, which would be a counterpart for NGOs in this work. Since then such authority was envisaged – the National Agency for Corruption Prevention that will be set up according to the new Law on Corruption Prevention, which enters into force in April 2015.
- actively involve civil society organisations in the discussion of draft strategies, programmes, plans and other anti-corruption initiatives from the initial stage of their preparation.
- provide public financing for implementation of regional anti-corruption programmes and civil society meaningful involvement in their preparation, implementation and evaluation.
- develop procedures for the public authorities to take into account results of the civil society anti-corruption assessment of legal acts and their drafts.

Conclusions

Public participation and awareness raising prior to 2014 was largely formalistic and ineffective. There were various mechanisms for involving the public in the decision-making process, but little was known about their actual implementation and effectiveness. Positive experience of civil society involvement was noted with regard to development and implementation by the Ukrainian Government of the OGP Action Plan. State bodies launch public consultations on draft decisions, including through on-line means, but they very rarely receive active feedback from the civil society and therefore they have not become meaningful tools for public engagement in the decision-making. This was explained by the lack of trust from the civil society which did not believe that their suggestions would be taken seriously.

The involvement of civil society in anti-corruption and other public policies after the Maidan events have radically evolved: main anti-corruption policy documents were developed with direct participation of NGOs, or were developed by NGOs and civil society experts themselves. This public participation was not formalised through any procedures or mechanisms and was very effective. The civil society became a driving force behind many reforms measures, e.g. the anti-corruption package of laws adopted in October 2014.

The monitoring team believes that at the next state of the anti-corruption policy, it will be important to develop a more structured mechanism for civil society participation with the focus on the monitoring of the implementation of the Anti-Corruption Strategy by the NGOs and on awareness raising and public education with the NGO participation.

Ukraine is largely compliant with recommendations 1.4.-1.5.

New recommendation 1.4.-1.5.

- *Ensure that there is a functioning institutional mechanism for civil society participation in the designing and monitoring of the Anti-Corruption Strategy and Action Plan implementation.*
- *Include systemic awareness-raising and anti-corruption public education in the Government anti-corruption measures.*
- *Engage civil society in the development and delivery of education and awareness raising activities.*

1.6. Specialised anti-corruption policy and co-ordination institution

Second Round Recommendation 1.6.

- *Strengthen the capacity and ensure stability of the recently established anti-corruption policy coordination bodies, including the Agent on Anti-corruption Issues and the Bureau on Anti-corruption Policy, clarify their functions and ensure adequate resources for their work.*
- *Ensure effective coordination and cooperation among various bodies working on anti-corruption policy such as the Agent, the Bureau, Ministry of Justice, relevant committee of the Parliament and the Presidential Administration.*
- *Ensure that the public council provides a useful mechanism of public participation in the anti-corruption policy.*
- *Consider transforming position of the Government Agent into an autonomous institution, separate from the Government's Secretariat with necessary level of independence and sufficient resources (budget, personnel, etc.) to effectively perform its functions to meet the requirements/in accordance with Article 6 of the UNCAC.*

As mentioned above, several institutions were involved in the coordination of implementation of the 2011 Anti-Corruption Programme, including the following: the National Anti-Corruption Committee, the Ministry of Justice and the Government Agent on Anti-Corruption Policy.

National Anti-Corruption Committee

The National Anti-Corruption Committee (NAC) was established by the President's decree on 26 February 2010. Formally the NAC was responsible for developing anti-corruption policy proposals, analysis of anti-corruption efforts and effectiveness of anti-corruption strategy and action plan. The Government underlined that draft of the 2011 Law on the Principles was developed within the NAC and approved at its meeting, as well as the draft National Anti-Corruption Strategy (adopted in 2011 as well). Another NAC decision was implemented in the President's decree of 5 October 2011 "On immediate measures for implementation of the Law of Ukraine on Principles for Preventing and Counteracting Corruption".

The OECD/ACN Second Round Monitoring report noted that: "The role of the Council is limited to providing advice, making recommendations and suggesting draft legal acts to the President. The President is chairing the Council and appoints its members. Currently the Council consists of the highest public officials. There is one NGO representative sitting on the Committee and a few representatives of the academia and universities. The Committee does not have a dedicated Secretariat; its functions are performed by the Presidential Administration and the Ministry of Justice. The National Anti-Corruption Committee is, therefore, a high-level forum for endorsing draft decisions to be promulgated by the President, but it is not called to play the role of a permanent anti-corruption agency. While it is premature to assess the operations of this Council, it appears that up to date it did not provide important contribution to the anti-corruption activities in Ukraine to date."

In March 2012 the Secretary of the National Defence and Security Council was assigned the role of the NAC secretary. However, it did not impact the effectiveness of NAC's work. The third meeting of the NAC was held in June 2011 when draft anti-corruption strategy was considered. After that a number of changes were made in the regulations and in the composition of the NAC, but there had been no visible signs of its actual activity. It therefore appeared to be not a functioning institution serving no role but that of window-dressing.

On 14 October 2014, the new National Council on Anti-Corruption Policy, a high-level coordination mechanism which includes representatives of the civil society, business sector and local self-government, was established as advisory body to the President. The Council is not functioning yet; its personal composition has not been formed. The former National Anti-Corruption Committee was abolished.

The Government Agent on Anti-Corruption Policy

Co-ordination bodies which existed at the time of adoption of the Second Monitoring Round report on Ukraine, namely the Government Agent on Anti-Corruption Policy and its Bureau within the Government's Secretariat, were disbanded shortly after adoption of the report in December 2010. Position of the Government Agent was revoked on 7 February 2011.

On 11 July 2013 the Cabinet of Ministers reinstated the Government Agent on Anti-Corruption Policy as a position within the Government's secretariat and appointed the former Government Agent as the new Agent. However, no regulations on the Agent defining its mandate were adopted until December 2013. Supporting staff was assigned to the Agent only in 2014 and included eventually three staff members who at the same time were staff members of the Government Secretariat and were not directly subordinated to the Agent.

The Government Agent on Anti-Corruption was replaced after the Maidan events: the Government appointed a well-known investigative journalist to this position. It was seen as a gesture of the Government towards Maidan activists. However, due to lack of institutional capacity and proper powers work of the office was ineffective. On 4 September 2014 Government approved new regulations on the anti-corruption units in executive authorities, which subordinated them to the Government Agent on Anti-Corruption. However, shortly after that, the Government Agent resigned accusing Government of inaction and harmful cooperation with the civil society. With adoption of the Law on Corruption Prevention which provides for establishment of the Corruption Prevention Agency there is no reason to keep ineffective and dependent on the Government position of the Government Anti-Corruption Agent.

The Ministry of Justice

In October 2011 the President assigned – temporarily – the function of the anti-corruption policy coordination to the Ministry of Justice. This function is implemented by a small unit of 11 staff members within the Ministry's Department on legislation on the anti-corruption, which is also responsible for legal drafting. Ministry of Justice's powers are limited to the executive authorities but only when there is relevant instruction of the Government or provision in the law mandating other executive bodies e.g. to provide reports. NGOs noted that the Ministry's role was therefore limited to drafting of legal acts, carrying out anti-corruption screening of draft legal acts, receiving and summarizing reports on implementation of the State Programme.

The Ministry of Justice informed that it held two co-ordination meetings on 1 June and 8 August 2013 about the implementation of the Anti-Corruption Programme with participation of different public authorities. As a result of the meetings, information on the Programme's implementation was submitted to the Government as well as proposals on amending the Programme. The Ministry continues to act as a temporary coordinator for anti-corruption policy and also continues to act as the focal point for international anti-corruption policy coordination until the new National Agency for Corruption Prevention becomes operational.

Co-ordination

The NAC was supposed to co-ordinate anti-corruption work of various public authorities related to the 2011 Programme, but as discussed above, it was ineffective. The Government Agent on Anti-Corruption Policy and its supporting Bureau were supposed to co-ordinate the executive in relation to the Programme implementation, but they never became fully operational. The Ministry of Justice performed the role of the co-ordinator on a temporary basis and in a limited scope related to the reporting about the implementation of the Programme. Also, the Prosecutor General's Office was in charge of co-ordinating law enforcement agencies in the anti-corruption area.

There was no meaningful involvement of the parliament's committee on anti-corruption in the anti-corruption policy co-ordination. Interaction between the Government and the parliament's committee starts when a draft law is submitted by the Government and it is reviewed by the parliament. In 2013, however, several government-sponsored draft laws on the anti-corruption were not supported and were replaced by similar draft laws initiated by MPs. Main reason for this was political, but it also showed that there was insufficient co-ordination and consultation when the draft legislation is prepared. The role of the parliament's committee increased in 2014, in particular during consideration of the anti-corruption package of laws passed in October 2014.

Public councils

Public council mentioned in this part of the recommendations is the one which existed under the previous Government Agent on the Anti-Corruption Policy. It however ceased its activity and was not reinstated together with the Government Agent's position. Regulations on the National Anti-Corruption Committee under the President provided for establishment of a public council at this institution as well, but it was not implemented in practice and no such body existed.

Public councils were also established at all executive authorities, as discussed in section 1.4-1.5. But they were seen as ineffective; there were several examples when such bodies were "hijacked" by a large number of fake or affiliated with authorities NGOs which took over the councils to promote their own agenda. NGOs interviewed during the on-site visit confirmed that public councils at various executive authorities did not represent any civil society groups, and most often they were subordinated to the heads of the state bodies. However, during the on-site visit some positive examples were quoted by several NGOs and business associations. In December 2014 the Government decided to disband all public councils set up prior to February 2014.

Independent corruption prevention body

Up until 2014, no consideration was given by the Government to the possibility of establishing an "autonomous institution, separate from the Government's Secretariat with necessary level of independence and sufficient resources to effectively perform its functions to meet the requirements/in accordance with Article 6 of the UNCAC" as it was recommended during the second round of monitoring.

In its Joint First and Second Round Evaluation report on Ukraine in March 2007 GRECO also recommended "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. Such a body should represent public institutions as well as civil society and be given the necessary level of independence to perform an effective monitoring function." In the Third Addendum to the Compliance Report on Ukraine adopted 6 years later

(in March 2013) GRECO found that that recommendation was not fully implemented and that “the concrete results of the NAC’s activity remain unclear”.²⁵

In its February 2012 progress report on implementation by Ukraine of the Visa Liberalisation Action Plan European Commission noted that Ukraine should put the institutional framework in place as a matter of urgency, through establishing an independent oversight with the responsibility of coordinating and supervising the implementation of anti-corruption strategies/action plans and the development of new ones, as well as ensuring the independence and specialisation of the prosecution and law enforcement services, as recommended by GRECO and OECD.²⁶

In the report of Civic monitoring of implementation of benchmarks for signing the EU-Ukraine Association Agreement (1 October 2013), independent NGOs and experts noted that the restoration of the post of the Government Agent cannot be considered as fulfilment of GRECO recommendations since no functions and powers of the office have been identified and no secretarial support has been provided. The institution was not independent. The President’s National Anti-Corruption Committee founded back in 2010 stayed inactive, and consequently it cannot be considered an effective agency for coordinating the development and implementation of anti-corruption policy. The amendments to the provisions of the National Anti-Corruption Committee according to which 1/5 of its members would have to consist of the representatives of NGOs have not been implemented.²⁷

A major break-through regarding the anti-corruption institutions was achieved in October 2014, when the parliament adopted two legal acts establishing new anti-corruption bodies in Ukraine - the National Agency for Corruption Prevention and the Anti-Corruption Bureau.

The National Agency for Corruption Prevention is expected to be established under the Law on Prevention of Corruption (see text in the Annex). Section II of the Law “National Agency for Prevention of Corruption” determines the status of the agency as a central executive body that is responsible to the Parliament. The Agency, despite its name, will be a collegiate body composed of five members that should be selected through an open competition conducted by a special selection commission and appointed by the Cabinet of Ministers for 4 years; they can hold their positions only for 2 terms. The Chairman of the Agency is elected by its members for a 2 years term. The Agency should work through weekly meetings, it will have regional offices. Maximum number of employees of the National Agency will be approved by the Cabinet of Ministers of Ukraine upon submission of the National Agency’s Chairman. Regulations for the Agency’s staff will be approved by the National Agency.

Article 9 of the Law provides guarantees for the independence of the Agency such as procedures for selection, appointment and dismissal of its Members, funding procedures and remuneration levels, and procedures for protection of Members of their families. The Agency will have following main tasks: anti-corruption policy (corruption research and analysis; developing, coordinating and monitoring implementation of the anti-corruption policy); control of asset declarations (monitoring of declarations and lifestyle of persons authorized to perform the functions of the state or local self-government, verification and disclosure of declarations on a single web-portal); protection of whistle-blowers; methodological

²⁵ GRECO, Third Addendum to the Joint First and Second Round Compliance Report on Ukraine, 22 March 2013, p. 4, available at: [www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2009\)1_ThirdAdd_Ukraine_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2009)1_ThirdAdd_Ukraine_EN.pdf).

²⁶ Cited above, page 17.

²⁷ Civic monitoring of implementation of benchmarks for signing the EU-Ukraine Association Agreement, Second Report, 1 October 2013, p. 40, available (in English) at: www.irf.ua/files/ukr/programs/euro/report_eng.pdf.

support to anti-corruption work of other state and local self-governance bodies; endorsement of anti-corruption programmes to be adopted in all public agencies; public awareness raising and international cooperation.

The Law on Corruption Prevention provides for public oversight over work of the National Agency for Corruption Prevention. Such oversight will be carried out by the Public Council comprising 15 members. The Public Council will have a power to delegate its member to the National Agency's meetings with the right of deliberative vote. The Ministry of Justice developed and sent to the Government draft regulations on competitive selection of the Public Council members.

The Law on Corruption Prevention will be enacted on 26 April 2015. It is not clear when the selection of the Agency's members will start, although there is a proposal pending in the parliament to amend the law and specify that such selection should be completed by the time the law is enacted, i.e. by the end of April 2015.²⁸ The Government is in charge of making arrangements to set up the agency.

The monitoring team was concerned that the public officials interviewed during the on-site visit did not provide any information as to the preparatory measures that were taken for the timely establishing of the Agency. While the monitoring team commended Ukraine for providing the Agency with its own budget, it was also concerned that the Ministry of Finance was given the task to estimate the future budget of the Agency, which may undermine its effectiveness and independence if sufficient transparency of the process is not ensured. However, the 2015 State Budget Law adopted on 28 December 2014 allocated UAH 112 million (about EUR 6 million) for the Agency in 2015, which may be just enough to start the agency considering that it will not become operational before June-July (if not later).

One question that remains is what to do with the anti-corruption units in the ministries and other agencies that were established in 2014 under the Government Anti-Corruption Agent. Initial draft of the Corruption Prevention Law had provisions on the network of such units which reported to the Corruption Prevention Agency, but these provisions were deleted in the parliament before final vote. The Government may still keep such units as it is a part of the executive authorities, but it is not clear how they will interact and coordinate with the new agency. The adopted Law has a provision which may allow to use the existing network of anti-corruption officers/units, as the National Agency may designate its "authorized persons", including from among non-staff members.

Conclusions

With regard to the anti-corruption policy co-ordination institution, there was no progress since the previous monitoring round in February 2011 and until October 2014. The National Anti-Corruption Committee existed only on paper. Recommendation to strengthen the Government Agent on Anti-Corruption Policy and to consider transforming it into an autonomous from the Government institution remained unheeded – the Government in fact moved in the opposite direction by disbanding the Agent two months after the monitoring report was adopted. An institution with a similar name was reinstated more than two years later, but remained without clearly defined remit, powers and resources. The Ministry of Justice was the only state body that continued coordination of anti-corruption policy within the narrow scope of its powers and with poor resources. This situation showed the lack of strategic vision or the will of the former regime to implement anti-corruption policies.

The adoption by the Parliament of two laws in October 2014 that establish the National Agency for Prevention of Corruption and the National Anti-Corruption Bureau became the major break-through in the anti-corruption institutional reform in Ukraine. While a number of concerns remain regarding the

²⁸ Relevant law was adopted on 12 February 2015.

independence and resources that will be provided to both bodies, the creation of the legal basis for their operation complies with the spirit of the recommendation. The creation of the new National Council on Anti-Corruption Policy under the President is also a step in the right direction. However, none of these bodies has become operational yet, it is too early to assess the degree of implementation of the recommendation.

Ukraine is partially compliant with recommendation 1.6.

New recommendation 1.6.

- *Ensure effective operation of the new National Council on Anti-Corruption Policy; consider assigning the function of its secretariat to the National Agency for Corruption Prevention.*
- *Establish without delay and ensure effective and independent functioning of the National Agency for Corruption Prevention.*
- *Ensure that the budget of the National Agency for Corruption Prevention provides for the necessary resources and operational autonomy.*
- *Subordinate anti-corruption units/officers in executive bodies to the National Agency for Corruption Prevention.*
- *Provide necessary training and other capacity building support to the staff of the National Agency for Corruption Prevention.*
- *Develop effective mechanism of coordination between the National Agency for Corruption Prevention, National Anti-Corruption Bureau, and other executive, legislative and judiciary authorities.*
- *Ensure in practice functioning of an effective mechanism for NGO participation in the work of the National Agency for Corruption Prevention.*

II. Criminalisation of corruption

The Government of Ukraine has taken significant recent steps to criminalize corruption. Specifically, the recently adopted anti-corruption legislation, adopted on 14 October 2014, is a comprehensive package that provides important statutory tools vital to prosecuting and deterring corruption. The passage of robust anti-corruption legislation, however, while laudable, is merely a first step. So far no major improvement has been noted with regard to criminal law enforcement. The Government of Ukraine must demonstrate its commitment to fighting corruption by enforcing its recently adopted anti-corruption legislation in a fair, transparent and consistent manner. The Government of Ukraine must also provide its prosecutors and investigators with the independence and resources necessary to investigate and prosecute corruption offences.

2.1-2.2 Offences and elements of offence

Second Round Recommendation 2.1.-2.2.

Undertake urgent steps to amend the significant and long overdue loopholes in the criminalisation of bribery and corruption related offences:

- ***Ensure that the anti-corruption package adopted in June 2009 enters into force as soon as possible. Review the provisions of the package, and of other relevant legislation to identify gaps of Ukrainian legislation against the international anti-corruption standards, and remove these gaps through appropriate legislative and institutional measures. Any revision of the package should not cause additional delay in its enactment.***
- ***Ensure the implementation of the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) and sign and ratify the Council of Europe Convention on Access to Official Documents (CETS No. 205).***
- ***Implement provisions of the Law Amending Some Legislative Acts of Ukraine Concerning Responsibility for Corruptive Offences that would criminalize trading in influence and the offering of a bribe.***
- ***Align offences of active and passive bribery with international standards by criminalising promising, requesting or soliciting a bribe, accepting a proposal or a promise of the bribe as complete offences and by ensuring that the legislation expressly criminalizes, for both principals and third persons, various specified forms of bribery through a third person or for the benefit of a third person.***
- ***Implement legislation increasing maximum punishments for active and passive bribery, and consider whether to increase the limitations period for some corruption offenses.***
- ***Enact a statutory definition of “bribe” which should include non-pecuniary undue advantages.***
- ***Consider reviewing the offence of illicit enrichment to bring it in line with Article 20 of the UNCAC.***

Ensure that the anti-corruption package adopted in June 2009 enters into force as soon as possible. Review the provisions of the package, and of other relevant legislation to identify gaps of Ukrainian legislation against the international anti-corruption standards, and remove these gaps through appropriate legislative and institutional measures. Any revision of the package should not cause additional delay in its enactment

The package of anti-corruption laws adopted in June 2009 included the following acts: the Law on Principles for Preventing and Counteracting Corruption (the Law on Principles), the Law on the Liability of Legal Persons for Corruption Offences and the Law on Amendments to Certain Legislative Acts of Ukraine regarding the Liability for Corruption Offences. The latter law covered incriminations of corruption offences. Entering into force of the package was postponed twice and, finally, all three laws were revoked by the Law of 21 December 2010. It was explained by political reasons since the previous laws were supported by the previous Government and President; the new President and Government were installed in 2010.

The delay in the signature and publication of the 21 December 2010 law allowed the three anti-corruption laws to come into force on 1 January 2011 and to remain effective for five days. Since one of the laws introduced a number of amendments in the definition of criminal and administrative corruption offences, this short period when it was in force caused a number of legal problems and resulted in significant legal uncertainty. The latter, itself an unacceptable situation under the rule of law, may have also created opportunities for corruption.

Finally, a new wording of the Law on Principles for Preventing and Counteracting Corruption and the Law on Amendments to Certain Legislative Acts of Ukraine regarding the Liability for Corruption Offences was adopted on 7 April 2011 (entered into force on 1 July 2011). The drafts of the above laws were introduced by President Yanukovich. At the same time no replacement for the liability of legal persons law was proposed.

Provisions concerning criminal and administrative liability for corruption or related to corruption offences were further amended by:

- Law no. 4025-VII of 15 November 2011 (*On amendments in some legislative acts of Ukraine concerning humanisation of liability for economic offences*);
- Law no. 221-VII of 18 April 2013 (*On amendments in some legislative acts of Ukraine to harmonise the national legislation with the standards of the Criminal Law Convention on Corruption*; entered in force on 18 May 2013);
- Law no. 222-VII of 18 April 2013 (*On amendments in the Criminal Code and Criminal Procedural Code of Ukraine with regard to the EU-Ukraine Visa Liberalisation Action Plan implementation*; entered into force on 15 December 2013);
- Law no. 314-VII of 23 May 2013 (*On amendments to certain legislative acts of Ukraine regarding implementation of the Action Plan for Liberalization of EU Visa Regime for Ukraine with regard to the liability of legal persons*; was supposed to come into force on 01.09.2014 but another law later changed the date of enactment and amendments entered into force on 27 April 2014).

Further amendments to the relevant provisions were prepared by the Ministry of Justice and submitted to the parliament in September 2013. After several revisions the Law no. 1261-VII *On Amendments in Certain Legislative Acts in the Area of State Anti-Corruption Policy with regard to Implementation of the EU-Ukraine Visa Liberalisation Action Plan* was finally adopted on 13 May 2014. It revised provisions on some criminal offences (in particular, finally introducing liability for requesting and promising of undue advantage), on special criminal confiscation and criminal fines for legal persons, introduced administrative liability for submitting false information in asset declarations and new procedure for verification of asset declarations (by tax authorities), improved provisions on protection of whistle-blowers. The law was enacted on 4 June 2014, except for provisions on the new mechanism for verification of asset declarations which became effective on 1 January 2015.

The reform of the criminal provisions on corruption continued with adoption in October 2014 of the package of anti-corruption laws, notably the **Law on the National Anti-Corruption Bureau** that entered

into force on 25 January 2015. In addition to establishing a new law enforcement institution to tackle high-level corruption, the law introduced a number of amendments in the Criminal Code, in particular:

- introduced for the first time a list of “corruption crimes” (Art. 191.2: Embezzlement by a service person; Art. 272.2: Misappropriation of weapons using one’s office; Art. 308.2, 312.2, 313.2, 320.2: Misappropriation of various types of drugs using one’s office; Art. 320.2: Misappropriation of documents using one’s office; Art. 410.2: Misappropriation of weapons by military servicemen; as well as the “core” bribery or abuse of office offences in Articles 354, 364, 364-1, 265-2, 268-270 CC – see Annex).
- Excluded “corruption crimes” from a number of CC provisions allowing release from criminal liability or punishment in various forms, in particular: provisions on effective regret (Art. 45 CC), peaceful agreement with victim (Art. 46), transfer of person to one’s bailment (Art. 47), change of situation (Art. 48), imposing a milder sanction than the one provided for in the law (Art. 69.1), if person is recognized as not socially dangerous (Art. 74.4), release from serving punishment with probation (Art. 75.1), conditional release from serving sentence (Art. 81.3.1), replacement of sentence’s part not served with a milder sanction (Art. 82.4.1), release from serving punishment due to amnesty (Art. 86), etc. These provisions were often used to release persons convicted of corruption from serving real sentences which made criminal liability ineffective.
- Amended incrimination of illicit enrichment to bring it in line with Article 20 of the UN Convention against Corruption.

The new **Law on Corruption Prevention** (adopted on 14 October 2014, will enter into force on 26 April 2015) introduced a new criminal offence of submitting false information in asset declaration (see Annex).

Before the new laws came into force additional amendments have already been proposed. This was explained by the hasty adoption of the October 2014 package and a number of inconsistencies among different laws passed on that day. For example, due to one of them the National Anti-Corruption Bureau had no investigative jurisdiction once the new Anti-Money Laundering Law entered into force several days after the Law on NAB did (on 6 February 2015). To address these deficiencies, as well as to further strengthen criminal law provisions on corruption, several draft laws were submitted by different groups of MPs (nos. [1406](#), [1660](#), [1660-1](#)). A **consolidated draft law** (no. [1660-d](#)), agreed by a working group established at the parliament’s Anti-Corruption Committee, proposed, inter alia, the following amendments related to corruption incriminations:

- correcting the list of “corruption crimes” to cover all relevant offences when committed with the use of one’s official position;
- new wording of the exemption from liability for those who committed active bribery (see chapter below on effective regret defence);
- extending definition of the person (not an official) subject to liability for active and passive bribery under Article 354 CC (see chapter below on the definition of public officials);
- including non-pecuniary and intangible benefits in the definition of undue advantage in all corruption incriminations;
- new wording of the illicit enrichment crime in Article 368² CC;
- narrowing the scope of bribe provocation offence in Article 370 CC;
- introducing civil confiscation of unexplained assets.

The draft law no. 1660-d was adopted in the final reading on 12 February 2015.

See Annex to this report for the text of the Criminal Code and the Code of Administrative Offences provisions with all the recent amendments.

In general, taking into account all the revisions which took place in 2013 and 2014 and new amendments in February 2105, Ukraine is now fully compliant with international standards with regard to criminal law provisions on corruption offences (see more detailed analysis below).

However, one cannot but note that provisions on corruption incriminations have been subject to way too often changes (with new amendments pending immediately), which in itself is not an acceptable practice. Criminal law, more than any other field of law, requires stability to ensure legal certainty and prevent arbitrary criminal enforcement. While Ukraine indeed had to significantly revise its Criminal Code provisions to align it with relevant international standards, as was recommended by various international organisations, including the OECD/ACN, it is regrettable that such changes were not well-thought in advance and required numerous adjustments and corrections. Frequent and hasty changes in the corruption incriminations may have also affected the law enforcement activity, as relevant agencies had to adapt to several consecutive changes which often repeatedly amended the same provisions.

As the 2009 anti-corruption package had never been enforced and was eventually replaced with the new package in 2011, the first part of this recommendation was technically not implemented. However, Ukraine did carry out a number of revisions of its criminal law to close loopholes and align it with international standards. Therefore, this part of the recommendation can be considered as largely implemented.

Ensure the implementation of the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) and sign and ratify the Council of Europe Convention on Access to Official Documents (CETS No. 205)

These issues will be covered under Recommendation 2.1.-2.2. bis (money laundering) and Recommendation 3.6. (access to information).

Implement provisions of the Law Amending Some Legislative Acts of Ukraine Concerning Responsibility for Corruptive Offences that would criminalize trading in influence and the offering of a bribe

Offering of a bribe as a separate complete offence and trading in influence were introduced in the Ukrainian Criminal Code (Article 369, para. 1, and Article 369², respectively) by the Law no. 3207-VI and came into force on 1 July 2011.

As appears from the statistics provided by the Ukrainian Government, Article 369² on trading in influence (“Abuse of influence”) has been applied in practice and a number of cases were investigated and sent to court with indictment (7 in 2011; 44 in 2012; 80 in 2013 and 115 in January-November 2014). 27 convictions were delivered by first instance courts in such cases in 2013 and 31 in January – June 2014.

No information is available on cases investigated/prosecuted under Article 369, para. 1, concerning offer of an unlawful benefit – the data provided concerns Article 369 in general with no detailed breakdown. During the on-site visit law enforcement officials could not remember any cases where offer of a bribe was investigated. See Annex 2 for statistical data on various corruption offences.

The Government also provided examples of real cases under trading in influence offence:

- 1) In 2013, the Security Service of Ukraine was notified of suspicions of offences being committed under Art. 369-2, para. 1, and Art. 15 (attempt) of the Criminal Code by a student of a higher educational institution, and under Art. 369-2, para. 3, and Art. 15 (attempt) of the Criminal Code by an assistant professor of one of the departments of the same higher educational institution who demanded USD 500 from a student for successful presentation of her master’s research paper and UAH 200 for successful passing of the state exam, and also UAH 8,000 from two other students

for presentation of their master's research papers, and received illegal benefit in the amount of UAH 12,000. Officers of a special unit of the Security Service caught the aforementioned persons red-handed when the money was changing hands.

- 2) Senior state inspector of the tax control department of a local regional state tax inspectorate of the State Tax Service demanded and received illegal benefit for influencing an official of the regional state tax inspectorate for accelerating the adoption of a positive decision on the issuance of a certificate of an extraordinary documentary on-site inspection of an individual entrepreneur for compliance with the tax, currency, and other legislation. The court imposed punishment in the form of 4 years of imprisonment, but on the basis of Art. 75 of the Criminal Code of Ukraine the person was exempted from serving the basic punishment with a probation period of 18 months and the fulfilment of certain duties envisaged by Art. 76 of the CC. On the basis of Art. 54 of the CC, the person was deprived of the special title of inspector of the tax service.
- 3) A therapist of an inter-district medical expert commission demanded and received illegal benefit from a person in the amount of USD 1,000 for influencing a positive decision concerning the assignment of a life-long disability group to a certain individual. The court sentenced the offender to 3 years of imprisonment. On the basis of Art. 75 of the Criminal Code, she was exempted from serving the punishment with the placement of a probation period
- 4) In May 2013, criminal proceedings were initiated in the Lviv Region under Art. 369-2, para. 2, of the Criminal Code against judge's assistant (clerk) of the Mykolayiv court of the Lviv Region who received illegal benefit in the amount of USD 2,500 in the period from March to May 2013 for influencing the decision of a person authorised to perform public functions. The case was referred to court.
- 5) In February 2013, criminal proceedings were initiated in the Poltava Region under Art. 369-2, para. 2, of the Criminal Code against deputy head of the housing department of the Executive Committee of the Kremenchug city council and member of the Public Commission for housing issues at the Executive Committee of the Kremenchug city council who were systematically demanding and receiving illegal benefits in the amount from UAH 6,000 to 8,000 from citizens for decisions concerning privatisation of dormitory rooms. The case was referred to court.

This part of the recommendation has been fully implemented.

Align offences of active and passive bribery with international standards by criminalising promising, requesting or soliciting a bribe, accepting a proposal or a promise of the bribe as complete offences and by ensuring that the legislation expressly criminalizes, for both principals and third persons, various specified forms of bribery through a third person or for the benefit of a third person.

With adoption of amendments in May 2014 (Law no. 1261-VII), "promise", "offer", "acceptance of offer or promise" of an unlawful benefit were duly criminalised as complete offences within active and passive bribery offences in the public and private sectors, as well as within offences of active and passive trading in influence. Third-party beneficiaries (i.e. when the benefit is intended for a third party) have already been explicitly covered in all relevant offences with amendments adopted in April 2013.

After May 2014 amendments request (solicitation) of an unlawful benefit is also covered in the relevant offences. Such solicitation is differentiated from the extortion that is included in the relevant incriminations as an aggravating element. In the Note to Article 354 CC "extortion" for the purposes of Articles 354, 368, 368-3 and 368-4 CC is defined as a "*demand to provide unlawful benefit with a threat to take actions or omit to act using one's position, authority granted, power, or service position in relation to the person who provides unlawful benefit, or deliberate creation of conditions under which a person is compelled to provide unlawful benefit in order to prevent harmful consequences for his/her rights and legitimate interests*". "Request", on the other hand, occurs when an official "indicates to another person,

explicitly or implicitly, that he will have to pay a bribe in order that the official act or refrain from acting”²⁹.

There is one minor detail which requires explanation. In Articles 368³ and 368⁴ “request” of unlawful benefit is included as an element in the paragraphs which concern active bribery, which seems odd (in all other articles it is duly mentioned in incriminations of passive side). This seems to be a technical mistake, which could be corrected, but is not substantial.

With regard to bribery through an intermediary (element “directly or indirectly”), it should be noted that GRECO considered this issue during its Third Evaluation Round of Ukraine and was satisfied by the explanation provided by the Ukrainian authorities. It was that according to Resolution No. 5 of the Plenary of the Supreme Court of Ukraine “On the court practice in bribery cases” (formally not binding, but authoritative for courts clarification) and court practice, situations involving indirect commission of corruption offences are criminalised through general rules on complicity. In particular, Article 27, paragraph 2, of the Criminal Code provides that a criminal offence can be committed by the principal offender “directly or through other persons, who cannot be criminally liable”. If the intermediary knows about the bribery, he is regarded as an accomplice according to Article 27 of the Criminal Code.³⁰

While the IAP Second Monitoring Round report on Ukraine recommended to explicitly mention indirect commission of bribery offences, for the sake of coherence among different monitoring mechanisms it is proposed to consider current provisions sufficient. It should be noted, however, that all IAP countries, except for Ukraine, cover indirect commission of relevant offences specifically in the relevant incriminations.³¹

Implement legislation increasing maximum punishments for active and passive bribery, and consider whether to increase the limitations period for some corruption offenses

Comparison of sanctions for basic (without aggravating elements) offences of active and passive bribery in the public sector as they evolved with numerous changes adopted during past 3 years is provided in Annex 2 to this report. Sanctions for similar offences in the private sector are provided as well.

See also for comparison sanctions currently provided for economic offences in the Ukrainian Criminal Code.

²⁹ See Explanatory Report to the CoE Criminal Law Convention, §§ 36, 41-42, <http://conventions.coe.int/Treaty/en/Reports/Html/173.htm>, and OECD Publication “Corruption. Glossary of International Standards in Criminal Law”, pp. 26-27, www.oecd.org/dataoecd/59/38/41194428.pdf.

³⁰ GRECO, Third Evaluation Round Report on Ukraine, Theme I, October 2011, §66, available at: [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2011\)1_Ukraine_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2011)1_Ukraine_One_EN.pdf).

³¹ OECD/ACN, Summary report “Anti-Corruption Reforms in Eastern Europe and Central Asia. Progress and Challenges, 2009-2013”, p. 53, available at: www.oecd.org/daf/anti-bribery/anti-corruption-reforms-eastern-europe-central-asia-2013.htm.

Table 9. Sanctions for economic crimes

Fraud (Art. 190, para. 1)	- fine (<50 untaxed incomes), OR - community works (240 hours), OR - correctional labour (1-2 years), OR - restriction of liberty (<3 years)
Misappropriation, embezzlement (Art. 191, para. 1)	- fine (<50 untaxed incomes), OR - correctional labour (<2 years), OR - restriction of liberty (<4 years), OR - deprivation of liberty (<4 years), AND - deprivation of the right to occupy certain offices or engage in certain activities (<3 years) or without it
Misappropriation, embezzlement by a service person with abuse one's service position (Art. 191, para. 2)	- restriction of liberty (<5 years), OR - deprivation of liberty (<5 years), AND - deprivation of the right to occupy certain offices or engage in certain activities (<3 years)
Money laundering (Art. 209, para. 1)	- deprivation of liberty (3-6 years), AND - deprivation of the right to occupy certain offices or engage in certain activities (<2 years) AND - confiscation of illegal property. AND - special confiscation.

When pre-July 2011 sanctions are compared with the ones introduced by May 2013 and May 2014 amendments, it can be seen that sanctions were significantly increased, in particular deprivation of liberty is now present in all basic offences as an optional sanction (which makes such offences extraditable), fines were increased and special confiscation introduced.

These are sanctions for basic, non-aggravated offences; for aggravated offence of receiving of unlawful benefit by the highest public official or for receiving by any public official of unlawful benefit in the amount exceeding EUR 15,000 the sanction is a non-optional deprivation of liberty for the term of 8 to 12 years with deprivation of the right to hold office for up to 3 years and with special confiscation and confiscation of property.

It is also important that sanctions for offer/promise, as well as for acceptance of offer/promise or request of unlawful benefit, were equalised with sanctions for giving and receiving of unlawful benefit, which complies with international standards.

Overall it appears that the sanctions were raised as recommended.

As to considering whether to increase the limitations period for some corruption offenses, the Government did not provide any information whether such consideration was carried out. It noted that for 12 corruption offences the statute of limitations is currently 3 years, for 13 offences – 5 years, for 15 – 10 years and for 1 offence – 15 years. This was before 2013-2014 amendments.

Statute of limitation for specific offence is based on the category of its gravity (minor gravity, medium gravity, grave and especially grave offence) which, in turn, depends on the maximum sanction under the offence. List of offences for which statute of limitation is 3 or 5 years (taking into account recent amendments) is provided below:

Table 10. Statute of limitations of three and five years for corruption offences

Three years	Five years
Active bribery of employee of state enterprise, institution or organisation – Basic offence (Art. 354, para. 1)	Active bribery of employee of state enterprise, institution or organisation – Repeatedly or by prior conspiracy (Art. 354, para. 2)
Passive bribery of employee of state enterprise, institution or organisation – Basic offence (Art. 354, para. 3)	Passive bribery of employee of state enterprise, institution or organisation – Repeatedly or by prior conspiracy (Art. 354, para. 4)
	Abuse of authority – Basic offence (Art. 364, para. 1)
	Passive bribery of public official (Art. 368, para. 1)
Illicit enrichment – Basic offence (Art. 368 ² , para. 1)	Illicit enrichment – Receiving of benefit in large amount (Art. 368 ² , para. 2)
Active bribery in private law legal persons (Art. 368 ³ , para. 1)	Active bribery in private law legal persons – Repeatedly or by prior conspiracy (Art. 368 ³ , para. 2)
	Passive bribery in private law legal persons (Art. 368 ³ , para. 3)
Active bribery of persons providing public services (Art. 368 ⁴ , para. 1)	Active bribery of persons providing public services – Repeatedly or by prior conspiracy or by organised group (Art. 368 ⁴ , para. 2)
	Active bribery of public official (Art. 369, para. 1)
Active trafficking in influence (Art. 369 ² , para. 1)	

A statute of limitation which is less than 5 years is problematic from the point of view of effectiveness of corruption investigations and prosecutions. OECD/ACN based on the IAP monitoring reports and experience of other monitoring mechanisms (OECD Working Group on Bribery, GRECO) recommended³² that the statute of limitation should at least be 5 years (and provide for possibility of suspension/interruption).

Another problem is that the statute of limitation is not suspended for the time when a person enjoys immunity from prosecution (see also Recommendations 2.4.-2.5.-2.6.).

Enact a statutory definition of “bribe” which should include non-pecuniary undue advantages

July 2011 amendments in the Criminal Code introduced the term “unlawful benefit”, but only for several corruption offences in the private sector and for offence of illicit enrichment. Bribery offences in the public sector still used the term “bribe” which was not defined in the Code and was clearly explained by the Supreme Court’s Resolution no. 5 as covering only material benefits. Term “unlawful benefit” was introduced throughout all corruption incriminations only by the Law no. 221-VII of April 2013 (in effect from 18 May 2013).

Definition of “unlawful benefit” is included in three different articles of the Criminal Code. In the Note to Article 354 (Bribery of employee of an enterprise, institution or organisation), for the purposes of this Article only, “unlawful benefit” is defined as “monetary funds or other property, advantages, privileges, services, which exceed 0.5 of the untaxed minimum personal income, or intangible assets being offered, promised, given or received without legitimate grounds therefor” (0.5 untaxed minimum personal income equals about UAH 294 or EUR 15/ USD 18).

Note to Article 364¹ CC includes the definition of the “unlawful benefit” which covers almost all other relevant articles (Articles 364, 364¹, 365², 368, 368², 368³, 368⁴, 369, 369² and 370 CC) and is almost identical to the one included in the note to Article 354, except for the element “which exceed 0.5 of the untaxed minimum personal income”.

³² See OECD/ACN, Summary report for 2009-2013, cited above, p. 73.

The third definition is included in the note to Article 368³ CC: “monetary funds or other property, advantages, privileges, services, *which exceed 1.5 of the untaxed minimum personal income*, or intangible assets being offered, promised, given or received without legitimate grounds therefor”

Having three different definitions of the same term in the Criminal Code does not seem to be reasonable. One can understand reasoning behind including additional element of minimum value of unlawful benefit as a threshold for liability for some of the corruption offences. The intention was obviously to exclude petty corruption committed without involvement of public officials. However, not only does such approach not comply with international standards, but it also seems unnecessary, because Ukrainian Criminal Code provides for possibility to discharge liability for *de minimis* offences (Art. 11 CC).

Definition in Article 364¹ CC corresponds to the one included in the Law on Principles of Corruption Prevention and Counteraction (Article 1). However, the new Law on Corruption Prevention (adopted in October 2014, to be enacted on 26 April 2015) includes a slightly different definition, which has an additional important element of “any other benefits of non-tangible or non-pecuniary nature”.

The definition of the unlawful benefit, after 2013-2014 amendments, includes “advantages, privileges, services”, as well as “intangible assets”, which could be understood as non-pecuniary advantages. However, there is no full clarity on this and further evidence, e.g. court practice, is required. Taking into account previous enforcement practice, most likely the above elements will be understood as requiring monetary value – e.g. that a service or advantage can be an unlawful benefit when it can be valued according to market prices; “intangible assets” can be seen as assets which are not material/tangible (e.g. shares, other securities, legal claims) but the value of which can still be calculated in monetary terms.

Therefore, Ukraine until recently was not compliant with this part of the recommendation. However, as noted in the beginning of this chapter, new amendments adopted in February 2015 introduced the element of “non-tangible or non-pecuniary” benefits and aligned criminal law definition (in all CC articles) with the one contained in the new Law on Corruption Prevention. This brings Ukraine in compliance with the recommendation.

Consider reviewing the offence of illicit enrichment to bring it in line with Article 20 of the UNCAC

An offence called “Illicit enrichment” was introduced in the Ukrainian Criminal Code by the Law no. 3207 in July 2011 and read as follows: “*Receiving by a service person of an unlawful benefit in substantial amount or transfer by such person of such benefit to her close relatives in the absence of the elements provided in Article 368 of the present Code*”.

In such wording this offence was very similar and overlapped with incrimination of passive bribery of public official, despite mentioning that it was excluded when elements of Article 368 were present. That situation in itself was unsatisfactory and led to legal uncertainty and created conditions for corruption, as law enforcement authorities and courts had possibility through interpretation to apply either Article 368² or Article 368, which have different sanctions.

Despite its name the offence provided in Article 368² CC had nothing in common with the illicit enrichment offence that the UN Convention Against Corruption, in its Article 20, recommends to introduce (“*illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income*”). An offence of illicit enrichment may be a powerful tool in prosecuting corrupt officials, as it does not require proving the corruption transaction actually happening but allows to draw inferences from the fact of possession of unexplained wealth by an official, which could not have been gained from lawful sources. As with money laundering, there is a

predicate offence to illicit enrichment (most often corruption), but the prosecution is not obliged to prove it.³³

As is clear from official statistics Article 368² CC has been applied in practice and from the available case law it is hard to distinguish how this offence is different from the passive bribery offence. NGOs provided the following example of a court decision under Article 368-2 CC:

- Conviction under Article 368-2 (para. 1) concerned an operative officer of a tax police in the Chernihiv region who was a member of an investigative and operative team dealing with a case alleged fake entrepreneurship and tax evasion. In that case the local court first imposed and then lifted a temporary seizure of bank account of the suspect company. The decision on lifting the seizure was not delivered to the bank directly but handed over to the tax police. The convicted operative officer received relevant court order from the investigator in order to deliver it to the bank but instead contacted the affected company and agreed to hand over to it the court order in exchange for 30% of the funds arrested in the bank account (UAH 73,000). The officer was apprehended during exchange of money by the Security Service officers. He was convicted and punished with a fine of UAH 8,500 and deprivation of the right to hold offices in the law enforcement agencies during 1 year.

It should be noted that alignment of the illicit enrichment offence with the UNCAC was included in the list of commitments / benchmarks used by international donors (EU, IMF) to track progress of Ukraine in anti-corruption area and decide on providing further funding.

It is welcome therefore that in October 2014 Ukraine passed a law (On the National Anti-Corruption Bureau) which introduced a new wording of the offence that entered into force on 25 January 2015. At the same time yet new amendments were introduced in the parliament proposing again to revise definition of the offence. The new wording was adopted on 12 February 2015. See Annex to this report for the text of all available wordings of Article 368² CC.

Both new definitions are a considerable improvement compared with the 2011 wording and seem to reflect the concept promoted by the UNCAC. The wording that entered into force in January 2015 provides a link to the official salary of a person to be calculated according to the asset and income declaration submitted in accordance with the new Law on Corruption Prevention. The problem with such approach is that the new Law on Corruption Prevention enters into force in April 2015 and a new asset and income declarations will be submitted only starting from 2016, which makes provision on illicit enrichment ineffective till that time. The new wording adopted in February 2015 removes this obstacles and replaces link to official salary (and income declaration) with an absolute amount of 1,000 minimum salaries, i.e. about UAH 1 million or EUR 37,000, as a limit for discrepancy between assets in ownership and income confirmed by lawful sources.

Ukraine is fully compliant with recommendations 2.1.-2.2.

See new recommendation after Chapter 2.1.-2.2.-bis

³³ See OECD/ACN, Summary report for 2009-2013, cited above, p. 60.

2.1.-2.2.-bis Responsibility of legal persons and money laundering

Second Round Recommendation 2.1. – 2.2. bis

- *Bring the law on corporate liability for corruption offences in compliance with international standards and recommendations. Ensure that the Law of Ukraine on the Liability of Legal Persons for Corruption Offences or similar legislation becomes effective. With the assistance of qualified international organizations where possible, plan, create and provide trainings and written guidelines and other advice on the law, and how to employ it in specific cases, for at least prosecutors and judges.*
- *In the sphere of money laundering, continue to pursue the implementation of the FATF and MONEYVAL recommendations.*

Bring the law on corporate liability for corruption offences in compliance with international standards and recommendations. Ensure that the Law of Ukraine on the Liability of Legal Persons for Corruption Offences or similar legislation becomes effective.

As was described above, the first Law introducing liability of legal persons for corruption offences in the Ukrainian legal system (a stand-alone Law on the Liability of Legal Persons for Corruption Offences) was adopted in 2009 but then was abolished in December 2010 before becoming effective. No replacement was proposed. Only in May 2013 Law no. 314-VII introduced relevant amendments in the Criminal Code of Ukraine. Amendments introducing “measures of criminal-law nature applicable to legal persons” were supposed to come into force on 1 September 2014, but then date of entering into force was changed in 2014 and the amendments became effective in April 2014. These new provisions in the Criminal Code have already been changed in May 2014.

The new amendments provided for a different model of corporate liability, which can be described as quasi-criminal liability: provisions are included in the Criminal Code but legal persons are not considered as subjects of criminal offences on par with natural persons; instead “measures of criminal law nature”³⁴ are applied to them in the following cases:

- 1) commission by its authorized person on behalf and in the interests of the legal person of any of the crimes specified in Articles 209, 306, 368³ (paragraphs 1-2), 368⁴ (paragraphs 1-2), 369 and 369² of this Code;
- 2) failure to carry out duties assigned to its authorized person by law or statutory documents with regard to taking measures to prevent corruption, which resulted in commission of any of the crimes specified in Articles 209, 306, 368³ (paragraphs 1-2), 368⁴ (paragraphs 1-2), 369 and 369² of this Code;
- 3) commission by its authorized person on behalf of the legal person of any of the crimes specified in Articles 258 - 258⁵ of this Code [terrorism-related offences];
- 4) commission by its authorized person on behalf and in the interests of the legal person of any of the crimes specified in Articles 109, 110, 113, 146, 147, 160, 260, 262, 436, 437, 438, 442, 444, 447 of this Code³⁵.

³⁴ Similar model of “criminal measures” was introduced in Azerbaijan in March 2012 and in some other countries, e.g. Latvia, Sweden. See overview of various models in the OECD/ACN Summary report for 2009-2013, cited above, p. 62-64.

³⁵ Article 109 CC - Actions aimed at forceful change or overthrow of the constitutional order or take-over of government; Article 100 - Trespass against territorial integrity and inviolability of Ukraine; Article 113 – Sabotage; Article 146 - Illegal confinement or abduction of a person; Article 147 - Hostage taking;

An “authorised person” of a legal entity means service persons of a legal person, as well as other persons who according to the law, statutory documents of the legal person or contract have the right to act on behalf of the legal person.

The above-mentioned corruption offences are considered committed in the interests of legal persons if they resulted in obtaining by the legal person of undue benefit or created conditions for obtaining such benefit, or were aimed at avoiding liability provided for in the law.

For corruption offences (paragraphs 1 and 2 of Articles 368³ and 368⁴, Article 369 and Article 369² CC), only one type of “measures of criminal nature” – a fine - applies to legal entities; other sanctions – confiscation and liquidation – are not applicable for corruption crimes.

The amount of fine was originally established in absolute terms depending on the gravity of crime committed by the “authorised person” and ranged from 5,000 to 75,000 untaxed minimum personal incomes (i.e. from UAH 85,000 to UAH 1,275,000 or EUR 4,400 to EUR 67,000).

The Government (in its draft law no. 3312) then proposed to increase (twice or more) the amount of fines to be applied to legal persons under different offences. Another draft law by MPs (no. 3522), instead of increasing the fines, proposed – for mentioned corruption offences – to provide that the amount of fine may not be less than the amount of unlawful benefit “given” by the legal entity’s authorised person. At the end, after May 2014 amendments, the main rule for sanctioning is that a fine is applied in the amount twice the “illegally obtained unlawful benefit”; if the benefit cannot be calculated or was not obtained – then a range of fines is applied depending on the gravity of offence (from 5,000 to 75,000 untaxed incomes).

For the full text of provisions on measures of criminal law nature applied to legal persons see Annex to this report.

Comments on some issues of compatibility of provisions on liability of legal persons for corruption offences in Ukrainian law with international standards:

1. Standard of liability. Original provisions of May 2013 on “criminal law measures” to legal persons were missing a mandatory element – liability for negligence by management. Liability should apply *“where the lack of supervision or control by [a person who has a leading position within the legal person] has made possible the commission of the criminal offences ... for the benefit of that legal person by a natural person under its authority”* (Article 18.2 of the Council of Europe Criminal Law Convention on Corruption). Similar requirement is included in the OECD standards (*“A person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance programmes or measures”*).³⁶ This deficiency was addressed in amendments of May 2014.

Article 160 - Violation of referendum law; Article 260 - Creation of unlawful paramilitary or armed formations; Article 262 - Stealing, appropriation or extortion of firearms, ammunition, explosives or radioactive material, or obtaining them by fraud or abuse of office; Article 436 - Propaganda of war; Article 437 - Planning, preparation and waging of an aggressive war; Article 438 - Violation of rules of the warfare; Article 442 – Genocide; Article 444 - Criminal offenses against internationally protected persons and institutions; Article 447 – Mercenary.

³⁶ See Annex I to Recommendation of the OECD Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, November 2009, available at: www.oecd.org/investment/anti-bribery/anti-briberyconvention/44176910.pdf.

2. Definition of “authorised person”. Liability of a legal entity is triggered by acts committed by an “authorised person”, that is either a “service person” of the entity or any other person who has the right to act on behalf of the entity based on the law, constituent documents of the legal entity or contract. This excludes perpetrators who may act in the interests of the legal entity but not be covered by this definition, e.g. employees of the entity who are not “service persons” or agents who represent the entity but were not formally authorised to act “on behalf” of the legal entity.

3. “On behalf”. For the act of the authorised person to trigger liability of the legal entity it has to be carried out not only in interests of the legal person, but also “on its behalf”. This is an excessive element; lack of an explicit statement that the act was committed on behalf of the legal entity may result in avoidance of liability. Such additional element is also not provided in any international standards (*e.g.* CoE Convention).

4. Benefit obtained. If amended by the draft law no. 3522, relevant provision would read that to be committed “in the interests” of the legal entity corruption offences had to result in obtaining by the entity of an unlawful benefit or had to create conditions for obtaining of such benefit. This may be understood that the actual benefit has to be obtained as a result of the corrupt act and thus exclude situations when for various reasons benefit did not materialise (*e.g.* the procurement contract obtained as a result of corruption did not generate any profit or was cancelled for some reason). There may also be a problem with treating a received benefit as “unlawful” – if, for example, the procurement contract would have been awarded to that legal person anyway, it may not be considered as “unlawful”. Overall these are unnecessary elements, which create additional elements to be proven.

5. Autonomous nature. An important condition for the corporate liability to be effective is its autonomy from investigation and prosecution of the natural perpetrator. Good Practice Guidance on implementing the OECD Anti-Bribery Convention states that the liability of legal persons should not restrict the liability to cases where natural persons who perpetrate offences are prosecuted or convicted. According to OECD Working Group on Bribery monitoring reports, “a regime that requires the conviction and punishment of a natural person fails to address increasingly complex corporate structures, which are often characterised by decentralised decision-making.” Conviction of a natural person as a prerequisite to the liability of a legal person also prevents the application of effective, proportionate and dissuasive sanctions to legal persons. Back in 1988, the Council of Europe’s Committee of Ministers, in its Recommendation to Member States provided that enterprises should be held liable, whether a natural person who committed the acts or omission constituting the offence can be identified or not. Similarly in its evaluations, GRECO was concerned about “the fact that a physical perpetrator has to be identified first, as in large corporations, the sheer potential for persons being responsible for only a fraction of the completed offence as well as collective decision-making processes could make it impossible to identify with certainty a particular natural person as a suspect and/or prosecute him/her”.³⁷

While it is not directly stated in the introduced provisions of the Ukrainian CC, it is clear from them that corporate liability is linked to that of the “authorised person” who committed the offence. The very model used (“measures of criminal nature”) presumes that such measures are secondary to individual liability; it requires “commission of the crime” by the authorised person on behalf and in the interests of the legal entity; according to Article 96¹⁰ CC when applying such measures to a legal entity court takes into account, *inter alia*, gravity of the crime committed, degree of criminal intent of the perpetrator; according to Article 214, para. 8, of the Criminal Procedure Code (CPC) proceedings with regard to the legal entity are carried out simultaneously with the proceedings concerning natural person; under Article 284 CPC, para. 3, proceedings with regard to the legal entity should be closed in case criminal proceedings against the natural person were closed or relevant person was acquitted.

³⁷ OECD/ACN Summary report for 2009-2013, cited above, p. 64.

Lack of autonomous nature of the corporate liability is the main deficiency of the Ukrainian new provisions.

6. Sanctions. Monetary sanctions should be sufficiently severe to have an impact on large corporations. According to the OECD WGB, to ensure a level playing field of commerce and prevent “regulatory arbitrage” monetary sanctions have to be compared on an international level. The OECD WGB considered maximum sanctions of EUR 1 million (Germany, Italy), EUR 1,660,000 (Slovakia) and EUR 700,000 (Austria) to be insufficient. On the other hand, the maximum criminal sanctions of about EUR 16 million (Estonia) and EUR 10 million (Belgium) were found by the OECD WGB to be sufficient (in the both above cases the confiscation of the bribe and its proceeds was available as well).³⁸

Changes to the CPC (Article 100) also provide that money, other property that are received by a natural or legal person as a result of the criminal offence and/or are proceeds thereof, as well as property into which they were fully or partly transformed, should be confiscated. However, such confiscation is effected by the court when deciding on the criminal case against the natural person. This is another proof that the corporate autonomy is not autonomous and that if a natural perpetrator was not identified or not held liable for any reason the legal entity evades liability.

The amended provisions on sanctions for legal persons provide that the fine should be in the amount of twice the illegally obtained unlawful benefit. This excludes from this provision offences which do not involve “giving” of the benefit, but just offer/promise or their acceptance.

When the unlawful benefit did not exist or cannot be calculated fine in absolute values is applied (see above). While the maximum fine is not sufficiently dissuasive for large companies, the minimum fine (from EUR 4,400 to EUR 67,000 for various offences) may be excessive for small and medium enterprises and, therefore, be disproportionate. This could be solved by establishing the fine in proportion to the size and financial situation (profit) of the company and also by focusing on disgorging of the proceeds received from the corrupt act.

7. Offences covered. “Criminal measures” applicable to legal persons do not cover offence of bribery by an employee of an enterprise, institution or organisation (Article 354 CC).

Ukraine is largely compliant with this part of the recommendation.

With the assistance of qualified international organizations where possible, plan, create and provide trainings and written guidelines and other advice on the law, and how to employ it in specific cases, for at least prosecutors and judges.

The Government stated in 2013 that the Ministry of Justice planned to issue a clarification on the new provisions on liability of legal persons for corruption. NGOs mentioned several seminars:

- 1) Regional training on Standards of Liability of Legal Persons for Corruption Offences held in Kyiv on 2-3 July 2013 by the Ministry of Justice of Ukraine and Council of Europe/EU project on good governance and fighting corruption in the Eastern Partnership countries. Training was built on experience of different countries in implementing corporate liability and was attended by the Council of Europe experts and participants from EU Eastern Partnership countries. It included, in particular, cases based on real situations.³⁹

³⁸ Idem, p. 65.

³⁹ Source: www.minjust.gov.ua/photoalbum/723.

- 2) A round-table discussion was organised in the Ministry of Justice on 5 March 2013 jointly with the Council of Europe/EU anti-corruption project for Eastern Partnership countries. It was dedicated to the draft law on liability of legal persons which was pending at the time in the parliament.⁴⁰
- 3) A round-table discussion organised on 17 April 2013 by the Association of Attorneys of Ukraine and hosted by the Kyiv Shevchenko University.⁴¹

While the above events are welcome, they cannot be considered as proper training programme for law enforcement officials, prosecutors and judges dealing with the new provisions on corporate liability. No guidelines were issued. This part of the recommendation has not been implemented.

- In the sphere of money laundering, continue to pursue the implementation of the FATF and MONEYVAL recommendations
- Ensure the implementation of the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) – from Recommendation 2.1.-2.2.

Government informed that on 17 November 2010 Ukraine ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198), which entered into force for Ukraine on 1 June 2011 (CoE AML Convention). The Convention's provisions were implemented in the Law of Ukraine on Prevention and Countering of Legalisation (Laundering) of the Proceeds from Crime or the Financing of Terrorism (AML/CFT Law).

In keeping with the provisions of Article 12 of the CoE AML Convention, Ukraine set up a financial intelligence unit – the State Service of Financial Monitoring, which is the central executive authority in charge of financial monitoring, ensuring coordination of activities of the governmental authorities in the sphere of prevention and countering of the legalisation (laundering) of the proceeds from crime or the financing of terrorism. In line with Article 46 of the Convention, Article 19, para. 1, of the AML/CFT Law stipulates that Ukraine's FIU may conclude interdepartmental international cooperation agreements with relevant bodies of other states in the legally prescribed manner. In line with Articles 14 and 47 of the CoE AML Convention, Article 17 of the Ukrainian Law envisages suspension of financial transactions if there is a motivated suspicion that they are connected with the legalisation (laundering) of the proceeds from crime or the financing of terrorism and if international sanctions were applied to them. In accordance with Article 22, para. 5 of the Law, in response to a request of a competent authority of a foreign state to suspend a financial transaction which could be connected with the legalisation (laundering) of the proceeds from crime or the financing of terrorism, the Ukrainian FIU may order a primary financial monitoring body to suspend the transaction, or update, or ensure the monitoring of the financial transaction of a relevant person within the period indicated by that request.

Government also reported that significant amendments were introduced to the national legislation during 2010-2011 in the sphere of prevention and countering of the legalisation (laundering) of proceeds from crime or the financing of terrorism. In May 2010, parliament adopted a new version of the basic law on money-laundering and the financing of terrorism, which entered into force on 21 August 2010 (Ukraine's AML/CFT Law). A number of other amendments were adopted. As a result, in October 2011 the FATF decided to remove Ukraine from the list of countries with strategic shortcomings in the system of countering money laundering and the financing of terrorism.

In December 2012 the Council of Europe MONEYVAL adopted Second progress report under the Third evaluation round of Ukraine. It noted that most of the outstanding issues were resolved, in particular:

⁴⁰ Source: www.minjust.gov.ua/news/43066.

⁴¹ Source: www.justinian.com.ua/files/20130417.pdf.

actions of conversion or transfer of property appear to be fully covered by the money laundering offence in Article 209 CC; there are cases of successful autonomous prosecutions of money laundering offences; insider trading and market manipulation were criminalized and made predicate offences; predicate offences for money laundering are all acts criminalised under the CC which are punished by a minimum penalty of one-year deprivation of liberty or a fine amounting to more than 3,000 untaxed personal incomes. The main outstanding issues which are relevant for this report were the liability of legal persons (see above) and availability of confiscation under all predicate offences to money laundering (will be discussed under recommendations 2.4.-2.6.).

As regards corruption offences as predicates for money laundering, before May 2013 and May 2014 amendments a number of offences in the Criminal Code were not covered as they did not provide for imprisonment or a fine of specified amount. However, with the latest amendments all corruption crimes include imprisonment as a sanction and therefore can be predicate offences for money laundering.

On 14 October 2014 Parliament adopted a new wording of the AML/CFT Law that entered into force on 6 February 2015. The new law removed some of the remaining deficiencies, in particular further aligned definition of money laundering crime with international standards (removed exception that tax evasion could not be predicate offence for money laundering), extended provisions on PEPs to national and international officials.

The new AML/CFT Law also introduced important changes in the Criminal Procedural Code (Article 216), which address one of the main deficiencies in practice of money laundering prosecution by countries in the region. The amendment in the CPC provides that investigation of money laundering is carried out without prior or simultaneous bringing to liability of the perpetrator for the predicate offence in cases, in particular, when:

- the predicate offence was committed outside of Ukraine, while the money laundering – on the territory of Ukraine;
- the fact of the predicate offence was established by court in the relevant procedural decisions.

This is a welcome amendment, which could serve as a best practice for other countries.

This part of the recommendation has been fully implemented.

Ukraine is largely compliant with the recommendation 2.1.-2.2.-bis.

New recommendation 2.1.-2.2.

- *Expand the statute of limitations for all corruption offences to at least 5 years and provide for suspension of the statute of limitations during the period an official enjoyed immunity from criminal prosecution.*
- *Provide adequate training and resources to prosecutors and investigators to ensure the effective enforcement of new criminal law provisions, in particular with regard to such offences as illicit enrichment, trafficking in influence, offer and promise of unlawful benefit, definition of unlawful benefit including intangible and non-pecuniary benefits, criminal measures to legal persons, new definition of money laundering.*
- *Analyse practice of application of the new provisions on corporate liability for corruption and, based on results of such analysis, introduce amendments to address deficiencies detected. Ensure autonomous nature of the corporate liability.*

2.3. Definition of public officials

Second Round Recommendation 2.3.

- *Ensure that the concept of "officials" subject to the Ukrainian criminal legislation is fully compliant with international standards, including the criminalisation of bribery of foreign or international public officials.*
- *Clarify the applicability of Article 364 Note's definition of "official" and Article 368 Note's definition of "officials holding responsible position" or "officials holding especially responsible position" by expressly identifying the Criminal Code Articles to which they apply.*

Ensure that the concept of "officials" subject to the Ukrainian criminal legislation is fully compliant with international standards, including the criminalisation of bribery of foreign or international public officials

National officials

Definition of a public sector official in the corruption incriminations was changed by the Law no. 3207 (in force since July 2011). Relevant offences refer to "service persons", who – in the Note 1 to Article 364 CC – are defined as follows:

"Service persons in Articles 364, 368, 368² and 369 of this Code shall mean persons who permanently, temporary or by special authorisation carry out functions of representative of authority or local self-government, as well as permanently or temporarily occupy in state authorities, local self-government bodies, at the state or municipal enterprises, institutions or organizations positions, which are related to performance of organizational and managerial or administrative and economic functions, or perform such functions upon special authorisation given to the person by authorised state authority, local self-government body, central authority of state governance with special status, authorised body or person of an enterprise, institution or organisation, by court or by law.

For the purposes of Articles 364, 368, 368² and 369 of this Code to state and municipal enterprises shall be equalled legal entities in whose statutory capital the state or a local community-owned share exceeds 50% or is of such amount that gives the state or the local community a right of decisive influence over the economic activity of such enterprise."

Almost identical definition is also included in Article 18 of the Criminal Code which covers all articles of the Code.

Some of the elements of this definition are further clarified in the Resolution no. 5 of 26.04.2002 of the Plenary of the Supreme Court of Ukraine "On the court practice in cases of bribery". While this resolution concerned provisions in force before the 2011 reform, it can be assumed that it will be used by courts for the new provisions as well where applicable and until updated. For instance, "representative of authority" is defined as "employees of state bodies and their secretariats who were granted the right, within their competence, to make demands and make decisions binding for legal and natural persons...". Terms "organizational and managerial or administrative and economic functions" are also defined in the resolution.

It is therefore clear that officials, as used in the Ukrainian Criminal Code provisions on corruption offences (“service persons”), were limited to employees with managerial, administrative, organisational or financial functions, thus excluding auxiliary employees (e.g. clerks, secretaries, typists, couriers, drivers, archivists).

This deficiency was addressed in the May 2014 amendments in Article 354 CC. The latter covers active and passive bribery of an employee of an enterprise, institution or organization, who is not a service person, or a person who works for the benefit of an enterprise, institution or organization. According to the definition included in the Note to Article 354, person who works for the benefit of an enterprise, institution or organization should mean a person who carries out work and has labour relations with such enterprise, institution or organization. Such definition of the “person who works for the benefit” is contradictory as it refers to labour relations, which are already covered by the reference to “employee”. To correct this new amendments were adopted in February 2015 and provide that a person who works for the benefit of an enterprise, institution or organization should mean a person who carries out work *or provides service according to an agreement with such enterprise, institution or organization*.

With the new amendments adopted in February 2015 definition of subjects of criminal corruption offences is in line with international standards.

Foreign officials

Corruption offences were extended to foreign officials by the reform of 2011. Article 18 and Note 2 to Article 364 CC provide that service persons shall also mean: *“officials of foreign states (persons who hold positions in the legislative, executive or judicial authority of a foreign state, in particular jurors, other persons who perform functions of the state for the foreign state, in particular for a state authority or a state enterprise), as well as foreign arbitrators, persons authorised to decide on civil, commercial or labour disputes in the foreign state in proceedings that are alternative to judicial, officials of international organisations (employees of an international organisation or any other persons authorised by such organisation to act on its behalf), members of international parliamentary assemblies, in which Ukraine participates, and judges and officials of international courts.”*

The new definition seems to cover all relevant types of officials required by international standards. The only issue is the narrow meaning of the term “state” in the Ukrainian Criminal Code (“*other persons who perform functions of the state for the foreign state*”, “*state authority*”) which is not the same as “public” used in international standards. In Ukraine itself the term “state” does not cover local self-government (local councils, mayors), while it is covered by the term “public” in international treaties. Therefore, the definition of public officials should be extended to persons performing any public functions, not just those of the “State”.

Clarify the applicability of Article 364 Note’s definition of “official” and Article 368 Note’s definition of “officials holding responsible position” or “officials holding especially responsible position” by expressly identifying the Criminal Code Articles to which they apply

By the Law no. 3207-VI (in force since July 2011) Note to Article 364 CC was amended and it was clarified to which articles of the Code definition of officials applies. The same was accomplished with regard to definition of “officials holding responsible position” and “officials holding especially responsible position” in the Note to Article 368 CC by the Law no. 221-VII (in force since May 2013) – it was explicitly provided that these definitions apply to Articles 368, 368², 369 and 382 (failure to execute a court decision) in which these terms are used. This is in line with the recommendation of the IAP monitoring.

At the same time, the Law no. 5288-VI of 18 September 2012 contains amendment in the Note to Article 368 and puts it in a new wording, which aims to align description of relevant officials with the new Law on Civil Service. This new wording mentions only Articles 368 and 382 as the ones to which definition of “officials holding responsible position” and “officials holding especially responsible position” applies, thus omitting Article 369, which remains unchanged and still uses these terms. This provision of the Law no. 5288-VI will come into force at the same time as the new Civil Service Law, that is on 1 January 2016 (if not postponed again).

Ukraine is fully compliant with recommendation 2.3.

2.4.-2.5.-2.6. Sanctions, confiscation, immunities and statute of limitations

Second Round Recommendations 2.4.-2.5.-2.6.

- *Amend the Criminal Code to ensure that the ‘confiscation of proceeds’ measure applies mandatorily to all corruption and corruption-related offences. Ensure that confiscation regime allows for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect. Review measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.*
- *As a matter of priority, review the effectiveness of legislation and regulation on immunities of judges and parliamentarians in order to ensure that the procedures for lifting of immunities are transparent, efficient, based on objective criteria, and not subject to misuse.*
- *Limit immunity for judges and parliamentarians to a certain extent, e.g., by introducing functional immunity and allowing arrest in cases of in flagrante delicto.*
- *Clarify the extent to which some or all criminal investigative measures can be employed against a subject even though the subject at the time possesses immunity from arrest and/or prosecution.*

Amend the Criminal Code to ensure that the ‘confiscation of proceeds’ measure applies mandatorily to all corruption and corruption-related offences

Criminal Code of Ukraine provides for confiscation as an additional sanction which is applied (mandatorily or optionally) when specifically mentioned in the article on particular offence and only for grave and especially grave crimes committed with mercenary purposes. According to Article 59 CC, “confiscation of property” may be applied to all or part of perpetrator’s property. Until 2013 amendments only several corruption offences included confiscation as a sanction; no provisions on value-based confiscation or confiscation of transferred/transformed property, or of proceeds from the crime existed.

The Law no. 222-VII of 18 April 2013 (came into force in December 2013) introduced the concept of “special confiscation” (Articles 96¹ and 96² CC – see Annex). The latter, after additional amendments in May 2014, is defined as “*coercive non-refundable seizure, by a court decision and to the favour of the State, of money, values and other property in the cases stipulated by this Code if the crime has been*

committed that is provided for in Article 354 and Articles 364, 364¹, 365², 368-369² of Chapter XVII of the Special Part of this Code... ”.

According to Article 96² CC, special confiscation should be applied in cases where the monetary funds, valuables and other property were: 1) obtained as the result of commission of a crime or constitute proceeds from such property; 2) intended to be used (used) to induce a person to commit a crime, to fund or to otherwise support the crime or to pay compensation for commission of the crime; 3) the object of the crime except for those to be returned to the owner (lawful owner) or, if such owner has not been identified, are transferred to the State; 4) procured, made, adapted or used as means or tools to commit the crime, except for those to be returned to the (lawful) owner who was not nor could not be aware of unlawful use thereof.

Therefore, the special confiscation covers converted property, property transferred to a third person (if the latter knew or should have known of its criminal origin) and provides for confiscation of equivalent value if seizure of specific property is not possible.

With amendments introduced in May 2014, all corruption offences specifically provide for mandatory special confiscation as additional sanction.

Overall introduction of the notion of special confiscation is a welcome step. It would be preferable that special confiscation was applied to all crimes without exception. Also general measure of confiscation of all property seems to be a disproportionate sanction. But this goes beyond the scope of this monitoring, the purpose of which is fulfilled by extension of the special confiscation to all corruption crimes.

Similar conclusion was reached by GRECO. In its Joint First and Second Round Evaluation of Ukraine in 2007 GRECO recommended to introduce regulations with respect to confiscation and seizure of proceeds from crime which would make it possible to apply measures with regard to direct as well as indirect (converted) proceeds, the value of the proceeds and in respect of proceeds held by a third party in conformity with the Criminal Law Convention on Corruption. In March 2014 GRECO adopted Fourth Addendum to Compliance Report, where it welcomed amendments adopted in April 2013, which introduced a new regime of confiscation and seizure of proceeds and instrumentalities of crime in line with European standards and the requirements of the current recommendation.⁴²

It should be noted, however, that the money laundering offence does not provide for special confiscation as a sanction, while including mandatory confiscation of “money or other property received by criminal means”. This does not seem to be equivalent of special confiscation under Article 96¹ CC.

In addition to confiscation applied as a sanction under the Criminal Code, Ukrainian law also provides for procedural confiscation. Under Article 100, para. 9, of the Criminal Procedure Code (in force since November 2012, taking into account amendments that entered into force on 15 December 2013), when the court delivers decision on the criminal case it should “decide on the special confiscation” and on the material evidence stored in the case and, in particular, confiscate “money, valuables and other property which were obtained as a result of commission of the criminal offence and/or were proceeds from such property, as well as property into which they were converted fully or partly”.⁴³ From the wording of the

⁴² GRECO, Fourth Addendum to the Joint First and Second Round Compliance Report on Ukraine, March 2014, page 6. Source: [www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2009\)1_FourthAdd_Ukraine_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2009)1_FourthAdd_Ukraine_EN.pdf).

⁴³ Law no. 314-VII (entering into force on 1 September 2014) introducing criminal measures applicable to legal persons would extend such confiscation to legal persons.

Article it is not clear whether such confiscation is applied only in cases when relevant CC article provided for special confiscation or not (previous wording of the same provision also provided for similar confiscation, but did not mention special confiscation).

It appears that the easiest solution would be to provide for special confiscation as an automatic sanction for all criminal offences and remove similar provisions from the Criminal Procedure Code.

As to implementation in practice Ukrainian authorities noted that, according to information provided by the Prosecutor's General Office, additional punishment in the form of property confiscation was applied for corruption crimes during January-July 2014 to 23 persons, i.e. 2.2% of the total number of persons convicted for corruption crimes; in 2012 property confiscation was applied to 19 persons (3.9% of the overall number of convicted for corruption offences) and in 2013 – to 30 persons (7.1%). Similar information on confiscation measures is not registered by the Ministry of Internal Affairs.

No statistical data is available on application of special confiscation.

This part of the recommendation has been implemented.

Review measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational

Measures for identification and seizure of property used for or obtained as a result of corruption offence were reviewed in preparation of the new Criminal Procedure Code which was adopted in 2012 (effective since November 2012). Provisional seizure of property and its arrest are regulated by Chapters 16 and 17 CPC. Government also noted that after the provisional seizure of property the authorised official should ensure the safekeeping of such property according to the procedures prescribed by the Cabinet of Ministers in its Resolution no. 1104 of 19 November 2012.

In its Joint First and Second Round Evaluation of Ukraine in 2007 GRECO recommended “to introduce regulations on the management of seized property, which can be applied in a flexible way in order to sufficiently preserve the value of such property” (recommendation xii). In the Third Addendum to the Compliance Report on Ukraine (March 2013) GRECO stated with regard Article 167 of the Criminal Procedure Code that its wording raised “*some issues with regard to the requirements of the recommendation. It allows the seizure of “property in the form of belongings, documents, monetary assets, etc.”, a rather imprecise wording which creates uncertainty about the exact scope of the provision. Direct and indirect seizure of the proceeds from crime, as well as seizure of assets held by third parties, are foreseen, but the element of seizure of the value of the proceeds appears to be missing.*”

GRECO also took note of the adoption of Resolution no. 1104 of the Cabinet of Ministers. It, however, considered that “*this resolution does not adequately respond to the purpose of the recommendation, but rather deals with storage and preservation of material means of evidence. It does contain paragraph 27 which addresses the issue of temporarily withdrawn property, but this paragraph only specifies that such property is to be dealt with according to the preceding paragraphs of the resolution. These paragraphs contain a list of material goods and GRECO notes that several types of property that are especially relevant to seizure in the context of the fight against corruption, such as immovable property, certain types of vehicles (planes or boats) and immaterial property (bonds, shares etc.), are missing from this list. The resolution does not contain any provision on the management of seized property, nor on the costs incurred by such management*”.

In its Fourth Addendum to the Compliance Report in March 2014 GRECO acknowledged partial implementation of the recommendation due to additional explanation of Ukrainian authorities and drafting of additional legal provision.⁴⁴

This part of the recommendation has been partially implemented.

New recommendation 2.5.

- ***Ensure that confiscation of assets obtained as a result of crime, their proceeds, or their equivalent in value is applied to all corruption and related crimes in line with international standards; collect and analyse statistics on the application of special confiscation measures (both under criminal and criminal procedure codes).***
- ***Implement an efficient procedure for identification and seizure of proceeds from corruption; consider setting up a special unit responsible for tracing and seizing property that may be subject to confiscation.***
- ***Introduce extended (civil or criminal) confiscation of assets of perpetrators of corruption crimes in line with international standards and best practice.***

As a matter of priority, review the effectiveness of legislation and regulation on immunities of judges and parliamentarians in order to ensure that the procedures for lifting of immunities are transparent, efficient, based on objective criteria, and not subject to misuse.

No substantial changes in the procedures for lifting immunities of judges and members of the parliament were introduced since the previous monitoring round. The new Criminal Procedure Code, in effect since November 2012, re-confirmed relevant immunities as established by the Constitution of Ukraine. In Article 208 it provided that a judge or a parliamentarian, unlike all other persons, may not be apprehended at the time when he/she commits a crime or attempts to do it, immediately after commission of a crime or during pursuit of a person suspected of a crime. Under Article 482 CPC, a notice of suspicion may be delivered to a judge only by the Prosecutor General of Ukraine or his Deputy, to a parliamentarian – only by the Prosecutor General of Ukraine.

According to Article 482 CPC, a judge may not be apprehended or be subject to a measure of restraint in the form of detention or house arrest – before his conviction by court - without consent of the parliament. A member of parliament of Ukraine may not be “brought to criminal liability” (a stage in the criminal proceedings when a notice of suspicion is delivered to a person), apprehended or subjected to a measure of restraint in the form of detention or house arrest without consent of the parliament. These immunities are based on relevant provisions of the Constitution of Ukraine (Article 80 for MPs and Article 126 for judges). Scope of immunity of MPs is therefore broader than that of the judges.

Criminal Procedure Code (Article 482), as well as the Law on the Status of People’s Deputies of Ukraine (Article 27), provide additional immunities which are absent in the Constitution: a personal search of a member of parliament of Ukraine, inspection of his personal belongings and luggage, personal transport, residence or work place, as well as breach of privacy of letters, telephone conversations, and other correspondence, and imposing other measures, including covert investigative actions, which, according to

⁴⁴ GRECO, Fourth Addendum to the Joint First and Second Round Compliance Report on Ukraine, cited above, page 7.

the law, restrict the rights and freedoms of an MP, may be applied only if the parliament has given its consent to bringing the MP to criminal liability and if it is not possible to obtain information by other means.

It is recommended to revoke these provisions of the CPC and the Law the Status of People's Deputies of Ukraine, as they present additional serious obstacles for effective investigation and are not required by the Constitution of Ukraine.

Procedures for giving the consent of the parliament for lifting immunity of judges and parliamentarians is regulated by the Law on the Parliament's Rules of Procedure (Chapter 35). It provides that relevant request should be submitted by the Prosecutor General concerning an MP and by the President of the Supreme Court concerning a judge. It is specifically noted that with regard to each restraining measure a separate request should be filed (and it is therefore subject to separate consideration). Relevant request should be "substantiated and sufficient, contain specific facts and evidence confirming fact of commission of the offence"; request for apprehension or arrest should include "clear justification" for such measure. If a request is not in line with the above requirements, the President of the Parliament returns it to the Prosecutor General or the Supreme Court's President – parliament's President therefore makes this decision on his own and only has to inform the parliament afterwards.

If the request is not rejected by the parliament's President, the following takes place:

- 1) Parliament's President asks the relevant MP to provide written explanation – within 5 days – to the parliament's Committee on the Rules of Procedure, and instructs that Committee to prepare an opinion on the submitted request.
- 2) the Rules of Procedure Committee shall – urgently but not later than within 20 days – "prepare this issue", that is determine whether the request is "sufficient, legal and justified", whether evidence was obtained legally and to consider relevant complaints. It is not clearly stated that the Committee is bound to provide its opinion within 20 days and what happens if it fails to approve one. Article 220, para. 1, also states that the absence of the relevant MP or judge who was invited to attend the committee's meeting "without justified grounds" is not an obstacle for review of the request and making of the decision – it is not clear what happens if a "justified ground" for absence is provided (e.g. an MP or judge claims to be sick), whether the Committee is still bound to provide an opinion within 20 days. Paragraph 5 of Article 220 CPC also provides that the Committee "leaves the request without consideration until the materials it demands are submitted to it or until a substantiated reply is provided" – it may mean that the Committee may delay the consideration by sending numerous requests to various institutions and persons, including abroad.
- 3) Based on the Committee's decision, if there is no "sufficient evidence" for justifying the request the Parliament's President "has the right" to return the request to the Prosecutor General or Supreme Court's President.
- 4) Within 7 days after submission of the relevant opinion by the Committee the Parliament has to consider the request at its plenary meeting. There are no provisions on convening a plenary meeting if it was not previously scheduled during those 7 days.
- 5) Decision on the request is adopted by the Parliament's by majority from overall parliament's composition by an open ballot.

Overall, even if to assume that all the deadlines are strictly met and not delayed under various reasons, the duration of consideration of the request for lifting immunity of a judge or an MP would last for at least 32 days. This is too long a term to be considered a speedy procedure. Moreover, relevant provisions lack clarity and allow derailing the procedure at any stage. The procedure for lifting immunity is therefore still subject to misuse. The threshold for supporting the request for lifting immunity is also vague (e.g. request should be "sufficient") and too high at the same time (should contain specific facts "confirming commission of the offence").

With regard to a similar procedure which existed under the previous Rules of the Parliament's Procedure, GRECO noted in its 2007 Joint First and Second Round Evaluation report that *"the lifting of immunity may in reality be a lengthy procedure. ... the procedure ... may well take more than a month, and even longer, as a request must be submitted for each and every measure requested, for example, search, detention, prosecution, etc., in the same case"*. It recommended Ukraine *"to consider reviewing the system of immunities in such a way as to provide for speedier decisions on the lifting of immunities"*.⁴⁵

Practice of implementation of these provisions confirms that it is almost impossible to lift immunity of an MP (the latest such case was in 2014, but previous case – back in 1999) and happens very rarely with regard to judges – no cases in 2010-2013, 2 cases in 2009 (detention of two judges), 2 cases in 2008 (detention of two judges), 1 case in 2007 (detention of a judge).

In June 2014 the Prosecutor General addressed to the parliament requests to lift immunity of two MPs and allow their notification of suspicion and detention. No decision was taken on these requests as of January 2015.

At the same time, according to official statistics a number of judges are annually indicted for corruption crimes (see table). No information on actual convictions in these cases is available.

Table 11. Number of judges indicted for corruption

	2011	2012	2013	2014 (Jan-Nov)
Number of corruption criminal cases against judges sent to courts	34	31	14	16

Source: Government replies to the monitoring questionnaire.

In its report on implementation by Ukraine of the Visa Liberalisation Action Plan the European Commission noted that concerns remained as regards the immunity of MPs from criminal proceedings and arrest, which created risk of obstruction and politicisation of judicial proceedings. No criminal proceedings (including preliminary investigations, searches, interceptions, covert operations, etc.) can be conducted against an MP without the consent of parliament. *"This may seriously affect the effectiveness and soundness of criminal proceedings and can in fact lead to a situation where parliament takes the place of the judicial system. Some concerns remain also with regard to the immunity of judges and prosecutors from arrest or detention, not least the decision-making process for lifting immunities, which currently lies with parliament."*⁴⁶

This part of the recommendation has not been implemented.

Limit immunity for judges and parliamentarians to a certain extent, e.g., by introducing functional immunity and allowing arrest in cases of *in flagrante delicto*

⁴⁵ GRECO, Joint First and Second Evaluation Rounds Report on Ukraine, March 2007, p. 23, available at: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2\(2006\)2_Ukraine_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2006)2_Ukraine_EN.pdf). Since the recommendation was "to consider" and due to information of the Ukrainian authorities about various draft laws on this topic, in its Compliance Report on this evaluation in May 2009 GRECO concluded that it has been dealt with in a satisfactory manner.

⁴⁶ Third report on the implementation by Ukraine of the Action Plan on Visa Liberalisation, 15 November 2013, cited above, p. 15.

The scope of immunity of judges and parliamentarians remained unchanged. Functional immunity and possibility of arrest when caught in the act were not introduced.

There were several attempts to revoke immunities provided for in the Constitution. A draft law (no. 2522a of 4 July 2013) was submitted by President Yanukovich and was preliminarily approved by the parliament on 10 October 2013. It provided, in particular, that lifting immunity (for apprehension or detention of a judge) of judges would be carried out by the High Council of Judges upon submission of the Higher Qualification Commission of Judges. Grounds and procedure for granting or refusing consent to apprehension or detention of a judge were to be determined by the law. This draft law was, however, rejected in July 2014.

In January 2015 President Poroshenko submitted a draft law (no. 1776) proposing to fully exclude immunity of MPs and to change procedure for lifting immunity of judges (the High Council of Justice would need to give a consent for apprehension and detention of a judge, except when a judge was apprehended during or immediately after commission of a grave or especially grave crime against life and health of a person). On 5 February 2015 the parliament sent the draft law to the Constitutional Court for opinion.

It should be noted that in the Ukrainian context immunity of parliamentarians has been considered as an important guarantee against repression of the opposition MPs. As the prosecution service and courts lack genuine independence and often operate through political instructions and “phone law”, broad immunity of MPs and difficult procedure for its lifting have been viewed as a safeguard.

This part of the recommendation has not been implemented.

Clarify the extent to which some or all criminal investigative measures can be employed against a subject even though the subject at the time possesses immunity from arrest and/or prosecution

The Government stated that measures which may be or may not be applied to persons with immunity are clarified in the CPC (Chapter 37, Articles 480-483). As was described above, there is a special procedure for delivering a notice of suspicion to MPs and judges. Arrest and apprehension may not be applied to judges without consent of the parliament; all other measures of restraint, as well as all investigative measures, may be applied to judges.

With regard to MPs, in addition to constitutional restrictions (“bringing to criminal liability”, apprehension and arrest only with the prior consent of the parliament), the CPC (and the Law on the Status of MPs) provides for additional restrictions on measures that may be applied to an MP: a personal search of a member of parliament of Ukraine, inspection of his personal belongings and luggage, personal transport, residence or work place, as well as breach of privacy of letters, telephone conversations, and other correspondence, and imposing other measures, including covert investigative actions, which, according to the law, restrict the rights and freedoms of an MP, may be applied only if the parliament has given its consent to bringing the MP to criminal liability and if it is not possible to obtain information by other means. The latter includes “other measures, including covert investigative actions, which, according to the law, restrict the rights and freedoms of an MP” – this effectively covers all restraining measures and all other measures which are carried out against the will of the person, including all investigative measures, covert or otherwise.

This part of the recommendation has been implemented.

Ukraine is partially compliant with the recommendation 2.4.-2.5.-2.6.

New recommendation 2.6.

- *Review legislation to ensure that the procedures for lifting immunities of MPs and judges are transparent, efficient, based on objective criteria and not subject to misuse.*
- *Limit immunity of judges and parliamentarians to a certain extent, e.g. by introducing functional immunity and allowing arrest in cases of in flagrante delicto.*
- *Revoke additional restrictions on the investigative measures with regard to MPs, which are not provided for in the Constitution of Ukraine.*

2.7. International co-operation and mutual legal assistance

Second Round Recommendation 2.7.

Contribute to ensuring effective international mutual legal assistance in investigation and prosecution of corruption cases. Consider ratifying the Second Protocol to Council of Europe Convention on Mutual Legal Assistance in Criminal Matters and amend legislation to accommodate special measures required by the Protocol and, in the longer perspective, by the United Nations Convention against Corruption.

Contribute to ensuring effective international mutual legal assistance in investigation and prosecution of corruption cases

Government informed that the following Ukrainian authorities are responsible for international cooperation in criminal matters, according to Article 545 CPC:

1. The Prosecutor General's Office of Ukraine makes requests for international legal assistance in criminal proceedings during pre-trial investigation and considers similar requests from foreign competent authorities.
2. The Ministry of Justice of Ukraine refers requests from courts for international legal assistance in criminal proceedings during court trial and consider similar requests from courts in foreign states.
3. Where the CPC or an effective international treaty of Ukraine prescribes a different procedure for relations, powers specified in paragraphs one and two above extend to the body specified in those legislative acts.

In 2011, the Prosecutor General's Office of Ukraine received 2 requests for MLA in corruption cases. No such requests were received in 2012, and 1 request was received during 9 months of 2013. The Prosecutor General's Office sent 9 requests to competent authorities of foreign countries for MLA in corruption cases in 2011, 3 in 2012, and 23 in 2013 and 2 requests in 2014. In the period from 2011 to 1 September 2013, the Prosecutor General's Office did not receive any requests from competent authorities of foreign countries for taking over criminal prosecution in corruption-related cases and did not send requests on the transfer of criminal prosecution in corruption-related cases to competent authorities of foreign countries. In 2014 the Ministry of Justice of Ukraine submitted one request to foreign competent authorities to execute court request on the extradition of person charged with corruption offence, and received one MLA request based on the UN Convention against Corruption.

In the period from 2011 to 2013, the Prosecutor General's Office of Ukraine refused one MLA request in a corruption-related case. This decision was taken by the Ukrainian side on the basis of Article 2 of the 1959

European Convention on Mutual Assistance in Criminal Matters and its 1978 Protocol as the request concerned an offence which was under investigation in Ukraine.

It should be noted that the new Law on the National Anti-Corruption Bureau (adopted in October 2014, enacted in January 2015) amended the Criminal Procedure Code and allowed the NAB to act independently when dealing with the MLA, i.e. the new agency will have the right to directly address and receive MLA requests without involvement of the GPO (the central authority for all pre-trial MLA issues). While this is overall an unorthodox solution, it may prove to be a useful tool for the new anti-corruption agency dealing with the high-level corruption and be another element guaranteeing its autonomy. Application of this provision should be monitored though to verify its effectiveness.

As corruption has become more global and transnational, mutual legal assistance is vital to investigating and prosecuting corruption offences, and is equally vital to confiscating and seizing the proceeds of corruption that have been sheltered in foreign countries. Repatriation of illicit proceeds is an important step in the fight against corruption and sends a powerful message. Ukraine must increase its efforts at international cooperation and mutual legal assistance in the fight against corruption.

In 2014 Ukraine faced a challenge of investigating and prosecuting corruption and other crimes committed by the former high-level officials during Yanukovich regime. In response to claims of numerous crimes the EU and other jurisdictions have frozen significant amounts of money at the accounts of alleged perpetrators in March 2014. Since then, however, no tangible progress was achieved in investigating those allegations inside Ukraine or communicating their results to the foreign states. This put in question freezing orders issued and raised the possibility of them being lifted. The responsibility for such inaction is attributed mainly to the Prosecutor's General Office. In response to public criticism the PGO stepped up its work and notified a number of suspicions in the end of December 2014 in cases which concerned economic and corruption crimes. This is, however, just a first (a quite delayed) step, effective and swift investigation and prosecution should ensue.

Ukraine is partially compliant with this part of the recommendation.

Consider ratifying the Second Protocol to Council of Europe Convention on Mutual Legal Assistance in Criminal Matters and amend legislation to accommodate special measures required by the Protocol and, in the longer perspective, by the United Nations Convention against Corruption.

On 1 June 2011, the parliament of Ukraine ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which entered into force for Ukraine on 1 January 2012. The Law no. 3529-VI of 16 June 2011 on Amendment of Some Legal Acts of Ukraine in Connection with Ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters introduced amendments to the Criminal Procedure Code of Ukraine in order to implement the provisions of the Second Additional Protocol. Further, the new Criminal Procedure Code (in force since November 2012) incorporated a separate Section IX on International Co-operation during Criminal Proceedings (Articles 541-614), including the following provisions: Art. 542 (scope of international co-operation during criminal proceedings), Art. 561 (procedural actions that can be taken as part of international legal assistance), Art. 563 (presence of representatives of the competent authorities of the requesting state), Art. 565 (temporary transfer), Art. 545 (central authority of Ukraine), Art. 572 (appealing against decisions, actions or omissions of government authorities, their executives or officials, compensation for the inflicted damage and costs involving international legal assistance provision on the territory of Ukraine), Art. 558 (procedures for fulfilling a request (instruction) for international legal assistance on the territory of Ukraine), Art. 567 (questioning on request of a competent authority of a foreign state by video or telephone conferencing), Art. 568 (search, arrest and confiscation of property),

Art. 569 (controlled supply), Art. 571 (establishment and operation of joint investigation teams), Art. 556 (confidentiality).

Ukraine is compliant with this part of the recommendation.

Asset recovery. After Maidan events and fleeing of former President Yanukovich and a number of his close associates, the EU and other jurisdictions froze bank accounts and other assets belonging to the high government officials - alleged perpetrators of crimes in 2010-2013.⁴⁷ The Ukrainian FIU reported in April 2014 that it estimated the overall amount of money laundered at more than UAH 77 billion, that it sent requests to 136 FIUs worldwide to trace stolen assets and freeze them, that the US and the UK assisted in the work on recovery of stolen assets.⁴⁸ In April 2014 an international forum was organised in London to support the Government of Ukraine in recovering stolen assets.⁴⁹

In August 2014 the PGO signed an agreement with the Basel Institute on Governance's International Centre for Asset Recovery (ICAR) to provide technical assistance with regard to financial investigation and the prosecution of corruption and money laundering offences. ICAR was also assist in liaising with foreign jurisdictions, through informal contacts and by using formal mutual legal assistance channels. ICAR was to support GPO investigators and prosecutors to locate stolen assets, to obtain evidence domestically and from abroad to enable a successful confiscation of the assets and, ultimately, to return the stolen assets to Ukraine.⁵⁰

Ukrainian civil society was also very active in advocating for progress in investigation of relevant offences and recovering stolen assets, notably NGO the Anti-Corruption Action Centre.⁵¹

The Ministry of Justice and the GPO established separate units on asset recovery. No information is available about number of staff in these units and their capacity.

Despite these and other efforts not much progress was achieved in repatriating illegal proceeds of the Yanukovich regime's officials to Ukraine. This is mainly due to ineffective national investigations into relevant cases, but may also be explained by ineffective procedures for asset recovery, lack of expertise and capacity.

The problem of returning assets illegal obtained by public officials as a result of criminal activity is not new in Ukraine. For example, the Government was not able to recover stolen assets in 1990s by the former Prime Minister Lazarenko who was convicted in the US on money laundering and other charges. In November 2013 several NGOs formed a coalition to advocate for repatriation of criminal assets of Lazarenko and creation of a special fund to use the recovered money on social projects, without directing them to Government coffers where they may be stolen again.⁵²

Overall this raises the issue of effective procedures and capacity of GPO and other authorities in recovering stolen assets, as well of the mechanism to administer funds returned to Ukraine.

⁴⁷ See, for example: www.euronews.com/2014/02/28/switzerland-austria-and-liechtenstein-freeze-assets-and-bank-accounts-of/, www.theguardian.com/world/2014/mar/06/ukraine-eu-freezes-assets-yanukovich.

⁴⁸ Source: www.sdfm.gov.ua/print.php?what=news&id=2546&lang=uk&archived=0.

⁴⁹ Source: www.gov.uk/government/news/ukraine-forum-on-asset-recovery.

⁵⁰ Source: www.baselgovernance.org/news/basel-institute-icar-mandated-assist-ukraine-recovering-yanukovich-assets.

⁵¹ See, for example, <http://antac.org.ua/2014/07/scho-robyt-ukrajina-dlya-povernennya-z-za-kordonu-zlochynno-nabutyh-statktiv-eks-posadovtsiv>.

⁵² Source: <http://antac.org.ua/2013/11/hroshi-lazarenka-mayut-povertaty-neuryadovi-orhanizatsiji>.

Ukraine is largely compliant with recommendation 2.7.

New recommendation 2.7.

- *Step up efforts in obtaining mutual legal assistance in corruption cases, in particular with a view to recover assets allegedly stolen by the officials of Yanukovich regime.*
- *Review procedures on assets recovery to ensure that they are effective and allow swift repatriation of stolen assets.*
- *Raise capacity of the Prosecutor's General Office and other agencies (notably, the newly established National Anti-Corruption Bureau) on mutual legal assistance and asset recovery issues.*
- *Establish national mechanism for independent and transparent administration of stolen assets recovered from abroad.*

2.8. Application, interpretation and procedure

Second Round Recommendation 2.8.

- *Pursue reform of the relationship between administrative and criminal law and ensure that notwithstanding administrative liability bribery and related offenses are rigorously investigated, prosecuted and punished under criminal law.*
- *Additionally, consider the necessity of reduction of number of the institutions empowered to apply the administrative sanctions and clearly separate their competence in this regard.*

Pursue reform of the relationship between administrative and criminal law and ensure that notwithstanding administrative liability bribery and related offenses are rigorously investigated, prosecuted and punished under criminal law

Before the 2011 reform the Law on the Fight against Corruption included administrative corruption offences, which overlapped with relevant criminal offences. The new Law on Principles, adopted in April 2011, no longer contained sanctions for corruption. Instead, the Law no. 3207, enacted on 1 July 2011, introduced in the Code of Administrative Offence (CAO) a new Chapter 13-A "Administrative Corruption Offences" (Articles 172² to 172⁹).

Two CAO articles raised especial concern as they contained offences similar to bribery offences in the Criminal Code. Article 172², Violation of restrictions on the use of service position, sanctioned with a fine and confiscation of unlawful benefit in case for violation of restrictions on the use of service powers for receiving or accepting an offer/promise of an unlawful benefit in the amount up to about EUR 2,500 (or EUR 5,000 as aggravated offence). Article 172³ CAO, proposing or giving of unlawful benefit, mirrored the active side of the corrupt act. The act was to constitute a crime of bribery only if the benefit exceeded the mentioned amounts.

GRECO Third Round Evaluation report on Ukraine stressed in this regard that the Council of Europe Criminal Law Convention on Corruption unequivocally requires that acts of bribery involving any undue advantage be established as criminal offences – the element “undue” excluding only advantages permitted by law, gifts of very low value, etc. *“The GET is of the firm opinion that this requirement is not fulfilled when all corruption acts involving advantages of a value of up to 4,300 EUR are considered as mere administrative offences, as this amount probably represents several times the monthly salary of many public officials in Ukraine.”* GRECO recommended therefore taking the legislative measures necessary to ensure that the provisions of the Criminal Code on active and passive bribery in the public sector cover clearly any form of (undue) advantage (in the meaning of the Criminal Law Convention on Corruption) and advantages of low value.⁵³

Article 172² and 172³ CAO were revoked by amendments contained in the Law no. 221-VII (in force since 18 May 2013).

However, there is one more article in the Code of Administrative Offences which raises concern in this regard – Article 172⁵, Violation of restrictions established by the law with regard to receiving of a gift (donation). It sanctions violation of “restrictions” and of “prohibition” with regard to receiving of gifts (donations), as established by the law. Such restrictions and prohibitions are set in Article 8 of the Law on Principles. In particular, according to para. 1 of Article 8, public officials are prohibited from receiving gifts (donations) from legal or natural persons for *“decisions, actions or omission to act in the interests of the gift-giver which are adopted, taken by such person directly or with her support by other officials and bodies”*. Receiving of such gifts is similar to act of passive bribery, as the person in exchange for a benefit takes certain actions/inaction or adopts a decision.

In its replies to the questionnaire, the Government stated that such a gift shall be something that a giver presents on his/her own will *“for giving pleasure or benefit to the taker of the gift, the presentation of which is usually connected with a certain occasion: an event, custom or holiday. Proceeding from the ban imposed by the Law on the acceptance of gifts for certain decisions, actions or omissions, albeit of insignificant value, the official must make sure that it actually is a manifestation of hospitality rather than a bribe. It is also necessary to take into account the explanations of the Plenary of the Ukraine’s Supreme Court presented in para. 8 of its Resolution No. 5 of 26 April 2002 ..., according to which illegal benefit can be given and accepted in a disguised form, e.g. in the form of concluding a legal transaction, unjustified accrual and payment of salary, unequal payment for various services. The list of possible disguised forms is not exhaustive. Therefore, the receipt of illegal benefit may be disguised as a gift, which would entail criminal rather than administrative liability, as per Article 368 “Acceptance of an offer, promise or receipt of illegal benefit by an official” of the Criminal Code. In view of the above, there are no problems with enforcement of Art. 172⁵ of the Code of Administrative Offences and the aforementioned article of the Criminal Code”*.

This explanation actually confirms that in the circumstances described in Article 172⁵ CAO a gift may actually be bribe and it can be interpreted both way. There is no clear difference between them, which gives law enforcement agencies a significant discretion in qualification of the relevant act. The gift, under Article 172⁵ taken together with Article 8 of the Law on Principles, has all the features of a bribe (unlawful benefit under criminal law) – it is a benefit (the receiving person is placed in a better position than he was before the commission of the offence⁵⁴), it is undue (the recipient is not lawfully entitled to receive it) and it is provided in exchange for official act.

⁵³ GRECO, Third Evaluation Round Report on Ukraine, Theme I, October 2011, §65.

⁵⁴ Explanatory Report to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173), §37; <http://conventions.coe.int>.

As was noted in the OECD/ACN Summary Report for 2009-2012, the element of “undue” aims at excluding advantages permitted by the law or by administrative rules as well as gifts of very low value and socially acceptable gifts. This allows countries to authorize acceptance of small value gifts not exceeding certain amount and not being given in exchange for an act or omission by an official. In other words, if an advantage is aimed at influencing a public official it should be qualified as an “undue” one and trigger liability.⁵⁵

Moreover, Article 8 of the Law on Principles does not specify when the gift should be given to be prohibited – before or after the official act (thus covering both). It is also material that the same Article contains, firstly, another type of prohibited gifts which are not related to taking of official actions in response or due to a gift (a gift given by a subordinate employee), and, secondly, it clearly specifies what gift is allowed (gift given as a sign of hospitality if it does not exceed 50% of the minimum salary amount for one-time gift or 1 minimum salary annually from one source and if it is not given for “decision, action or omission to act”).

In March 2013, in its Third Addendum to the Compliance Report on Ukraine within the Joint First and Second Evaluation Rounds, GRECO raised the issue of Article 172⁵ CAO. The Ukrainian authorities stated then to GRECO that this article would not be abolished (as Articles 172² and 172³), but that “*Article 8 of Law 3206 “On Principles of Preventing and Counteracting Corruption” provides for a clear-cut distinction between cases giving rise to criminal liability of the offender and cases entailing administrative liability. According to this article, all cases in which a gift is accepted in exchange for an action or inaction in the interest of the giver of the gift are subject to criminal liability under the bribery provisions of the Criminal Code. **The only cases subject to administrative liability under article 172.5 CAO are those in which a person violates a legal ban on the acceptance of gifts by receiving a gift, without a specific purpose, from one of his/her subordinates.***” GRECO was satisfied by the explanations provided on Article 172-5 CAO and invited the Ukrainian authorities to disseminate them among practitioners, in order to make it clear that the acceptance of a gift in exchange for an action or inaction in the interest of the gift-giver is to be prosecuted as a criminal offence.⁵⁶

It is, however, hard to agree with such explanation of the Ukrainian authorities. As can be seen from the text of Article 8 of the Law on Principles receiving of gifts from subordinates is indeed prohibited but it is the second type of prohibited gifts, while the first one is clearly stated as receiving of gifts for action or inaction in the interests of the gifter. There is, therefore, no clear distinction between the administrative liability for receiving a prohibited gift and criminal liability for passive bribery.

Statistics on the number of administrative sanctions applied for various corruption offences see in Annex 2.

Ukraine is therefore only partially compliant with this part of the recommendation.

This problem will be eliminated with enactment of the new Law on Corruption Prevention in the end of April 2015. The CAO chapter on Administrative corruption offence will be revised (see Annex for full text) and relevant offence (of receiving prohibited gift) will be removed from the Code which would result in full compliance with the IAP monitoring recommendation.

Additionally, consider the necessity of reduction of number of the institutions empowered to apply the administrative sanctions and clearly separate their competence in this regard

⁵⁵ OECD/ACN Summary report for 2009-2013, cited above, p. 55.

⁵⁶ GRECO, Third Addendum to the Joint First and Second Round Compliance Report on Ukraine, 22 March 2013, cited above, p. 6.

Before the amendments introduced in 2013, under the Law on Principles (Article 5) the following agencies were “specially authorized subjects in counteracting corruption” (including through enforcement of administrative liability for corruption offences): public prosecution bodies, special units for combating organised crime of the Ministry of Internal Affairs, tax police, units for combating corruption and organised crime of the Security Service, Military Service of Law Enforcement of the Armed Forces of Ukraine, units of internal security of the Customs Service.

Amendments adopted in May 2013 (Law no. 224-VII, came into force on 9 June 2013) excluded from that list tax police, Military Service of Law Enforcement of the Armed Forces of Ukraine, units of internal security of the Customs Service.

Administrative sanctions for corruption cases are applied by courts based on the so-called administrative protocols drawn up by the mentioned “specially authorised subjects”.

However, provisions on the mentioned above agencies’ powers to draw up administrative protocols and sending them to court to decide on administrative sanctions for corruption offences remain in the Code of Administrative Offences, which is the main legal act for these issues. Amendments introduced in May 2014 solved this issue by revoking powers of the tax agencies and military police to deal with administrative corruption offences. The remaining agencies dealing with administrative offences are the Ministry of Interior, Security Service and prosecutors.

Additional amendments in this regard were adopted in February 2015 (draft law no. [1660-d](#)) and provide that the Security Service and prosecutors will also be stripped of this power, while the newly established National Agency for Corruption Prevention will be given such power. These amendments will enter into force in April 2015. This is a welcome development.

This part of the recommendation was fully implemented by Ukraine.

Ukraine is fully compliant with the recommendation 2.8.

New issues

Access to financial information. Access of law enforcement agencies to bank and other financial data is a crucial element of effective criminal investigations, especially concerning financial crimes. The Ukrainian law (CPC, Law on Banks, Law on Depository System) provides framework for obtaining such data on request of investigative authorities. Information on legal persons and private entrepreneurs can be obtained without court order, based on written request but only concerning specified persons and specified period of time. Information on natural persons can be obtained by court (investigative judge) order.

The problem which was mentioned by interlocutors during the on-site visit is locating accounts of the suspect/accused in the specific banks or other financial institutions. To obtain such information, if not already known from the case file, a law enforcement agency needs to send out requests to all banks based on court order (only tax authorities may request information about existence of accounts in banks directly). Establishing whether a person owns an account is the first step in the possible further freezing and seizing of the relevant assets. It should therefore be simplified and provide law enforcement agencies with possibility of establishing the list of accounts a person owns (without accessing further details).

There is a good practice in some EU countries, which may be used in Ukraine as well. At least seven EU countries have established **centralised bank account registers** (Croatia, France, Germany, Italy, Portugal,

Romania, Slovenia).⁵⁷ This would also comply with the FATF revised Recommendation 31 (powers of law enforcement and investigative authorities): “...*In addition, countries should have effective mechanisms in place to identify, in a timely manner, whether natural or legal persons hold or control accounts.*”

Therefore the Asset Recovery Platform, which is co-chaired by the European Commission, DG-Home and Europol, recommended in 2012 that:

- each country should consider establishing a national centralised bank account register. Registers should be managed by a competent public authority (the national Financial Supervisory Authority, the National Central Bank, the Tax Authority or another government authority);
- the centralised bank account register should include all information on the financial relationship of banks with their customers - including all forms of bank accounts, such as checking accounts, savings accounts, corresponding accounts, all financial products, loans, mortgages, and bank safes. This information should provide the identification details of the account holder, the account number, the bank, the opening date and (where applicable) the closing date. It should also include data on the signatories and on the beneficial owners.
- information provided to law enforcement from the centralized bank account register should not include any details on the transactions or the balance of accounts, unless already provided for by a country. Its main purpose is to swiftly identify bank accounts in the course of financial investigations and if appropriate, to obtain court orders to freeze the bank account or to get access to the relevant financial transactions within the bank account.
- law enforcement agencies should be able to consult the register without the need for prior authorisation by judicial authorities.

Ukraine is therefore recommended to establish such centralised register of bank account which should be open for access to investigative agencies without prior court authorisation.

Another issue which was raised during on-site visit is **access of investigative agencies to databases of customs and tax bodies**. There is no direct access to such data, which sometimes presents a major block for effective investigations.

It should be noted that additional amendments adopted in February 2015 extended powers of the National Anti-Corruption Bureau with regard to access to financial data. The amendments introduced a new covert investigative measure of monitoring of bank accounts, whereby banks would be obliged to inform the NAB about transactions in the specified accounts before relevant transactions (or immediately after if not possible). This measure will be ordered by court. According to the NAB Law the new agency will also have direct access to databases and information banks of state and local self-government authorities.

Enforcement

There exists in Ukraine a strong perception that there is a lack of political will of the Ukrainian authorities to prosecute corruption. This perception was echoed by those who feel that the only thing that will motivate a prosecutor to prosecute corruption is media pressure where there is a perception that public officials act with impunity. Relatedly, a perception exists that the passage of legislation criminalizing corruption is exceeding the political will for the enforcement of those laws. A perception also exists that

⁵⁷ See Europol Report on the Establishment of Centralised Bank Account Registers as an Effective Tool for Financial Investigations and Asset Recovery, December 2012, available at: [http://sna.just.ro/Portals/0/Report%20on%20the%20establishment%20of%20centralised%20bank%20account%20registers%20\(2\).pdf](http://sna.just.ro/Portals/0/Report%20on%20the%20establishment%20of%20centralised%20bank%20account%20registers%20(2).pdf). See also Communication from the European Commission to the European Parliament and the Council on “Proceeds of organised crime: ensuring that “crime does not pay”, COM/2008/0766 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008DC0766>.

the political will for prosecuting corruption in opposition parties or in the government officials no longer in office is much greater than the political will for prosecuting corruption in the majority party and current government.

Adoption of legislation is a reflection of political will, but the true measure of political will is whether those laws are enforced fairly, equitably, and consistently. Public hunger for anti-corruption prosecution can only be satisfied by the consistent, transparent enforcement of anti-corruption legislation, not the mere passage of anti-corruption legislation.

This perception is wide-spread and is attested by the official statistics and lack of tangible results in prosecution of high-level public officials. The situation, unfortunately, has not changed significantly after the Maidan events and overthrow of the authoritarian government of ex-President Yanukovich who is himself hiding from the prosecution in Russia.

Anti-corruption investigations are focusing mainly on low or mid-level officials (see statistics below) or officials of local self-government. Persons in the private sector have also been prosecuted actively.

Table 12. Prosecution of public officials for corruption in 2013-2014

Perpetrators of corruption crimes	Number of cases submitted to court	
	2013	2014 (Jan-Nov)
Civil servants of:		
- 1 st - 2 nd category (highest level)	2	2
- 3 rd category	23	3
- 4 th category	31	23
- 5th-7th categories	245	225
Members of regional (oblast) councils	1	1
Members of village and city councils	21	10
Officials of local self-government of:		
- 1st-2nd category (highest level)	0	1
- 3 rd category	8	4
- 4 th category	80	89
- 5th-7th categories	74	51
Persons providing public services (notaries, auditors, attorneys, etc.)	96	78
Officials of private companies	290	252

Source: Prosecutor's General Office statistics.

Another problem with enforcement is leniency of sanctions for convicted corrupt officials. The courts often release such persons on parole, apply sanctions below the minimum punishment provided by the specific incrimination or release convicted persons after they serve a short period of imprisonment or impose in the outset sanctions not connected with deprivation of liberty. According to experts met during the on-site visit, from the corruption cases detected by law enforcement only about a quarter ends up in court with indictment and out of them only very few result in conviction with “real” imprisonment terms. See also Annex to this report for relevant statistics.

To address this policy of lenient sanctioning the parliament amended the Criminal Code in October 2014 (by the Law on the National Anti-Corruption Bureau) and introduced the category of corruption crimes which are now excluded from a number of provisions on various forms of discharging from liability or punishment. This is a welcome development.

As is described elsewhere in this report corruption is pervasive in Ukraine and is present at all levels. It is often characterised by pyramidal schemes leading to the highest public officials. Due to active media and civil society a number of credible allegations are made public on regular basis. The law enforcement

authorities in most cases turn a blind eye to such allegations. Below are examples of some of the most notorious cases which have been in public domain but not addressed by the Ukrainian law enforcement agencies. They were compiled during the time of Yanukovich government; however, there was only limited success in investigation and prosecution of the below and other cases and sanctioning of any of the Yanukovich regime officials for corruption or related offences since February 2014 when the government was changed after popular uprising.

- *Mezhyhirya case*. The then President Yanukovich resided in a Mezhyhirya estate outside of the capital city. A residence, formerly used for foreign delegations, was rented by Viktor Yanukovich during his terms as a Prime Minister in 2002-2004 and in 2007. The residence was privatised (not for money, but in exchange for several decrepit buildings in Kyiv) with alleged violations; private ownership was “formalised” by reportedly orchestrated court decisions. Ownership of the residence was changed several times, but it was clear that ex-President Yanukovich remained its beneficial owner. To somehow explain the use of the residence by the President his Administration rented for him some premises on the residence’s territory with the rent payments going to offshore companies, which, according to journalists, were controlled by persons affiliated with the Viktor Yanukovich’s family. Overall the residence occupies about 137 hectares of land and includes various buildings lavishly reconstructed and refurbished at the estimated cost of USD 75 to 100 million. Such luxurious way of life could not be explained by official income of ex-President Yanukovich. The Mezhyhirya case was described in detail by investigative journalists in various mass media (notably by “Ukrayinska Pravda” internet edition).⁵⁸ Similar allegations of property appropriation were made with regard to land plots in the so called Sukholuchya area which allegedly were transferred into control of the companies behind the Mezhyhirya deals and used as personal hunting area of President Yanukovich.⁵⁹ After Maidan events the Mezhyhirya was first nationalised by a parliament resolution (which was a dubious way of expropriating someone’s property from the legal point of view) and then eventually seized pending investigation against Yanukovich and his cronies.
- «*Vyshka Boyka*» case. In 2011 “Zerkalo Nedeli” newspaper reported⁶⁰ about a possible sham procurement of an oilrig by the state company “Chornomornaftogaz”⁶¹. Reportedly two affiliated

⁵⁸ See, in particular: “Yanukovich, the luxury residence and the money trail that leads to London”, Open Democracy, June 2012, www.opendemocracy.net/od-russia/serhij-leschenko/yanukovich-luxury-residence-and-money-trail-that-leads-to-london; “The secrets of Mezhyhirya”, Ukrayinska Pravda, June 2012, <http://blogs.pravda.com.ua/authors/leschenko/4fce2d5d5aa10>; “Why Yanukovich could never sign an EU deal”, Kyiv Post, December 2013, www.kyivpost.com/opinion/op-ed/why-yanukovich-could-never-sign-an-eu-deal-333115.html; “Oligarchs hold key to Yanukovich’s grip on power”, Financial Times, December 2013, <http://www.ft.com/cms/s/0/78d02720-60e8-11e3-916e-00144feabdc0.html>; <http://yanukovich.info/>; “Sounding the Alarm Round 2: Protecting Democracy in Ukraine”, Freedom House, July 2012, p. 15, www.freedomhouse.org/report/special-reports/sounding-alarm-round-2-protecting-democracy-ukraine.

⁵⁹ See journalist investigation by Forbes Ukraine: <http://forbes.ua/nation/1337281-rassledovanie-mezhigore-2-v-lesah-kievskoj-oblasti>.

⁶⁰ “Vyshka dlya Boyka”, May 2011, http://gazeta.dt.ua/POLITICS/vishka_dlya_boyka.html; “SBU v pomich”, June 2011, http://gazeta.dt.ua/POLITICS/sbu_v_pomich.html; “Vyshka vsevladdy”, September 2011, http://gazeta.dt.ua/POLITICS/vishka_vsevladdy.html; “Dvi vyzhky “Naftogazu”, October 2011, http://gazeta.dt.ua/POLITICS/dvi_vishki_naftogazu_yunona_i_avos.html; and others. See also: “Ukraine oil rig deal: fat cats getting fatter?”, June 2011, Open Democracy, www.opendemocracy.net/od-russia/natalia-sedletska/ukraine-oil-rig-deal-fat-cats-getting-fatter; <http://forbes.ua/nation/1343220-rassledovanie-klan-kacub-poveliteli-tenderov>.

⁶¹ For other allegations of corruption at “Chornomornaftogaz” see: <http://nashigroshi.org/2013/11/15/litopys-chornomornaftogazu>.

companies that took part in the tender for procuring the oilrig were shell companies with formal management registered at to Latvian citizens. One of them (Highway Investment processing LLP, registered in London) won the tender with the bid of USD 400 million, while the actual producer's price (Keppel Corporation from Singapore) for exactly that oilrig was USD 248.5 million. While ex-President Yanukovich asked the Security Service to look into the deal, nothing transpired from the investigation.⁶² In December 2014 Prosecutor General Vitaliy Yarema (who dismissed in February 2015) stated that the indictment in this case would soon be sent to court; however, in February 2015 Prosecutor's General Office in reply to an inquiry by an MP noted that not even suspicion was delivered in the case.⁶³

- *Case of renting of a helicopter for the President.* In 2011 the company "Centravia LLC" leased, without open tender, an Augusta 139 helicopter and a Falcona 900 plane to the state aviation company "Ukraine" for UAH 7.5 million (USD 937,500) and UAH 8 million (USD 1 million) respectively. Both vehicles were to be used for transportation of ex-President Yanukovich. Centravia LLC had among its founders and directors the same people who controlled "Tantalit LLC", a company which until owned the Mezhyhirya estate and whose beneficiary, as was alleged in the media, was ex-President Yanukovich.⁶⁴ It also transpired from journalist inquiry that the helicopter was formally cleared through customs and registered by the State Aviation Service only two years (in July 2013) after start of use by the ex-President.⁶⁵
- *Euro-2012 Football Championship.* In July 2010 parliament of Ukraine excluded from the general Public Procurement Law procurement for preparation and holding of the European football championship that was co-hosted by Ukraine and Poland in 2012 ("Euro-2012 Championship"). Procurement for the said purposes was regulated by a special law on the Euro-2012 Championship which provided that all such procurement "may" be conducted through single-source procurement without competitive procedures upon endorsement by a special agency set up for preparing and holding the Championship. This resulted in alleged significant inflation of cost of the related procurement and awarding of contracts to companies affiliated with government officials, including the then Vice Prime Minister in charge of the Championship preparation. Relevant allegations were documented in numerous media reports and analysis by NGOs.⁶⁶ Accounting Chamber of Ukraine in

⁶² See also other reports on this case: "Massive Ukrainian government money-laundering system surfaces", June 2011, Business New Europe, www.bne.eu/story2713; "Latvian trace of Chornomornaftogaz swindle", TV channel "TVi" broadcast, www.youtube.com/watch?v=BKyAJLhiSdA; "More questions as new details emerge over Naftogaz rig purchase", September 2013, Business New Europe, www.bne.eu/story5297.

⁶³ Statement by the PG: www.5.ua/ukrayina/yarema-poobicyav-skore-zakinchennya-rozslidyvannya-spravi-pro-vishki-boika-64185.html. Information provided in February 2015:

www.pravda.com.ua/news/2015/02/9/7057994/.

⁶⁴ "Tayemnytsya vertolyotu Yanukovycha zakhovana v Mezhygiryi", July 2011, Ukrayinska Pravda, www.pravda.com.ua/articles/2011/07/20/6405659; "Yanukovich litaye vzhe dvoma vertolyotamy Augusta I odnym litakom Falcon za 8 milyoniv", May 2012, Nashi Groshi, <http://nashigroshi.org/2012/05/28/yanukovich-litaje-vzhe-dvoma-vertolotamy-agusta-i-odnym-litakom-falcon-za-8-miljoniv>.

⁶⁵ Source: <http://nashigroshi.org/2014/01/10/yanukovich-dva-roky-litav-na-nezarejestrovanomu-ta-nerozmytnenomu-vertoloti-agusta>.

⁶⁶ See, among many others: "Ukraine Soccer Costs Soar as Graft Increases", Bloomberg News, www.bloomberg.com/news/2012-05-24/ukraine-soccer-costs-soar-as-graft-increases-chart-of-the-day.html, www.pravda.com.ua/news/2012/05/28/6965486; www.radiosvoboda.org/content/article/24615886.html; www.pravda.com.ua/articles/2011/01/17/5796400; www.pravda.com.ua/articles/2011/01/19/5805829, www.pravda.com.ua/articles/2011/01/18/5801389; www.epravda.com.ua/publications/2012/05/14/323440; www.theguardian.com/football/2012/jun/20/euro-2012-corruption-allegations-ukraine; www.independent.co.uk/news/world/europe/after-the-final-whistle--

October 2012 concluded that “a huge sector of economy related to preparation and holding of the Euro-2012 Football Championship in Ukraine was through legislation removed from transparent and competitive environment. Procedures for determining price of works and goods, for selecting procurement participants ... were de facto without any control. Such situation leads to abuse of public funds, their illegal and inefficient use. ... The inspection established that none of the [single-source] procedures approved by the Agency had a substantiated justification. ... The Agency gave 304 approvals without appropriate justification for the use of single-source procurement from public funds for the overall amount of UAH 18.855 billion [about EUR 1.8 billion] and EUR 590,000.”⁶⁷

- *Drugs procurement.* In 2012 NGOs protecting patients’ rights reported about inflated 1.5 to 3 times price of medicine procured by the Ministry of Health and State Penitentiary Department under the state funding programmes. It was alleged that related companies (often intermediaries) take part in the procurement and that they were affiliated with public officials responsible for decision-making, including the minister and other high-level officials of the Ministry of Health.⁶⁸ Allegations of corruption in the Ministry of Health Protection and derailment of the drugs procurement continued in 2014 as well.⁶⁹ This resulted in the decision in December 2014 to outsource procurement of certain drugs to international organisations (UNICEF, WHO, etc.).⁷⁰
- *Activ Solar GmbH case.* Activ Solar GmbH is a company registered in Austria, whose beneficiary owner, according to the media, was Mr Andriy Klyuev, former First Vice-Prime Minister of Ukraine and former head of secretariat of the National Security and Defence Council. In 2010-2011 Mr Klyuev was the head of the Government’s Commission on investment projects, which decided on allocating budget financing to investment projects (by financing interest payments for credit obtained by the companies implementing investment projects). About UAH 372 million were allocated to companies controlled by offshore entities which were reportedly affiliated to Mr Klyuev himself or members of the governing party. More than UAH 200 million were allocated to JSC “Zavod napivprovidnykiv”, controlled by the mentioned Activ Solar GmbH.⁷¹

ukraines-dark-future-corruption-7899904.html; www.playthegame.org/news/detailed/ukraines-euro-2012-preparations-rife-with-corruption-and-overspending-5394.html;
www.economist.com/blogs/easternapproaches/2012/05/ukraine-and-euro-2012.

⁶⁷ Source: <http://nashigroshi.org/2013/05/13/17-pokraschen-tenderiv-chasiv-yanukovycha>, www.epravda.com.ua/publications/2013/05/19/374879. Report by the Accounting Chamber is available here: http://issuu.com/vitaliyshabunin/docs/zvit_rahunkovoyi_po_tenderah.

⁶⁸ See report by NGOs: <http://nikorupciji.org/2013/06/20/analitychna-zapyska-z-pryvodu-faktiv-koruptsiji-pry-zdijsnenni-derzhavnyh-zakupivel-likarskyh-zasobiv-v-2012-2013-rr>; <http://gazeta.dt.ua/internal/indar-epohi-simeynoyi-medicini-.html>; <http://newsinfo.inquirer.net/223199/ukraine-corruption-blamed-for-aids-non-treatment>;

http://gazeta.dt.ua/ECONOMICS/korotka_politekonomiya_medichnih_derzhakupivel.html,

http://gazeta.dt.ua/POLITICS/medichni_tenderi-2012_bude_deshevo_ale_serdito.html,

http://gazeta.dt.ua/HEALTH/liko_dlya_donbasu_zalishitisya_mae_tilki_odin.html;

<http://gazeta.dt.ua/internal/smert-vid-vakcini-chi-bude-vikrito-zlochinnu-aferu-minzdorov-ya.html>. See

also: Accounting Chamber report www.ac-rada.gov.ua/doccatalog/document/16741950/Tuberkulez_2013.pdf;

media report on procurement of ambulances by the Ministry in 2013: <http://nashigroshi.org/2013/11/03/shvydka-bohatyrova>.

⁶⁹ See, for example: http://dt.ua/UKRAINE/korupciya-v-moz-prizvodit-do-podorozhchannya-importnih-likiv-vdvichi-brodskiy-145588_.html, www.day.kiev.ua/uk/article/ekonomika/moz-provaliv-zakupivlyu-likiv-2014-roku,

⁷⁰ Source: http://ukr.lb.ua/news/2014/12/09/288740_ukraina_peredast_oon_zakupivlyu.html.

⁷¹ See media reports: “370 million of state support for two Donetsk families”, *Ukrayinska Pravda*, www.pravda.com.ua/articles/2010/11/12/5565415; “Tax Haven of Yanukovych and Klyuev”, *Ukrayinska*

- “YeDAPS” case. Private company “Yedyna derzhavna avtomatyzovana pasportna systema” (“YeDAPS”) had for several years been the sole supplier to the Government of documents used for production of various identification documents. Numerous reports in the media alleged that the price of the company services have been inflated; many contracts were obtained on non-competitive basis; company’s founders even obtained copyright of the image of state symbols (and use of name “Ukraine” on the documents) and received payments for their use on official documents; the company was able to lobby, with the help of affiliated MPs (notably Vasyl Grytsak), legislative amendments which favoured extensive use in various documents of expensive technologies owned by the company. While many such “schemes” seem to have been stopped in 2013, no criminal investigation has been launched (Mr Grytsak was in fact appointed in April 2013 to the position of the Deputy Head of the Migration Service which was responsible for issuing identification documents in Ukraine).⁷² In 2014 the Minister of Interior acknowledged that the ministry lost annually hundreds of millions of Hryvnias due to corruption deals with YeDAPS.⁷³
- *Corruption in defence sector.* Media has been reporting about numerous corruption allegations related to procurement in the defence sector, arms trade, use of economic entities controlled by the Ministry of Defence, privatization of army property (including land plots).⁷⁴
- *VAT refunds*⁷⁵. For many years companies in Ukraine were able to receive VAT refunds to which they are entitled by the law only through bribery or political connections.⁷⁶ This practice is well illustrated in the following case. In December 2013 the US Department of Justice announced that Alfred C. Toepfer International Ukraine Ltd. (ACTI Ukraine), a subsidiary of Archer Daniels Midland Company (ADM), pleaded guilty in the Central District of Illinois to one count of conspiracy to violate the anti-bribery provisions of the FCPA and agreed to pay \$17.8 million in criminal fines. According to the charges, from 2002 to 2008, ACTI Ukraine, a trader and seller of commodities

Pravda, <http://eastbook.eu/en/2012/01/material-en/news-en/serhyi-leshchenko-tax-haven-of-yanukovykh-and-kluyev> (Ukrainian original at www.pravda.com.ua/articles/2011/10/21/6693989).

⁷² See, among others, the following media reports:

http://gazeta.zn.ua/POLITICS/otmena_gologramm_v_rukah_yanukovicha.html,
<http://gazeta.dt.ua/internal/vidkit-yedapsa-.html>, <http://nashigroshi.org/2011/12/19/moskal-prochytav-sche-odnu-novynu-nh-znajshov-70-miljoniv>, www.epravda.com.ua/publications/2013/03/13/365479,
www.epravda.com.ua/publications/2013/07/24/386615.

⁷³ Source: www.pravda.com.ua/news/2014/12/1/7045983.

⁷⁴ See, among others, the following media reports:

http://gazeta.zn.ua/POLITICS/boevye_svini_salamatina.html, <http://gazeta.zn.ua/internal/est-takaya-professiya-rodinu-zachischat-.html>,
http://gazeta.zn.ua/POLITICS/eta_pochti_detektivnaya_istoriya_nachalas_esche_v_bytnost_ministrom_oborony_mezhelya_i_zavershilas_u.html, <http://zn.ua/PROJECTS/karman.html>.

⁷⁵ “VAT in Ukraine was introduced in 1992 and replaced a Soviet-style turnover tax. Statutory tax rate is defined at 20%, which will be reduced to 17% in 2014. In 2012 VAT accounted for 31.2% of total consolidated fiscal revenues, and, as such, was the most important tax. As in all countries with VAT, exports in Ukraine are subject to zero-rate VAT to avoid double taxation of exporters. However, a timely and full VAT refund was not achieved, regardless the introduction of automatic VAT refunds, which harms exporters’ position at the global market. Throughout its history, VAT was traditionally criticised for its underperformance and improper administration.” (“VAT in Ukraine: Would other indirect taxes perform better?”, Oleksandra Betliy, Ricardo Giucci, Robert Kirchner, German Advisory Group, Institute for Economic Research and Policy Consulting, March 2013, www.ier.com.ua/files/publications/Policy_papers/German_advisory_group/2013/PP_02_2013_en.pdf).

⁷⁶ See description as of 2010: “The VAT refund problem: Towards a sustainable solution for the future”, German Advisory Group, Berlin/Kyiv, July 2010, available at: www.ier.com.ua/files/publications/Policy_Briefing_Series/2010/PB_02_2010_eng.pdf.

based in Ukraine, together with Alfred C. Toepfer International G.m.b.H. (ACTI Hamburg), another subsidiary of ADM, paid third-party vendors to pass on bribes to Ukrainian government officials to obtain VAT refunds. The charges allege that, in total, ACTI Ukraine and ACTI Hamburg paid roughly \$22 million to two vendors, nearly all of which was to be passed on to Ukrainian government officials to obtain over \$100 million in VAT refunds, resulting in a benefit to ACTI Ukraine and ACTI Hamburg of roughly \$41 million.⁷⁷ The US Securities and Exchange Commission in its complaint against the AND outlines one of the schemes: the subsidiaries – ACTI Ukraine and ACTI Hamburg – “inflated commodities contracts with a Ukrainian shipping company to provide payments to government officials.” In another scheme, “the subsidiaries created phony insurance contracts with an insurance company that included false premiums passed on to Ukraine government officials.” The bribes usually were generally 18 to 20 per cent of the corresponding VAT refunds. Civil society corruption watchdog organisations stated that VAT refunds were doled out manually and that the practice of giving bribes to obtain refunds still existed in 2014.⁷⁸

- *Money laundering.* Allegations were made in the media that several former highest officials and their relatives (including son of the former Prime Minister – Oleksiy Azarov, ex-President Yanukovich and his family, brothers Andriy and Serhiy Klyuev – the first is the former Vice PM and ex-secretary to the National Security and Defence Council, the second – member of parliament) had been using foreign jurisdictions to launder proceeds from alleged corruption, in particular through Austria, Liechtenstein, Germany, UK. Allegedly a number of shell companies were being used to hide their beneficial ownership in numerous assets.⁷⁹

After change of government in February 2014 the number of public reports and studies about systemic corruption increased significantly. Various business sector representatives described in detail corrupt arrangements which existed. Some of them are described in chapter 3.9. and still exist. Among others:

- In February 2014 deputy chairman of the Employers Federation of Ukraine’s Council stated that companies had to spend up to 50% of their turnover on corruption; only in the main corrupt areas there were more than UAH 160 billion corrupt payments annually. Kickbacks in the public procurement amounted to 15-50% of the contract value, for VAT refund from the state budget – 30-35% (annual corrupt “market” related to the tax administration was estimated at more than UAH 40 billion). At customs, the practice was that only 50% of the customs fees was paid to the budget, the rest was paid to shadow intermediaries who ensured smooth and quick customs clearance (annual corrupt “market” at the customs was estimated at more than UAH 40 billion).

⁷⁷ US Department of Justice, Press Release, ADM Subsidiary Pleads Guilty to Conspiracy to Violate the Foreign Corrupt Practices Act, 20 December 2013. Source: www.justice.gov/opa/pr/2013/December/13-crm-1356.html.

⁷⁸ “There is no automatic VAT refunds otherwise there wouldn’t be arrears in this area,” said Vitaliy Shabunin, chairman of the Anti-Corruption Center. “The practice of giving kickbacks to obtain them is 20 to 40 percent of the corresponding VAT refund amount.” See: “US prosecutors expose Ukraine's corruption in VAT-refund payments”, Kyiv Post, 26 December 2013, www.kyivpost.com/content/business/us-prosecutors-expose-ukraines-corruption-in-vat-refund-payments-2-334308.html. See also other testimonies on the current practice of VAT refund: <http://ua.korrespondent.net/journal/1611215-korrespondent-tri-zapovitni-bukvi-nepovernennya-pdv-stae-odnoyu-z-osnovnih-problem-ukrayinskoyi-ekono>. See also http://business-tv.com.ua/news/ekonomist_u_vibori_pidpriemstv_yakim_povertayut_pdv_e_koruptsiini_riziki-114.html

⁷⁹ See the summary of the allegations based on the previous media reports: <http://yanukovich.info/uk/rejnhard-proksh>. See also separate report on Klyuyevs brothers: <http://nashigroshi.org/2013/12/26/pavutyynya-klyuyevyh-chastyna-1>. See also: “Payback time for the “Yanukovich Family”, Anders Aslund, Peterson Institute for International Economics, December 2013, www.piie.com/blogs/realtime/?p=4162.

Trade in grain (one of the main Ukraine's commodities) required more than UAH 5 billion worth of corruption payments annually to various inspections.⁸⁰

- In March 2014 agrarian business association made a public statement with details of the corrupt schemes which existed. Among them: 1) state subsidies to agribusiness companies distributed only based on corrupt payment (with kickbacks of 15-20% of the subsidy and annual amount of subsidies in 2013 in the amount of UAH 1 billion); 2) mandatory certification of exported grain – to speed up receiving of necessary permits up to UAH 100 had to be paid for a ton of product (with 30 million tons exported in 2013); 3) mandatory technical inspection of agricultural machinery which is conducted by licensed centres (with annual estimate of bribes of UAH 150 million); 4) registration of land lease agreements required a bribe of up to UAH 1,000 with about 1 million transactions annually.⁸¹
- In March 2014 Confederation of Construction Companies of Ukraine at a joint event with the Government officials announced the cost of corruption for the sector – up to UAH 20 billion annually, with the share of bribes in one square meter of constructed property representing about 10-15% in its cost. Representatives of the sector provided detailed information on corrupt “tariffs” which had to be paid.⁸²

The above list of high-profile corruption cases and schemes is far from being exhaustive. During on-site visit interlocutors confirmed that many of the corruption schemes remained or have been modified under new leadership of ministries and other agencies who came to power in 2014.⁸³ A detailed and very disturbing account of alleged corruption in post-Maidan administration is presented in journalist materials.⁸⁴ It was even acknowledged by the Prosecutor General.⁸⁵ Civil society activists attributed this to a large extent to the inaction of the Prosecutor's General Office and personally Prosecutor General.⁸⁶

⁸⁰ Source: <http://fru.org.ua/ua/events/biznes-ostannimy-rokamy-buv-zmushenyi-viddavaty-na-khabari-do-50protsent-vid-svoikh-oborotiv-fru>.

⁸¹ Source: <http://biz.liga.net/all/prodovolstvie/stati/2701928-osnovnye-korruptsionnye-skhemy-v-ukrainskom-agrarnom-sektore.htm/section1/>.

⁸² See more details at: <http://biz.liga.net/all/nedvizhimost/stati/2702340-stroiteli-rasskazali-skolko-i-gde-im-prihoditsya-davat-vzyatok.htm>.

⁸³ See also statements of business representatives, e.g.: <http://nv.ua/publications/eshche-tri-mesyaca-i-pro-prezidenta-s-premerom-mozhno-budet-govorit-ryba-gniet-s-golovy-prezident-eva--30442.html>.

⁸⁴ See, notably, “Thieves in law. Bureaucrats have stolen billions already after the revolution, for which Ukrainians paid with hundreds of their lives”, *Novoye Vremya*, 3 February 2015. Source: <http://nv.ua/publications/svolochi-vysshie-chinovniki-ukrali-milliardy-uzhe-posle-revolyucii-za-kotoruyu-ukraincy-zaplatili-sotnyami-zhizney-32380.html>. See also account of continued corruption in customs: <http://biz.liga.net/ekonomika/all/stati/2937653-tamozhnya-beret-dobro-ckandal-iz-smartfona-khomutynnika.htm>.

⁸⁵ Source: www.pravda.com.ua/news/2015/02/6/7057729/.

⁸⁶ See, for instance, <http://blogs.pravda.com.ua/authors/shabunin/54d45dc96473e>.

New recommendation 2.8.

- *Consider establishing a centralised register of bank accounts, including information about beneficial ownership, that should be accessible for investigative agencies without court order in order to swiftly identify bank accounts in the course of financial investigations.*
- *Ensure direct access of investigative agencies dealing with financial investigations to tax and customs databases with due protection of personal data.*
- *Step up law enforcement efforts in prosecution of corruption offences with the focus on high-level public officials and corruption schemes affecting whole sectors of economy.*
- *Ensure free access via Internet to regularly updated detailed statistic data on criminal and other corruption offences, in particular on the number of reports of such offences, number of registered cases, the outcomes of their investigation, criminal prosecution and court proceedings (with data on sanctions imposed and categories of the accused depending on their position and place of work). Statistical data should be accompanied with analysis of trends in corruption offences.*

2.9. Specialised anti-corruption law-enforcement bodies

Second Round Recommendation 2.9.

Ensure without further delay effective anti-corruption specialization in the law enforcement system by creating by law and setting up an autonomous specialized anti-corruption investigative agency, structurally independent from the existing law enforcement and security agencies, to target high-level corruption and empowered with adequate guarantees of independence, authorities and resources in line with international standards and best practices.

National Anti-Corruption Bureau

In October 2014 the parliament adopted Law on the National Anti-Corruption Bureau of Ukraine (NAB), which became effective on 25 January 2015. The law was based on the draft submitted by the President and previously endorsed by the Government. The draft law was prepared jointly by the civil society experts, Ministry of Justice, Parliament's Anti-Corruption Committee and President's office.⁸⁷

The Law on the NAB (see full text in the Annex) provides for establishment of a specialised investigative agency dealing with high-level corruption. It has narrow specialisation focusing on corruption crimes committed by certain high-level public officials and corruption crimes involving significant amounts of bribes even if no high-level public official was involved. NAB also has exclusive investigative jurisdiction for foreign bribery regardless of the amount of bribe or officials involved. NAB will not deal with

⁸⁷ The concept of the draft law was based on the one developed within the OECD project implemented in 2007-2009 with the US Department of State support. See more information on the project: www.oecd.org/corruption/acn/mainactivities/strengtheningcapacityforinvestigationandprosecutionofcorruptioninukraine.htm.

administrative offences related to corruption. Overall, this seems to be a sound approach to delineate competence of the new agency and focus it on the most important offences.

NAB is formally a state law enforcement authority, not subordinated to the Government. A number of guarantees are included in the law to secure its independent functioning. One of them is the procedure for appointment and dismissal of the NAB's Director. Director of the Bureau is to be selected by a special commission based on results of an open competition. Selection commission is composed of independent experts and moral authorities chosen by the Parliament, the President and the Government (each appoints three members). Unfortunately, the original draft law was amended in the parliament and political element has been introduced in the procedure for selection of the NAB's Director. The Selection Commission has to choose three best fit candidates and propose them to the President who then picks one candidate and submits him/her for approval to the Parliament. This may significantly undermine political neutrality of the Bureau and its independence from external influence – it is strongly recommended to reconsider this procedure and remove any involvement of political bodies in the process. The Selection Commission should be able to select one best candidate and the President then has to formally appoint him to the post. In February 2015 the appointment procedure was amended – the parliament was removed from the process, while the President retained his power to choose one candidate from those proposed to him by the Selection Commission (the latter will propose “two or three” candidates).

The first selection of the NAB's Director has already been launched. Unfortunately there was a delay in the appointment of the selection commission by the government, parliament and president (who did it only in the end of December, while the law was published on 25 October). This will result in the delay with appointment of the first NAB's Director (according to the Law it had to be completed before 25 January 2015). However, the composition of the selection commission was quite positive and, according to NGOs, included independent persons with high reputation. The Commission accepted applications till 11 February 2015 and then started selection procedure, which will involve interviews with candidates. According to the law, all Selection Commission's sessions are open for the media and are also broadcasted live on Internet, thus ensuring transparency of the process. Information about all candidates who applied will be published on the President's web site. This is very important for the public to trust in the selection process.

Another important guarantee of independence is secured job tenure. The NAB's Director is appointed for 7-year term of office (without the right for re-appointment) and may be dismissed only based on objective grounds without possibility of no-confidence vote on political grounds. It is important to preserve this guarantee. There is a risk though that if the NAB's Director fails to perform his duties properly there is no possibility to dismiss him before expiration of the 7-year term. It would be advisable to have a possibility of early termination of the NAB's Director office for gross negligence through a procedure which protects independence of the NAB, for example by an independent commission after public hearings.

In February 2015 the Law on the NAB was amended and an additional ground for dismissal was introduced – the President or the parliament will have the right to dismiss NAB's Director if there is a negative conclusion on the NAB's effectiveness delivered by annual audit of the NAB's operation. Annual audit of NAB's effectiveness, its operational and institutional independence will be conducted by a commission of three members to be appointed by the President, Government and Parliament (each appointing one member). Audit commission members will have to be persons with clean reputation who have substantial experience of judicial or investigative experience abroad or in international organisations. While this is a step in the right direction, procedure for appointing members of the commission (by political bodies) and final decision-making by the President or Parliament create risks of political influence on Director's dismissal.

The NAB will have up to 700 staff members and is supposed to be fully autonomous from other law enforcement agencies, i.e. it will have its own detectives, investigators, technical means for covert

measures and units for personal protection. However, a lot will depend on the actual allocation of resources to the new agency. The 2015 State Budget adopted in the last days of December 2014 provided for UAH 250 million (about EUR 13 million) for the NAB during 2015 – which may be sufficient for the start of operations taking into account that the actual work will not start until March-April and staff will be recruited gradually. However, allocation of necessary resources should be guaranteed for the upcoming years.

Important issue for independence and proper functioning of the NAB is the remuneration of its staff. The original draft law proposed by the President set relatively high salaries for the main staff of the Bureau (from 15 minimum salaries or UAH 18,000 for investigators to 50 minimum salaries or about UAH 60,000 for the NAB's Director as basic salary rates). Unfortunately, these provisions were removed from the law before voting and salaries of the NAB's staff will be established by the Government and mostly likely will be much lower than originally planned. The staff of the anti-corruption agency dealing with complex corruption cases and large amounts of bribe cannot remain effective and non-corruption itself without sufficient remuneration commensurate with the complexity of work and corruption risks. It is therefore very welcome that in February 2015 (draft law no. 1660-d, mentioned above) the Law was amended to bring back relevant provisions and establish salary rates for the NAB's staff directly in the law (with even higher rates than the original ones – from UAH 22,000 as basic salary rate without increments for NAB's investigators to UAH 60,000 of basic salary for the NAB's Director). It is also a positive sign that the laws related to the State Budget for 2015 include exception for the NAB (and the National Agency on Corruption Prevention) in terms of their staff salary rates – for all other civil servants the salary cap was established at 8-10 minimum salaries (i.e. UAH 9,600-12,000 before taxes).

The monitoring team was also informed about the preparatory process that was launched for the creation of this body; notably an informal working group was established at the Administration of the President to help prepare the process. As turned out later one member of the group (former Deputy Prosecutor General of Georgia) applied for the position of the NAB's Director.

Overall the Law on the National Anti-Corruption Bureau is mostly compliant with international standards and best practices on specialised anti-corruption institutions.⁸⁸ The remaining deficiencies (involvement of political bodies in the process of selection of the Bureau's head, lack of provisions on staff remuneration directly in the law, lack of provisions on the NAB's interaction with other law enforcement and public state agencies, etc.) were addressed by the law adopted on 12 February 2015 (draft law no. 1660-d). It also remains to be seen if the agency is properly launched and functional and provided with necessary resources, as was recommended to Ukraine in the Second monitoring round report.

Public officials and non-governmental representatives interviewed during the on-site have raised several concerns regarding the Bureau. One such concern was related to the constitutionality of this body, as the Constitution of Ukraine does not allow establishment of law-enforcement bodies under the President and his power to appoint NAB's Director (as well as does not provide for the parliament's power to endorse such appointment). According to the current Constitution of Ukraine such new body could have been created only under the Government (even though this would significantly decrease its independence). It is

⁸⁸ See, *inter alia*: Article 36 of the UN Convention against Corruption; Article 20 of the Council of Europe Criminal Law Convention on Corruption; EPAC Anti-Corruption Authority Standards, November 2011, www.epac.at/downloads/recommendations/doc_view/1-anti-corruption-authority-standards; Jakarta Statement on Principles for Anti-Corruption Agencies, November 2012, www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf. See also OECD/ACN publication on Specialised Anti-Corruption Institutions – Review of Models, 2013, www.oecd.org/daf/anti-bribery/specialisedanti-corruptioninstitutions-reviewofmodels.htm.

therefore important to consider possible constitutional amendments to provide legal basis for functioning of an independent institution (or institutions) to tackle corruption.

Ukraine is largely compliant with the recommendations 2.9. See new recommendation below.

State Bureau of Investigations

According to Article 216 of the new Criminal Procedure Code (in force since November 2012), pre-trial investigation of criminal offences (including corruption offences) committed by officials occupying an especially responsible position (determined in Article 9, para. 1, of the Law on Civil Service), persons whose positions are referred to the 1st – 3rd categories of civil servants, judges and law enforcement officers was assigned to investigators of the State Investigation Bureau.

Before establishment of the State Investigation Bureau - but not later than five years after enactment of the CPC (i.e. November 2017) - pre-trial investigation of criminal offences committed by any of the aforementioned persons was assigned to investigators attached to the prosecution service.

CPC gave no details on the institution of the State Investigation Bureau (SBI); it was supposed to be regulated by a special law.

From CPC it is clear that the SBI will be specialised in all crimes committed by certain officials, regardless of the nature of the crime – from murder, rape, etc. to financial and corruption offences. This can hardly be recognised as an effective specialisation. There is also no restriction in terms of level of offence, e.g. amount of bribe or damage caused; the future bureau will have to deal with minor offences as well.

Part of the SBI's investigative jurisdiction has already been assigned to the NAB (certain high-level officials – see Annex). It, however, is not clear what exactly will remain in the SBI's competence. The Coalition Agreement signed in November 2014 in the Parliament provided that the SBI should deal with corruption and organised crime offences (except those in the NAB's jurisdiction), as well as all especially grave crimes and crimes committed by law enforcement employees. The SBI is supposed to take on functions of the investigators attached to the prosecutor's office and partly investigators of the Security Service, as well as units for combating organised crime.

A draft law on the SBI ([no. 2114](#)) was submitted to the parliament on 12 February 2015 proposing to establish the new agency as an autonomous authority under the Government with competitive selection procedure for its head. Investigative jurisdiction of the SBI would include organised and terrorism crimes, especially grave violent crimes, crimes of torture and ill-treatment committed by law enforcement officers, war crimes, corruption crimes committed by the NAB's officials or prosecutors of the Specialised Anti-Corruption Prosecutor's Office.

Other investigative agencies

Government informed that criminal offences related to corruption committed by other persons (not referred to jurisdiction of the prosecution service) are investigated by police investigators. Bodies of the interior ensure specialisation of investigators responsible for corruption offences. To implement decision of the Ministry of Internal Affairs Collegium of 19 November 2012 (On preparation of bodies of the interior to operation under the new Criminal Procedure Code of Ukraine), enacted by order of the Ministry no. 963 of 26 October 2012, the Main Department of the Interior, the Interior Department of the Autonomous Republic of Crimea, interior departments of regions, the cities of Kyiv and Sevastopol, railway interior departments have issued orders to assign investigators to perform pre-trial investigations of offences

committed in the sphere of service activities (which include corruption offence). In the beginning of 2013, 1,223 officers of investigating units were assigned to the above cases.

Specialised anti-corruption prosecutors

As to specialisation of prosecutors until recently the Main Department for supervision of compliance with the law by special units and other bodies engaged in the fight against organised crime and corruption has been functioning within the Prosecutor General's Office. A corruption offences investigation section was created within this Main Department. Also a section of procedural guidance and state prosecution support in corruption-related criminal cases was set up to ensure effective compliance with the Criminal Procedure Code. Relevant structural changes have also been made at the regional prosecution offices.

In the late 2014 – beginning of January 2015, in response to criticism as to tackling of corruption offences by the GPO, it had set up a division for investigation of corruption crimes committed by officials holding especially responsible positions (see note to Article 368 of the Criminal Code in the Annex for definition of such officials).

The Law on the National Anti-Corruption Bureau envisaged secondment of specialised prosecutors from the GPO to the NAB to conduct oversight over investigations carried out by the NAB's investigators. Relevant amendments were made to the Law on Prosecutor's Office. However, in October 2014 parliament new version of the general Law on Prosecutor's Office, which did not contain any similar provisions. This is addressed in the draft law no. 1660-d that was adopted in February 2015.

The latter actually went further and provided for establishment of a Specialised Anti-Corruption Prosecutor's Office directly under the Prosecutor General. The law regulates its powers and procedure for selection of staff (open competition, including for the position of the head of the Specialised Office who is Deputy Prosecutor General *ex officio*). This is a very welcome development, which will allow ensuring effective specialisation of the prosecutor's in corruption cases. Issues remain, however, with regard to autonomy of such office, which may be influenced by the Prosecutor General, who is appointed by the political bodies (Parliament and President) and is subject to fully discretionally dismissal by the President of Ukraine.

The latter issue is especially disturbing not only with regard to the specialised anti-corruption prosecutor's office, but concerning independence of the prosecution service in general. In October 2010 the Law on Prokuratura (Article 2) was amended to complement an exhaustive list of grounds for dismissal of the Prosecutor General with provision that the Prosecutor General may also be dismissed for any other reason. This further undermined independence of the prosecutor's office.

Specialised anti-corruption courts

Interlocutors during the on-site visit also mentioned the idea of setting up specialised anti-corruption courts, at least for the high-profile cases investigated by the NAB. This is an interesting idea worth pursuing. Examples of such courts exist in European and other countries, e.g. Croatia (special court departments established in 4 county courts in 2008 and dealing with cases investigated by the specialised agency USKOK), Slovakia (the Specialised Criminal Court set up in 2009), Indonesia (the Special Court for Corruption Crimes), India, Malaysia, etc.⁸⁹

Setting up specialised court(s) will allow insulating the NAB and its cases from the ordinary judicial system that is perceived to be very corrupt itself. While after Maidan events there were several attempts to

⁸⁹ See e.g.: www.cmi.no/publications/publication/?4903=the-indonesian-court-for-corruption-crimes.

remove judges allegedly involved in corruption from the system, they seem to have failed. According to interlocutors, judiciary remains to a large extent corrupt and susceptible to political influence.

New recommendation 2.9.

- *Ensure swift establishment and genuine independence of the National Anti-Corruption Bureau, in particular by excluding political bodies from the process of the Bureau's head selection, ensuring his job security, providing it with necessary resources, including the salaries for the Bureau's staff as established by the law.*
- *Consider introducing amendments in the Constitution of Ukraine to provide legal basis for functioning of independent anti-corruption agencies (law enforcement and preventive).*
- *Ensure operational and institutional autonomy of the specialized anti-corruption prosecutor's office dealing with cases in jurisdiction of the National Anti-Corruption Bureau.*
- *Consider introducing specialized anti-corruption courts or judges.*

III. Prevention of corruption

3.2. Integrity of public service

Second Round Recommendation 3.2.

- Legal framework for integrity in civil service
 - *Reform the legislation on Civil Service in order to introduce clear delineation of political and professional civil servants, principles of legality and impartiality, of merit based competitive appointment and promotion and other framework requirements applicable to all civil servants, in line with good European and international practice.*
 - *Review and reform rules for recruitment, promotion, discipline and dismissal of civil servants and develop clear guidelines and criteria for these processes, in order to limit discretion and arbitrary decisions of managers, to ensure professionalism of civil service and protect it from politisation.*
 - *Review and reform remuneration schemes in order to ensure that flexible share of the salary does not represent a dominant part and is provided in transparent and objective manner based on clearly established criteria.*
 - *Ensure decent salaries.*
 - *Establish a clear and well balanced set of rights and duties for civil servants.*
- Conflict of interest regulation
 - *Introduce modern Conflict of interest legislation without further delay.*
 - *This legislation should contain definition of conflict of interest in line with good international practice, and should provide for clear and effective set of restrictions, as well as an effective and credible implementation mechanism.*
 - *Consider developing special conflict of interest regulations for different categories of officials, in different branches and at different levels of seniority.*
 - *Ensure that there is an effective institutional mechanism for the management and control of implementation of conflict of interests regulation.*
 - *Consider introducing responsibility for the managers to prevent conflict of interests in their institutions and providing sanctions for failure to comply.*
 - *When the legal framework is in place, develop guidelines on conflict of interests and provide training to public officials.*
- Asset declarations
 - *Review the current system of asset declarations and ensure focus at high level officials/specialise by sector/branch/risk areas;*
 - *improve the list of requested information;*
 - *provide some verification and publication;*
 - *ensure effective sanctions for not filing or filing knowingly false or incomplete information;*
 - *introduce system of exchange of information with law enforcement and*
 - *consider accepting asset declaration as evidence in illicit enrichment proceedings.*
- Code of ethics
 - *Develop and adopt a modern general code of ethics applicable for all civil servants, promote*

its dissemination and application.

- *Develop specific codes for various branches and sectors, especially in risk areas.*
- *Provide training and practical guides for their dissemination and application.*
- **Reporting and whistle-blower protection**
 - *Introduce requirement for civil servants to report suspicions of corruption as well as sanctions for failure to report.*
 - *Introduce a system of protection of whistle blowers from harassment and persecution.*
 - *Disseminate information about these systems and provide relevant training.*
- **Internal units for disciplinary measures and conflict of interest.** *Ensure the existence and operation of internal units, responsible for disciplinary proceedings, management of conflict of interest issues (provide advice on how to avoid, recommendations on how to eliminate) and possibly asset declarations (advice, help in compiling, primary unit for collecting etc.), or a clear assignment of these responsibilities to other units.*

Legal framework for integrity in civil service

Reform the legislation on Civil Service in order to introduce clear delineation of political and professional civil servants, principles of legality and impartiality, of merit based competitive appointment and promotion and other framework requirements applicable to all civil servants, in line with good European and international practice.

On 17 November 2011 the Verkhovna Rada of Ukraine adopted a new wording of the Law of Ukraine on Civil Service (Law no. 4050-VI). It was supposed to enter into force on 1 January 2013 and replace previous version of the Civil Service Law of 1993 (Law no. 3723-XII). On 5 December 2012 entering into force of the new law was delayed until 1 January 2014; on 17 December 2013 the parliament again postponed enactment of the law – until 1 January 2015; on 25 December 2014 the parliament adopted a law which once again postponed entry into force of the 2011 Law on Civil Service until 1 January 2016.

According to the new Government Programme, it is expected that the new Law on Civil Service (replacing the 2011 Law) will be adopted by the end of first quarter of 2015⁹⁰.

Government informed that in order to implement the 2011 Law on Civil Service, a number of bylaws were adopted by the Cabinet of Ministers of Ukraine:

- “On approval of the procedure for additional paid leave of civil servants” No. 551 of 20 June 2012;
- “On approval of the procedure for reimbursement of unforeseen expenses of a civil servant in connection with his recall from the annual basic or additional paid leave” No. 605 of 4 July 2012;
- “On provision of housing for civil servants, as well as compensation of accommodation costs and other costs incurred due to a temporary transfer to another position on civil service in another place” No. 681 of 18 July 2012;
- “On approval of the procedure for in-service investigations” No. 666 of 25 July 2012;
- “Issues of assigning ranks to civil servants and determining correlation between the ranks of civil servants and ranks of local government officials, military and diplomatic ranks and other special ranks” No. 680 of 25 July 2012;

⁹⁰ Action Programme of the Cabinet of Ministers of Ukraine, www.kmu.gov.ua/document/247816159/Program_en.pdf.

- “On classification of positions occupied by members of the former civil servants to an appropriate group and subgroup posts in the civil service stipulated by the Law of Ukraine “On Civil Service” No. 740 of 8 August 2012.

In addition the National Agency of Ukraine on Civil Service (NACS), as the central body of executive power with a special status which ensures development and implementation of the state policy in the area of civil service and exercises functional administration of the civil service, issued, in particular, the following bylaws to the 2011 Law on Civil Service:

- “On approval of the procedure for training of civil servants” No. 61 of 3 April 2012 registered with the Ministry of Justice under No. 580/20893 on 18 April 2012;
- “On approval of the standard rules of internal service regulations” No. 62 of 30 March 2012, registered with the Ministry of Justice under No. 632/20945 on 25 April 2012;
- “On approval of the procedure for keeping of personal records of civil servants” No. 44 of 5 March 2012 registered in the Ministry of Justice under No. 651/20964 on 27 April 2012;
- “On Approval of the standard procedure for conducting competition for vacant posts in the civil service” No. 43 of 5 March 2012 registered in the Ministry of Justice under No. 709/21022 on 28 April 2012;
- “On approval of the standard procedure for evaluation of the professional performance of civil servants” No. 46 of 5 March 2012 registered with the Ministry of Justice under No. 710/21023 on 28 April 2012;
- “On approval of the procedure for professional competence development of civil servants” No. 65 of 6 April 2012, registered with the Ministry of Justice under № 713/21026 on 4 May 2012;
- “On approval of the standard profile of professional competence for the post of the head of the apparatus [secretariat] and of the minimum requirements for professional competence of persons applying for this position” No. 91 of 16 May 2012 registered with the Ministry of Justice under No. 872/21184 on 31 May 2012;
- “On approval of the procedure for determining special requirements to work experience, education (obtained qualification) and other requirements to the level of professional competence of the persons applying for positions of civil service of groups II, III, IV and V” No. 92 of 16 May 2012 registered in the Ministry of Justice under No. 873/21185 on 31 May 2012;
- “On the criteria for determining the list of positions of employees of state authorities, authorities of the Autonomous Republic of Crimea and their secretariats who perform support functions” No. 226 of 29 November 2012 registered with the Ministry of Justice under No. 2121/22433 on 19 December 2012.

Given the fact that a new Law on Civil Service is being developed and the 2011 Law on Civil Service is not expected to enter into force at all, the full set of secondary legislation to implement the new law should be reviewed/redrafted and adopted by the government.

The latest draft of the new Law on Civil Service, version of 11 December 2014 (hereinafter “draft Law on Civil Service”), in relation to the Law on Civil Service in force, adopted on 16 December 1993 (hereinafter “Law no. 3723-XII”), and related laws, forms the main basis for evaluating the implementation of the following recommendations:

Clear delineation of professional and political offices

Government informed that at present the Law no. 3723-XII determines the key criteria of the functioning and the status of civil servants in state bodies and their secretariats. According to Article 1 of the Law no. 3723-XII, civil service in Ukraine means the professional occupation of persons who hold offices in state

authorities and their secretariats concerning practical implementation of tasks and functions of the State and who receive remuneration on the expense of the state funds. These persons are referred to as civil servants and have relevant service powers.

Article 9.1 of the Law no. 3723-XII provides that the legal status of the President of Ukraine, the Head of the Verkhovna Rada and his deputies, heads of Standing Commissions of Verkhovna Rada of Ukraine and their deputies, people's deputies of Ukraine, the Prime Minister of Ukraine, members of Cabinet of Ministers of Ukraine, judges of the Constitutional Court of Ukraine, judges of the Supreme Court of Ukraine, judges of higher specialised courts of Ukraine, Prosecutor General of Ukraine and his deputies is regulated by the Constitution and special laws.

According to Article 6.3 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine” (adopted in October 2010; similar provision is included in the Law on the Cabinet adopted in February 2014) and Article 9.5 of the Law of Ukraine “On Central Bodies of the Executive Power” (adopted in March 2011) posts of members of the Cabinet of Ministers of Ukraine (the Prime Minister of Ukraine, the First Vice Prime Minister, three Vice Prime Ministers and ministers of Ukraine), as well as the post of the first deputy minister and deputy minister (if introduced) are political positions, which are not subject to the labour legislation and legislation on civil service.

In the ministries there is also a position of the “deputy minister – head of apparatus [secretariat]” who is a civil servant (and the head of civil service within the ministry). The deputy minister who is the head of the secretariat plays an important role in ensuring the professionalism in the relevant ministry and separation of the civil service from political influence. However, while not being formally a political position, the procedure for recruitment and appointment (dismissal) of deputy minister – head of secretariat subjects him to a substantial degree to political influence. Such deputy ministers are appointed and dismissed - upon proposal of the Prime Minister – by the Cabinet of Ministers. No competitive selection for this position is provided. Cabinet of Ministers has unlimited discretion in deciding on dismissal of the deputy minister – head of secretariat. This effectively makes this office a political one. Since the deputy minister – head of secretariat plays the deciding role in the formation and functioning of the civil service in the ministry (in particular by exercising powers of appointment and dismissal of all civil servants in the ministry, except for those appointed/dismissed by the minister himself, assigning to them ranks of civil service, deciding on their bonuses and disciplinary liability), such arrangement undermines delineation of political and professional positions.

Article 11.6 of the Law on the Central Bodies of the Executive Power provides that dismissal of the minister may not be a ground for dismissal of civil servants and employees of the ministry’s secretariat, except for employees of the minister’s private cabinet. According to Article 30.3 of the Law No. 3723-XII change of heads or composition of the states authorities may not be a ground for stopping the civil servants’ functions at the initiative of the newly appointed managers, except civil servants in the private office. However, in view of the above mentioned provisions on the deputy minister – head of the secretariat this guarantee cannot be effective. No similar guarantee is provided in the new Civil Service Law.

Similar problem exists with regard to other central executive authorities, which are not ministries (i.e. services, agencies and inspections) – their heads and deputy heads are civil servants but are appointed and dismissed upon proposal of the Prime Minister – by the Cabinet of Ministers.

Another issue with regard to separation of political influence from the professional civil service is the powers of the minister. According to Article 8 of the Law on the Central Bodies of the Executive Power, a minister, in particular: determines structure of secretariats of the ministry and its territorial bodies, approves regulations on the structural units of the ministry’s secretariat, appoints and dismisses heads and

deputy heads of all such structural units (as well as decides on their rewarding, disciplining, assigning of civil service ranks), appoints (upon approval by the heads of the local state administrations who, in their turn, are appointed and dismissed directly by the President of Ukraine) and dismisses heads of territorial bodies of the ministry, initiates rewarding or disciplining of the deputy minister – head of secretariat and assigning to him a civil service rank, etc.

The draft Law on Civil Service provides that civil service is public, professional and politically neutral activity related to practical implementation of governmental body functions within the granted authorities (Article 1, para. 1) and that civil servant is a citizen of Ukraine who holds a civil service position in an executive body or other governmental body, including their apparatus, apparatus of the authorized person, receives salary from budgetary funds, and executes the authorities directly related to implementation of tasks and performance functions of such governmental body (Article 1, para. 2).

Article 3 of the draft Law on Civil Service defines the material scope (para. 1), horizontal and vertical scope (para. 2) of the civil service. With regard to the concrete recommendation, i.e. a clear delineation between political and administrative positions, the vertical scope should clearly determine the upper division line between political appointees and civil servants.

According to Article 3, para. 2, the Law shall apply to the following positions of civil service:

- 1) in the Secretariat of the Cabinet of Ministers of Ukraine, Presidential Administration, Apparatus of the National Security and Defence Council of Ukraine, Secretariat of the High Council of Justice, Central Election Commission, Accounting Chamber, Secretariat of the Ukrainian Parliament Commissioner for Human Rights, in apparatuses of consultative, advisory and other auxiliary bodies and services established by the President of Ukraine, temporary consultative, advisory and other auxiliary bodies and services established by the Cabinet of Ministers of Ukraine;
- 2) Ukrainian Parliament Commissioner for Human Rights;
- 3) in the ministries of and other central executive bodies, governmental collegial bodies, as well as in their territorial bodies;
- 4) in local state administrations;
- 5) in court administrations and other governmental bodies not belonging to the system of executive bodies.

According to Article 3, para. 3, the Law shall not apply to: 1) the President of Ukraine, members of the Cabinet of Ministers of Ukraine, first deputy ministers and deputy ministers; 2) People's Deputies of Ukraine; 3) deputies of the Verkhovna Rada of the Autonomous Republic of Crimea; 4) judges; 5) prosecutors; 6) employees of governmental bodies performing servicing functions, except for those who directly participate in achieving the main tasks of the governmental bodies, which is specified in regulations and job descriptions of the said employees; 7) employees of state enterprises, institutions and organizations, as well as other state owned business entities; 8) servicemen of the Armed Forces of Ukraine and other military formations established in accordance with the law, privates and officers of internal affairs agencies and other bodies, to whom special ranks are assigned; 9) the Head of the Presidential Administration and his/her deputies (except for the Deputy Head – chief of staff); 10) advisors, assistants, authorized representatives and Press Secretary of the President of Ukraine; employees of the secretariats of the Head of the Verkhovna Rada of Ukraine and its deputies; employees of the executive support service of the Prime Minister of Ukraine, the First Deputy Prime Minister of Ukraine, Vice-Prime Ministers of Ukraine, other members of the Cabinet of Ministers of Ukraine, advising assistants to People's Deputies of Ukraine; and judicial assistants; 11) local self-government officials, except in cases provided for by the Law of Ukraine "On Service in Bodies of Local Self-Government".

According to Article 17, the positions called "civil service administrator" or senior civil service is established: 1) in the Secretariat of the Cabinet of Ministers of Ukraine – the State Secretary of the Cabinet of Ministers of Ukraine; 2) in the Ministry – the State Secretary of the Ministry; 3) in other central

executive body – the head of the respective body; 4) in governmental bodies (except for local state administrations), positions of heads of which belong to civil service positions, – head of the respective body; 5) in other governmental bodies, or in case of direct subordination to a person who holds political office – chief of staff; 6) for heads of local state administrations and their deputies – Deputy Head of the Presidential Administration – chief of staff.

By eliminating the positions listed in p. 1-3 and p. 9-10 in Article 3, para. 3, from the vertical scope of civil service and by specifying the senior civil service positions in Article 17, as proposed in the Draft Law on Civil Service, it can be concluded that the **clear delineation between political and administrative positions would be introduced in the legal framework.**

Principles of legality, impartiality and merit-based competitive appointment and promotion in civil service

Law no. 3723-XII does not determine the principles of legality, impartiality and merit-based recruitment and promotion. Article 4 of the Draft Law on Civil Service establishes the following basic principles of civil service: 1) patriotism; 2) integrity; 3) the rule of law; 4) legality; 5) efficiency; 6) citizen orientation; 7) equal access to civil service; 8) professionalism; 9) political impartiality; 10) transparency; 11) stability; 12) liability.

Article 8 (Obligations of civil servant) further specifies that civil servant shall be obliged to adhere to the principles of civil service and rules of professional conduct. Article 9 defines more precisely the political impartiality. Article 21 establishes that entry into civil service shall be based on competitive selection and article 22 specifies the competition shall be held for the purpose of selecting persons capable of professional performance of professional duties, and that the competition shall be conducted on the basis of merits exclusively.

It should be noted that Article 3 of the Draft Law on Civil Service, defining the scope of the civil service, excludes i.a. “other bodies to whom special ranks are assigned” (p 8 of para. 3 of Article 3) from the application of this law. Among these bodies - the Tax and Customs Administration. As tax and customs officials exercise and enforce public powers and are highly exposed to corruption, it is crucial that if this body falls under a special legislation, the above civil service principles and rules, including the merit-based recruitment and disciplinary liability applies to them.

By establishing the provisions as proposed in the Draft Law on Civil Service, it can be concluded that the principles of legality, impartiality and merit-based competitive appointment and promotion would be introduced in the legal framework.

Conclusion: If provisions analysed above are adopted, Ukraine would be fully compliant with the above part of the recommendation 3.2. At the moment, however, Ukraine is not compliant with this part of the recommendation that remains valid.

Review and reform rules for recruitment, promotion, discipline and dismissal of civil servants and develop clear guidelines and criteria for these processes, in order to limit discretion and arbitrary decisions of managers, to ensure professionalism of civil service and protect it from politisation.

Recruitment and promotion

Law no. 3723-XII establishes that appointment to positions of civil servants of categories 3 to 7 is carried out on competitive basis, except for cases when other laws stipulate otherwise. Recruitment to higher positions of civil service (categories 1-2) is therefore carried out without competition. The procedure for recruitment competition is governed by the Regulations adopted by the Cabinet of Ministers (Resolution

no. 169 of 15 February 2002). Information on civil service vacancies shall be published in the mass media at least one month before the competition.

Under the current law a civil servant may be promoted to a higher position on competitive basis, except in cases when provided for by laws or by the Cabinet of Ministers. Civil servant has the right to participate in a competition announced to fill a vacancy. The priority right for promotion is given to civil servants “who achieved the best results in work, show initiative, constantly raise their professional skills and those who were included in the personnel reserve”. The personnel reserve of civil service is formed for filling in vacancies of civil servants and promotion in the state bodies.

The Draft Law on Civil Service (Article 21) provides that entry into civil service shall be based on competitive selection and that the appointment to the positions of civil service without competition shall be prohibited, except in the cases stipulated by this law. Articles 22-29 further specify the purpose, criteria, procedure and documentation of the merit-based competition of civil servants which limit discretion and arbitrary decisions of managers to ensure professionalism of civil service. It is also foreseen that the Cabinet of Ministers shall within one month of the adoption of this law approve the Procedure for conducting competition for filling in the positions in civil service and Regulation of the Commission on Senior Civil Service.

However, there remains a certain concern with regard to recruitment of senior civil servants. According to the transitional provisions of the Draft Law on Civil Service (provision 9), the intention is to start competitive merit-based recruitment for positions of the heads, first deputies and deputies of heads of central executive bodies only as of 2017. Despite the considerable workload of the central executive body in ensuring the formation and implementation of the new civil service policy and legal framework which might be a reason for postponing the competitive selection procedure of senior civil servants, it is advisable to enforce the merit-based recruitment provisions without delay to ensure the professionalism and avoid politicisation of civil service.

Promotion of a civil servant according to the Draft Law on Civil Service (Article 39) is only admissible according to the results of competition which will be conducted on the basis of merit.

A general concern, with regard to recruitment and promotion remains with Article 5, para. 3, of the Draft Law on Civil Service. It provides that provisions of labour regulation shall apply to civil servants in cases not regulated by this law. The law should establish explicitly that provisions on recruitment and promotion, but also with disciplinary procedures, demotions and dismissals are regulated solely by the Law on Civil Service and not by Labour Code.

It can be concluded that by establishing the new main rules for recruitment and promotion of civil servants the civil service legislation will be improved in relation to the current regulations in this area.

Discipline and dismissal

Article 14 of the Law no. 3723-XII provides for disciplinary measures to a civil servant for non-execution or improper execution of service duties, excess of powers, violation of restrictions related to the civil service, as well as for a deed that denigrates him as a civil servant or discredits the state authority. Civil servants can be sanctioned with disciplinary measures provided by the general labour legislation, as well as by two additional measures: warning of incomplete service compliance and delay up to one year in assigning the next rank or promoting to a higher position.

More detailed provisions on the disciplinary liability of civil servants are included in the Draft Law on Civil Service. Article 61 establishes obligations for all civil servants and Article 62 establishes obligations

of administrators, i.e. senior civil servants, related to the service discipline. Article 64 lists 16 types of disciplinary offences. Article 65 establishes the types of disciplinary actions (reprimand, reproof, warning of incomplete conformance to the service, dismissal from civil service) and conditions of their application.

Law no. 3723-XII establishes the reasons for terminating the service relationship (article 30), resignation (article 31) and right to appeal against termination decisions (article 32).

The Draft Law on Civil Service (article 81) provides for a number of grounds for civil service termination. It also determines that a change of governmental bodies' administrators or members, civil service administrators or immediate supervisors cannot constitute the ground for termination of the civil service at the occupied position upon initiative of newly appointed administrators.

The proposed provisions on discipline and dismissal are clear improvements in relation to the current legislation, however some further improvements are possible as to the provisions regulating grounds for dismissal of civil servants. Defining every "breach of requirements to the political impartiality of a civil servant" as an absolute reason for dismissal is very rigorous, therefore adding "gross" or "serious" to the breach would be recommendable.

The Government did not provide full data on number of open competitions, promotions and dismissals across the civil service for the most recent year. The following data was provided for 2010–2012 and 2014 (1 January and 1 October).

Table 13. Statistics on civil service

	2010	2011	2012	1.1.2014	1.10.2014
Total number of civil servants	279,500	268,104	274,739	275,458	190,220
Number of civil servants recruited during the year	20,962	17,963	20,046	n/a	n/a
Number of civil servants dismissed during the year	48,106	52,194	39,544	n/a	n/a
Number of vacant positions	n/a	n/a	n/a	1834	1462

Source: Government replies to the monitoring questionnaire.

Further to the Draft Law on Civil Service, a Law on Cleansing the Government (hereinafter "Lustration Law") is related to the issue of termination of civil service. The Lustration Law was adopted by the Parliament on 16 September 2014. The law stipulates that those involved in corruption, treason or violation of human rights, especially in relation to the pacification of Maidan protests, will be dismissed immediately or disqualified from running for the posts, and banned from carrying out any work in government institutions for a period up to 10 years. Civil society organisations in Ukraine have pointed out that this law affects up to one million people. Effective implementation of the Lustration Law, in the form in which it has been approved (the lustration process will be conducted by the Ministry of Justice which itself is to be examined first; it will designate the organs involved in verifying the declarations and establish the other procedures), will lead to the elimination from public life of most politicians and civil servants of the older generation, accelerating the process of generational change. A negative bi-effect of this process is a disruption of the administration as a result of the large scale dismissals and resignations of experienced personnel, who cannot be replaced in a short time.

Conclusion: If provisions analysed above are adopted, Ukraine would be largely compliant with the above part of the recommendation 3.2. At the moment, however, Ukraine is not compliant with this part of the recommendation that remains valid.

Review and reform remuneration schemes in order to ensure that flexible share of the salary does not represent a dominant part and is provided in transparent and objective manner based on clearly established criteria.

According to Article 33.2 of the Law no. 3723-XII, salaries of civil servants consist of basic payment, bonuses, fixed supplements for rank, for length of service and other supplements. The Cabinet of Ministers' Resolution no. 268 of 9 March 2006 put into order the structure and terms of remuneration for employees of executive bodies, prosecutor's office, courts and other bodies. The Resolution envisaged the right of senior managers of state authorities to pay bonuses to employees in accordance with their personal contribution to overall result of work, as well as to pay bonuses on the occasion of public and professional holidays and anniversaries – within the bonus fund established in the amount of not less than 10% of salary rates and savings of the remuneration fund. No upper limits on the bonuses or more detailed guidelines on their payment exist on the general level. Specific conditions, procedure and size of bonuses to employees are determined in the relevant regulations of the relevant authority (approved by the head of the authority).

The current legal framework for remuneration has led to a situation where the basic salary constitutes 20%-30% of the total salary, which is in strong contrast with European good practice. Possibilities to pay supplements to the basic salary, e.g. supplement for additional workload and bonuses, premiums on the occasion on personal or state anniversaries, “thirteenth salary” for the Christmas and “fourteenth salary” for the summer holidays mean possibility for managerial discretion and thus internal unfairness in salaries. As a consequence, risk for nepotism, loyalty to the manager rather than to public interest, as well as arbitrariness and corruption remains.

The Draft Law on Civil Service (Articles 49-51) aims to optimise the remuneration system and remove intersectoral and regional imbalances by abolishing excessive differences between central/oblast/rayon levels and by establishing that the total amount of all bonuses being subject to civil servant per year shall not exceed 30% of the total amount of his/her wage per year. The bonus fund of each governmental body shall be established in amount not exceeding 10% of total salary budget each year.

Both the World Bank and the OECD have concluded that the bonus pay or pay for performance policies may contribute to improved individual performance and accountability as well as in recruiting and retaining highly capable individuals to the civil service.⁹¹ There is a high diversity of bonus and performance pay bonuses across OECD countries, but in average bonuses are usually limited to 20% of the base salary and to total budget for bonuses is limited to 5% of total annual salary budget. In Ukraine which is a transitional country, it is important to underline that when implementing bonus or performance pay policies, increased transaction costs have to be taken into consideration, including monetary and time costs to plan and implement this measure, including defining proper performance indicators and targets, training costs for managers and subordinate staff, expert assistance, software design and installation etc. These transaction costs are real and only justified by improved performance that has to be monitored and evaluated regularly.

Conclusion: If provisions analysed above are adopted, Ukraine would be largely compliant with the above part of the recommendation 3.2. At the moment, however, Ukraine is not compliant with this part of the recommendation that remains valid.

⁹¹ OECD (2012), *Rewarding Performance in the Public Sector. Performance-related pay in OECD countries*, OECD Network on Public Employment and Management.

Hasnain, Z., N. Manning and J. H. Pierskalla (2012), *Performance-related pay in the Public Sector: A Review of Theory and Evidence*, Policy Research Working Paper 6043, The World Bank.

Ensure decent salaries

Currently, the salaries in the civil service are not competitive with those in the private sector. First, the average salary levels of civil servants are not comparable to the similar positions in the private sector, especially in the capital and in several other large cities. This is one of the reasons why the civil service does not appeal to the most qualified professionals. Second, the latest central salary increase for all civil servants took place in February 2008. Since 2009, salary increases have been granted to employees with salaries that are lower than the minimum wage. At the same time, during this period the minimum wage increased from UAH 515 in February 2008 to UAH 1218 in 2014, i.e. 2.37 times. The net-salaries, following the legal possibilities to pay different supplements to the basic salary, differ between comparable positions and administrative bodies.⁹²

The aim of the new government is to downsize the public sector by 10% in 2015–2016 with a corresponding salary increase. Although the proposed changes in the remuneration system according to the Government Programme and the draft Law on Civil Service (Articles 49-51) are significant and necessary, no financial impact analysis of the proposed salary scheme (calculation of costs of the proposed system compared with the expenditures under the current system) in order to analyse its feasibility was provided.

Government informed that an average monthly salary in January – June 2014 in Ukraine was UAH 3,222 (about EUR 180). According to the State Statistics Committee data, average monthly salary in the category of economic activity “Public Administration” in 2010 was – UAH 2,747 (about EUR 150), in 2011 – UAH 3,053 (about EUR 170), in 2012 – UAH 3,442 (about EUR 190), in 2013 – UAH 3,702 (about EUR 205) and in January – June 2014 – UAH 3,609 (about EUR 200). A minimal salary rate of a civil servant - chief specialist of a district state administration (the lowest level of local executive bodies) is about UAH 1,515 (about EUR 84). The 2015 State Budget of Ukraine imposed a cap on remuneration of civil servants (with all additional payments) of 8 minimum salaries, i.e. UAH 9,600 or about EUR 640 (and 10 minimum salaries if the agency carried out optimisation of its structure).

The main reason for postponement of the 2011 Law on Civil Service was that it provided for gradual increase in the salaries and social benefits of civil servants. This also seems to be the main issue behind delay in submission to the parliament of the new Draft Law on Civil Service, which sets directly in the law salary rates for civil servants.

At the moment, however, Ukraine is not compliant with this part of the recommendation that remains valid.

Establish a clear and well balanced set of rights and duties for civil servants.

Main rights and duties of civil servants are set in articles 10 and 11 of the Law no. 3723-XII.

In August 2010 the National Civil Service Agency (then - the Main Department of Civil Service) adopted General Rules of Civil Servant’s Conduct (which replaced similar Rules of 2000; General Rules were further amended in 2010, 2011 and 2012). The General Rules summarise standards of ethical behaviour, integrity and prevention of conflict of interest in activities of civil servants and ways to settle conflict of interest. They cover all civil servants who, when recruited, are supposed to familiarise with the General Rules which is confirmed by a written note in the servant’s personal file.

⁹² OECD/SIGMA (2014), *Civil Service Professionalisation in Armenia, Azerbaijan, Georgia, Moldova and Ukraine*, p. 92.

The Draft Law on Civil Service (Article 7) establishes the following rights of civil servant: 1) respect for their personality, honour and dignity, fair and respectful treatment by chiefs, colleagues and other citizens; 2) clear definition of their professional duties; 3) healthy and safe working conditions; 4) labour remuneration depending on the civil service position held, performance of employment activity and length of civil service; 5) vacation leaves and social security under this Law; 6) training and professional competence development in “public administration” field according to the demands of the governmental body; 7) job promotion depending on the professional competence level; 8) participation in trade unions for the purpose of protecting their rights and interests; 9) participation in civil associations, except for political parties; 10) appeal in the manner prescribed by law against decisions on the imposition of disciplinary action, dismissal from the civil service position, as well as against negative opinion on the performance of professional activities; 11) protection from unlawful prosecution in case of reports on violation of the requirements of this Law on the part of governmental bodies and their officials, as provided for by Article 11 hereof.

The obligations of civil servants according to the Draft Law on Civil Service (Article 8) are the following:

- 1) observe the Constitution and laws of Ukraine, act only on the ground, within the scope of powers and in the way stipulated by the Constitution and laws of Ukraine, as well as by the effective international treaties ratified by the Verkhovna Rada of Ukraine;
- 2) adhere to the principles of civil service and rules of professional conduct;
- 3) prevent the violation of human and civil rights and freedoms;
- 4) hold the state symbols of Ukraine in respect;
- 5) use the official and regional language(s) while performing professional duties in cases stipulated by the Law of Ukraine “On the Principles of State Language Policy”.
- 6) provide, within the scope of their powers and authorities, effective performance of tasks and functions of governmental bodies;
- 7) diligently and professionally perform their professional duties;
- 8) take the initiative and creativity while working;
- 9) implement the decisions of governmental bodies, orders, directions and instructions of chiefs given on the basis of and within the authorities granted by the Constitution and laws of Ukraine;
- 10) observe legislative requirements on preventing and counteracting corruption;
- 11) prevent any conflict of interest while performing civil service;
- 12) constantly increase their level of professional competence and improve organization of the professional work;
- 13) preserve the state secret and citizens’ personal data communicated to him/her in connection with the performance of professional duties, as well as other information that shall not be disclosed under the law;
- 14) perform other duties established by this Law and other legislative acts.

Rules of conduct are also regulated in the special Law on Rules of Ethical Behaviour adopted in May 2012. This law will be superseded by the new Law on Corruption Prevention (adopted in October 2014, to be enacted on 26 April 2015; see text in the Annex). The latter sets general requirements to conduct of all public officials, while the National Agency for Corruption Prevention will have to adopt special regulations on ethical conduct for civil servants and local self-government servants.

Conclusion: By establishing and implementing the above provisions dealing with the rights and obligations of civil servants, aiming at ensuring the professional ethos of civil servant on the one side and at guaranteeing the neutrality, impartiality and integrity of the civil servant as well as the corresponding duties and benefits provided by the state as the employing institution on the other side, it can be concluded that Ukraine will be fully compliant with the above part of the recommendation 3.2. if relevant provisions are adopted. At the moment, however, Ukraine is not compliant with this part of the recommendation that remains valid.

Conflict of interest regulation

Introduce modern Conflict of interest legislation without further delay. This legislation should contain definition of conflict of interest in line with good international practice, and should provide for clear and effective set of restrictions, as well as an effective and credible implementation mechanism.

The Law on Principles for Preventing and Counteracting Corruption (Law on Principles; adopted in April 2011, in force since 1 July 2011) introduced basic provisions on conflict of interests, including its definition. Provisions on conflict of interests were further amended by Law no. 224-VII of 14 May 2013. Additional provisions on conflict of interests were included in the Law on the Rules of Ethical Conduct. This law cross-referred to the Law on the Rules of Ethical Conduct, stating that for definition of the term “conflict of interests” the Law on Principles should be used.

Both of the above laws, i.e. the Law on Principles and the Law on the Rules of Ethical Conduct, will be abolished when the new Law on Prevention of Corruption of 14 October 2014 enters into force on 26 April 2015.

Conflict of interest regulation under the previous legal framework

Article 1 of the Law on Principles defines conflict of interest as “a contradiction between personal property, non-property interests of the person or her close persons and her service powers, the presence of which can affect the objectivity or impartiality of decision-making and affect taking or non-taking of actions during exercise of service powers assigned to him”. Article 14 of the Law on Principles (“Resolving conflict of interests”) stipulates that persons authorised to perform functions of the State or local self-government (a broad range of public officials, not only civil servants), as well as officials of legal entities of public law and persons providing public services (auditors, notaries, assessors, forensic experts, mediators, labour arbitrators, etc.) are obliged to: 1) take measures to prevent any possibility of a conflict of interests; 2) immediately, in writing, notify the direct superior of a conflict of interest’s existence. More detailed rules on resolving conflicts of interests should be included in special laws and regulations that define powers of state authorities, local self-government bodies, provision of certain public services and carrying out of other activities related to performance of functions of the state or local self-government.

Additional provisions on conflict of interests were introduced in the Law on Principles by the Law no. 224-VI and they entered into force on 1 January 2014. They provide that persons authorised to perform functions of the State or local self-government and officials of other legal entities of public law are obliged – within 10 days after appointment (election) to the position – to delegate to another person (except for family members) management of their business and corporate rights in the manner prescribed by law.

The mentioned amendments also determined who is responsible for control over enforcement of conflict of interests rules. For judges such control shall be exercised by the Council of Judges of Ukraine (an executive body of judicial self-government); for members of parliament – parliament’s committee to be designated by the parliament. For all other persons authorised to perform functions of the State or local self-government and officials of legal entities of public law, such control shall be exercised by “authorised units” to be set up within each public agency. “Methodical support” for the said authorised units with regard to prevention, detection and resolving of conflict of interests in the activities of civil servants and local self-government officials shall be provided by the central executive body that implements the state policy in the domain of public service (i.e. National Civil Service Agency).

Detection of conflicts of interests was also included in the mechanism for verification of asset declarations. The Law no. 224-VII (provisions in force from 1 January 2014) provided that authorised units of public

authorities should verify – within 30 days after submission – declarations for existence of conflict of interests, namely to compare service duties of the official with his and his family members' financial interests. Law no. 224-VII also amended the form of the declaration to extend the scope of information to be declared and to include names of specific banks, companies, other entities in which the official (and his family members) has bank accounts, shares, financial liabilities.

The Law on aligning other legislative acts with the Law on Principles (no. 4711-VI, adopted in May 2012 and entered into force on 13 June 2012) introduced identical provisions on conflict of interests in laws regulating activity of various public authorities (as required by Article 14 of the Law on Principles). Relevant provision reads that in case of conflict of interests during performance of service powers an official should immediately notify his direct superior; the latter should take all necessary measures in order to prevent conflict of interests by ordering execution of the relevant task to another official, executing relevant task on his own or in another way envisaged in the legislations.

The most detailed rules on the conflict of interests were to be found in the General Rules of Civil Servant's Conduct (adopted in 2010 by the National Agency of Civil Service and amended several times since then) but they cover only civil servants. They include the following guidelines:

- A civil servant should take measures to prevent conflict of interests (definition of conflict of interests has not so far been aligned with May 2013 amendments in the Law on Principles).
- Circumstances likely to give rise to a conflict of interest must be removed before a civil servant is appointed. If such circumstances emerged after his appointment the civil servant must without delay inform in writing his direct superior and take urgent measures to eliminate them.
- If a civil servant became aware of the existence of a conflict of interest of other civil servants, he should inform of this his direct superior.
- A civil servant who informed about the conflict of interest his direct superior and considers that the measures taken were insufficient may inform in writing the head of the state authority.
- The direct superior shall take all necessary measures to prevent conflict of interests by instructing another official to execute relevant task, by personally executing relevant duties or by any other manner stipulated by legislation.
- In case of conflict of interest of a civil servant who is member of the collegial body (committee, commission, board, council, etc.) such civil servant should not participate in the decision-making if his non-participation does not affect the powers of the body. If his non-participation does affect the powers of the body, the participation of such civil servant in the decision-making should be carried out under control.
- A civil servant is recommended to get rid of the private interest which may result in a conflict of interest by disposing of corporate rights, property or property rights, transferring them in trust management or otherwise.
- If it is impossible to resolve the conflict of interests by substituting the civil servant with another person and if there is no possibility to transfer him to another position of the corresponding civil service category, the head or deputy head of the authority where the civil servant works, in the shortest possible period but no longer than within 1 working day, shall make a decision to exercise control over decisions made by this civil servant. The decision shall mention the form of control, the person responsible and the requirements to the civil servant as regards deciding on the subject of the conflict of interest.
- Control is to be carried out in the following form: inspection by the person designated by the head of the authority of the content of decisions or draft decisions made or prepared by the civil servant or the collegial body on matters related to the subject of the conflict of interest; review of cases and decision-making by the civil servant in presence of the person designated to exercise control.

The definition of the conflict of interests in the main legal act which regulated this issue – the Law on Principles – was incompliant with international standards, even after changes introduced in May 2013 by the Law no. 224-VII. Article 8 of the Council of Europe Model Code of Conduct for Public Officials (Committee of Ministers Recommendation no. R (2000) 10) states that the public official should not allow his or her private interests to conflict with his or her public position. It is his or her responsibility to avoid such conflicts of interest, *whether real, potential or apparent*. Article 13 provides that conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, *or appear to influence*, the impartial and objective performance of his or her official duties. The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto. Article 14 also states that the public should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of his personal or private interests.

OECD Guidelines for Managing Conflict of Interest in the Public Service (approved by the OECD Council in 2003), in addition to actual conflict of interests (which is covered by the current definition in the Ukrainian Law on Principles), also define “an apparent conflict of interest”, which exists “where *it appears* that a public official’s private interests could improperly influence the performance of their duties but this is not in fact the case”, and “a potential conflict of interest”, which arises “where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future”.

Apparent conflict of interests is mentioned in the Law on the Rules of Ethical Conduct, however it does not have a separate enforcement mechanism and no liability is provided for failure to prevent or report such conflict of interests. Private interests of official in the Ukrainian law are limited to the official himself and his close relatives or persons of his household. No declaring of interests is provided by the law; the amended template of the declaration does provide for identification of financial institutions or companies in which the official has interests (through ownership of deposits, shares, etc.) but this does not cover all interests which should be declared.

Conflict of interest regulation under the new legal framework

The Law on Prevention of Corruption defines (Article 1) and regulates (Articles 28-36) prevention and resolution of conflict of interest.

According to Article 1, the real conflict of interest is a contradiction between private interest of a person and his/her official or representative activities which affects the objectivity or impartiality of his/her decisions and commitment or non-commitment of actions in the exercise of mentioned activities. Potential conflict of interest is defined as presence of a person’s private interest in the area in which he/she exercises his/her official or representative powers that could affect the objectivity or impartiality of his/her decisions or affect the commitment or non-commitment of actions in the exercise of mentioned activities. Notion of apparent conflict of interests is not used in the law.

According to Article 28, para. 1, persons referred to in clauses 1 and 2 of part 1, article 3 of this law (see text in the Annex), shall be obliged: 1) to take measures to prevent the occurrence of real or potential conflict of interest; 2) to report - no later than the next business day from the date when the person found out or should have found out about having a real or potential conflict of interest – to the immediate supervisor, and if the person holds the position that does not provide for having an immediate supervisor or the position in a collective body – to report to the National Agency or other authority or a collective body determined by the law, where the conflict of interest occurred while exercising authority, respectively; 3)

not to take any actions and not to make decisions under the conditions of a real conflict of interest; 4) to take measures to address real or potential conflict of interest.

Article 28 further provides that persons authorized to perform the functions of the government or local self-government may not directly or indirectly in any way encourage their subordinates to make decisions, take actions or refrain from actions that violate the law and benefit their private interests or the private interests of third parties. Immediate supervisor or the supervisor of an authority which has the powers to dismiss/initiate dismissal from position within two business days after receiving a notice that her/his subordinate has a real or potential conflict of interest makes a decision aiming to resolve the conflict of interest, and reports about it to a respective person. Similar action has to be taken if supervisor found out about the conflict of interests on his own.

The Law on Prevention of Corruption foresees both external and self-resolving measures to resolve conflicts of interest (Article 29). Conflict of interest shall be resolved externally by: 1) suspension of a person from fulfilling the task, performing actions, making decisions or participation in making decisions under the conditions of a real or potential conflict of interest; 2) use of external monitoring to control how person fulfils certain task, does certain actions or makes decisions; 3) restricting a person to access certain information; 4) reviewing the scope of person's official powers; 5) reassignment of a person to another position; 6) discharge of a person.

Persons covered by this law, who have an actual or potential conflict of interest, can independently take steps to resolve it by eliminating the respective private interest and provide documents that prove it to the immediate supervisor or the supervisor of an authority which has the powers to dismiss/initiate dismissal from position. Elimination of a private interest shall exclude any possibility of its concealment.

The Law on Prevention of Corruption also regulates suspension from fulfilling a task, performing actions, decision-making or participation in decision making in the conditions of a real or potential conflict of interest (Article 30); restricting access to information of a person where the conflict of interest is associated with such access and is of a constant nature (Article 31); reviewing the scope of official powers of a person if a conflict of interest in its activities is of permanent nature (Article 32); exercising official powers under external control if suspension of the person from fulfilling a task, performing actions, decision making or participating in decision-making under a real or potential conflict of interest, restricting of person's access to information or reviewing its powers are impossible (Article 33); reassignment and discharge of a person due to the conflict of interest (Article 34); and peculiarities of resolving conflict of interest arising in the activities of certain categories of person, including the President of Ukraine, People's Deputies, members of the Cabinet of Ministers, heads of central executive bodies, judges, the chairmen and vice-chairmen of oblast and district councils (Article 35); preventing conflict of interest when a person owns enterprises or equity rights (Article 36).

By adopting the new legal framework for prevention of corruption, the definition and mechanism to resolve conflict of interest is clearly improved. The definition of the conflict of interest, against the international standards and OECD Guidelines for Managing Conflict of Interest, only misses an element of "apparent conflict of interest" which exists "where it appears that a public official's private interests could improperly influence the performance of their duties but this is not in fact the case".

Conclusion: Ukraine is largely compliant with the above part of the recommendation 3.2.

Consider developing special conflict of interest regulations for different categories of officials, in different branches and at different levels of seniority.

As was noted above, in 2012 all laws which regulate powers of various public authorities were amended to introduce provisions on conflict of interests. Relevant provisions, however, were uniform and not detailed. Only rules for civil servants included more detailed guidelines on conflict of interests, but they cover all civil servants regardless of the institution or sector they work in.

The Law on Prevention of Corruption, adopted in October 2014, provides that all subjects covered by this law (article 3) should follow the general conflict of interest regulation as established in section V of this law. According to Article 35, rules for resolving conflict of interest in the activities of the President of Ukraine, People's Deputies of Ukraine, members of the Cabinet of Ministers of Ukraine, heads of central executive bodies, which are not part of the Cabinet of Ministers of Ukraine, judges of the Constitutional Court of Ukraine and judges of courts of general jurisdiction, the chairmen, vice-chairmen of oblast and district councils, city, village, settlement heads, secretaries of city, village and settlement councils, deputies of local councils are determined by the laws governing the status of the respective persons and the basis of the organization of respective bodies. The Law on Prevention of Corruption also introduced amendments in the relevant laws to regulate special procedures for conflict of interests prevention and resolution for different categories of officials.

Conclusion: Ukraine is fully compliant with the above sub-recommendation of 3.2.

Ensure that there is an effective institutional mechanism for the management and control of implementation of conflict of interests regulation.

From 1 January 2014, the control mechanism for conflict of interest enforcement should have been exercised by the internal anti-corruption units in each public authority.

In its Second progress report on implementation by Ukraine of the Visa Liberalisation Action Plan (February 2012) the European Commission recommended to “introduce clear provisions on effective mechanisms for prevention, monitoring and verification of conflicts of interests and incompatibilities, including guarantees for independence and efficiency of the body/entity responsible for monitoring and verification, sufficient capacity and dissuasive and effective sanctioning systems”.⁹³ In November 2013 (Third progress report) the European Commission noted with regard to conflict of interests that, while some internal control is envisaged, there is no outside independent verification in place.⁹⁴

Government reported that the internal anti-corruption units, as foreseen under the previous prevention of corruption legislation, were established but these were structural subdivisions, often with other main functions (e.g. internal audit, personnel management) within the administrative bodies with no special status or guarantees of independence.

According to the new Law on Prevention of Corruption (Article 11), the National Agency on Anti-Corruption will be responsible for monitoring and control over implementation of legislation on ethical behaviour, the prevention and settlement of conflicts of interest in the activities of persons authorised to perform the functions of the state or local self-government and persons equated to them. Powers of the National Agency are regulated in Article 12 of the Law (see Annex).

In case of identifying violations of this Law regarding ethical behaviour, prevention and settlement of conflicts of interest in the activities of persons authorized to perform the functions of the state or local self-

⁹³ Second report on the implementation by Ukraine of the Action Plan on Visa Liberalisation, cited above, p. 16.

⁹⁴ Third report on the implementation by Ukraine of the Action Plan on Visa Liberalisation, cited above, p. 15.

government and persons equated to them, or any other violation of this Law, National Agency will send to the head of the body, enterprise, institution a requirement to eliminate violations of the law, to conduct service investigation, to bring the perpetrator to the statutory liability.

The requirement of the National Agency is binding. Official to whom the requirement of the National Agency is addressed shall inform the Commission on the results of its fulfilment within ten working days after receipt of the requirement.

Additional amendments were adopted in February 2015 extending powers of the National Agency that will be authorized to bring to administrative liability for violation of the rules on conflict interests (namely draw up infringement protocols and refer them to the court for sanctioning). This is a welcome development.

Conclusion: By establishing a new legal framework which provides for institutional mechanism for the management and control of implementation of conflict of interest regulation, Ukraine is fully compliant with the above part of the recommendation 3.2.

Consider introducing responsibility for the managers to prevent conflict of interests in their institutions and providing sanctions for failure to comply.

According to Article 172⁹ of the Code of Administrative Offences (CAO), failure to take measures, which are provided for by the law, by an official or a service person of a state authority, an official of a local self-government body, of a legal entity, their structural units in case of detection of corruption offence is punished by a fine in the amount of 50 to 125 untaxed minimum personal incomes (about EUR 80 to 190). According to the Government, this provision covers failure of the superior to take measures in case of conflict of interests.

Liability for failure to notify the direct superior of a conflict of interests is also provided by Article 172⁷ CAO (a fine of 10 to 150 untaxed minimum personal incomes, that is about EUR 15 to 230).

See statistics on application of the relevant articles and new wording of the relevant CAO provisions in the Annex.

According to the Draft Law on Civil Service (article 8) each civil servant shall be obliged to prevent any conflict of interest while performing civil service. Article 17 provides further that civil service administrators, i.e. state secretaries of ministries and heads of central executive bodies and other governmental bodies, shall monitor observance of the discipline and adopt decisions within their powers on imposition of disciplinary action on subordinated civil servants.

Conclusion: Ukraine is fully compliant with the above part of the recommendation of 3.2.

When the legal framework is in place, develop guidelines on conflict of interests and provide training to public officials.

General Rules on Civil Servant's Conduct include relatively detailed guidelines on prevention and resolving of conflicts of interests. However, they cover only civil servants. Also in October 2012 the Ministry of Justice (together with an academic institution) prepared Recommendations⁹⁵ on implementation of the anti-corruption legislation, which includes a chapter on conflict of interests and provides some explanation but mainly repeats provisions of various legal acts.

⁹⁵ Available (in Ukrainian) at: www.minjust.gov.ua/file/29552.

Government did not provide any concrete information on trainings on conflicts of interests but explained that in accordance with the Law on Prevention of Corruption (Article 11), adopted in October 2014, the National Agency on Preventing Corruption will be responsible for coordination and rendering methodological help in detecting corruption risks and implementation of measures to address them, including the preparation and implementation of anti-corruption programmes in state authorities and local self-governments. The National Agency will also be responsible for organisation of training, retraining and advanced training of civil servants of state authorities and local self-government officials on issues related to the prevention of corruption.

Conclusion: Given that the new legal framework on preventing corruption, including conflict of interest, is only recently adopted, guidelines on conflict of interest are not yet developed and respective trainings not conducted, although the primary legislation is in place, Ukraine is partially compliant with the above part of the recommendation 3.2.

Asset declarations

Review the current system of asset declarations and ensure focus at high level officials/ specialise by sector/ branch/ risk areas

Regulation on asset declaration under the previous legal framework

The recent system of asset declarations was introduced in 2011 with adoption of the Law on Principles. Obligation of public officials to declare their assets, income, expenses and financial liabilities entered into force on 1 January 2012, with first declarations filed by 1 April 2012 (declaring of expenses became mandatory from 2013 after the Constitutional Court's ruling that its earlier enactment was unconstitutional). Filing of declarations in 2012 was marred with inconsistencies in different laws, but they were removed when in June 2012 other laws were aligned with the Law on Principles.

Provisions on asset declarations in the Law on Principles were further amended in May 2013 (Law no. 224-VII) – with some of those amendments entering into force on 1 January 2014 (others in June 2013). Persons who are obliged to file declarations (declaring subjects) are all public officials (persons authorised to perform functions of the State or local self-government) and officials of other public law legal entities (which includes enterprises and institutions that were set up by the state or local self-government authorities, even if such institutions are not public authorities themselves; this includes state and municipal enterprises, budgetary institutions like hospitals, universities, museums, mass media, etc.; term “officials” excludes those employees who do not perform organisational, managerial, financial or administrative functions). Declaring subjects submit annually by 1 April, at the place of their work (service), declarations of assets, income, expenses and financial obligations for the previous year according to the form (template) which is included directly in the law as an annex. Declarations should be submitted also by persons who are candidates for positions subject to declaration obligations - prior to the appointment or election to the relevant office under procedure stipulated by special laws.

Declaring subjects who are resigning or otherwise cease activity related to performance of functions of the State or local self-government shall submit the declaration for the period not covered by the previously submitted declarations. Declaring subjects who resigned or otherwise ceased to perform state or local self-government functions are required to submit declaration within one year at their last place of work (service). These two provisions were added in May 2013 and are important to ensure that no period in office remains “undeclared” and also to provide a tool for enforcing post-employment restrictions that are stipulated in Article 10 of the Law on Principles and cover one-year period as well.

In addition, if a declaring subject or his family member opened a foreign currency account in a non-resident bank, he is supposed, within 10 days, notify of this the State Tax Service indicating the account number and the non-resident bank location.

There was no specialization with regard to seniority of officials, sectors or risk areas provided, except as regards mandatory publication of declarations which extends only to senior officials (see below) in the previous legal framework.

Regulation on asset declaration under the new legal framework

According to the Law on Prevention of Corruption (Article 45), adopted in October 2014, persons covered by this law (see the Annex) are obliged to submit declarations annually by 1 April – for the last year and in the form which is determined by the National Agency on Preventing Corruption, through an official single web portal which will be maintained by the National Agency (Unified State Register of Declarations of Persons Authorised to Perform the Functions of the State or Local Self-Government).

Government could not provide exact number of officials who will be submitting the declarations in accordance with the new Law, an estimated figure given was about 700,000.

According to the same article, officials who terminate related to the functions of state or local self-governments activities shall submit a declaration, for a period not covered by previously submitted declarations. Persons who terminated activities related to the functions of state or local self-governments are required the next year after the termination to file a declaration in accordance with procedure stipulated in the law for the past year. A person who aspires to hold the position covered by this law, prior to appointment or election to the respective position shall file a declaration for the past year. In case the subject of declaration has identified errors in the declaration he/she filed, the National Agency upon his/her written application allows him/her to correct them within ten calendar days. Bringing the declarant to liability for failure to submit, late submission of the declaration of a person authorised to perform the functions of the state or local self-government, or submission of it with deliberately false information does not release the declarant from the obligation to file a declaration with trustworthy information.

Government informed that at present, the development of the register/web portal for submitting declarations is underway and should be ready by the time when the Law on Prevention of Corruption enters into force, i.e. 26 April 2015.

According to Article 50 of the law, declarations of officials that have responsible and highly responsible status, and declarations of persons who hold positions associated with high levels of corruption risks, are subject to mandatory complete examination. The list of these high profile and high-risk positions shall be approved by the National Agency. Declarations filled by other declarants in case of discrepancies discovered in result of arithmetical and logical control shall also be a subject to complete examination.

Complete examination of declarations shall be carried out within 90 days from the date of filing of declarations and is meant to ascertain the reliability of the declared data, accuracy of evaluation of the declared assets, examination for the presence of the conflict of interests and signs of illicit enrichment. When results of the complete examination of the declaration show false information included in the declaration, the National Agency shall notify in writing the head of the relevant authority, where the respective declarant works, and other specially authorized entities in the field of combating corruption in the manner provided by parts two and three of article 15 of the Law on Prevention of Corruption.

Conclusion: By reviewing the previous system of asset declarations and establishing a new legal framework which ensures focus at high level and high-risk officials, Ukraine is fully compliant with the above part of the recommendation of 3.2.

improve the list of requested information

Regulation under the previous legal framework

The Law no. 224-VII amended, *inter alia*, the template of the declaration by including obligation to state specific banks and other financial institutions, companies, in which the declaring subject or his family members have accounts, own shares or have financial liabilities (before that only amount/value of deposits, shares and financial liabilities had to be indicated). This is an important change which significantly raises the possibility of detecting conflicts of interests.

An issue of declaration of expenses remains – originally the Law provided that a one-time lump sum expense (deposit) of UAH 150,000 (about EUR 14,000 at that time or EUR 7,500 in the beginning of 2015 due to Hryvnya devaluation) should be declared, which means that if an official purchased valuables in the amount of less than this threshold, even on daily basis, such expenses do not need to be declared. This provision was criticised by the NGOs and Council of Europe experts, the latter recommending to decrease this threshold to not more than 20 monthly minimum salaries or to about UAH 24,000 (EUR 1,000).⁹⁶ In response the Law on Principles was amended and the threshold was lowered, but only to UAH 80,000 (about EUR 4,000) which is still several times more than annual average salary in the public administration. Ukrainian Law on the Judiciary and Status of Judges provided until 2012 (when it was aligned with the Law on Principles) that judges should declare their expenses if one time transaction exceeded a monthly salary of the judge. This seems to be an optimal model which should be introduced uniformly for all declarations.

Regulation under the new legal framework

The list of requested information in declarations is established in Article 46 of the Law on Prevention of Corruption and it is a significant improvement on the current scope of information to be declared.

Several deficiencies can be noted though. The limit for declaring expenditures was lowered to 50 minimum salaries (i.e. about UAH 60,000) but is still too high. Gifts given to official by close persons are not subject to declaring, which is a loophole that can be used to hide bribes.

These deficiencies are addressed in the law adopted on 12 February 2015 (draft law no. 1660-d – see above) which lowered threshold for declaring expenditures to 20 minimum salaries and established a limit of 5 minimum salaries (i.e. about UAH 6,000) for declaring gifts from any source. The law also introduced mandatory declaring by the public official or his family member of beneficial ownership in legal persons (notion of beneficial owners of legal persons was introduced in the Ukrainian legislation in October 2014), which is a very progressive step.

Conclusion: By improving the list of requested information in asset declarations, Ukraine is fully compliant with the above part of the recommendation 3.2.

⁹⁶ Technical paper, Financial Supervision of Public Officials, prepared by Tilman Hoppe, Project Long-Term Adviser, with input from Valts Kalniņš, Council of Europe Expert; Eastern Partnership-Council of Europe Facility Project on “Good Governance and Fight against Corruption”, December 2012, ECCU-EaP-7/2012; p. 8; available at: www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/eap-coe%20facility/Technical%20Paper/2524-ECCU-EaP-7%202012-RA%20Ukraine%20AD_Final.pdf.

provide some verification and publication

Regulation under the previous legal framework

Initially the 2011 Law on Principles did not provide for any verification of submitted declarations. In February 2012 the European Commission in its second report on implementation by Ukraine of the Action Plan on Visa Liberalisation recommended to “*complement the existing legal framework with additional clear provisions on effective mechanisms for disclosure, verification and supervision of public official's assets and for dealing with potential cases of unjustified wealth, including guarantees for independence and efficiency of the body/entity responsible for monitoring and supervision, sufficient capacity, dissuasive and effective sanctioning systems*”.⁹⁷ In response to this Government initiated amendments in the Law on Principles, which were adopted by the Law no. 224-VII and came into force on 1 January 2014.

They provided that authorised anti-corruption units within public authorities should carry out: 1) verification of the fact of timely submission of declarations; 2) verification of declarations for existence of conflict of interests (see above); 3) “logical and arithmetic control of declarations”. Verification of the fact of timely filing of a declaration should be carried out within 15 working days from the date when such declaration must have been filed. Checking of declarations for the conflict of interests is to be carried out within 30 days after filing and consist of comparing the service duties of the official with his and his family members’ financial interests.

Logical and arithmetic control of declarations shall be carried out within 30 days after filing of the declaration in the manner to be determined jointly by the central executive body responsible for the state tax policy (Ministry of Revenues and Fees) and the Ministry of Justice of Ukraine. If during verification of a declaration arithmetic or logical errors are detected, the authorised anti-corruption unit immediately notifies of this the relevant official, who has the right, within 5 days after receipt of the notification, to submit a written explanation to the authorised unit and/or to submit an amended declaration. In connection with the logical and arithmetic control of declarations, the authorised unit has the right to send information inquiries to state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies, enterprises, institutions and organizations regardless of ownership form – the latter are obliged to provide requested information/documents within 10 days.

If elements of an offence are detected as a result of the above-mentioned verifications, the authorised unit should notify in writing the head of the relevant public authority and the law enforcement agencies.

Before it even entered into force the Government proposed to amend this verification mechanism in September 2013 by revoking provisions on the “logical and arithmetic” control of declarations by the authorised units and replacing them with verification of authenticity of declarations by the bodies of the Ministry of Revenues and Fees (i.e. by tax authorities). Procedure for such verification should be determined by the said Ministry as well. To ensure such verification the public authority (or public law legal entity) which received submitted declaration should forward it to the tax authorities within 10 days. For conducting the verification tax authorities have the right to receive upon request information/documents from any public or private entity. If inauthenticity of information included in the declaration is detected tax authorities are supposed to notify thereof the law enforcement agencies (namely specially authorised subjects for counteracting corruption which are determined in the Law on Principles). Relevant amendments were adopted in May 2014 and entered into force on 1 January 2015.

⁹⁷ Second report on the implementation by Ukraine of the Action Plan on Visa Liberalisation, cited above, p. 16.

In November 2013 the European Commission, in its third report on the implementation by Ukraine of the Action Plan on Visa Liberalisation evaluated this yet to be adopted law and noted that “*more efforts need to be made to ensure a sound and independent verification mechanism and an effective, proportionate and dissuasive sanctioning system. Dedicated internal control mechanisms have been set up within public institutions and the Ministry of Revenue and Duties has been designated as the institution responsible for verifying asset declarations. ... it is not yet clear how the verification work of the Ministry of Revenue and Taxes will be organised, what methodologies and tools will be applied and how its capacity to carry out this new additional task is ensured. Nor will the Authority have the power to apply sanctions itself. It can only refer cases to other authorities or law enforcement bodies. Cooperation between the State Authority on Income and Fees and other administrative and law enforcement bodies for the purpose of verifying asset declarations needs to be clearly defined*”.⁹⁸

Even before May 2013 amendments verification of declarations (of their authenticity) was provided in the Law on Principles, but only with regard to candidates who apply for positions which are covered by the obligation to submit annual declarations. Such verification is conducted within the procedure of “special inspection” of candidates for public offices (a kind of a vetting procedure). According to the procedure of such “special inspection” approved by the President of Ukraine (Decree no. 33 of 25 January 2012 with the following amendments), verification of declarations is conducted by the Ministry of Revenues and Fees (tax authorities). If there are “discrepancies” in the submitted declaration the candidate is given 5 days to provide explanation or to correct discrepancies. It is not clear what is meant by “discrepancies” – either inconsistent data within the declaration or discrepancy between declared information and information obtained by the inspecting authority from other sources.

In their assessment (December 2012) Council of Europe experts noted that the State Tax Service uses all information from current and previous tax files, which is stored in a central electronic database. Tax information is available on all citizens of Ukraine, but tax declarations are only required from public officials if they hold more than one public post or if they generate a second income. In addition, during the interviews the State Tax Service pointed out its access to the database of the land registry services and to the police register of vehicles. As for the control of any hidden (i.e. undeclared) income, the State Tax Service would need access to bank information (for example under a future statutory exception to bank secrecy or with consent of the official in question). Experts, therefore, recommended to verify not only the declarations of candidates for public office, but also a sample of the declarations submitted by officials already in office. For example, a small fraction of randomly selected declarations of all officials could be verified in combination with the declarations of officials holding posts with a high corruption risk, such as procurement, etc.⁹⁹

It should be noted that the arrangement when verification was conducted by internal units in public authorities was not effective, since such units lacked independence and capacity to verify relevant declarations. Introduction of external verification should therefore be welcomed. Tax authorities appear to be well equipped to carry out such verification, as they have necessary expertise and access to relevant (but not all) databases. However, requirement to verify authenticity of all submitted declarations (whose number may be well beyond 300,000) without exceptions makes any verification mechanism futile. Also there is an issue of independence of tax authorities, which are part of the Government system.

As regards publication of declarations, the Law on Principles, before amendments introduced in April 2014 (see below), contained a list of officials whose declarations should be published – within 30 days after submission - “on official web-sites *or* in official printed editions” of the relevant public authorities. The

⁹⁸ Third report on the implementation by Ukraine of the Action Plan on Visa Liberalisation, cited above, p. 15.

⁹⁹ Technical paper, *Financial Supervision of Public Officials*, December 2012, cited above, p. 11.

relevant information placed on the official websites of state authorities and local self-government bodies shall be available for access for at least one year. Declarations of the following officials were subject to mandatory publication: President of Ukraine, Head of the Verkhovna Rada of Ukraine, people's deputies of Ukraine, Prime Minister of Ukraine, members of the Cabinet of Ministers of Ukraine, president and judges of the Constitutional Court of Ukraine, president and judges of the Supreme Court of Ukraine, presidents and judges of higher specialised courts of Ukraine, Prosecutor General and his deputies, head of the National Bank of Ukraine, chairman of the Accounting Chamber, members of the High Council of Justice, members of the Central Election Commission, parliament's Commissioner for Human Rights, members of the High Qualifications Commission of Judges of Ukraine, the first deputy ministers and deputy ministers, deputy ministers – heads of secretariat, heads of other state authorities, authorities of the Autonomous Republic of Crimea and their deputies, members of collegial public bodies (commissions, councils), mayors of villages, towns and cities, chairmen of local council and their deputies, secretaries of local council, heads of executive bodies of local councils and their deputies. In addition to proactive publication, declarations of all officials should also be available upon request to any person.

The Law on Principles excludes certain information contained in the declarations from public access designating it information with restricted access, namely information on the registration number of the taxpayer or series and number of the citizen's passport, as well as place of residence and registration of the declarant, location of objects that are listed in the declaration. It is assumed that all other information included in the declaration is open for public access. This is confirmed by Article 6.6 of the Law on Access to Public Information which specifically provides that information from declarations, except that defined in the Law on Principles, does not belong to information of restricted access.

Despite explicit provisions on openness of declarations in practice there have been frequent cases of denial of access to declarations upon requests filed in accordance with the Law on Access to Public Information – authorities often refer to the personal data protection requirements and refuse to provide copies of declarations or information from them without consent of the declarant, even if such information had already been (or was supposed to be) published.

In March 2014 parliament passed amendments (Law no. 1170) in various laws to align them with the Access to Public Information Law and in particular provide for mandatory publication of the declarations of the above mentioned officials on the web-sites of the relevant public authorities; declarations are to be published in the print outlets only if such web-sites are absent. The Law no. 1770 also amended the Personal Data Protection Law to allow access to certain personal information of public interest, including to information contained in public officials' declarations.

Another issue is that the Law on Principles states that mandatory publication concerns “information from the declaration” without specifying that this covers all information, except for the restricted in access. This would seem to be a logical interpretation, however, it is not always followed in practice, as public authorities sometimes publish in the printed outlets or provide upon request only part of “information from declaration”, excluding e.g. data on relatives.

Regulation under the new legal framework

According to the Law on Prevention of Corruption, adopted in October 2014, the National Agency on Preventing Corruption has the power of monitoring and verification of declarations, storage and disclosure of declarations, and monitoring lifestyle of persons covered by this law (Article 11).

Article 47 provides that the National Agency ensures open round-the clock access to the official register/web portal (Unified State Register of Declarations of Persons Authorised to Perform the Functions of the State or Local Self-Government). Access to the web portal shall be granted through the ability to

view, copy and print the information, as well as a set of data (electronic record), organised in a format that allows its automatic processing by electronic use for further reuse. Information in the declaration about the registration number of the taxpayer registration card or series and number of Ukrainian passports, address of residence, date of birth of natural persons regarding whom information is contained in the declaration, location of objects that are listed in the declaration, constitute information with restricted access and are not available in the open access. Declarations of all public officials without exceptions will be available on the central web-portal.

The National Agency, as provided in Article 48, will conduct the following types of control regarding declarations filed by the declarants (detailed procedure shall be adopted by the National Agency): 1) control with respect to timeliness of filing; 2) control with respect to the accuracy and completeness; 3) logical and arithmetic control.

In addition to verification of declarations, the National Agency, as provided in Article 51, shall selectively monitor lifestyle of declarants in order to establish correspondence between their level of living and property and income received by them and their family members according to the declaration of a declarant. Lifestyle monitoring of the declarants is performed by the National Agency on the basis of information received from individuals and legal entities, as well as from the media and other open sources of information, which contains information about the discrepancy between the standard of living of the declaring subjects and their declared property and income. Lifestyle monitoring shall be carried out in compliance with the legislation on personal data protection and should not involve undue abuse of the right to privacy and family life of a person. Established inconsistency of the level of living and property and income declared by the declarant serves as a ground for complete examination of declaration. In case the National Agency finds out discrepancies in living standards it shall give opportunity to the declaring subject within ten working days to provide a written explanation about this fact. In the case lifestyle monitoring reveals characteristics of a corruption or related to corruption offense, the National Agency shall inform the specially authorized subjects in the area of countering corruption about those. The detailed procedure for monitoring lifestyles of the declarants will be determined by the National Agency.

The Law on Preventing Corruption establishes additional measures of financial control in Article 52:

- 1) When a declarant or its family member open a foreign currency account in a non-resident bank the respective declarant is obliged to notify in writing within ten days the National Agency according to the procedure it established, indicating the account number and location of the non-resident bank;
- 2) If there are significant changes in the declarant's material status, namely - receipt of income, purchase of property for the sum exceeding the 50 minimum wages established as of January 1 of the respective year, the mentioned declarant within ten days from the receipt of income or property purchase is obliged to notify about it in writing the National Agency. This information is brought to the Unified State Register of Declarations and published on the official website of the National Agency.

The detailed procedure for informing the National Agency on opening of a foreign currency account in non-resident banks, as well as on significant changes in material status will be determined by the National Agency.

Conclusion: By providing legal mechanisms for verification and publication of asset declarations, Ukraine is fully compliant with the above part of the recommendation 3.2.

ensure effective sanctions for not filing or filing knowingly false or incomplete information

Regulation under the previous legal framework

Until recently there was only administrative liability (Article 172⁶ CAO) for failure to submit (or untimely submission) of the declaration and for failure to notify (or untimely notification) about opening of a foreign currency account in a non-resident bank. It is punished by a fine of up to about EUR 25. Administrative sanction is applied by courts based on administrative protocols drawn up by the specially authorised subject for counteracting corruption, that is Ministry of Internal Affairs, Security Service and prosecutors (taking into account changes introduced by the Law no. 224-VII).

In May 2014 Article 172⁶ CAO was supplemented with additional offence of submitting “knowingly false” information in the asset declaration, which removed the gap. It is punished with a fine of up to equivalent of EUR 230.

See text of Article 172⁶ CAO and statistics on its application in the Annex.

Regulation under the new legal framework

According to Article 65 of the Law on Preventing of Corruption, the persons covered by this law (Article 3) are subject to criminal, administrative, civil and disciplinary liability as prescribed by law. Consequently, the Administrative Offences Code and the Criminal Code has been amended as follows:

Administrative Offences Code was supplemented with new wording of Article 172⁶. Violations of financial control requirements, which punishes with a fine untimely filing of a declaration, failure to notify or untimely notice about opening of the foreign currency account in a non-resident banking institution or about significant changes in assets status.

In addition a new article was added in the Criminal Code. Article 366¹. Declaring of false information provides that filing by a declaring subject of deliberately false information in the declaration of the person authorized to perform state or local self-government stipulated by the Law of Ukraine "On prevention of corruption" or intentional failure by a declaring subject to file the mentioned declaration entails imprisonment for up to two years with deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

Conclusion: By upgrading sanctions for not filing or filing knowingly false or incomplete information in declarations, Ukraine is fully compliant with the above part of the recommendation 3.2.

introduce system of exchange of information with law enforcement and consider accepting asset declaration as evidence in illicit enrichment proceedings

As no system of asset declarations verification existed until recently there was no need for a system of exchange of information with law enforcement agencies. Only when discrepancies are detected in the declarations of candidates for public offices such information should be passed on to the law enforcement agencies. With introduction of verification mechanism from 1 January 2014 such requirement will exist also for detected inaccuracies in all other declarations. Government confirmed that a proper system of exchange of information with law enforcement agencies and banks, the latter through the court authority, shall be ensured.

As to acceptance of declarations in illicit enrichment proceedings it should be noted that Ukraine until recently had no liability for possession of unexplained wealth. Offence of “illicit enrichment” was included

in the Criminal Code but it was very similar to passive bribery and did not correspond to “illicit enrichment” as it is defined in the UNCAC. However with enactment in January 2015 of the Law on the National Anti-Corruption Bureau relevant provision of the Criminal Code was revised and aligned with the UNCAC. See report sections under Pillar II for more details and Annex to this report for the text of the new provision. Asset declaration would be an obvious source of evidence for the public prosecution in establishing lack of legal grounds for acquiring excessive property. It remains to be seen how the new provision on illicit enrichment will be used in practice.

Conclusion: By starting to introduce a proper system of exchange of information and by revising illicit enrichment offence, Ukraine is partially compliant with the above part of the recommendation 3.2.

Code of ethics

Develop and adopt a modern general code of ethics applicable for all civil servants, promote its dissemination and application. Develop specific codes for various branches and sectors, especially in risk areas. Provide training and practical guides for their dissemination and application.

Regulation and implementation under the previous legal framework

A separate Law on the Rules of Ethical Conduct was enacted in June 2012 covering a broad range of public officials. It includes such requirements as compliance with law, priority of state (local self-government) interests, political impartiality, tolerance, objectivity, competence and effectiveness, promoting trust towards authorities, confidentiality, avoiding execution of illegal decisions and instructions, prevention of conflict of interests, prevention of receiving unlawful benefit or gift, declaring of assets, income and expenses. Provisions of the Law on the Rules of Ethical Conduct are quite general and do not cover all issues included e.g. in the Council of Europe Model Code of Conduct for Public Officials.¹⁰⁰

For civil servants there are General Rules of Civil Servant’s Conduct approved by the predecessor of the National Agency of Civil Service in 2010 and amended several times since then. The General Rules summarise standards of ethical behaviour, integrity and prevention of conflict of interest in activities of civil servants and ways to settle conflict of interest.

The 2011 Law on Principles included a separate article (Art. 13) on codes of conduct. It provides that general requirements as to the behaviour of persons authorised to perform functions of the State or local self-government, which they are obliged to observe while performing their service duties, as well as grounds and procedure for bringing them to liability for violation thereof shall be established by law. Laws and other normative and legal acts that regulate the organisation and procedure of activity of state authorities and local government bodies, provision of certain types of public services, or the procedure for activities of categories of persons authorised to perform functions of the State or local self-government, may establish special requirements to behaviour of such persons.

The Law no. 4711-VI (enacted in June 2012), which amended a number of laws on various public authorities or categories of officials to align them with the Law on Principles, provided in the Law on Militia (police) and the Prokuratura that respectively the Minister of Internal Affairs and the Prosecutor General (after endorsement by the national conference of prosecution office employees) should approve professional ethics and conduct codes for the militiamen and employees of prosecution office. The latter was approved by the Prosecutor’s General order on 28 November 2012. There exists also a Code of conduct for employees responsible for preparing and issuing personal identification documents (adopted by

¹⁰⁰ Available at: <https://wcd.coe.int/ViewDoc.jsp?id=353945>.

joint order of the Ministry of Internal Affairs, Ministry of Foreign Affairs, Ministry of Infrastructure and Main Department of Civil Service in June 2011 as a part of commitments included in the EU Visa Liberalisation Action Plan). A new version of the Code of Judicial Ethics was adopted by the 11th Congress of Judges of Ukraine on 22 February 2013.

When reporting to GRECO on Ukraine's compliance with GRECO recommendation xxii of the Joint First and Second Evaluations Rounds the authorities of Ukraine reported that the "State Programme on Prevention and Counteraction of Corruption for 2011-2015" foresaw the organisation, in a centralised manner, of professional initial and in-service training on the prevention of and fight against corruption, ethical conduct and resolution of conflicts of interest for civil servants and local government officials whose official duties include the implementation of anti-corruption measures at the workplace. The National Agency of Ukraine on Civil Service had undertaken several activities to implement this part of the programme, such as the definition of a procedure for the organisation of the training, the development of a model training programme, the training of 200 trainers and an expansion of the network of educational institutions – from 1 to 32 – providing such professional training. In 2012, 29 917 employees, representing 8% of the total number of civil servants and local self-government officials – have undergone this mandatory professional training. Similar training activities are reported for the employees of the Ministry of Justice. The National Agency on Civil Service and the Ministry of Justice was to continue this training on ethical and anti-corruption issues in 2013. GRECO concluded that relevant part of the recommendation had been implemented satisfactorily.¹⁰¹

Government confirmed that no codes of conduct were developed for officials working in corruption risk areas, except for the mentioned code for officials dealing with issuing identification documents to individuals. Government also confirmed that trainings of trainers and civil servants continued also after 2012.

Regulation under the new legal framework

Due to adoption of the Law on Prevention of Corruption in October 2014, the Law on Principles of Prevention and Countering Corruption and the law on the Rules of Ethical Conduct will be abolished.

The National Agency of Preventing Corruption, according to Article 11 of the Law on Prevention of Corruption, will have the power of approving the rules of ethical conduct for state civil servants and local self-government officials, organisation of training, retraining and advanced training of civil servants of state authorities and local self-government officials, and providing clarification, guidance and consulting on issues of application of legislation on ethical conduct, prevention and settlement of conflicts of interest.

Articles 37-44 of the Law on Prevention of Corruption regulate in more detail the rules of ethical conduct. Article 37 specifies that in addition to the general rules of ethical conduct, the state authorities and local self-government authorities may develop and ensure compliance of the specific rules of conduct to perform the functions of the state or local self-governments.

Conclusion: By establishing general rules of ethical conduct, however not yet developing specific codes for risk groups within the civil service, Ukraine is largely compliant with the above sub-recommendation of 3.2.

¹⁰¹ GRECO, Third Addendum to the Joint First and Second Round Compliance Report on Ukraine, 22 March 2013, cited above, p. 16.

Reporting and whistle-blowers

Introduce requirement for civil servants to report suspicions of corruption as well as sanctions for failure to report; system of protection of whistle blowers from harassment and persecution; disseminate information about these systems and provide relevant training.

Regulation under the previous legal framework

Article 5.7 of the Law on Principles (as amended by the Law no. 224-VII) provided that officials and service persons of state authorities, authorities of the Autonomous Republic of Crimea, officials of local self-government, of legal entities of public law, their structural units in case of detection of corruption offence or receiving information on commission of such offence by employees of the relevant authority (legal entity) are obliged to take measures, within their competence, to stop the offence and to inform thereof in writing without delay the specially authorised subject of counteracting corruption.

In addition, separate reporting obligations are provided in case of proposal of unlawful benefit or gift (Article 16 of the Law on the Rules of Ethical Conduct: notify in writing direct superior or relevant elected or collegiate body and/or one of the specially authorised subjects for counteracting corruption) and conflict of interests (Article 14 of the Law on Principles: without delay notify direct superior of existence of conflict of interests). These additional obligations therefore overlap with the general one and provide for different procedure of reporting.

Article 172⁹ CAO establishes administrative sanction (a fine from EUR 85 to 190) for failure to take measures, which are provided for by the law, in case of detection of corruption offence. This offence is supposed to cover the reporting obligations included in the Law on Principles. In addition, for failure to report about conflict of interest there is a separate offence provided in Article 172⁷ CAO (see text in the Annex).

Article 20 of the Law on Principles provided that persons who assist in preventing and counteracting corruption are under state protection. The State shall ensure the implementation by law enforcement agencies of legal, organisational, technical and other measures designed to protect against unlawful attacks on life, health, housing and other assets of persons who assist in preventing and counteracting corruption, and their close persons. State protection of persons who assist in preventing and counteracting corruption is carried out in accordance with the Law of Ukraine "On ensuring security of persons who take part in criminal proceedings". The latter, however, concerns only persons who have a formal status in criminal proceedings (victim, witness, etc.) and is not a proper whistle-blower protection.

In May 2013, by Law no. 244-VII, a provision was added in Article 20 of the Law on Principles whereby a person may not be dismissed or forced to resign, brought to disciplinary liability or be subjected to other negative measures (transfer, attestation, change in work conditions, etc.) on the part of his superior or employer due to his reporting about violation of this Law by another person.

Regulation under the new legal framework

Reporting and protection of whistle blowers is regulated in the Law on Prevention of Corruption, adopted in October 2014, as follows:

A person providing assistance in preventing and combating corruption (a whistle blower) – is a person who, having reasonable belief that the information is accurate, reports violations of the requirements of this Law by another person.

Persons providing assistance in preventing and combating corruption are under state protection. When there is a threat of life, dwelling, health and property of persons assisting in preventing and combating corruption, or of their close persons in connection with the made notification about violation of requirements of this Law, law enforcement agencies may apply to them legal, organizational and technical and other measures, aimed to protect against illegal attempts and envisaged by the Law of Ukraine "On Ensuring the Safety of Persons Involved in Criminal Proceedings".

A person or its family member shall not be discharged or forced to resign, brought to disciplinary liability or subjected to other negative measures of impact by a supervisor or employer (reassignment, certification, changing working conditions denial of appointment to a higher position, wage cutting, etc.) or to the threat of such measures of impact in connection with notification the person makes about violation of the requirements of this Law by other person. Information about the whistle blower may be disclosed only upon his/her consent except for cases stipulated by law.

The National Agency, as well as other state authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities provide conditions for their employees to notify about violations of requirements of this Law by other persons, in particular through the phone lines, official websites, electronic means of communication.

Reporting about violation of requirements of this Law may be done by an employee of a respective agency without attribution (anonymous). Anonymous report on violation of the requirements of this Law shall be considered if the information provided in the report is about a specific person, contains the actual data that can be verified. Anonymous reports about violations of requirements of this Law are subject for review within fifteen days from the date of their receipt. If it is impossible to verify the information contained in the report within the said term, head of the relevant agency or his deputy shall prolong term for report's review up to thirty days from the date of its receipt.

If the information contained in the report on violation of the requirements of this Law is confirmed, the head of the relevant agency takes measures to terminate the revealed violation, eliminate its consequences and bring the offenders to disciplinary liability and, in case of detection of a criminal or administrative offense, the head shall also inform specially authorized subjects in the field of anti-corruption.

The National Agency constantly monitors implementation of the law regarding protection of whistle-blowers, conducts an annual review and revision of state policy in this area.

Officials of state authorities, authorities of the Autonomous Republic of Crimea, officials of local self-government authorities, legal entities of public law, their structural subdivisions in case of a corruption or related to corruption offense or receiving information on the commission of such offense by employees of relevant state authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities, legal entities of public law, their structural subdivisions are required, within their powers to take measures to stop such violations and immediately report them to specially authorized subject in the field of anti-corruption.

Government reported that the measure of whistle blowing is still rather unfamiliar or objectionable by public employees, mainly due to the fact that the real protection of whistle blowers cannot be ensured despite the legal protection. So far, no respective training programmes have been conducted.

Conclusion: By establishing proper legal framework for protection of whistle blower, however not yet conducted specific trainings and practical guides, Ukraine is largely compliant with the above sub-recommendation of 3.2.

Internal units for disciplinary measures and conflict of interest

Ensure the existence and operation of internal units, responsible for disciplinary proceedings, management of conflict of interest issues (provide advice on how to avoid, recommendations on how to eliminate) and possibly asset declarations (advice, help in compiling, primary unit for collecting etc.), or a clear assignment of these responsibilities to other units.

Internal units on anti-corruption have been established even prior to the enactment of the 2011 Law on Principles – in anticipation of the enactment of the 2009 framework anti-corruption law. In December 2009 Government by its resolution no. 1422 adopted Standard regulations on the unit on prevention and detection of corruption in the executive authorities and recommended ministries, other central executive authorities, state administrations to set up such units within the general number of existing staff. This resolution and Standard regulations were amended in November 2011 (by another Government).

Provisions on anti-corruption units were introduced in the Law on Principles by the Law no. 224-VII of May 2013. They provide that “authorised units” mean authorised units or persons responsible for the prevention and detection of corruption, which are formed (appointed) in state authorities, authorities of the Autonomous Republic of Crimea, their secretariats, local self-government bodies and legal entities of public law by the decision of the head of the authority/entity or a legal entity of public law in accordance with legislation. Under the Law, such units are responsible for verification of declarations and control over compliance of conflict of interests provisions. Article 14 of the Law on Principles also provided that “methodical” support of authorised units concerning prevention, detection and resolving of conflict of interests in activity of civil servants and officials of local self-government is to be carried out by the National Civil Service Agency.

According to Standard Regulation on anti-corruption units in the executive authorities their main tasks were: preparation, implementation of and control over measures to prevent corruption; provision of methodical and consultative assistance on compliance with anti-corruption legislation; participation in information and research support to anti-corruption measures and international cooperation on relevant issues; conducting organisational and awareness raising work on prevention, detection and counteraction of corruption.

Anti-corruption units, in particular: take measures to detect conflict of interests and assist in resolving it; detect risks creating condition for corruption offences, make proposals to the management on their elimination; provide assistance on filling in of declarations of assets, income, expenses and financial liabilities; take part in internal investigations; report about possible corruption offences to the head of the executive authority and to the law enforcement agencies.

Government reported that the anti-corruption units were established, except in four state authorities. However, in many institutions these units are structural subdivision often with other main functions, e.g. internal audit, personnel management, and therefore not all units have performed the responsibilities according to their mandate.

See also chapter 1.6. of this report for additional analysis on anti-corruption units and their relation with the future National Agency for Corruption Prevention.

Conclusion: Considering that the internal anti-corruption units have not been fully operational, Ukraine is partially compliant with the above sub-recommendation of 3.2.

As the new draft Law on Civil Service has not been adopted at the moment, the rating for the whole recommendation 3.2. is partially compliant and the first sub-recommendation of 3.2 ('Legal framework for integrity in civil service') remains valid.

New recommendation 3.2.

- *Legal framework for integrity in civil service*
 - *Reform the legislation on Civil Service in order to introduce clear delineation of political and professional civil servants, principles of legality and impartiality, of merit based competitive appointment and promotion and other framework requirements applicable to all civil servants, in line with good European and international practice.*
 - *Review and reform rules for recruitment, promotion, discipline and dismissal of civil servants and develop clear guidelines and criteria for these processes, in order to limit discretion and arbitrary decisions of managers, to ensure professionalism of civil service and protect it from politisation.*
 - *Review and reform remuneration schemes in order to ensure that flexible share of the salary does not represent a dominant part and is provided in transparent and objective manner based on clearly established criteria.*
 - *Ensure decent salaries.*
 - *Establish a clear and well balanced set of rights and duties for civil servants.*
- *Once the new law is adopted and enacted: Implement the regulations on recruitment and selection of civil servants, including the senior civil servants, based on merit, equal opportunity and open competition to ensure professionalism and avoid direct or indirect political influence on civil service as foreseen in the Law on Civil Service.*
- *Implement and ensure effective functioning of the regulations on conflict of interest, asset declarations, code of ethics and whistle-blower protection as foreseen in the Law on Prevention of Corruption.*
- *Consider adopting a stand-alone whistle-blower protection law to cover both public and private sector.*

3.3. Promoting transparency and reducing discretion in public administration

Second Round Recommendation 3.3.

- *Develop and adopt Code of Administrative Procedures without delay, based on best international practice.*
- *Take further steps in ensuring transparency and discretion in public administration, for example, by encouraging participation of the public and implementing screening of legislation also in the course of drafting legislation in the parliament.*
- *Step up efforts to improve transparency and discretion in risk areas, including tax and customs, and other sectors.*

Develop and adopt Code of Administrative Procedures without delay, based on best international practice

Preparation of the Code of Administrative Procedures (CAP) has a long history in Ukraine. First draft text was submitted to the parliament by the Government in 2001 and then was resubmitted in almost each next parliament's convocation by different Governments (respectively in 2004, 2008 and 2012). Last time the draft code was sent to the parliament by the Government on 3 December 2012 but withdrawn within one week.

In 2012 OECD/EU programme SIGMA provided assessment of one of the draft CAP (sent to SIGMA in November 2011) and the draft Law on Administrative Services (it was adopted as a law in September 2012). SIGMA, in particular, criticised having separate laws in this field as it would most probably create additional problems in interpretation and implementation, reducing effectiveness. SIGMA has been insisting that there is no strong reason for having two separate laws. All the matters related to principles, procedures, rights and duties, sanctions and appeals, should be dealt with within the same law. SIGMA noted that it is of fundamental importance to ensure that the new legislation contributes to a better legal administrative environment for citizens and business. Adopting legislation of good quality will make its implementation feasible and easier. It recommended therefore to, at least, ensure full compatibility, establish proper cross references and minimize risks between two acts, if the approach of two laws is finally chosen (as it was). As to draft CAP itself, it was recognised as a good basis, but which still required improvement (a number of specific recommendations were made).

Adoption of the CAP was also one of GRECO recommendations after the Joint first and second rounds of evaluation of Ukraine¹⁰² and Ukraine's commitment to the EU and Council of Europe, as well as a part of various Government plans (e.g. the July 2014 Government's Plan of Priority Measures to Combat Corruption¹⁰³).

In June 2013, the Prime Minister ordered to set up a working group for development of new conceptual approach to improvement of administrative procedures. Such group was established by the Ministry of Justice in July 2013. Also in July 2013, the available draft Code of Administrative Procedure was sent for evaluation to the Council of Europe. In February 2014 the Council of Europe's evaluation was received but

¹⁰² See GRECO Joint First and Second Rounds Evaluation Report, adopted in 2006, and following compliance reports on Ukraine, [www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports\(round2\)_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports(round2)_en.asp).

¹⁰³ See text: <http://zakon1.rada.gov.ua/laws/show/647-2014-%D1%80>.

because of the tense political situation in Ukraine, the working group did not convene before July 2014. The working group improved the draft in line with the comments by the Council of Europe and sent the new draft, now called a draft Law on Administrative Procedure (LAP), for evaluation to SIGMA. SIGMA submitted first round of comments in October and a final assessment in November 2014, after meetings with the government working group and High Administrative Court of Ukraine.

According to SIGMA's final assessment of the draft Law on Administrative Procedure (version of 14 November 2014)¹⁰⁴, the draft in general conforms to European standards, including the European Convention on Human Rights, Council of Europe Recommendation CM/Rec 2007(7) on good administration and the Charter of Fundamental Rights of the European Union, Article 41: the right to good administration. It is an important piece of legislation capable of greatly helping to establish, promote and improve the implementation of the Rule of Law principle and transparency in public administration.

At the same time it is important:

- 1) for the administration because it provides the rules for issuing acts and decisions that comply with legal procedures and are not at risk of being annulled by a court; the duties and rights of parties involved are laid down; and the procedural requirements contribute to avoiding arbitrariness and favour the proper use of power;
- 2) for citizens and businesses who have a point of reference in case they contest the legality of an administrative act; procedural rights can thus be defended, knowing that procedures often have an impact on substance;
- 3) for courts who will have to pronounce themselves on the legality of an act or decision, based on specific legal requirements; these provide tools for judges and courts in order to deal with problems arising between the state and the citizens.

A further important aspect of the draft, which is particular for Ukraine, is that the Law on Administrative Procedure provides at the same time guidelines for the internal administrative operation, in order to rationalise and standardise it, and ensure its compliance with legal rules and principles.

It is crucial that the draft Law on Administrative Procedure advances into the parliamentary stage for further reasoning and adoption. While its preparation has lasted for many years now, the administration continues to operate without specific procedural requirements and principles. This creates a status quo that will be hard to reverse. The sooner the law is put into effect the better it will be for all stakeholders involved.

In December 2014 the Ministry of Justice published for public consultations draft Law on Administrative Procedure with deadline for submission of comments and proposals by 11 January 2015. As of mid February 2015 the draft law was still pending in the government.

By drafting a Law on Administrative Procedures which in general integrates European standards on good governance and administration, although not yet adopting it, Ukraine is partially compliant with the above sub-recommendation of 3.3.

Once the new law is adopted it is will be important to prepare and carry out an implementation plan for the Law on Administrative Procedure by making practitioners and other stakeholders familiar with the new provisions and their rational. The implementation plan should include preparation of manual/commentary of the LAP, delivering practical trainings (including case studies) to civil servants, judges, court advisors and other critical target groups, screening the existing laws to harmonise them with the LAP, carrying out a comprehensive awareness raising programme to inform the citizens and general public of the LAP,

¹⁰⁴ OECD/SIGMA (28 November 2014), *Draft Law of Ukraine on Administrative Procedure. Final Report.*

developing internal control and supervisory mechanisms within administrative bodies to ensure compliance with the LAP.

Take further steps in ensuring transparency and discretion in public administration, for example, by encouraging participation of the public and implementing screening of legislation also in the course of drafting legislation in the parliament.

Issues of **public participation** in decision-making are covered in Pillar I.

As regards **anti-corruption screening of draft laws** in the parliament, such screening (in addition to the one carried out by the Ministry of Justice as regards the draft laws and other legal acts considered by the Government) was introduced by amendments in the Law on Principles of Corruption Prevention and Counteraction adopted in May 2013 by the Law no. 224-VII. It concerns draft legal acts submitted in the parliament by MPs; it is carried out by the secretariat of the Parliament's Committee on Anti-Corruption which, according to the Rules of Procedure, has to provide its opinion to the committee designated as the main one for the relevant draft law within 21 days.

It should be noted that this covers a large number of drafts registered with the parliament by MPs – just for the period from 10 June (when amendments entered into force) till beginning of January 2014 there were more than 2,000 draft acts submitted, all of them formally subject to anti-corruption evaluation. This raises the issue of capacity of the committee's secretariat to process such huge number of documents and provide a meaningful assessment. There are also no provisions in the parliament's Rules of Procedure for cases when the Anti-Corruption Committee finds corruption risks in a draft act.

NGOs confirmed that the screening conducted by the Anti-Corruption Committee is ineffective; it usually is very superficial and fails to provide a meaningful analysis of the draft laws and detect most of the corruption risks. This is explained by the lack of capacity in the secretariat to carry out such work and by the enormous number of documents subject to screening.

Along with the official anti-corruption screening the 2011 Law on Principles of Corruption Prevention and Counteraction also mentions that civil society organisations or individuals may carry out their own assessment. Such screening had been organised by the civil society expert council at the Parliament's Anti-Corruption Committee with donor support (International Renaissance Foundation and UNDP). A special methodology for unofficial screening was developed with support of the UNDP and it is different from the official one used by the Ministry of Justice. A group of experts conducts selective screening of draft laws and provides written opinions to the Anti-Corruption Committee while also publishing them on the Internet. Despite quite high quality of such evaluations, they are usually discarded by the Committee and rarely affect its decisions or, moreover, decisions of the Parliament.

Another related issue is adoption of the **Law on Normative Acts**, which have been pending in the parliament for long time but without result. In 2008 and 2009 such law was even adopted but then both times vetoed by the President for some its provisions were found to be unconstitutional. In its 2006 Evaluation report on Ukraine GRECO recommended adopting a clear set of rules governing the administrative process and decision making as well as clear guidelines with regard to the hierarchy of different legal norms and standards governing public administration. In the latest compliance report (of March 2014) GRECO noted that this recommendation was only partially implemented (due to adoption of the Law on Administrative Services).¹⁰⁵

¹⁰⁵ GRECO, Joint First and Second Rounds of Evaluation of Ukraine, Fourth Addendum to the Compliance Report, March 2014,

Step up efforts to improve transparency and discretion in risk areas, including tax and customs, and other sectors.

On government's business deregulation efforts see section 3.9. on integrity in private sector, on access to information - section 3.6. of this report.

The Government informed about measures taken within the Ministry of Revenues and Taxes to prevent and detect corruption offences in ministry's area of responsibility (which includes tax and customs). The division carrying out supervision over observance of the anti-corruption legislation in the Ministry is the Main department of internal security. Among the main tasks of the department reportedly are corruption prevention and counteraction, exposure of reasons and conditions leading to corruption. In January-August 2013 Department carried out about 2,200 official inspections and investigations, as a result 625 officers were brought to disciplinary responsibility and 86 people dismissed. The Department paid significant attention to complaints of natural and legal persons about possible misconduct by employees of the Ministry of Revenues and Taxes. In the said period in 2013, 833 complaints were processed with 270 of them fully or partially confirmed. In order to prevent corruption about 8,000 lectures, presentations and individual interviews were held with employees of the Ministry on compliance with requirements of the anti-corruption legislation; about 1,700 articles were published in the mass media and 1,600 materials on anti-corruption topic were placed on TV and radio. The Ministry introduced an interactive service called "Pulse" which aims to provide immediate response to complaints from taxpayers and foreign economic entities who can report through this system allegations of abuse of office by the Ministry's employees. Through this channel in January-August 2013 the Department received 146 signals about possible unlawful acts by the ministry's staff; as a result of inspections 19 signals were fully or partly confirmed, 3 persons were brought to disciplinary responsibility, 1 person was dismissed, 12 official warnings were made and 1 criminal proceeding started. During first eight months of 2013 based on the Department's materials 23 protocols on administrative corruption offences were drawn up and sent to the court, which resulted in 19 court decisions on bringing to administrative liability, 12 people were fired.

It is worth noting also that in October 2013 it was announced that the Ministry of Revenues and Taxes registered with the Ministry of Justice its internal regulations on the use of polygraph for internal investigations, including in cases of possible corruption, and during recruitment of staff. Reportedly polygraphs have already been used for some time in the Ministry of Internal Affairs and Security Service. It appears that results of such check-up can be used only internally and may not serve as evidence for bringing to liability. The goal therefore is to serve mainly as a preventive mechanism.¹⁰⁶

In July 2014 the State Fiscal Service issued rules establishing a council on staffing issues in the Service, which provides for civil society and business representatives participation in the recruitment to managerial posts in territorial units of the Fiscal Service.

The new Corruption Prevention Law, adopted in October 2014 and to be enacted in April 2015, introduced mandatory development by all public agencies of internal anti-corruption programmes, which will be based on corruption risk analysis in the activity of the agency. Such anti-corruption programmes will have to be endorsed by the National Agency for Corruption Prevention, which will thereby conduct quality checks of the programmes. The National Agency for Corruption Prevention will also have to adopt a methodology for corruption risks assessment. In its 2014-2015 Action Plan for Implementation in Ukraine of the Open Government Partnership, the Government also committed to develop by March 2015 guidelines on

[www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2009\)1_FourthAdd_Ukraine_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2009)1_FourthAdd_Ukraine_EN.pdf).

¹⁰⁶ See report in the media (in Russian): www.kommersant.ua/doc/2330840.

detection of corruption risks in activity of the Ministry of Justice bodies, which could be then rolled over to other institutions with high corruption risks.

In the same 2014-2015 Action Plan for Implementation in Ukraine of the Open Government Partnership, the Government also instructed ministries to develop model regulations on the monitoring committees for infrastructure projects, which would include supervisory boards to oversee implementation of national or regional infrastructure projects.

Overall the above new developments are very welcome signs that corruption will be addressed in specific high risk sectors and that the anti-corruption measures will be tailored taking into account peculiarities of different sectors and will be based on risk assessment. The Government is encouraged to start developing relevant regulations even before the new National Agency for Corruption Prevention is set up and functioning.

Monitoring of infrastructure projects is another new initiative which should be welcomed and actively pursued. If properly implemented it could become a robust mechanism for public oversight over large public funds expenditures and could use integrity pacts model promoted by Transparency International and other anti-corruption NGOs.¹⁰⁷ However, it is too early to assess how effective this initiative would be as it is only at the drafting stage.

Ukraine is partially compliant with Recommendation 3.3. that remains valid.

¹⁰⁷ See, e.g.: www.transparency.org/whatwedo/tools/integrity_pacts.

3.4. Public financial control and audit

Second Round Recommendation 3.4.

- *Clarify the main directions of reforms in the area of public financial control, in order to effectively delineate key functions such as external and internal audit and financial inspections. As a long-term goal, develop the external and internal audit functions to signal corruption and fraud cases to the KRU or to law-enforcement bodies.*
- *As a short-term goal, improve the effectiveness of KRU by focusing on financial inspections as its one and only task. Ensure that the inspection service focuses on investigating important cases; develop an intelligence function/unit, which maps the areas of high risk of corruption as a basis of the planning of inspections. Improve KRU's relations with law enforcement bodies, by collecting information about what happened with the material they have provided to the bodies; by using this information to analyse why the KRU's material is not taken into account by the law enforcement bodies; by starting a dialogue with the bodies how to improve the KRU material; and by drafting new guidelines for their inspectors based on the wishes of the law enforcement bodies. Develop the capacity and task of KRU to analyse their findings in terms of where and how preventive measures should be developed: i.e. ensure that KRU reporting should include recommendations for the managers of public institutions to take measures to improve the systems to prevent the type of violations of laws and regulations which were detected.*

Clarify the main directions of reforms in the area of public financial control, in order to effectively delineate key functions such as external and internal audit and financial inspections. As a long-term goal, develop the external and internal audit functions to signal corruption and fraud cases to the KRU or to law-enforcement bodies.

Financial Management and Control

According to the Government, during past three years the following legislative base was formed to develop financial management and control system:

- Articles 20, 21, 22, 26, 28, 46, 48, 49, 56, 58, 60, 111, 113 of the Budget Code of Ukraine establish the basic principles of organisation and implementation of financial management and control (FMC), accountability and responsibility of heads of state-funded institutions, internal audit. For implementation of its provisions the Government and the Ministry of Finance adopted more than 70 bylaws;
- In the framework of the budget reform the Budget Code of Ukraine and a number of subordinate acts were developed to strengthen requirements to the financial management and responsibility (accountability) of the agency's head in charge of implementation of functions of the principal administrator of budget funds;
- The Head's responsibility (accountability) for management and development is also enhanced with the provisions of the Law "On the Rules of Procedure of the Verkhovna Rada of Ukraine" providing for a hearing at the plenary meetings of the Verkhovna Rada of Ukraine of the principal administrators of budget funds with regards to goals, tasks and expected results of the corresponding budget programs in the draft Law on the State Budget of Ukraine for the following

year, and the review of the annual report on implementation of the Law on the State Budget of Ukraine - results of implementation of the budgetary programs for the reporting period;

- To assist in organisation and implementation of internal control in the state-funded entities the Ministry of Finance (by order no. 995 of 14 September 2012) approved Methodological recommendations for organization of internal control by administrators of budget funds in their institutions and in the subordinate state-funded entities based on the Guidance on Internal Control Standards for the Public Sector, developed by the Internal Control Committee of the International Organization of Supreme Audit Institutions (INTOSAI GOV 9100)

The reform activities in the FMC field concentrated on developing a basis for a sound budget preparation, budget execution and budget reporting system. The Budget Code indeed provides directions on how Government units are supposed to organise its annual budget with corresponding responsibilities for managers of spending units. The regular financial control on spending in line with the budget is, as in many other countries, in the hands of the Treasury. Overspending is not permitted and prosecuted. The Minister of Finance has issued recommendations on how to organise internal control. Further, there are 70(!) other acts, which provide additional clauses about financial management and control. All in all, the legal framework looks reasonable but also a bit fragmented. Although information about the implementation of the legal framework is missing, it seems desirable to harmonise all legal provisions. The Budget Code is a leading act but secondary legislation could be harmonised and screened on possible anti-corruption measures. Recommending budget administrators to introduce risk management is not sufficient (as it is now in the methodological guidelines of the Ministry of Finance), it should be prescribed as mandatory.

Internal Audit

Internal audit units are established in accordance with the Procedure for establishment of structural units of internal audit and implementing such an audit in ministries, other central executive bodies and their territorial bodies and state-funded entities under administration of the ministries, other central executive bodies, approved by the Cabinet of Ministers (resolution no. 1001 of 28 September 2011), and the Concept of Development of State Internal Financial Control for the period up to 2017, approved by the Cabinet of Ministers of Ukraine on 24 May 2005.

Internal audit reform included the following:

- The new edition of the Budget Code of Ukraine of 8 July 2010 (effective as of 1 January 2011). Its Article 26 defines the concept of internal audit, envisages mandatory organization and implementation of internal audit by administrators of budget funds, and establishes the head's personal responsibility for organization and functioning of internal audit.
- Procedure for establishment of structural units of internal audit and carrying out such an audit in executive bodies and state-funded entities was approved by the Cabinet of Ministers (mentioned above) and determined mechanism for setting up internal audit units and the procedure for conducting internal audit in the executive authorities and state-funded entities. This document also defines the status of internal audit units, criteria for its staffing, qualification requirements to the head and specialists of such units, powers of the head of the body and specialists of the internal audit unit and other key aspects of the internal audit function.
- Standards of Internal Audit were approved by the Ministry of Finance on 4 October 2011 and determine common approach to organising and conducting internal audit, preparing audit reports, conclusions and recommendations in the ministries and other central executive bodies and their territorial bodies and state-funded entities. The Internal Audit Standards: clarified the terminology in this area; specified aspects and forms of internal audit (performance audit, financial audit, compliance audit); determined approaches to execution of audit assignments, the main steps of its

organization, implementation, documenting and reporting on the results; unified requirements to major internal guidance documents on internal audit issues; clearly delineated duties and responsibilities of both internal and external stakeholders; laid down the basics for on-going improvement of internal audit;

- Code of Ethics of the Internal Audit Unit's Employees was approved by the Ministry of Finance of Ukraine on 29 September 2011 and determined a system of moral and professional values and rules of conduct of employees of the internal audit units or officials in charge of implementation of internal audit.

In accordance with requirements of the Cabinet of Ministers Resolution no. 1001 of 28 September 2011, as of 1 January 2012 the internal audit function was introduced in all ministries, other central executive bodies; and as of 1 January 2013 - in the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, the Kyiv and Sevastopol City Councils. To carry out internal audit in the central executive body an independent division - a structural unit of internal audit is set up. Similarly, by decision of the head of the central executive body internal audit units are formed in territorial bodies and state-funded entities. If it is impossible to set up a special unit for internal audit, an official, who is authorized to conduct internal audit, is appointed.

Internal audit is carried out in accordance with the auditing plans which are formulated by the unit and approved by the head of the authority in consultation with the relevant bodies of the State Financial Inspection. Internal audit is conducted in accordance with the Standards approved by the Ministry of Finance.

Guidance material on internal audit has been developed. IA units have been set up and staffed. Although IA is still in its early days in Ukraine, implementation is on its way.

The internal audit units are independent and report to the minister, with whom the heads of the Internal Audit Units have regular contact (although possibility of direct contact with the minister varies from ministry to ministry). IA units operate according to a risk-based approach.

The capacity of internal units has decreased by around 50% as a result of the general downsizing of the civil service.

In 2012 internal audit mainly focused on compliance audit, but more and more the internal audit units are carrying out performance audits. For example, in 2012 only 1% of the audits were performance audits, but in 2013 they already amounted to 10 % and in 2014 - 14% of all audits.

Internal audit units have not reported yet on specific cases of suspicions of corruption.

Financial inspections

As to the State Financial Inspection its powers are defined by a separate law - the Law on the Main Principles of the State Financial Control (the title of the Law as amended by the Law no. 5463-VI of 16 October 2012) and the Regulations on the State Financial Inspection of Ukraine approved by the Decree of the President of Ukraine no. 499 of 23 April 2011.

On 16 October 2012 the parliament passed amendments in the Law on the Main Principles of the State Financial Control by the law no. 5463-VI "On Amending Certain Legislative Acts of Ukraine Concerning Activity of the Ministry of Finance of Ukraine, Ministry of Economic Development and Trade of Ukraine, Other Central Executive Bodies whose Activities Are Directed and Coordinated by Appropriate Ministers".

In particular, among functions of the state control authority a function of control over implementation of internal control and internal audit within administrators of budget funds was stressed; significant changes were introduced regarding the powers of bodies of the State Financial Inspection of Ukraine. On 3 July 2013 the Cabinet of Ministers by its resolution no. 513 (in force since August 2013) introduced a number of amendments in the Procedure for carrying out inspections by the State Financial Inspection of Ukraine, its territorial bodies (initially approved in April 2006). The amendments were mainly related to changes due to the territorial reform.

The State Financial Inspection has introduced a risk-based approach and improved the relation with the prosecutor's office. The institution focuses more on inspections than on audit. In 2012 the ratio of audit / financial inspections was 50-50%, but in 2014 it was 10-90%. Results of inspections are published in quarterly reports of which 90% are published on the agency's website. In specific cases the agency holds press conferences to announce results of inspections.

The State Financial Inspection has no mandate to control revenues (tax, excise and customs). The Tax office is in charge of inspecting the revenues. Within the State Fiscal Service a specific security department is in charge of inspecting corruption cases in the Tax office. The department in the Ministry of the Interior is also involved in investigating corruption cases in the Tax office.

The Government also reported about the following measures in the area of improving the public financial control system in Ukraine:

- To provide methodological support for internal control and internal audit, a training course on methodology for internal control and implementation of internal audit, on conduct of internal and external quality assessments, implementation of performance audit was organized.
- A number of training activities (seminars, classes, workshops) were held for managers and employees, internal auditors in the public sector; pilot projects on internal control and internal audit were implemented. Training programmes for internal auditors in the public sector has been developed. Training for more than 165 internal auditors of ministries, other central executive bodies was provided to improve knowledge and skills in the field of internal control and internal audit.

On 1 August 2013 the Government adopted Strategy for Development of Public Finance Management System. According to the Strategy, development of state internal financial control shall be further carried out in two phases: phase 1 - medium-term (2013 - 2014), phase 2 – long-term (2015 to 2017).

Phase 1 envisages implementation, in particular, of the following measures:

1) support and development of the internal control operations, including financial control and responsibility (accountability) and internal audit. Within this framework it is planned to conduct trainings for managers and employees of internal audit units, state-funded entities on issues of organisation of internal control, including financial management and responsibility (accountability), explanatory and advisory support to internal audit and internal control;

2) to support internal control and internal audit activities it was planned to develop a template for reporting on results of internal audit unit's activity; determine procedure for assessment of quality of internal control and internal audit; improve the Methodological recommendations on organisation of internal control by administrators of state funds at their institutions and in the subordinate state-funded entities.

Phase 2 envisages implementation, in particular, of the following measures:

1) further support and develop internal control implementation including financial management and responsibility (accountability) and internal audit through workshops, trainings, consultations, conferences, briefings, round tables, pilot projects related to internal control, including financial management and responsibility (accountability) and internal audit;

2) develop proposals concerning organisational and structural changes in the State Financial Inspection and the Ministry of Finance by implementation of analysis of the status of development and functional ability of the internal audit units, preparation of proposals for further implementation by the State Financial Inspection of centralized internal audit (public financial audit) with regard to the capacity of internal audit in state-funded entities and development of the independent external audit body (the Accounting Chamber), preparation of proposals on refocusing of the State Financial Inspection's activities to carry out solely inspection, preparation of proposals regarding functioning of the Harmonization Unit for Internal Control and Internal Audit within the Ministry of Finance.

Conclusion. In general the reform of the Public Financial Control has concentrated on defining and improving the legal framework for the FMC, Internal Audit and Financial Inspection. The legal framework for Financial Management and Control is, however, not fully in line with international standards. The implementation of internal audit in the public sector has started only recently. The existence of a reform agenda is promising, although it again focuses more on reforming the design of the function and not on implementation of the existing legal framework.

The areas of FMC and IA did not pay specific attention to prevention of corrupt behaviour. No statistics are available on this. This implies that in the area of public financial control the ex-post activities of the financial inspection function are still the most important for combating corruption.

External Audit

External audit is carried out by the Accounting Chamber. Its status and powers are set out in the Constitution of Ukraine and the Law of Ukraine "On the Accounting Chamber".

In 2013 the Parliament passed an amendment to Article 98 of the Constitution of Ukraine that authorises the Accounting Chamber to control the revenues to the state budget of Ukraine (in addition to expenditures). This decision of the Ukrainian Parliament laid the constitutional foundations for considerably wider parliamentary control both over accumulation and the use of public funds. This guarantees transparency of the Ukrainian budget process in line with the international standards followed in many countries worldwide. The same amendment also envisages that the organization, powers and procedures of the Accounting Chamber will be established by law.

It should be noted, however, that the Accounting Chamber's scope of authority is still limited to the national budget. In its Joint First and Second Round Evaluation Report on Ukraine, adopted in 2007, GRECO recommended that the external independent audit of local authorities be extended to cover all their activities and that such an audit is built on the same principles of independence, transparency and control which apply to the Accounting Chamber.¹⁰⁸ It is therefore regrettable that the process of constitutional amendments did not result in extension of the Accounting Chamber's powers to auditing of local budgets.

¹⁰⁸ See also GRECO Fourth Addendum to Compliance report with evaluation of this recommendation, March 2014, pages 8-9, [www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2009\)1_FourthAdd_Ukraine_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2009)1_FourthAdd_Ukraine_EN.pdf).

In view of the urgent need to strengthen the independence of the Accounting Chamber as the highest financial control authority of Ukraine, the Accounting Chamber developed a new draft of the Law of Ukraine on the Accounting Chamber, with account of the internationally recognized standards for external audit of public finance and of the EU best practices. This law will stipulate the functional, organizational and financial independence of the Chamber.

Thus, independence of the Chairman and Members of the Chamber will be secured by a special procedure of appointment and early termination of tenure, prohibition of any interference with the exercise of their powers, performance safeguards and personal immunity necessary for fulfilment of duties.

Another element of independent operation of the Accounting Chamber is its independence in the choice of the systems and methods of control and in approval of the priorities and plans of its work. In other words, the Chamber is to exercise its powers independently of other public authorities, under the Constitution of Ukraine and laws of Ukraine.

The third element shielding the Accounting Chamber from outside influences is the would-be guarantee of its proper budgetary funding, in the amount that does not depend on executive discretion. The draft Law contains provisions on financial guarantees for the Accounting Chamber, which itself would determine the amount of funds for its support. The Chamber's budget request is to be included by the Ministry of Finance into the State Budget of Ukraine.

Special attention is given to provisions on the Accounting Chamber's control over the flow of funds from the State Budget of Ukraine and to management and use of state property in accordance with the standards of the International Organization of Supreme Audit Institutions (INTOSAI) and, in particular, principle 3 of Mexico Declaration on SAI Independence.

The draft Law was reviewed by international experts of Austria, Germany and the United Kingdom. These experts regarded the draft law in compliance with the internationally recognized standards of external auditing of public finances and EU good practices. The draft law was submitted to the parliament by President Poroshenko in February 2015 and adopted in the first reading on 5 March 2015.¹⁰⁹

The extension of the mandate in 2013 and the proposed strengthening of the Accounting Chamber's independence by law are excellent steps forward for creating conditions for auditing objectively and independently Government's operations.

The Accounting Chamber also investigates cases on request of the Prosecutor (15 requests in 2013).

It has developed its own Strategic Development Plan. Unfortunately, it is not known if anti-corruption activities are part of this plan. More generally, the impact of the Accounting Chamber's own activities is not known. Parliament approves the annual report of the Accounting Chamber without discussion, there are no statistics available about the effect of its recommendations on the Government operations, and the Accounting Chamber does not disclose audit reports on its website (while publishing only short conclusions which in style look like press-releases).

The conditions for objectively and independently auditing Government's operations and specifically its efforts to combat corruption will be present if the new wording of the Law on the Accounting Chamber is approved by the Verkhovna Rada. The Accounting Chamber should disclose more information on its own operations for the public and, in particular, publish in full results of its audits.

¹⁰⁹ Draft law no. 2072 of 9 February 2015, available at:
http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53946.

Conclusions. Conditions for paying more attention to preventing corruption are now present in the areas of internal and external audit but not yet in the area of Financial Management and Control. The Financial Inspection function has been developing in the direction of a financial investigation service, which could be a very useful tool for combating corruption. Although the external audit function investigates (ex-post) regularly suspicions of corruption on request of the law enforcement bodies, its main focus will have to be in future on auditing risks of corruptive behaviour in the public sector (prevention).

Ukraine is largely compliant with this part of the recommendation.

As a short-term goal, improve the effectiveness of KRU by ...

“Ensure that the inspection service focuses on investigating important cases”

To improve effectiveness of the control and inspection function and to limit fiscal pressure on business entities the State Financial Inspection of Ukraine has started introducing a risk-oriented approach to planning inspections, while shifting inspections from identifying minor violations of accounting nature to significant facts of misappropriation of funds and fraud.

The number of inspections has decreased (but still about 7,000-8,000 cases a year) and the number of reported shortcomings has increased, in other words the effectiveness of the inspection work has considerably improved.

“Develop an intelligence function/unit, which maps the areas of high risk of corruption as a basis of the planning of inspections”

Such kind of a unit has not been established yet.

“Improve KRU's relations with law enforcement bodies by ...”

The relation of the State Financial Inspection with the Prosecutors Office has improved. In the past the State Financial Inspection sent materials on detected irregularities to the Prosecutors Office, which were not investigated because those cases concerned mostly not really substantive issues. Since 2013 the State Financial Inspection has only been sending files which could result in criminal cases. In 2013 the agency sent about 2,000 cases to the Prosecutors Office. All of them were taken into account by the Prosecutor's office and 1,400 of them were prosecuted in 2013.

“Develop the capacity and task of KRU to analyse their findings in terms of where and how preventive measures should be developed”

The State Financial Inspection has not introduced this type of approach. It should be mentioned that the position and the task of the State Financial Inspection are under discussion. The institution works under pressure and focuses on its main task: carrying out ex-post inspections.

Conclusion. The State Financial Inspection has changed its focus during the few last years and concentrates on the most important cases after introducing a risk based approach. The relation with the Prosecutor's office is more effective than after the second round. A further development into a professional investigation service would be desirable.

Ukraine is largely compliant with the recommendation 3.4.

New recommendation 3.4.

- *Continue reforming the State Financial Inspection Service by improving the risk based approach, developing an intelligence function, training the staff in analysing expenditures for suspicions of fraud and corruption.*
- *Revise the Law on the Accounting Chamber to strengthen independence and effectiveness of the Chamber in line with international standards. Increase transparency of the Accounting Chamber's operations by ensuring publication on Internet and free public access to information on audit activities, including to all audit reports and results of investigations by the prosecutor's office on corruption cases detected by the Accounting Chamber*
- *Consider revising the legal framework on Financial Management and Control by bringing together the current legal provisions in more than 70 by-laws in one Financial Management and Control law and implement this law in phases.*
- *Adopt an internal audit law in order to strengthen the independent position of the internal audit units and consequently improve the quality of internal audit results.*

3.5. Public procurement

Second Round Recommendation 3.5.

- *Further develop the control and review system in the area of public procurement, develop internal and external audit and inspections to detect and prevent corruption in public procurement.*
- *Further develop conflict of interest provisions in the Public Procurement Law and in other relevant legislation. Establish a mechanism to prevent and detect conflict of interest in public procurement.*
- *Ensure that the debarment system is fully operational.*
- *Introduce requirements of anti-corruption statements and codes of ethics as a part of tender documents.*
- *Develop e-procurement.*
- *Raise the capacity of the Anti-monopoly Committee.*
- *Provide continuous training on integrity in public procurement, especially to the officials of purchasing organisations, private sector and law-enforcement.*
- *Assess the practice of application of the new law on public procurement, including the effect of the fee on the lodging of complaints.*
- *Review the practice of application of sanctions established by Article 164-14 of the Code of Administrative Violations for breaching provisions related to public procurement, and ensure that state officials are subject to this provision.*

Public procurement represents a large share of economic activity in Ukraine. In 2013, the aggregate value of government procurements amounted to UAH 185.5 billion for 76,478 contracts, representing approximately 13% of the country's GDP, while during the first nine months of 2014 the value of public procurement was UAH 92.9 billion for 54,740 contracts.

Public procurement is one of the most corrupt-prone areas in Ukraine. Widespread corruption in the procurement has been acknowledged by civil society experts and public officials. For example, in September 2014 the Minister of Justice referred to data by the Security Service according to which about 75% of funds allocated for procurement had been embezzled through various avenues during past 4 years, i.e. about UAH 150 billion.¹¹⁰ The reported data seem to continue the troubling trend observed at President Yanukovich's time, when the official estimates of corruption in public procurement were very high – the Security Service reported about annual losses from corruption in this area of about UAH 35-52 billion (or about 10-15% of the state budget expenses).¹¹¹

¹¹⁰ Source: <http://economics.unian.net/finance/960764-yanukovich-i-ko-razvorovyivali-150-mlrd-griven-ejagodno-s-pomoschyu-goszakupok.html>.

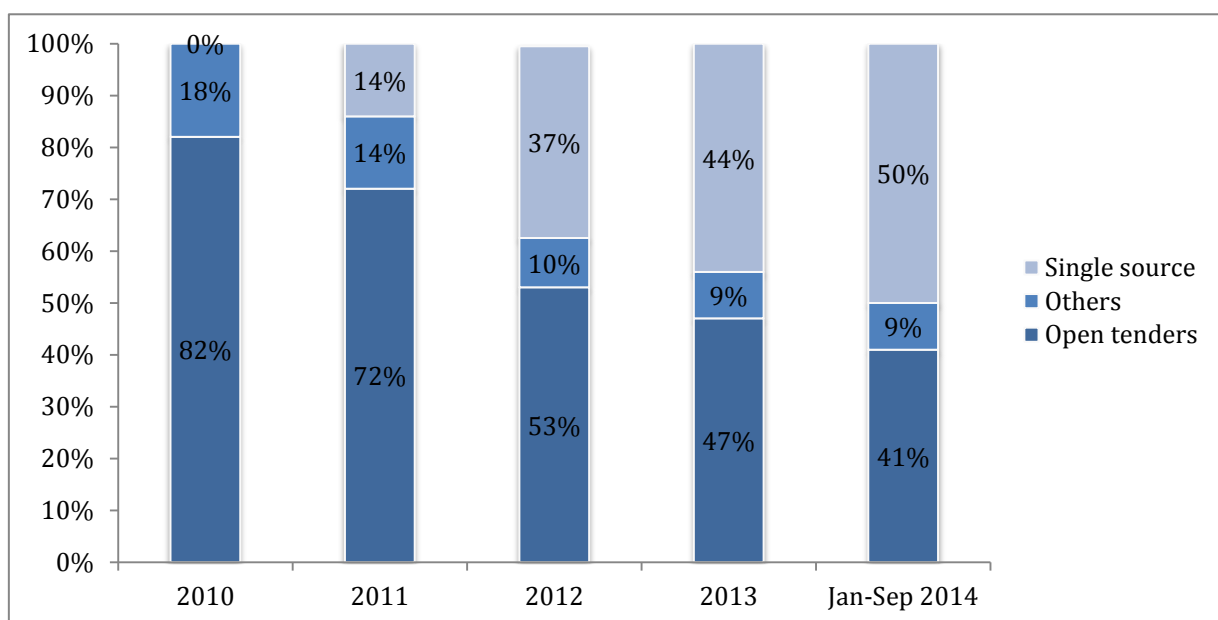
¹¹¹ Source: http://dt.ua/ECONOMICS/sbu-zaproponovala-vivesti-z-tini-zakupivli-derzhpidpriyemstv-124757_.html.

Anti-corruption NGOs and journalists (NashiGroshi.org, Anti-Corruption Action Centre NGO and others) reported on a large number of procurement cases where collusion, procurement at inflated prices or contract awards to affiliated persons were alleged. It appears though that most of allegations reported by NGOs were left unnoticed by the law enforcement and control institutions.

The 2010 Public Procurement Law was amended more than 30 times in 2010-2013, that resulted in “distortion of the competition, undermined effectiveness of the use of public funds and transparency of public procurement. The Law fostered increase in corruption and numerous losses of budget funds”.¹¹² The number of exemptions from the PPL increased from five in 2010 to 37 at the end of 2013. The list of procurement regulated by special rules was 10-point long in 2010, but included 28 exceptions in 2013.¹¹³

The number of competitive procurement procedures has been falling since 2010 and this very negative trend continued in 2014 (see the chart below).

Figure 2. Volume of different procurement methods used in 2010-2014



Source: Calculations based on the State Statistics Committee data (www.ukrstat.gov.ua/operativ/operativ2014/fin/zakup/zakup_u/zak314_u.htm)

Important development, which appears to have resulted in substantially increased corruption in the public procurement, was an amendment of the Public Procurement Law in 2012. This amendment excluded the mandatory application of competitive procurement procedures for public companies, when contracts were financed from companies’ own money. That exempted such procurement from the disclosure requirements.

In view of the pandemic corruption a procurement reform was initiated as one of the first major anti-corruption measures after the Maidan Revolution in Ukraine in the winter of 2013-2014. The new Law on Public Procurement (No. 1197–VII), which came into force on 20 April 2014, was developed by the Government jointly with the civil society and was designed to streamline the government procurement in Ukraine and address corruption risks. The new Law was developed under the framework of the Ukraine-

¹¹² National Institute of Strategic Studies, www.niss.gov.ua/articles/1486.

¹¹³ Idem.

EU Association Agreement and largely modelled on the basis of the EU Procurement Directives of 2004. The Law on Peculiarities of Public Procurement in Certain Spheres of Entrepreneurial Activities of 2010 was also amended to align it with the EU model and the new Public Procurement Law.

In this context it shall be noted that in 2014 EU adopted new Procurement Directives for public sector and utility sector procurement.

A significant breakthrough was achieved by adopting on 14 October 2014 a set of laws significantly amending anti-corruption legislation. The most noteworthy in respect of public procurement is the Law on Prevention of Corruption.

Further develop the control and review system in the area of public procurement, develop internal and external audit and inspections to detect and prevent corruption in public procurement

The new Public Procurement Law provides a more comprehensive background for control and review system in public procurement, as it put a substantial emphasis on disclosure of information and transparency, as well as on introduction of elements of e-procurement.

Government informed that since October 2011 the Ministry of Economic Development has been carrying out monitoring of the public procurement in accordance with procedure approved by the Ministry of Economic Development (Order No. 155 of 19 October 2011). According to the said procedure, the Ministry of Economic Development checks: justification of the procurement procedures used by procuring organization; compliance of procurement documents and the procedures with requirements of the laws; justification for exemptions for public procurement legislation; implementation of procurement and respective procurement agreement; the efficiency of procurement. Findings of the procurement monitoring are published on the web site of the Ministry of Economic Development (me.gov.ua).

In addition to the above the Cabinet of Ministers also approved Procedure for Inspections of Public Procurement by the State Financial Inspection and Its Territorial Bodies (Resolution No. 631 of 1 August 2013).

The 2014 Law on Prevention of Corruption (to be enacted on 26 April 2015) introduced mandatory anti-corruption programmes for the participants in the public procurement. It also provides for introduction of compliance (anti-corruption) officers in all organisations participating in the public procurement, which increases internal control. The Public Procurement Law was also amended to ban from the procurement entities that fail to implement these requirements. These are welcome developments.

The above mentioned changes in the legislation represent a substantial progress in mitigating corruption risks in public procurement through intensely enhanced control and oversight in the process on all sides. Synchronisation of the Public Procurement Law with the Law on Prevention of Corruption is required to achieve the benefits of the proposed novelties.

At the same time there are reportedly several draft proposals to the Parliament, which propose amendments to new provisions. One of them is to limit the requirement regarding introduction of mandatory anti-corruption programmes and establishing the compliance officers only to entities that participate in the procurement above certain value (UAH 1 million - for procurement of goods and services or UAH 5 million - for procurement of works). This appears to be a reasonable qualification, which would reduce the burden for small and medium enterprises, participating in low value public procurement.¹¹⁴

¹¹⁴ Relevant law was adopted on 12 February 2015.

Another proposal, submitted by the Government (draft law no. 1551), which suggests removing this requirement from the Public Procurement Law altogether, does not seem to be justified. While such restrictions are not required by the EU *acquis*, they are very welcome from the anti-corruption perspective, as functioning compliance system is an important tool in corruption prevention, in particular when it concerns such high-risk area as public procurement. Restriction on participation in the public procurement is an effective incentive to promote introduction of compliance systems in the private sector. It is perplexing that the provision, which the Government suggests to remove, was originally included in the Law on the Government's proposal.

In order to further increase impartial oversight for the public spending and procurement activities the government shall expand involvement of civil society in the process, as provided for in the Public Procurement Law, and expand information disclosure for all stages of the procurement cycle through development of e-procurement and more broadly e-governance initiatives.

It was reported that in July 2014, as a step to improve doing business environment in Ukraine, the Law on State Budget was amended to introduce a temporary ban on any inspections of business activities (except for State Fiscal Service), unless there is a Government decision allowing specific inspection.¹¹⁵ This resulted in the prohibition for the State Financial Inspection to carry out inspections of public procurement, which dramatically undermined the Government internal financial control in this area and substantially increased the risk of corruption. The supervision of public procurement shall be reinstalled, while the form of inspections may probably need to be adjusted to provide for minimal disruption to business activities.

Another concern was a radical reduction of budgetary expenses for control institutions, including the State Financial Inspection, in the second half of 2014. Most of respective staff had to take unpaid leaves. This obviously affected control by the Government agency in the area of public procurement.

For more information on evaluation of the system of financial control in Ukraine see Chapter 3.4. of this report.

This part of the recommendation has been partially implemented.

Further develop conflict of interest provisions in the Public Procurement Law and in other relevant legislation. Establish a mechanism to prevent and detect conflict of interest in public procurement.

The IAP Second round monitoring report was critical of the Public Procurement Law in force at the time, for it did not establish an effective mechanism for prevention and detection of the conflict of interests. Tender documentation did not require conflict of interest declarations, and potential conflicts could only be made known by looking at the names of beneficiary owners. Members of tender committees were not obliged to declare their conflicts of interests either.¹¹⁶

The new Public Procurement Law introduced much more detailed provisions aimed at preventing a conflict of interest between a procuring entity and the procurement procedure participants. Article 17 of the PPL requires the procuring entity to deny participation and reject a bid proposal filed by a bidder who is a related party to another bidder or to member of the tender committee. Definition of the related party is sufficiently broad to cover most cases of possible conflicts of interests.

¹¹⁵ See Article 31 of the 2014 State Budget Law and relevant Government resolution No. 408 of 13 August 2014 (available at: <http://zakon1.rada.gov.ua/laws/show/408-2014-%D0%BF>).

¹¹⁶ IAP Second Monitoring Round report on Ukraine, p. 60, www.oecd.org.

In addition, members of the Antimonopoly Committee's administrative panel (a review body for public procurement) are not allowed to take part in the consideration of complaints if they are "related" to the complainant or the procuring entity.

Public procurement is also covered by the general conflict of interest provisions in the Law on Principles for Preventing and Counteracting Corruption and in the new 2014 Law on Prevention of Corruption (see in Chapter 3.2. above).

The Law on Prevention of Corruption provides much broader and more comprehensive coverage to prevent conflict of interest, *inter alia*, in public procurement. The Law defines two types of conflict of interests – real and potential and determines specific measures which should be taken to address conflict of interests. In particular, Article 35 of the Law on Prevention of Corruption addresses, *inter alia*, conflict of interests with regard to members of a collective body (for example, tender commissions) and prevents such persons from taking part in the process.

At the same time none of the above mentioned laws seems to identify a conflict of interest, which may occur in the procurement process due to affiliation (related) persons, who were involved in the early phases of the procurement cycle, such as feasibility or design stages. There is no formal requirement to present a conflict of interest and/or affiliation declaration/statement, as a part of tender submissions.

This part of the recommendation has been largely implemented.

Ensure that the debarment system is fully operational

The new Public Procurement Law denies participation in the procurement to bidders who were held liable by the Anti-Monopoly Committee for bid rigging in the past three years, whose representatives were sanctioned for corruption offences or convicted of an economic crime (even if unrelated to procurement).

The 2014 Law on Corruption Prevention introduced additional ground for disbarment from public procurement – when the bidder (a legal person) has been sanctioned with criminal law measures for commission of corruption criminal offence (i.e. corporate liability measure introduced in Ukraine in April 2014). Legal entities which were sanctioned for corruption offences will be entered in the relevant State register (currently administered by the Ministry of Justice, but after enactment of the new Corruption Prevention Law will be administered by the National Agency for Corruption Prevention).

Although the results of introduction of the above debarment system are yet to be seen, these are welcome provisions that should be fully enacted.

This part of the recommendation was partially implemented.

Introduce requirements of anti-corruption statements and codes of ethics as a part of tender documents

No such requirements have been introduced. This part of the recommendation was not implemented.

Develop e-procurement

The Public Procurement Law provides for an option to carry out procurement procedures in electronic format, paving the way for introduction of e-procurement in the near future.

Some procurement related information is published on the Ministry of Economic Development web site and an official national web portal on public procurement (Public Procurements web portal -

<https://tender.me.gov.ua>). This web portal is the only official state information source on the Internet placing announcements and results of procurement, using public funds. To get access to the tender announcements a free registered access is provided.

In late 2014 the government embarked on a trial project to test a basic e-procurement platform for low value/risk contracts with a number of volunteered public organisations. The results of this trial project are expected to lead to broad scale introduction of e-procurement for entire public sector in future. In this respect it is important to note that e-procurement shall not be limited to e-reverse auctions, as it happens in some other countries in the region and shall aim to cover all procedures provided for in the Law.

It was reported that in December 2014 the Government proposed a draft law (No. 1551) suggesting a number of amendments in the Public Procurement Law, in particular concerning e-procurement. According to the draft, the Government will define the procuring entities that will be obliged to hold open tenders using electronic means, when procuring certain goods and services (also to be defined by the Government). It is proposed that such e-tenders will be held using electronic reverse auctions (therefore, they can not be formally classified as open tenders per se). Although introduction of mandatory e-procurement procedure may be a positive development, these proposals have been criticised by the civil society, as it appears that too many aspects of e-procurement would be subject to the strict Government regulation, which is perceived to be often prone to corruption and ineffectiveness.¹¹⁷

The draft law also proposes deleting a free access to the public procurement web-portal and introduces a charge from procuring entities for publication of information on it. This would be a serious step back in the procurement reforms that will limit public access to the procurement information and undermine transparency of the entire procurement process as well as a possibility for public scrutiny.

This part of the recommendation has been partially implemented.

Raise the capacity of the Antimonopoly Committee

The Public Procurement Law adopted in June 2010 assigned the function of the appeal authority in the area of public procurement to the Antimonopoly Committee of Ukraine. This arrangement was preserved in the 2014 Public Procurement Law. As stated in the law, in order to provide an impartial and effective protection of the rights and legitimate interests of persons taking part in public procurement the Antimonopoly Committee established a permanent administrative panel for reviewing complaints of the law violations. The panel consists of three commissioners. Decisions of the panel are published on the public procurement and on the Committee web sites. The functioning of the panel is regulated by the Law on the Antimonopoly Committee of Ukraine and the respective Rules of Procedure of the Committee. The panel is supported by 23 staff members.

Within last four years the board considered about 6,000 complaints. Only 200 of them were challenged in court. Correctness and objectivity of the decisions by the board appear to be supported by the increasing number of appeals as well as by a relatively low number of the court cases overruling the board decisions (only 4% since its establishment).

The effectiveness of work by the Committee increased in the recent years as it managed to raise the ratio of the reviewed vs. received appeals from 40 per cent - in 2010 to 68 per cent - in 2013 (see table below).

This part of the recommendation has been fully implemented.

¹¹⁷ See, e.g.: www.epravda.com.ua/columns/2015/01/14/521477/.

Provide continuous training on integrity in public procurement, especially to the officials of purchasing organisations, private sector and law-enforcement.

According to the Government, in 2011-2013 the Ministry of Economic Development jointly with international organizations (World Bank, EBRD, EU and USAID/LINK) held seven workshops, three round tables, three open meetings and three international conferences on issues of adherence to of the public procurement legislation, further improvement of the entire public procurement system in Ukraine, etc. They were attended by representatives of central and local authorities, international experts, representatives of the Antimonopoly Committee, the Accounting Chamber, the State Treasury, the State Financial Inspection, law-enforcement agencies, NGOs. Overall about 500 people attended these events.

At the same time it appears that no dedicated training was provided in respect of integrity issues in public procurement.

This part of the recommendation has not been implemented.

Assess the practice of application of the new law on public procurement, including the effect of the fee on the lodging of complaints.

The Ministry of Economic Development carries out regular analysis of the public procurement, the results of which are reported to the Cabinet of Ministers and the Accounting Chamber. They are also published on the web site of the Ministry.

The reports published for the previous years, while the previous Laws on public procurement were in force, suggest a large proportion of the public contracts awarded on non-competitive basis (37 per cent - in 2012 and 44 per cent - in 2013). Annual information for 2014 was not available at the time of report.

The results of application of the new Public Procurement Law are yet to be seen. Meanwhile, NGOs raised a concern that utilities/natural monopolies seem to be abusing the laws by unjustifiably using direct contracting wherever possible and not disclosing information on procurement, as required.

It also was reported that actual disbursement of state funds under the signed contracts was at historically lowest level – 23 per cent, which may suggest inter alia a low financial discipline and/or indicate a risk of bribe solicitation in exchange for payments for the works done.

As the fees for lodging a complaint are concerned, as of the end of 2014, the fee level set by the Cabinet of Ministers in 2010 (Resolution No. 773 of 28 July 2010) did not change, despite more than 100 per cent depreciation of Hryvnya during the period. It is UAH 5,000 (about EUR 250) for an appeal with regard to procurement of goods or services, and UAH 15,000 (about EUR 750) – for appeals in respect of works contracts. The introduction of fees was motivated by presence of fictitious appeals, which were used to abuse the procurement processes. The positive dynamic of the appeals from 330 in 2010 to 840 in 2013 suggests that the fees are not considered excessive or burdensome for businesses (see the Table below). The same observation is made by the World Bank in their review of Ukrainian Public Financial Management Performance undertaken in 2011.

Table 14. Statistics on procurement-related complaints and their review

	Jul-Dec 2010	2011	2012	2013	Jan-Aug 2014
Total number of complaints received	330	665	787	1,182	524
Number of meetings held by the Panel	80	273	296	308	171
Number of decisions made by Panel	324	1,086	1,440	2,074	879
Results of complaints' review:					
- Complaints rejected	74	159	171	342	133
- Upheld partially	43	149	68	70	36
- Upheld fully	14	85	270	397	165

Source: Government replies to the monitoring questionnaire.

This part of the recommendation has been partially implemented, as the application of the 2014 Public Procurement Law enforcement has not yet been reviewed.

The Government conducted satisfactory analysis of the fee amount on the lodging of complaints. Therefore, this part of the recommendation is deemed fully implemented.

Review the practice of application of sanctions established by Article 164-14 of the Code of Administrative Violations for breaching provisions related to public procurement, and ensure that state officials are subject to this provision.

The Government provided the following statistics in respect of the sanctions applied under Article 164-14 of the Code of Administrative Offences:

Table 15. Statistics on administrative sanctions for procurement-related offences

	2011	2012	2013	Jan-Aug 2014
Persons sanctioned on initiative of the State Financial Inspection	383	196	155	81
Persons sanctioned on initiative of the Ministry of Internal Affairs bodies	11	5	-	-

Source: Government replies to the monitoring questionnaire.

As can be seen, very limited information was made available in respect of the practice in question. The data provided suggest decreasing trend in number of people sanctioned on demand of the State Financial Inspection: 383 – in 2011 and 155 – in 2013. Similar trend is observed in respect of people sanctioned on demand of the Interior Ministry: 11 - in 2011 and none – in 2013.

No information was provided in respect of how many of the sanctioned persons were public officials.

At the same time the reported statistics of criminal violations in public procurement show that about 73 per cent (about 2,500 cases in 2013) are attributed to private sector (tenderers) and only 27 per cent (about 900 cases in 2013) – to public officials. Meanwhile, NGOs made an observation that coincidentally a significant number of current MPs used to be in the recent past chairmen of tender evaluation committees.

New issues

Dramatic changes to the legislative framework in public procurement and introduction of substantially new anti-corruption framework in Ukraine provide significantly altered settings for assessment of the situation as compared to the previous rounds of reviews.

During the on-site visit and based on additional research the following new issues were identified:

- The statistical data for 2012-2013 and changes introduced to the new Public Procurement Law after its adoption show that a share of public contracts awarded via non-competitive process is still at unacceptably high level and continues to rise. The law on Public Procurement provides too broad list of exemptions, albeit it was reduced as compared to the previous edition of the law.
- Simplification of procurement framework for utility/natural monopoly sector without reforming tariff setting system or otherwise providing incentives for use of competitive procedures, led to unaccounted procurements in that sector, which would inevitably be a feeding ground for corruption and may result in deterioration of public infrastructure, reduction of quality of public services and unjustified increase of tariffs for the population. Therefore, given the large volume of procurement by the exempted companies as well as the existing tariff setting policies, which seem to provide no intensive for a large number of natural monopolies to reduce cost of their capital expenditure programs, the laws shall be amended to oblige these companies to apply open tenders or other appropriate competitive procedures, which would increase economy, efficiency and transparency of their procurement and reduce the grounds and risks of corruption.
- An apparent lack of appropriate monitoring, data and statistical analysis of procurement activities in 2014, especially in utility/natural monopoly sector, represents substantial risk to public finance and procurement reforms. The situation does not support a notion of more public disclosure of procurement information.
- The current level of transparency in the public procurement should be expanded, e.g. by mandatory publication of all key procurement information (in open data formats). This should include publication of the procurement contracts and amendments to them (with possible limited exceptions under the Access to Public Information Law with regard to sensitive commercial data).¹¹⁸

The 2014 Public Procurement Law introduced mandatory publication of procurement information by publicly owned enterprises (companies with 50% or more state or municipal ownership) on the governmental procurement web-portal. This amendment was made in the Economic Code and was aimed to ensure minimal level of transparency in procurement by public companies, especially for those companies, which were excluded from the Public Procurement Law in 2012. It was a welcome reform that was intended to provide for a public control over all public procurement. However, according to NGOs, these provisions have not been enforced and very little information is, in fact, published on the web-portal. This situation should be urgently addressed.

- In order to resolve some of the above issues an all inclusive e-procurement system shall be established as one of the first priorities.

¹¹⁸ See Report on Publishing Government Contracts: Addressing Concerns and Easing Implementation, Centre for Global Development, 2014, available at: www.cgdev.org/publication/publishing-government-contracts-addressing-concerns-and-easing-implementation.

- A reported lack of financial discipline on local level seemingly instigated an exodus of private sector entities from procurement arena in public sector in the regions. This situation leads to monopolistic markets, which will inevitably increase a financial burden on the government and local finance as well as population.
- Introduction of 3 years (or similar medium term) planning in procurement shall be considered to provide for sustainable development of infrastructure. The annual planning limits appear to provide a fertile ground for favouritism, unfair commercial advantages or direct contracting on large construction projects. It also put unnecessary pressure on contracting entities. Introduction of medium term planning horizons with an opportunity to tender the contracts, implementation of which may take longer than one year, and arrange tender tenders at any time during a year without unnecessary pressure regarding the completion time.
- Introduction of standard balanced contracting arrangements modelled on internationally recognised contract terms and conditions should be considered. The current contracting practices, especially in construction sector, do not seem to provide for fair and balanced risk allocation and relationships between the parties, that forms the ground for corrupt practices during contract implementation, including payments, acceptance of works, variation orders.
- Use of subjective criteria in evaluation of tenders shall be reviewed. The law on Public Procurement provides for use of undefined qualitative criteria and arbitrarily set weighting factors/merit point system in evaluation. The use of such criteria, which very often support corrupt practices, shall be minimised and substituted with monetary factors, wherever possible.
- Use of fast track procurement under two stage procedures and procedures involving prequalification should be reconsidered. The nature of contracts, which can be subject to two-stage procedure, is usually complex. The law meanwhile provides for use of short time period for the most critical phase of the tendering process. This may lead to abuse and unfair competition. The same considerations apply to the tendering procedure following prequalification. Similar issue appears to exist in respect of the minimal time limits for introduction of changes to the tender documents in open tenders (seven days prior to tender opening). Such practice is often used to abuse fairness of tendering process and provide an inequitable accessibility to information for preferred tenderers, whilst limiting the others to present comprehensive and fully responsive tenders.
- As the introduction of Law on Prevention of Corruption is concerned, its application shall be reviewed to verify if its provisions do not prevent SMEs from participating in public procurement or appropriate amendments may need to be introduced.
- The state shall avoid over-regulation of the anti-bribery activities, while setting the standards. In this respect in order to facilitate introduction of anti-corruption policies and practices and assisting the new National Corruption Prevention Agency in its work, introduction of certification of companies vis-à-vis anti-bribery standard ISO 37001 or BS 10500 may be considered.

Ukraine is partially compliant with the previous recommendation 3.5.

New recommendation 3.5.

- *Continue reforming the public procurement system, based on regular assessment of application of the new Law on Public Procurement, in particular with a view to maximise the coverage of the Public Procurement Law, minimise application of non-competitive procedures. At the same time ensure that any changes to the Public Procurement Law are subject to public consultations.*
- *Establish e-procurement system covering all procurement procedures envisaged by the Public Procurement Law.*
- *Ensure that entities participating in the public procurement process are required to implement internal anti-corruption programmes. Introduce mandatory anti-corruption statements in tender submissions.*
- *Ensure that the debarment system is fully operational, in particular that legal entities or their officials who have been held liable for corruption offences or bid rigging are barred from participation in the public procurement.*
- *Arrange regular trainings for private sector participants and procuring entities on integrity in public procurement at central and local level, and for law enforcement and state control organisations – on public procurement procedures and prevention of corruption.*
- *Increase transparency of public procurement by ensuring publication and free access to information on specific procurements on Internet, including procurement contracts and results of procurement by publicly owned companies.*

3.6. Access to information

Second Round Recommendation 3.6.

- *In the area of access to information and open government, consider creating an independent office of an Information Commissioner to receive appeals under the access to information law, conduct investigations, and make reports and recommendations.*
- *Adopt new law on access to public information.*
- *Consider adopting a Public Participation Law that provides citizens with an opportunity to use information to affect government decisions. Consider adopting provisions that provide for proactive disclosure of information in corruption-prone areas.*
- *Revise the rules and practice for classification of information and address the practice of classifying information on grounds that are not provided by the law.*
- *Take practical steps to appoint Information Officers at all government agencies.*
- *Align the newly adopted Law on the Protection of Personal Data with European standards by reviewing provisions hindering access to information on public officials.*

In the area of access to information and open government, consider creating an independent office of an Information Commissioner to receive appeals under the access to information law, conduct investigations, and make reports and recommendations

In January 2011 Ukrainian Parliament adopted a new Law on Access to Public Information and also revised the Law on Information (both came into force on 9 May 2011). Regulations on access to information held by public authorities (through information requests and proactive publication) were incorporated into one law - the Access to Public Information Law (API Law). The current Law includes such complaint mechanisms: administrative complaints (to the head of the agency which refused to provide information or to the higher authority if there is one); complaint to prosecutor's office; judicial review.

Initial draft API Law included provisions on designating the Ombudsman (Parliament's Commissioner on Human Rights) as an independent non-judicial supervision authority on access to information. Relevant provisions, however, were removed from the final draft law upon insistence of the then Ombudsman. The working group that was set up within the parliament to finalise text of the law had indeed reviewed this issue. As the IAP Second Monitoring Round recommendation was to consider creating such an office, it can be said to have been fully implemented.

However, the issue of lack of an independent supervision mechanism for enforcement of the access to information right remains. Shortly before enactment of the law the President issued a decree (no. 547 of 5 May 2011) on ensuring access to public information by executive authorities, which, *inter alia*, instructed the Government to prepare and submit to the parliament a draft law on "state control" over enforcement of the access to public information provisions. Such draft law was prepared by the Government agency only in January 2015 (see below).

According to experts, the most suitable option would be to establish an independent authority for the access to information enforcement (which could also be merged with the Data Protection Authority, as is the arrangement in some European countries) in the Constitution of Ukraine. This would ensure proper level of independence and visibility of such authority. However, such option requires constitutional

amendments, which is a complicated process. It should also be noted that in order to implement requirements of the EU on adequate protection of personal data in Ukraine (part of Visa Liberalisation Action Plan with EU) Ukrainian Parliament in July 2013 amended the Data Protection Law and provided that, instead of a special executive authority (State Service on Personal Data Protection under the Ministry of Justice), supervisory functions in the area should be assigned to the Ombudsman. A similar model could be used for the access to information enforcement as an interim solution.

It is therefore welcome that a process has been launched in late 2014 under the office of the current Ombudsman to draft relevant amendments in the API Law with involvement of civil society experts. The drafting is supported by the Council of Europe projects. It provides for assigning the Ombudsman institution with additional powers of supervising enforcement of the access to information requirements. These powers will include the right to issue binding orders on disclosure (or non-disclosure) of the information sought and compliance with other API provisions, including the right to bring persons to administrative liability in case of non-compliance.

A draft law on state control in the access to information area was developed by the State Committee on TV and Radio and published for consultations in January 2015.¹¹⁹ It proposes to assign control functions to the State Committee itself. It does not seem to be a justified solution, since the Committee lacks required independence being an executive authority under the Government.

Issue of establishing an independent non-judicial supervisory mechanism for enforcing the access to information right has recently been mentioned in various official action plans. For instance, it was included the new Anti-Corruption Strategy of Ukraine for 2014-2017, adopted by the Law of 14 October 2014¹²⁰, and in the Government Action Plan for 2014-2015 to implement Ukraine's commitments under the Open Government Partnership (adopted on 26 November 2014)¹²¹. It has also become a part of the requirements of international organisations – e.g. in 2014 the EU has included it as a benchmark for Ukraine to comply with requirements necessary for disbursement of funds under its State-building contract to Ukraine.

The first step in assigning the Ombudsman relevant powers has already been made. The new 2014 Law of Ukraine on Prosecutor's Office amended the Code of Administrative Offences (CAO), whereby the Ombudsman's office was given power to draw up administrative protocols on violation of Article 212³ (Violation of the right to access to information) and send them to court for sanctioning. This power previously belonged to the prosecutor's office. This amendment became effective on 26 October 2014.

While assigning of the relevant powers can be solved through legislative amendments, the crucial point in ensuring genuine guarantees of the access to information right is providing necessary resources for the supervisory authority. The Ombudsman office currently lacks even the minimum needed staff to deal with such powers – the supervisory function will remain ineffective until it is supported with necessary resources, which should be provided from the State Budget.

¹¹⁹ Text of the draft law is available at:

http://comin.kmu.gov.ua/control/uk/publish/article?art_id=117357&cat_id=80453.

¹²⁰ See text in Ukrainian: <http://zakon1.rada.gov.ua/laws/show/1699-18>.

¹²¹ See text in Ukrainian: <http://zakon1.rada.gov.ua/laws/show/1176-2014-%D1%80>.

Adopt new law on access to public information

Such law was adopted on 13 January 2011 and came into force on 9 May 2011. According to the international rating of right to information laws, Ukrainian law was ranked 9th from 89 national laws (rating provides assessment of the text of the law, not its practical enforcement).¹²²

Consider adopting a Public Participation Law that provides citizens with an opportunity to use information to affect government decisions

Ukrainian authorities informed that the Government's Action Plan for implementation of the Open Government Partnership Initiative (approved on 18 July 2012) instructed the Ministry of Justice to follow up and support adoption in the parliament of the draft law on amendments in certain laws on public participation in the state policy formulation and implementation, decision-making on local issues (no. 0866 in the Parliament of VII convocation). This draft laws was passed in the first reading in October 2009 and its consideration had been pending since then; in November 2014, with the convocation of the new parliament, the draft law was automatically withdrawn.

The new Government Action Plan for 2014-2015 to implement Ukraine's commitments under the Open Government Partnership (adopted on 26 November 2014) instructs the Ministry of Justice (and a number of other ministries) to prepare and submit to the Government a new draft law on public participation in the process of state policy formulation and implementation, as well as in consideration of local issues.

In view of the recommendation of the previous round ("Consider adopting") this part of the recommendation could be considered as fully implemented.

Consider adopting provisions that provide for proactive disclosure of information in corruption-prone areas

The 2011 Law on Access to Public Information includes special requirements on proactive publication of information by public authorities. Article 15 of the API Law includes a list of information which is subject to mandatory publication, including on the official web-sites (if available). The proactive publication requirement covers all draft legal acts, as well as legal acts once adopted, which includes individual decisions e.g. on land appropriation, disbursement of public money. In addition, in April 2014 a new Law on Public Procurement was adopted and it provided for mandatory proactive publication of the main information on public procurement, one of the most corruption-prone areas in Ukraine (see for additional details relevant section of this report). Also there are plans to adopt a law on open data, which would provide for proactive publication of various information in the open data format (see below).

This part of the recommendation, therefore, was fully implemented.

Revise the rules and practice for classification of information and address the practice of classifying information on grounds that are not provided by the law

This recommendation concerned practice prior to adoption of the Access to Public Information Law. The new law did indeed revise relevant rules and established new types of information with restricted access. At the same time the problem remains under the new legal provisions as well. With adoption of a new law all public authorities were supposed to review their documents to ensure that classification of restricted in access information is in line with the new law, in particular that classification (restriction) marks that are used are those allowed by the law. For example, in reply to the information request of a civic activist the

¹²² See Global Right to Information Rating, www.rti-rating.org/country_rating.php.

Ministry of Justice of Ukraine stated that as of June 2013 the Ministry was aware of 120 legal acts (all by the President of Ukraine) marked with “Not For Publication” mark that is not provided for in any law. The President’s Administration informed that it formed a commission to review relevant acts and decide on further restriction of access.¹²³ This concerns legal acts only; there are also other documents which may still have illegal classification marks.

At the same time there are no reports of assigning illegal classification marks after enactment of the new law, so the issue remains only with the documents created before the Access to Public Information Law came into force.

Another problem in this regard is that the Law on State Secrets has not been brought in line with the new API Law for quite some time, in particular it did not include requirement to carry out the harm and public interest tests when classifying information or deciding on its disclosure. While the API Law formally covers all types of information, including state secrets, in practice relevant authorities follow special Law on State Secrets and relevant bylaws. It is therefore a welcome development that after three years of consideration relevant amendments (Law no. 1170-VII), which bring legislation in line with the API Law, were finally adopted in March 2014. There is no information on how the new requirements for classifying information as secret have been implemented since then.

The Law no. 1170-VII provided additional safeguard in this regard – it introduced a cut-off date after which all restriction marks on the documents would no longer be valid (and relevant documents and information will automatically become open), unless they are confirmed in accordance with the API Law. This will happen on 19 April 2015 (one year after enactment of the Law no. 1170-VII).

The practice of classification of information remains problematic. While the new API Law provided for two types of information “classification” by public authorities (as “official information” according to Article 9 of the API Law and as “secret” (*tayemna*) information in accordance with the special Law on State Secrets), in practice relevant provisions are not fully complied. This concerns first of all the so-called “official” (*sluzhbova*) information. According to NGOs¹²⁴, a number of issues can be raised in this regard:

- 1) public authorities fail to apply the harm and public interest tests required by Article 6.2 of the API Law – both during initial classification and when considering a request for accessing such information;
- 2) public authorities go beyond the scope of information that can be classified as official and restrict access on this ground to other information as well;
- 3) almost all public authorities have adopted the so-called lists of official information (even though the API Law does not require to do this mandatorily), which often contain information that may not be ‘official’ according to the Law, and use them for automatic denial in access to information covered by such lists;
- 4) public information administrators automatically deny access to documents which were classified by other public authority despite the API Law’s requirement to decide on the disclosure of the information based on the harm and public interest tests in each specific case.

¹²³ See relevant replies of the Ministry of Justice and the President’s Administration: <https://maidanua.org/2013/11/nedostup-do-informatsiji-how-it-works-v-administratsiji-yanukovycha>.

¹²⁴ See, among others, Guidelines on Official Information, Centre for Political Studies and Analytics, 2014. Source: <http://cpsa.org.ua/vydannya/posibnyk-sluzhbova-informatsiya-poryadok-vidnesennya-ta-dostupu>. See also recommendations by the Ombudsman’s office: www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4049:2014-10-01-07-37-36&catid=239:2014&Itemid=256.

Additional problem is that the bylaws on classification of information as official have become illegal once the API Law and the new Law on Information were enacted. The latter removed an authorisation for the Government to issue such bylaws. To address this the Law no. 1170-VII instructed the Government to adopt such bylaws, but only with regard to one type of official information. As of February 2015 such regulation has not yet been adopted, which makes the use of the previous Government Instruction regulating relevant procedure illegal and liable for appeal.

Take practical steps to appoint Information Officers at all government agencies.

Appointment of (or designating among existing) officials or special unit responsible for access to information is mandated by the API Law for all “administrators” of public information, that is public authorities (and other entities) which are recognised by the Law as entities covered by the requirement to provide information upon request. Government informed that most of the executive authorities have appointed or designated such officers (units). According to report prepared by the Government Secretariat, as of September 2014 among 96 executive authorities which were reviewed (17 ministries, 56 central executive authorities, 23 local executive authorities), 18.8% of executive power bodies had set up specialised units dealing only with access to information, 45.8% - units within other structural units of the authority (section, division, department), 35.4% - had designated officials in charge of access to information.¹²⁵ No information is available on other “administrators” of public information (notably, local self government bodies).

Align the newly adopted Law on the Protection of Personal Data with European standards by reviewing provisions hindering access to information on public officials

Despite the recommendation of the Second round in November 2012 the Data Protection Law was amended (by the law no. 5491-VI) and provisions of Article 5 which allowed exceptions to the restricted access regime for any personal data were deleted from the law. It was an important exception which allowed to refer to other laws when they specifically provided that certain personal information (e.g. included in the asset declaration of public officials) could not be restricted in access. The Data Protection Law thus assigned confidential status to all personal data (that is data about an identified or an identifiable natural person), which was considered to contradict the Constitution and the API Law.

In practice this resulted in frequent cases of denial of access to documents that include personal data with reference to Data Protection Law, even when another law specifically forbade restricting access to certain information. For example, the parliament’s secretariat has consistently denied access to information from asset declarations of MPs despite explicit provisions in the API Law (Article 6) and the Law on Principles for Preventing and Counteracting Corruption (Article 12) to the effect that information in asset declarations (with exception of certain data also explicitly determined in these laws) may not be restricted in access and despite the requirement of the Law on Principles to publish relevant information in print media.

This issue was finally solved by the above-mentioned Law no. 1170-VII (enacted on 19 April 2014). The latter revised Article 5 of the Personal Data Protection Law and provided that: personal data may be determined as confidential only by the natural person or by the law; certain personal data (like those included in asset declarations, information on the use of public funds or data on public officials’ exercise of their duties) may not be restricted in access; other laws may prohibit restricting access to other personal data. This was an important amendment that removed inconsistency of the Data Protection Law with access to information laws – in line with the IAP recommendation.

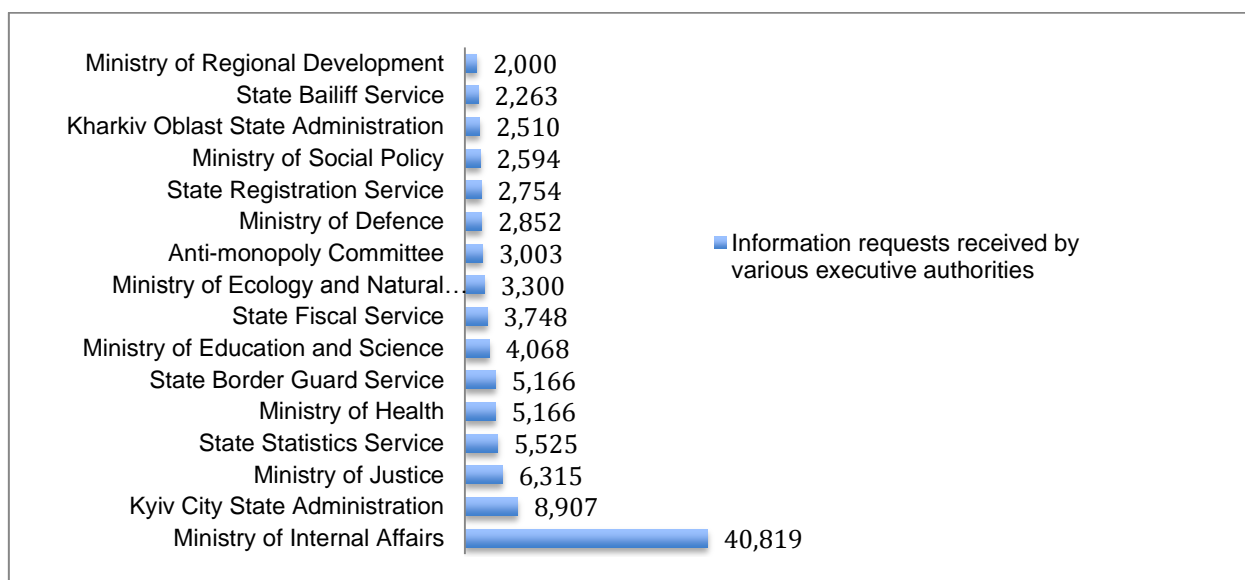
¹²⁵ Source: www.kmu.gov.ua/control/uk/publish/article?art_id=247764426&cat_id=245633708.

Practical enforcement

No government agency is responsible for systemic collection and analysis of data on practical enforcement of the access to information law. Initially, after adoption of the 2011 Law the President (in Decree no. 547 of 5 May 2011) instructed the Government to carry out monitoring of enforcement by executive authorities of the API Law and monitoring of relevant court decisions. The Government instructed the State Committee on TV and Radio (responsible, *inter alia*, for information policy issues) to perform these tasks. Such monitoring has been carried out but it covers a limited scope of issues and lacks data on the processing of information requests.¹²⁶ Commendable job is done by the Government's Secretariat¹²⁷ which on its own initiative collects statistics on processing of information requests by executive authorities (see some data in the table below).

Individual agencies publish regularly very basic information on the number of processed requests for information (see examples of statistical summaries by the Ministry of Justice¹²⁸ and Ministry of Internal Affairs¹²⁹ in the table below).

Figure 3. Statistics on the number of information requests received by public authorities



Source: Web site of the Government of Ukraine.

¹²⁶ See the last available monitoring as of 29 April 2014:
http://comin.kmu.gov.ua/control/uk/publish/article?art_id=113369&cat_id=89240.

¹²⁷ Reports by the Government's Secretariat:
www.kmu.gov.ua/control/uk/publish/officialcategory?cat_id=245633708.

¹²⁸ Reports by the Ministry of Justice: http://minjust.gov.ua/zvit_zapit_info.

¹²⁹ Reports by the Ministry of Internal Affairs:
<http://mvs.gov.ua/mvs/control/main/uk/publish/category/599768>.

Table 16. Statistics on processing of information requests

	Executive authorities (ministries, other central executive bodies, local executive bodies) (9 May 2011 – 31 August 2014)	Secretariat of the Cabinet of Ministers (9 May 2011 – 30 November 2014)	Ministry of Justice (1 January – 31 December 2013)	Ministry of Internal Affairs (1 January – 30 September 2014)
Total number of received information requests*	143,005, incl.: - by ministries – 53,6% - by other central authorities – 27,9% - by local authorities – 18,5%. From them: 18,3% (26,224 letters) were in fact petitions, although registered initially as information requests*	7,686	1,566	7,854
<i>From them:</i>				
Received by:				
- post	60,883 (42,6%)	2,987	404	4,830
- phone	1,458 (1%)	349	8	113
- fax	4,596 (3,2%)	87	6	153
- e-mail	64,877 (45,4%)	4,263	1,092	1,562
- handed over personally	11,191 (7,8%)	0	56	1,296
Submitted by:				
- mass media	10,087 (7,1%)	575	Not available	514
- individuals	93,767 (65,6%)	5,487	1,157	5,319
- legal persons	31,652 (22,1%)	1,102	409	1,803
- citizen's associations without legal personality status	7,499 (5,2%)	522	0	218
- forwarded from other public authorities	Not available	Not available	87	Not available
Status of processing:				
- satisfied	Not available	2,552	1,003 (of them 680 letters were in fact petitions)	4,309 (of them 2,569 were in fact petitions)
- denied	4,435 (3,1% from information requests received), including 3,125 denials because another public authority was in possession of the requested information, 1,310 denials because requested information was restricted in access (14 requests concerned secret information, 842 – confidential, 451 - official)	0	9	241
- under consideration	Not available	85	0	-
- forwarded to proper information holder	Not available	5,049	503	607

Source: Web sites of the Government, Ministry of Justice, Ministry of Interior.

*"Information requests" covers all incoming correspondence referring to the API Law, even if in substance some letters were in fact petitions (i.e. complaints, applications, requests of legal advice, etc.). This somewhat distorts the statistics (as only part of such correspondence is proper information requests) and may be related to the way incoming correspondence is registered.

Extractive industries transparency. Ukraine declared its intent to join the EITI in 2009 by the Government's resolution. Ukraine formed an EITI multi-stakeholder group consisting of representatives from the government, industry and civil society in October 2012. This group prepared the EITI application that was submitted to the EITI International Secretariat in July 2013. In October 2013 Ukraine was recognised as a Candidate country. Ukraine has now to implement the EITI Standard, which will ensure more transparency of the payments to the government from the extractives sector in the country. Ukraine is required to publish its first EITI Report within two years, i.e. by 17 October 2015. If the EITI Report is not published by this deadline, Ukraine will be suspended. Validation will commence within three years of becoming a Candidate (by 17 October 2016) and as a result Ukraine may be recognised as compliant with the EITI standards.

It should be noted that Ukraine decided not to include iron ore and coal sectors in the first EITI report. EITI Board stated in this regard: "The Board considers this approach sub-optimal given the significance of these industries, and emphasised that compliance requires coverage of all material oil, gas and mining industries. Achieving compliance will require coverage of these sectors unless the MSG can demonstrate that they are not material."¹³⁰

In its Action Plan for 2014-2015 on implementation of the OGP commitments the Government of Ukraine committed to ensure by the end of 2015 compliance with the EITI standards by amending relevant legislation and preparing the relevant report.

Open budget. Ukraine's score in the Open Budget Index (internationalbudget.org) has deteriorated from 55 (out of 100) in 2008 to 54 in 2012 (while increased in 2010 to 62). Average worldwide score in the 2012 Index was 43 (other IAP countries scored: Tajikistan – 17, Kyrgyzstan – 20, Azerbaijan – 42, Kazakhstan – 48, Mongolia – 51, Georgia - 55). Ukraine's score indicates that the government provides the public with only some information on the national government's budget and financial activities during the course of the budget year. This makes it challenging for citizens to hold the government accountable for its management of the public's money. In this regard the International Budget Partnership noted that the government of Ukraine has the potential to greatly expand budget transparency by introducing a number of short-term and medium-term measures, some of which can be achieved at almost no cost to the government. A number of recommendations were made to the Ukrainian authorities to improve budget transparency and oversight and public engagement in the budgeting.

It is notable that the Parliament of Ukraine adopted in February 2015 a law on transparency of public funds (draft law no. 0949; approved in the first reading in June 2014). The law provides for mandatory publication of detailed information on budgetary transactions on a single web-site and publication of Treasury transactions in real time on-line, as well as publishing of information on budget expenses and revenues in open data format (in bulk and machine-readable format). Adoption of the law is a very welcome development for budgetary transparency in Ukraine.

Urban planning documents. Construction and land allotment are one of the most corrupt-prone areas in Ukraine. Very often corruption starts here from the planning stage, when local self-government authorities decide on the zoning and assigning status to different territories/lands.¹³¹ To prevent corruption in this process it is important to ensure maximum transparency of the urban planning documents (so called general plan of the city or territory and detailed plan of the territory). These issues are regulated by the Law on Urban Building Activity, which did provide for openness of such documents but has been poorly enforced. The Law no. 1170-VII, cited above, further improved guarantees of free access to such

¹³⁰ Source: <http://eiti.org/news/ukraine-application-eiti-candidature-approved>.

¹³¹ See, for instance, publication by NGO Eastern Ukrainian Centre for Civic Initiatives, 2011, http://cityplan.in.ua/application/uploads/book_files/secret_comprehensive_plans_report.pdf.

documents by prohibiting to include therein restricted in access information. However, these provisions are often not implemented in practice for various reasons (the most often being that such documents contain secret or official information and therefore may not be disclosed). It is therefore welcome that free public access to urban planning documents was included in the Government commitments in the 2014-2015 OGP Action Plan. Unhindered access to such documents was also declared as priority by several high-level Government officials in charge of urban planning issues.¹³² It is also important to ensure access to such documents in machine-readable formats.

Open data. Several official action plans provide for adoption of the legislative amendments to introduce the concept of open data in the Ukrainian law, in particular the new 2014-2017 Anti-Corruption Strategy adopted by the Law on 14 October 2014 and the Government's OGP Action Plan for 2014-2015 (see above). This is a welcome development. Such draft law was prepared with support of the UNDP in November 2014 and its submission to the parliament by the President is expected shortly. The draft law provides for amendments in the API Law to introduce the notion of open data (structured data sets in a format which allows their automatic processing for the purposes of re-use), set up the open data infrastructure (central government depository of open data, authorised agency to deal with open data issues, list of datasets to be published, etc.). The draft law also amends a number of other laws to ensure publication of certain public interest information as datasets, notably the data on public procurement, company register, urban planning documentation.

Ukraine is largely compliant with the previous recommendation 3.6.

New Recommendation 3.6.

- *Set up or designate an independent authority to supervise enforcement of the access to public information regulations by receiving appeals, conducting administrative investigations and issuing binding decisions, monitoring the enforcement and collecting relevant statistics and reports. Provide such authority with necessary powers and resources for effective functioning.*
- *Reach compliance with the EITI Standards and cover in the EITI reports all material oil, gas and mining industries. Adopt legislation on transparency of extractive industries.*
- *Implement the law on openness of public funds, including provisions on on-line access to information on Treasury transactions.*
- *Ensure in practice unhindered public access to urban planning documentation.*
- *Adopt the law on publication of information in machine-readable open formats (open data) and ensure publication in such format of information of public interest (in particular, on public procurement, budgetary expenditures, asset declarations of public officials, state company register, normative legal acts).*
- *Ensure effective implementation and continuation of the Open Government Partnership's Action Plan.*

¹³² See the latest statement by Vice Prime Minister that local authorities should ensure in 2015 free access to urban planning documentation, www.kmu.gov.ua/control/uk/publish/article?art_id=247859515&cat_id=244274130. According to this statement, as of end of 2014, 169 general city plans were published on-line (about 40% from all such documents), as well as 94 plans of towns and 1,181 plans of villages.

3.7. Political corruption

Second Round Recommendation 3.7.

- *Review existing regulation of political party financing with the aim to properly regulate the financing of political parties, including during election campaigning, in line with Council of Europe standards.*
- *Ensure effective restrictions on contributions and improve existing system of sanctions.*
- *Create effective control mechanism which includes an institution with adequate powers and resources.*
- *Ensure transparency of political party financing through reporting and disclosure requirement.*
- *Consider re-introducing state financing mechanism.*

General description. The legislation on financing of political parties and electoral campaigns has not been substantially improved since the Second round of the IAP monitoring. In October 2011 the Council of Europe's GRECO adopted Evaluation report on Transparency of party financing in Ukraine, noting that the system of transparency in Ukraine falls short of the standards established by Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. The current regulations, which are dispersed in numerous laws, lack coherence and clarity. In the area of regular party funding, permitted funding sources are not precisely defined and regulated. Such important areas as donations in kind and financing by entities related to a party are not addressed. No detailed and comprehensive information is made available to a monitoring body and to the public at large. While the transparency regulations applicable to election campaign funding are more precise, they still show some important gaps and can at present easily be circumvented. Moreover, the disclosure obligations in this area are insufficient and the current monitoring mechanism lacks the necessary powers and resources to carry out in-depth, proactive supervision and to effectively detect and disclose any case of undue influence in connection with campaign funding. In both areas there is a need to take significant measures to enhance transparency and ensure supervision by an independent monitoring mechanism and by the public. Under the present regime, virtually no irregularities have been brought to light and led to the imposition of – scarcely regulated – sanctions, despite a prevalent belief that significant portions of political financing stem from hidden or even prohibited sources – e.g. contributions to election campaigns made in cash or in excess of the legal limits, use of party resources not included in the election funds, support by third parties etc.¹³³

As a result, GRECO addressed to Ukraine nine recommendations, which are coherent with the IAP Second monitoring round recommendations. In December 2013 GRECO adopted Compliance report on Ukraine where noted that the measures taken so far are insufficient to address GRECO's recommendations. Regarding general party funding, the only tangible progress achieved is the simplification of the legal framework, which is now mainly provided by the regulations of the Law on Political Parties, whereas the 2012 Law "on Civil Associations" is not applicable to political parties (in contrast with the previous law with the same title). GRECO concluded that much more needed to be done in order to fulfil the requirements of the recommendations. Ukraine was urged to step up its efforts to significantly increase

¹³³ Source: GRECO, Third evaluation round report on Ukraine, Theme II, October 2011, para. 93, [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2011\)1_Ukraine_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2011)1_Ukraine_Two_EN.pdf).

transparency in the funding of political parties and election campaigns and was encouraged to pursue the reforms already initiated. Out of nine recommendations only three recommendations have been partly implemented, while six recommendations have not been implemented at all.¹³⁴

Similar conclusions with regard to electoral financing were included in the OSCE/ODIHR Election Observation Mission reports after 2012 and 2014 parliamentary elections and 2014 presidential elections (see more details below).¹³⁵

It should be noted that despite some law drafting activity no tangible progress was achieved in reforming the party financing legislation since the Second round of the IAP monitoring. Shortly after adoption of the IAP report, in January 2011, the President of Ukraine adopted an Action Plan on Honouring Ukraine's Commitments and Obligations as a Member of the Council of Europe, which instructed the Ministry of Justice to develop relevant amendments but set the deadline of 1 August 2013.¹³⁶ This was seen as an unreasonable delay. But even it has not resulted in the adoption of the relevant changes in the law.

The new Anti-Corruption Strategy for 2014-2017, adopted for the first time by the law (No. 1699-VII of 14 October 2014), included the following measures on party financing:

“To adopt the legislation for executing GRECO recommendations in terms of establishing limitations and strengthening the transparency and accountability of financing political parties and electoral processes, namely:

- to unify regulatory acts on financing electoral campaigns that are currently provided for by the laws of Ukraine “On Elections of the Members of Parliament of Ukraine”, “On Elections of the President of Ukraine”, “On Elections of the Members of Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Settlement or City Heads”;
- to introduce state financing of political parties in the form of providing budget funds for statutory activities of the parties as per the results of elections, in particular with the support of political parties not represented in the Parliament, and reimbursement of costs of electoral campaigns to political parties that entered the Parliament;
- to establish the requirements of transparency of regular financing of the parties – in particular, these requirements can presume regular reporting, open publication of reports of political parties with detailed information about the revenues (including the list of persons who made donations), expenses and financial commitments;
- to clearly regulate the modality of donations, to establish limitations on the amount of donations that political parties can receive;
- to define the contents and templates of annual reports of political parties; to ensure proper accounting of revenues, expenses, debts and assets and consolidated reports provision;
- to establish that regular and pre-election reports of parties are subject to independent audit by certified auditors;
- to set up functional mechanism of monitoring of observance of legislation on financing the political parties and electoral campaigns, investigating the violations and prosecution of offenders, to set

¹³⁴ Source: Compliance report on Ukraine, Third evaluation round, “Transparency of party financing”, December 2013, para. 82, [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)14_Ukraine_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)14_Ukraine_EN.pdf).

¹³⁵ OSCE/ODIHR Election Observation Mission reports: Parliamentary elections of 28 October 2012, January 2013, www.osce.org/odihr/98578; Early Parliamentary Elections of 26 October 2014, December 2014, <http://www.osce.org/odihr/elections/ukraine/132556>; Early Presidential Elections of 25 May 2014, June 2014, <http://www.osce.org/odihr/elections/ukraine/120549>.

¹³⁶ See text of the Action Plan in Ukrainian: <http://zakon1.rada.gov.ua/laws/show/24/2011>.

up/identify a state body to perform the respective functions that will meet international standards on independence and efficiency;

- to establish effective and proportionate penalties for violation of the law on political finances.”

It remains to be seen what deadlines for implementing this priority will be set in the upcoming Government action plan for implementing the new Anti-Corruption Strategy.

In parallel to Government work on the legislative amendments civil society experts have prepared a Concept paper on the reform of the relevant legislation, which presents a comprehensive outline of the changes required to align Ukrainian system with international standards. The Concept paper was developed in 2014 by the IFES and Transparency International – Ukraine.¹³⁷

In January 2015, the Parliamentary Committee for Prevention and Counteraction to Corruption established a working group to draft comprehensive amendments to address GRECO recommendations on transparency of party funding. It is expected that the working group will finalize the draft in Spring 2015.

Review existing regulation of political party financing with the aim to properly regulate the financing of political parties, including during election campaigning, in line with Council of Europe standards.

The Government informed that the Ministry of Justice had carried out an analysis of the current legislation of Ukraine concerning the funding of political parties and election campaigns, as well as relevant European standards, international experience of legal regulation of the issue of funding of political parties and election campaigns. In November 2012 the Ministry held a round-table discussion on the political financing with involvement of civil society and international experts.¹³⁸ In 2012-2013 the Ministry of Justice prepared amendments to regulations on party financing, but there was no progress in their consideration.

NGOs informed that the Government’s State Program for Preventing and Counteracting Corruption in 2011-2015 scheduled main measures of political finance reform only for the 2013-2015. In addition, the planned activities in this regard fail to address most of the 2011 GRECO recommendations and 2010 OECD/ACN recommendations. The State Program suggested to limit the value of donations from both natural and legal persons, to review the system of sanctions applicable to political parties to ensure that they are proportionate and effective, to publish annual financial reports of political parties and their property statements on the CEC website, to introduce liability of electoral funds managers for failure to submit financial reports on the receipt and use of electoral funds in time or failure to present correct data in those reports, and to ensure that media are subject to proportionate sanctions for failure to place political advertising only after having received funds for such a placement. These measures failed to address the key international recommendations pertaining to introduction of public funding of political parties, disclosure rules and other recommendations.

In July 2013, the Ministry of Justice prepared a draft Law on amendments to the 2011 Parliamentary Election Law. The draft addressed a number of GRECO recommendations on political finance reform. In particular, it suggested to establish election campaign spending limits, to provide for publication of the reports on the receipt and use of electoral funds before and after the Election Day, to require that the Central Election Commission is obliged to publish the received reports and results of their analysis on its website.

¹³⁷ Available here: <http://ti-ukraine.org/what-we-do/research/4997.html>.

¹³⁸ Verbatim record of the discussion (in Ukrainian) is available at: www.minjust.gov.ua/news/44516.

During November 2014 on-site visit the Ministry of Justice informed that it has prepared another draft law on party financing, which addressed some of the GRECO and IAP recommendations. On 12 December 2014, the Ministry of Justice published its draft law for consultations. The draft law provides restrictions on the value of donations to political parties, specifies requirements to the annual financial reports of political parties, introduces mandatory review of the party reports by the Accounting Chamber, establishes administrative sanctions for certain violations of party financing regulations. According to the civil society experts, the draft fails to introduce direct public funding of political parties and to address a number of other GRECO recommendations (such as recommendations to regulate donations in-kind and donations by third parties, to harmonize the rules on party financing with the provisions on campaign financing laid down in the election laws and others).

Financing of electoral campaigns. A new Law on Parliamentary Elections was adopted in 2011 and has been amended several times since then. Substantial amendments have been introduced in November 2013 and April 2014.

According to the OSCE/ODIHR Election Observation Mission report after October 2012 parliamentary elections¹³⁹, the Law requires candidates to open accounts in the district in which they are running, but does not state what should be done when this is not possible for technical reasons. Despite this legal requirement to open a special bank account, some 500 majoritarian candidates never opened a bank account; the law does not provide any sanctions. There are no limits on the use of a party's or candidate's own funds. The law does not provide for checking the source of the funds that a party or candidate contributes to their own campaign fund. There are no limitations on the amount of campaign expenditures.

During 2012 election campaign Central Election Commission (CEC) co-ordinated with the National Bank of Ukraine to ensure that banks sent weekly reports on each bank account for checking by the CEC. The CEC informed that the new electoral system created some difficulties in this respect, given the large number of candidates and the small number of staff and resources available. The CEC could only check the bank account reports; complaints alleging spending made through other means, including public resources, were turned over to law enforcement bodies. The law does not provide for publication of any kind of campaign finance reporting prior to election day. Under instructions developed by the CEC, DEC's received weekly summaries of bank transactions for the respective majoritarian candidates. DEC's appeared not to have the capacity to check these summaries, nor does the law assign the DEC's any role in the process.

Parties and candidates are required to file financial reports with the CEC no later than 15 days after election day. Although all 21 parties submitting lists of candidates filed such reports, only one-third of the majoritarian candidates had filed a report by the deadline; the law does not provide any penalties for non-compliance. A report for each party submitting a list of candidates was posted on the CEC website, but these contained only the overall amounts of income and expenditure for the party's campaign. It was therefore not possible for domestic stakeholders or independent observers to review the accuracy and completeness of the reports, thereby reducing the transparency.¹⁴⁰

As noted in the OSCE/ODIHR Election Observation Mission final report after October 2014 early parliamentary elections, the 2013 amendments to the election law introduced only limited additional measures to increase the transparency of campaign finances. The law stipulates that parties with candidate lists and majoritarian candidates must establish electoral funds from which all campaign expenses must be paid directly by bank transfer. The size of an electoral fund for a party with a proportional candidate list

¹³⁹ OSCE/ODIHR Election Observation Mission report on Parliamentary Elections of 28 October 2012, page 18, <http://www.osce.org/odihr/98578?download=true>.

¹⁴⁰ Idem, page 18, www.osce.org/odihr/98578.

may not exceed 90,000 minimum salaries (some UAH 112.5 million or less than EUR 7 million at that time¹⁴¹), while for a majoritarian candidate it may not exceed 4,000 minimum salaries (some UAH 5 million or just over EUR 300,000¹⁴²). The source of funds is limited to a party's or candidate's own resources and private donations from individuals. Donations from anonymous sources or foreign citizens are not permitted. There are no limits on individual donations, however, and in-kind contributions are not regulated.

According to the Law, interim and final financial reports on the receipt and use of funds must be submitted by political parties to the CEC and by majoritarian candidates to the respective District Election Commissions (DECs). The election commissions are required to publish these reports, analyse them, and to publish the respective analyses. However, because of the short campaign period, most contestants were not required to submit interim financial reports during these elections, as legal deadlines preceded the completion of candidate registration. In addition, in the case of early parliamentary elections, individuals wishing to register as candidates are not required to submit financial declarations to the CEC. Consequently, voters had little information about the amounts or sources of contestants' campaign funds before election day. As reported by OSCE/ODIHR EOM observers, several DECs appeared unaware that they are required to analyse financial reports submitted by majoritarian candidates.¹⁴³

Similar problems remain with regard to the presidential elections. The election law does not provide adequate regulations for campaign financing. As noted in the OSCE/ODIHR report, a campaign can be financed from candidates' private funds, individual donations, and funds from the nominating party. There is no limit to the amount a party can contribute to its candidate's campaign. Individuals can donate up to 400 minimum salaries (some UAH 490,000, around EUR 32,000 at the time¹⁴⁴) to a candidate. Donations from foreign citizens, anonymous sources and legal entities are prohibited. The election law stipulates that a presidential candidate must create two designated campaign bank accounts, for funds and expenses. There are no limits to campaign spending, and there is no requirement for candidates to report on their campaign finances prior to election day. In a welcome development, six candidates signed up to an initiative by the "CHESNO" Civil Movement to disclose their campaign funds during the campaign period. The election law requires that all expenditures must be made by bank transfer from the expense account. As required by law, the candidates submitted financial reports to the CEC within 15 days after election day, and the CEC published these reports in the state newspapers. However, the law does not provide detailed requirements regarding the financial reports published by the CEC.¹⁴⁵

In its December 2013 Compliance Report (cited above), GRECO considered that more needed to be done in order to effectively prevent the circumvention of the transparency regulations on election funds by indirect contributions to the funds, via parties' or candidates' "own funds". GRECO acknowledged that November 2013 amendments included some changes to the control over election funds, but it considered that additional measures needed to be taken to prevent the circumvention of transparency rules by contributions which do not pass through the election funds. Moreover, those changes concerned parliamentary elections, whereas the recommendation was aimed at all elections, including presidential and local elections.¹⁴⁶

¹⁴¹ As of January 2015, this amounted to about UAH 109 million or EUR 5.5 million.

¹⁴² About UAH 4.8 million or about EUR 240,000 in January 2015.

¹⁴³ OSCE/ODIHR Election Observation Mission report on Early Parliamentary Elections of 26 October 2014, page 18, www.osce.org/odihr/elections/ukraine/132556?download=true.

¹⁴⁴ About UAH 487,000 or EUR 24,000 in January 2015.

¹⁴⁵ OSCE/ODIHR Election Observation Mission report on Early Presidential Elections of 25 May 2014, page 18, <http://www.osce.org/odihr/elections/ukraine/120549?download=true>.

¹⁴⁶ GRECO, Compliance Report on Ukraine, § 51, cited above.

It therefore can be concluded that this part of the recommendation has been implemented only partially, namely with regard to the parliamentary elections funding - restriction on the amount of the electoral fund has been introduced as well as additional reporting and verification requirements.

Ensure effective restrictions on contributions and improve existing system of sanctions

The forbidden sources of donations to political parties are listed in Article 14 of the Law on Political Parties in Ukraine. The parties cannot be funded by the state authorities and local self-government bodies; state and municipal enterprises, companies with shares owned by the state or local self-governance bodies; foreign states, foreign nationals and foreign legal persons; charitable and religious organizations; anonymous persons or persons under pseudonym; political parties that did not form the electoral bloc of political parties.

Additional restrictions on sources of party funding were also provided by the Law on Associations of Citizens, which was criticised by GRECO for lack of consistent approach to regulation. In 2012 a new Law on Civic Associations was adopted and it no longer covers political parties.

The main deficiency is that the Law on Political Parties establishes neither any limits on the amount of donations to parties, nor on the amount of membership fees. It therefore fails short of the standards set in the Council of Europe Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns.

The 2011 Law on Parliamentary Elections, 1999 Presidential Election Law and 2010 Local Elections Law provide for restrictions on the value of donations to electoral campaigns. See above information on the restrictions with regard to presidential and parliamentary elections. The Law on Local Elections set the limit of donations at 10 minimum monthly salaries, i.e. UAH 12,180 or about EUR 600 (as of January 2015). All election laws provide that own donations of the electoral participants to their election funds cannot be limited in value and number of transactions. This is an easy way to circumvent donation restrictions (see also OSCE/ODIHR reports cited above). This makes current system of donation restrictions ineffective.

Effective system of restrictions on contributions also requires that the contribution (donation) is clearly defined. In its 2011 report GRECO noted that a clear definition of the permitted funding sources would be needed in order to determine without any doubt which sources of income are covered by the transparency regulations and to ensure that donations in kind and loans are also covered and are to be accounted for at their commercial value. Membership fees need to be regulated to prevent that political parties could themselves define which contributions are to be regarded as a donation or a membership fee and that transparency regulations on donations might be circumvented by paying higher membership fees. GRECO recommended to clearly define and regulate donations – including indirect contributions such as donations in kind, to be evaluated at their market value –, loans and other permitted sources of political party funding and to ensure that membership fees are not used to circumvent the rules on donations.¹⁴⁷

Since 2010, no measures have been taken to improve the system of sanctions for violation of provisions on political funding. In its December 2013 Compliance report GRECO noted that no progress was achieved in implementing its recommendation to ensure that: all infringements of the existing and yet to be established rules on financing of political parties and election campaigns are clearly defined and made subject to an appropriate range of effective, proportionate and dissuasive sanctions; any party representatives and election candidates themselves are liable for infringements of party and campaign funding rules.¹⁴⁸

¹⁴⁷ GRECO, Third evaluation round report on Ukraine, § 82, cited above.

¹⁴⁸ GRECO Compliance Report on Ukraine, §§ 76-78, cited above.

This part of the recommendation has not been implemented.

Create effective control mechanism which includes an institution with adequate powers and resources

According to Article 18 of the Law on Political Parties the Ministry of Justice, the Central Election Commission and the respective territorial/district election commissions are the key agencies entitled to supervise activities of political parties, including party funding. The CEC and other election commissions monitor the activities of political parties during the election campaigns, while the Ministry of Justice is tasked with controlling whether the activities of political parties are consistent with the Constitution, laws and party charters. The Law on Political Parties in Ukraine fails to specify the powers of the Ministry of Justice on control of the party activities. It only requires that parties provide the Ministry and other controlling bodies with the “necessary documents and explanations”.

The 2011 Law on Parliamentary Elections provided that the CEC is empowered to exercise selective control of the receipt, registration and use of electoral funds in accordance with the Procedure to be approved jointly by the CEC, National Bank and the Ministry of Infrastructure in advance of the elections. For the 2012 parliamentary elections, such procedure was approved on 12 July 2012. It provides that control of the receipt and use of the electoral funds is exercised by the CEC directly (as regards receipt and use of party electoral funds) or through the district election commissions (as regards receipt and use of electoral funds established by single mandate district candidates). The banks at which the electoral fund accounts are opened also have certain powers to supervise the receipt and use of electoral funds. Banks must provide the CEC with the information on all the transactions made at accounts of the electoral funds. While the Procedure ensures effective control of the use of electoral funds (such control is limited to only arithmetical check-ups), it fails to provide for any mechanisms allowing the CEC to supervise funding from the sources other than electoral funds.

The provisions governing control of funding of the presidential and local elections are much the same as in the parliamentary elections (see above) and have the same flaws. As regards local elections, NGOs found it questionable that the territorial election commissions (which are established shortly before the elections from the nominees of the local party organizations) can effectively, professionally and independently carry out their controlling powers even in terms of arithmetical verification.

In 2011 GRECO concluded that the current regime suffers from the lack of effective external supervision of the legal regulation of political funding. The monitoring over general party financing is highly fragmentary and in addition, it is exercised by the tax authorities and the Ministry of Justice which do not satisfy the requirement of independence under Article 14 of the Council of Europe’s Committee of Ministers Recommendation.

As concerns campaign funding of parties and candidates, supervision by the CEC and other electoral commission is a rather formalistic exercise and does not go beyond the information that banks and electoral subjects themselves provide. The financial scrutiny exercised by the election commissions may satisfy accountancy standards but there is no sufficient verification of whether an election campaign could have been financed by non-declared funding – in particular, by cash donations, donations exceeding the legal thresholds or donations in kind. The fact that no breaches of the rules have so far been detected in the course of this supervision and that no sanctions have been imposed on parties or election candidates is telling in this respect, especially in the view of many allegations that political funding to a large extent originates from covert or unlawful sources.¹⁴⁹

In its December 2013 Compliance report GRECO acknowledged that provisions of the 2011 Law on Parliamentary Elections have given the CEC the mandate to analyse the financial reports on the receipt and

¹⁴⁹ GRECO, Third evaluation round report on Ukraine, §§ 86 and 88, cited above.

use of the resources of election funds and to report to law enforcement authorities any signs of violations of the Law on Elections. GRECO stressed that much more needed to be done in order to address the concerns underlying the recommendation. GRECO regretted that no measures have been taken to ensure effective and pro-active supervision of election campaign funding, such as the provision of adequate financial and personnel resources to the monitoring mechanism. Moreover, GRECO had serious misgivings about the fact that with respect to general party funding, the situation remained unchanged. There was still no monitoring body with a clear mandate and the necessary resources – including personnel specialised in party financing – to comprehensively check party accounts and parties' compliance with transparency regulations.

This part of the recommendation has not been implemented.

Ensure transparency of political party financing through reporting and disclosure requirement

With regard to **electoral funding** some progress was made concerning reporting of parliamentary elections related expenses. November 2013 amendments in the Law introduced new requirements, namely that twenty days before the voting date the manager of the election fund of a political party must submit to the CEC an interim financial report on the use of the election fund. Such report should be immediately published on the official web site of the CEC. Not later than on the fifteenth day after the voting date the fund manager is supposed to submit to the CEC a financial report on the receipt and use of the election fund (which also should be published immediately on the CEC website). Similar rules are provided for election funds of majoritarian candidates in single-mandate districts (reports are to be submitted to DEC's and then forwarded to the CEC for publication). The CEC has to adopt the form (template) for such financial reports.¹⁵⁰

With regard to these amendments GRECO noted that it very much regretted that the disclosure obligation would not apply to the complete campaign accounts. It would appear that the financial reports to be made public would only contain aggregate figures and that they would not provide detailed and individualised information on donations, other sources of income and expenditure. Moreover, GRECO noted that further significant concerns underlying the recommendation have not been addressed, namely the fact that in presidential elections, only very general information is published and in a manner that does not guarantee easy access by the public, and that no campaign finance information is made public prior to presidential or local elections.¹⁵¹

As regards **regular party financing**, i.e. not related to the participation in the election campaign, no changes were introduced since the previous monitoring round.

As noted by GRECO in its 2011 Evaluation report, transparency of party finances would certainly benefit from the introduction of a standardised format for party accounts (preferably accompanied by appropriate guidelines), which would be conducive to ensuring a sufficiently high level of detail in all reports and would facilitate comparisons over the years and between the parties. Party accounts are not submitted to a monitoring body and made public. Only the summary tax reports are submitted to State agencies – i.e. the tax inspectorates which merely check compliance with tax legislation. The Law on Political Parties requires political parties to publish statements of yearly income and expenses and of property in the national press. However, the law does not contain any specific requirements on the form and content of these statements or any obligation to submit them to a monitoring body for verification, nor does it describe the timeframe, method and terms for publication. The statements generally show the total sum of

¹⁵⁰ See relevant forms adopted by the CEC in April 2014 (which replaced previous forms approved by the CEC in 2012): <http://zakon1.rada.gov.ua/laws/show/v0448359-14/print1390914944563705>.

¹⁵¹ GRECO Compliance Report on Ukraine, § 55, cited above.

financial receipts, the total sum and purpose of expenses and information on property of the party. Such statements are extremely short and did not appear to provide any valuable data. Some parties publish their reports only in their own magazines and others do not comply with this disclosure obligation at all. GRECO underlined that, to guarantee full transparency and improve supervision of political financing, it is essential to have detailed annual reports, including an itemised breakdown of the figures, to be submitted to a monitoring body and to be made public within specified timeframes in an easily accessible manner, ideally on the party websites and also on the website of the monitoring body.¹⁵² No progress in this regard was noted in the GRECO December 2013 Compliance report.¹⁵³

Therefore, this part of the recommendation has been partially implemented (only with regard to reporting at the parliamentary elections).

Consider re-introducing state financing mechanism

The Government in its replies to the questionnaire in 2013 noted that Ukraine has already had negative experience of the introduction of state funding of political parties. Direct state funding was provided by the Law of 27 November 2003 no. 1349 “On amendments to certain legislative acts of Ukraine in connection with the introduction of state funding of political parties in Ukraine”. The Law of Ukraine “On the State Budget of Ukraine for 2007” suspended for the year 2007 relevant articles of the Law of Ukraine “On Political Parties in Ukraine” regarding the public financing of authorized activity of political parties. Law on the State Budget of Ukraine for 2008 revoked provisions, which introduced state funding.

Government also noted that Ukraine is characterised by its multi-party system. The number of registered political parties in Ukraine was about 200. Even if half of them put forward their candidates for the election, the burden on the State Budget of Ukraine will be very significant. Thus, the development of a system of public funding of political parties is primarily connected with the financial capabilities of the budget of Ukraine, which are now limited. In addition, the system of public financing of political parties may create a situation in which the taxpayers who actually provide funding of the state budget, are forced to indirectly participate in the financing of political parties, with the purpose and principles of which they disagree. Political parties that will receive funds from the state budget may reduce the level of their own political activity, especially for receiving funding at a lower level, that is, through membership fees. This will reduce the efficiency of the parties’ activities. However, since the state budget at all levels is effectively controlled by the bodies of political parties, the influence of these bodies can be much larger in comparison with the influence of the rank-and-file party members and their organizations.

During on-site visit in November 2014 the Ministry of Justice had more positive view on the prospect of re-introduction of the state funding of political parties, although still referring to difficult financial situation as a possible obstacle for such decision.

It should be noted that direct state financial support of political parties is a necessary condition for reducing political corruption and cutting political parties dependence on the private businessmen (notably so called oligarchs, who according to media reports and experts have been in control of politics in Ukraine through shadow financing of political parties). State funding is necessary to balance private money influence on the politics. It is an established standard in European countries.¹⁵⁴

¹⁵² GRECO, Third evaluation round report on Ukraine, §§ 83-84, cited above.

¹⁵³ GRECO Compliance Report on Ukraine, §§ 65-67, cited above.

¹⁵⁴ The only countries without direct state funding of political parties are Andorra, Belarus, Malta, Moldova and Switzerland. See also relevant international standards, in particular: 2011 OSCE Guidelines on Political Party Regulation, <http://www.osce.org/odihr/77812>; Parliamentary Assembly of the Council of Europe Recommendation No. 1516 (2001), www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-

In its 2011 Evaluation report on Ukraine GRECO noted that various forms of shadow financing were reported – e.g. contributions to election campaigns made in cash or in excess of the legal limits, use of party resources not included in the election funds, support by third parties etc. – on which it has so far not been possible to shed sufficient light. It was also pointed out that the political class was heavily influenced by powerful business interests that formed a type of oligarchy. GRECO was seriously concerned to hear from a number of interlocutors that there was some resignation and a pervasive sense among Ukrainians that political parties are established and used for private gain, that politicians have not served them well and that democracy has failed to deliver on its promise. Therefore, it was clear that the lack of public funding might induce parties and election candidates to seek funding from hidden or even prohibited sources.¹⁵⁵

It was a matter of great concern for GRECO that parties and election candidates rely entirely on private funding, that is to say their own funds, subscriptions and donations – as they are currently not entitled to any direct State aid. There is a clear risk that parties and election candidates become highly dependent on powerful businesses or on shadow financing. For the sake of transparency, the authorities were urged to put the introduction of State aid high on the political agenda again.¹⁵⁶

Similar concerns were voiced by the OSCE in its election observation reports. In the 2012 report OSCE/ODIHR noted that the absence of public campaign financing and the lack of spending limits caused many contestants to rely on the support of wealthy individuals or business interests.¹⁵⁷ In 2014 the absence of public financing for political parties or election campaigns, insufficient measures to enhance transparency, as well as a lack of enforcement mechanisms were named by some interlocutors as reasons why wealthy donor and business interests continue to wield disproportionate influence over the campaign process.¹⁵⁸ Direct public funding would reduce the dependency of political parties on private donors, and would also help to ensure that parties have equal opportunities to compete in elections. At the same time, any such system should be based on clear guidelines to ensure that funds are allocated in an objective and unbiased manner.¹⁵⁹

Detailed proposals on introduction of the state funding of political parties were made by the civil society experts in the Concept paper on the legislation reform in the area of party and electoral campaign financing. It provides for two types of direct funding: 1) annual funding based on the results of the parliamentary elections and number of votes obtained (parties which obtained certain level of popular support, e.g. 1-2% less than the threshold for entering the parliament, will qualify for funding in the amount proportionate to the number of votes received; total amount of budget financing for all eligible

en.asp?fileid=16907&lang=en; Venice Commission Guidelines on Political Party Regulation, www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282010%29024-e; Council of Europe Committee of Ministers Recommendation 2003 (4); GRECO reports.

¹⁵⁵ GRECO, Third evaluation round report on Ukraine, § 73, cited above.

¹⁵⁶ *Idem*, § 93.

¹⁵⁷ OSCE/ODIHR Election Observation Mission report on Parliamentary Elections of 28 October 2012, page 18, cited above

¹⁵⁸ OSCE/ODIHR Election Observation Mission report on Early Parliamentary Elections of 26 October 2014, page 18, cited above.

¹⁵⁹ OSCE/ODIHR Opinion on Draft Amendments to some Legislative Acts of Ukraine concerning Transparency of Financing of Political Parties and Election Campaigns, September 2014, www.osce.org/odihr/123753?download=true.

parties would be limited to 1% of the minimum salary multiplied on the number of registered voters¹⁶⁰); 2) one-time reimbursement of actual electoral campaign expenses within certain limit per party (e.g. 100,000 minimum salaries, about UA 120 million or EUR 6 million if calculated in 2015). It is also proposed to limit party expenses on broadcasting media campaign advertisement, which is the main electoral expense that requires significant funding.¹⁶¹ This proposal by NGOs seems adequate and in line with international standards.

The IAP Second Round Monitoring report recommendation was for the Ukraine's Government to consider re-introducing state financing mechanism. According to the monitoring methodology a proof of such consideration should be provided (draft law, public discussion, hearings in the parliament, etc.). No information on such consideration was provided and arguments against such measure in the Government replies to the questionnaire submitted in 2013 do not qualify as such. Therefore, this part of the recommendation has not been implemented.

Integrity of political officials

Corruption in politics is not limited to issues of party and electoral financing. Robust mechanism of integrity and corruption prevention among political public officials is required as well. As was noted in the IAP Summary report for 2008-2013, officials holding political office (MPs, ministers, etc.) should be covered either by general rules on prevention of conflict of interests, asset disclosure, etc. applicable to all public officials or by special provisions, e.g. in the parliament's rules of procedure and/or laws on the status of such officials. It is also a good practice to adopt special codes of conduct for parliamentarians.¹⁶² The main challenge countries face in this regard, is to design a system of enforcement which would be sufficiently robust, but at the same time, does not infringe on the independence of such officials. That is why in many ACN countries, enforcement of integrity rules concerning parliamentarians is entrusted to a special structure of parliament (ethics and rules of procedure committees, etc.).¹⁶³

In Ukraine relevant rules are included in the framework Law on Principles for Corruption Prevention and Counteraction which in April 2015 will be replaced by the new Law on Corruption Prevention (adopted on 14 October 2014). The latter also repeals the Law on Rules of Ethical Behaviour covering all public officials. The framework law includes rules applying to all public officials concerning conflicts of interests, gift restrictions, office incompatibilities and asset disclosure. Some additional rules are provided in the special laws On the Status of MPs, On the Parliament's Rules of Procedure and On the Cabinet of Ministers of Ukraine.

The Law on the Status of MPs contains rules on incompatibility of MP's office with other posts or activities (based on the constitutional restrictions), basic requirements on ethical behaviour (including not to use one's mandate for personal purposes, in particular for the purpose of obtaining benefits), duties of MPs, including to disclose one's assets and income in accordance with the anti-corruption laws. Additional rules on ethics and discipline during plenary sessions of the parliament are defined in the Parliament's Rules of Procedure (Law No. 1861-VI) but these rules are not related to anti-corruption measures. Until

¹⁶⁰ In 2015 this would amount to about UAH 445 million or EUR 22 million – total fund to be distributed among all eligible parties.

¹⁶¹ Concept paper was developed in 2014 by the IFES and Transparency International – Ukraine, <http://ti-ukraine.org/what-we-do/research/4997.html>.

¹⁶² Article 8 of the UN Convention against Corruption 8 calls on states to apply codes or standards of conduct for the correct, honourable and proper performance of public functions. According to TI, only few European countries have established codes of conducts for parliamentarians: France, Germany, Greece, Ireland, Latvia, Lithuania, Poland, UK (source: TI, June 2012, www.transparency.org).

¹⁶³

recently the Parliament's Committee on the Rules of Procedure had dealt, among others, with issues of ethics of MPs; however, in the parliament of the VIII convocation, elected in 2014, this function was removed from the Committee's remit. The Parliament's Anti-Corruption Committee has no role in enforcing any of the anti-corruption measures in the activity of the parliament (except for conducting anti-corruption screening of draft laws submitted by MPs).

Neither the current framework anti-corruption law, nor the new Law on Corruption Prevention (to be enacted on 26 April 2015) provide for specific integrity measures for members of the parliament. MPs are covered by general provisions on the conflict of interests, asset disclosure and gift restrictions. While the latter two may not require special regulation for MPs, general provisions on conflict of interest are difficult to apply to the work of the parliament. Both the 2011 and the 2014 laws provide that special laws regulating activity of different public authorities should establish special rules on prevention and resolution of conflicts of interests of the relevant officials. For many public authorities such special rules were incorporated in the relevant laws (although most of them mainly duplicate provisions of the framework law). However, no such rules were adopted for MPs (and for members of the Government). There is also no enforcement mechanism to control compliance with the relevant rules by the MPs (e.g. rules on conflict of interest or on ethical behaviour).

As MPs and Government members hold special public offices it may be not effective to apply to them the same regulations as to other public officials; this is especially true for members of the parliament, where the issue of parliamentary independence is also important. It is therefore recommended to amend the Law on the Status of MPs, Parliament's Rules of Procedure and other regulations to provide for special procedure to prevent and resolve conflict of interests of MPs, to address breaches of ethics requirements set by the law. The enforcement role could be entrusted to one of the Parliament's committees – either the Rules of Procedure Committee or the Anti-Corruption Committee. Additional rules on the conflict of interest of Government members could be included in the Law on the Cabinet of Ministers of Ukraine (while control over their enforcement could be exercised by the National Agency for Corruption Prevention, which is supposed to be established under the new Law on Corruption Prevention).

Ukraine is partially compliant with the previous recommendation 3.7.

New recommendation 3.7.

- ***Adopt, without further delay, comprehensive reform of the political party and election campaign financing in line with Council of Europe standards, in particular by establishing restrictions on contributions and membership fee, ensuring transparency of party finances and electoral expenses through regular reporting and disclosure of detailed information on party and electoral campaign accounts, providing effective sanctions and establishing supervision mechanism with adequate powers and resources.***
- ***To ensure balance between private and public funding, re-introduce direct state financing of political parties according to the results of the parliamentary elections in line with best European practice.***
- ***Reinforce rules on integrity and corruption prevention for officials holding political offices, in particular by establishing special regulations and enforcement mechanism for conflict of interests for the parliament and Government members.***

3.8. Integrity in the judiciary

Second Round Recommendation 3.8.

- *Initiate a constitutional reform to bring provisions on the judiciary in line with European standards and recommendations of the Venice Commission, in particular with regard to appointment and dismissal of judges, life tenure, and composition of the High Council of Justice.*
- *Ensure sufficient and transparent funding of the judiciary and exclude possibility of financing of the judiciary by private donations and local self-government.*
- *Implement provisions on the financial disclosure of judges.*
- *Review legal provisions on the disciplinary proceedings, dismissal and recusal of judges to guarantee their impartiality and protection of judicial independence.*

Initiate a constitutional reform to bring provisions on the judiciary in line with European standards and recommendations of the Venice Commission, in particular with regard to appointment and dismissal of judges, life tenure, and composition of the High Council of Justice.

Amendments in the Constitution of Ukraine were initiated in 2013 by President Yanukovych. Draft law on amendments in the Constitution of Ukraine on strengthening the guarantees of judicial independence (no. 2522a) was submitted to the parliament in July 2013, then referred by the parliament to the Constitutional Court for opinion and after its clearance was preliminarily approved on 10 October 2013; however, in July 2014 the draft law was rejected.

The draft law no. 2522a, among other things, provided for the following¹⁶⁴:

- Initial 5-year appointment of judges was removed, instead the President would appoint all judges for life term upon submission of the High Council of Justice. It was intended that the role of the President in appointment and dismissal of judges would be ceremonial.
- Consent to detention or arrest of a judge would be given by the High Council of Justice on the proposal of the High Qualification Commission of Judges of Ukraine.
- The powers and composition of the High Council of Justice were changed. In particular, the draft law assigned to the High Council of Justice the power to appoint judges to administrative positions in the courts of general jurisdiction (except for the Supreme Court of Ukraine) upon submission of the relevant council of judges.
- Regarding the composition of the High Council of Justice, it was proposed that the President and the parliament would no longer take part in the forming its composition. Twelve of the twenty HCJ members would be judges appointed by the Congress of Judges of Ukraine; the Congress of Advocates of Ukraine and the Congress of representatives of legal higher education and academic would elect two members each; President of the Constitutional Court, President of the Supreme Court, Chairman of the Council of Judges of Ukraine, the Prosecutor General of Ukraine would be ex officio members of the HCJ. At the same time, the Prosecutor General would not participate in the HCJ decision-making with regard to judges.

¹⁶⁴ See English translation of the draft law: [www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2013\)058-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2013)058-e). (Right column of the table represents the draft law submitted by the President and pre-approved by the parliament.)

In June 2013 the Venice Commission adopted its assessment (Opinion 722/2013)¹⁶⁵ on the previous version of the draft law, which mainly coincided with the one submitted in the parliament. The Venice Commission welcomed most of the proposed amendments as they were in line with its previous recommendations to Ukraine. The following Venice Commission recommendations from Opinion 722/2013 have not been accommodated in the text of the draft law submitted by the President and pre-approved by the parliament in October 2013:

- 1) Immunity of judges: the immunity should be functional and criteria for lifting immunity should be established.
- 2) Composition of the HCJ: In order to guarantee the independence of the HCJ, the bodies electing or appointing its members must themselves be composed in an appropriate manner. As concerns the judges' component, it must be ensured that judges of all levels carry equal weight in the election. Judges of the highest courts should not have a stronger position in the election. As for the Bar, the Law on the Bar will need to be amended to provide for a democratic election of the Bar's representatives in the HCJ. The same applies to the Congress of the Representatives of Legal Academia.
- 3) High Qualification Commission of Judges and the HCJ: in Venice Commission's opinion there is no need for two separate bodies.

In July 2014 newly elected President Poroshenko submitted his own version of the constitutional amendments, which concerned relations among different branches of power but did not touch on the judicial reform. In its opinion of October 2014 the Venice Commission regretted that the new amendments did not address the judiciary and that that long-awaited and extremely urgent reform had not yet taken place while it had repeatedly urged the Ukrainian authorities to amend the constitutional provisions on the judiciary. The Commission had also supported the draft amendments which had just been rejected by the Verkhovna Rada (amendments of 2013). The Commission urged once again the Ukrainian authorities to proceed swiftly to the reform of the judiciary in conformity with the applicable standards of independence.¹⁶⁶

In January 2015 President Poroshenko submitted to parliament yet another draft law on constitutional amendments (draft law no. 1776). This time it did concern judiciary, but only the issue of immunity of judges. The draft law was endorsed by the parliament and sent for Constitutional Court opinion on 5 February 2015.

The latest draft law proposes to assign power of lifting judicial immunity to the High Council of Judges (instead of the parliament) and provide for possibility of detention in situations of *in flagrante delicto* (when a judge is caught red-handed in the process or immediately after commission of a grave or especially grave crime against person's life or health). Immunity will remain limited to arrest and pre-trial detention; similar to the current law, indictment of a judge would not require prior authorisation (see also chapter 2.4.-2.5.-2.6. of this report).

¹⁶⁵ Opinion on the Draft Law on the amendments to the Constitution, Strengthening the Independence of Judges and on the Changes to the Constitution proposed by the Constitutional Assembly of Ukraine, adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), Opinion no. 722/2013, CDL-AD(2013)014, available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)014-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)014-e).

¹⁶⁶ Opinion on the Draft Law amending the Constitution of Ukraine, submitted by the President of Ukraine on 2 July 2014, endorsed by the Venice Commission at its 100th plenary session (Rome, 10-11 October 2014), Opinion no. 766/2014, CDL-AD(2014)037, available at: [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)037-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)037-e).

The draft law also provides that judges may not be held liable for acts committed in connection with administration of justice, except for cases of delivery of a knowingly unjust court decision, violating judicial oath or commission of a disciplinary offence. This provision raises concern – it may be construed to mean that a bribery offence committed by a judge when performing his functions is not covered by exception and judges are no liable for it (e.g. when a court decision in exchange of a bribe has not been delivered and therefore cannot be declared knowingly unjust).

Overall, amendments introduced in January 2015 regrettably do not provide for a comprehensive reform of the judiciary as recommended by the IAP Second monitoring round and the Council of Europe bodies (Venice Commission, Parliamentary Assembly of the Council of Europe).

It should also be noted that according to the civil society experts, if adopted, amendments concerning immunity of judges would prevent any new changes in the provisions on judicial immunities during one year after adoption. This may obstruct comprehensive amendments on strengthening judicial independence, as they will require a revision of the whole chapter on the judiciary in the Constitution of Ukraine.

As the recommendation was to initiate constitutional amendments and they were indeed initiated but then abandoned (and there are no new pending proposals), this part of the recommendation is partially implemented.

Ensure sufficient and transparent funding of the judiciary and exclude possibility of financing of the judiciary by private donations and local self-government.

Article 142 of the Law on the Judiciary and Status of Judges (the law of July 2010) provides that budgetary appropriations for maintenance of courts are protected and may not be decreased during budgetary period. In July 2011 the Law on the Court Fee was adopted, which provided that the collected court fees should be directed to a special fund of the State Budget and should be allocated for the funding of the judiciary only. The Law on the Judiciary also states that courts are to be funded from the State Budget and does not provide for any other sources of financing.

Government provided the following data on the level of state financing of courts.

Table 17. Level of funding of the judicial system

	Budget needed (UAH million)	Budget allocated (UAH million)	Level of budget financing from the needed
2011	9,667.7	2,930.3	30.3 %
2012	10,993.4	4,222.7	38.4 %
2013	9,585.0	4,419.2	46.1%

Source: Government replies to the monitoring questionnaire.

Budget allocated for 2014 is about the same as for 2013. This shows that the judiciary is underfunded (funded to not more than 50% of the required financing). Furthermore, according to the State Court Administration, in 2012-2014 the budget allocations were fulfilled (actually provided to courts) only partly – 90% in 2012, 96.9% in 2013 and 93.5% in 11 months of 2014.

Problems with financing of the judiciary were confirmed by judges during the on-site visit. Interlocutors referred to the lack of basic supplies (e.g. stationery), insufficient number of courtrooms and deliberation rooms, decrepit court buildings, etc. Regulations on the court premises standards are not complied with. There is no sufficient funding for the National School of Judges and this affects training of judges,

including on the anti-corruption issues (no funds to cover expenses required for judges from the regions to attend on-going training in the National School, etc.).

The July 2010 the Law on the Judiciary provided for gradual increase in the remuneration of judges: basic salary rate of a local court judge was set at 6 minimum salaries as of 01.01.2011, 8 minimum salaries as of 01.01.2012, 10 minimum salaries as of 01.01.2013, 12 minimum salaries as of 01.01.2014 and, finally, 15 minimum salaries starting from 01.01.2015 and further on. However, in December 2013 the law was amended and increase in the salary scheduled for 2014 was revoked – it was argued that such increase (which would cost UAH 600 million to the state budget) was not economically possible. Similar increase planned for 2015 was revoked by the Law adopted on 28 December 2014 and the current basic salary rate for judges is set at 10 minimum salaries.

Below is information on the average monthly judicial remuneration provided by the Ukrainian authorities.¹⁶⁷

Table 18. Judicial remuneration in Ukraine

Courts	Remuneration of a judge (UAH)				
	2010	2011	2012	2013	2014 (Jan-Oct)
Local courts	6,085	6,016	12,928	17,059	18,339
Courts of appeal	8,641	8,115	15,845	20,705	21,512
Local economic courts	7,352	7,232	12,601	16,533	17,968
Economic courts of appeal	9,895	9,713	15,303	19,474	20,986
Circuit administrative courts	6,287	5,937	11,549	15,220	16,686
Administrative courts of appeal	9,077	8,099	14,787	19,455	20,781

Source: State Court Administration of Ukraine.

According to a media report, basic salary rate of other judges in December 2013 was as follows: UAH 14,616 for higher specialised court and UAH 15,834 for Supreme Court and Constitutional Court judges (this is the basic salary rate, excluding any increments). It was also reported that the president of the Constitutional Court of Ukraine received in 2012 a monthly remuneration (with all increments included) of UAH 46,571.¹⁶⁸

In mid 2014, however, due to severe cuts in the budgetary expenses remuneration of judges was reduced to approximately 1/3 of the usual rate. At the end of 2014 further cuts were introduced by the Law of 28 December 2014. In 2015, the judicial remuneration will be limited to 7 minimum salaries per month (i.e. about UAH 8,400 or about EUR 350).

The above statistics and recent legislative changes show that the judiciary is not sufficiently funded and judicial remuneration is not commensurate with the judicial tasks. This creates major corruption risks in the judiciary and will make it difficult to restore its integrity.

This part of the recommendation has not been implemented.

¹⁶⁷ For information: according to official statistics average monthly salary in Ukraine in 2010 was UAH 2,239, in 2011 – UAH 2,633, in 2012 – UAH 3,026, in 2013 – UAH 3,702.

¹⁶⁸ Source: <http://vesti.ua/strana/31312-v-ukraine-sobralis-podnjat-zarplatu-jelitnym-sudjam>.

Implement provisions on the financial disclosure of judges

The new Law on the Judiciary adopted in 2010 obliged judges to submit annually by 1 May financial disclosure declarations to the tax administration and the State Court Administration. The latter was supposed to publish judicial declarations at the official web site of the judiciary. Article 54 of the Law provided that judges had to declare their expenses “in the event of one-time expenses exceeding the amount of the monthly salary”.

In May 2012 these provisions were amended and aligned with the 2011 Law on Principles for Preventing and Counteracting Corruption – judges should submit annual declarations by 1 April to the courts where they work according to the template included in the Law on Principles. Mandatory publication was provided only for judges of the Supreme Court and Higher Specialised Courts. But the law allowed such publication either on-line or in the print outlets, which made it difficult to verify such publication. In 2014 the Law on Principles was amended to mandate publication on-line (still only for higher level judges) if relevant court has a web site (which all higher courts do). According to the new Law on Prevention of Corruption (to be enacted in April 2015) all public officials, including judges, will submit declarations via electronic means on a central web-portal, where this information will also be automatically published. This new arrangement, however, will become functional not earlier than in 2016.

There is no information on the level of submission by judges of asset declarations in courts, especially judges whose declarations are not subject to mandatory publication.

It appears from the media and civil society reports that, after 2014 amendments, asset declarations of judges of the higher courts began to be published on-line. It transpired from such asset disclosures that a number of judges possess luxurious cars and immovable properties, many declared receiving large “gifts” from undisclosed sources.¹⁶⁹ This raises the issue of possible unjustified wealth and points to the urgency of investigation of illicit enrichment in Ukraine (see also Pillar 2 on criminalisation and chapter 3.2. on asset disclosure).

At the same time, investigation of illicit enrichment should be carried out in accordance with the law and in full respect of the judicial independence. In September 2014 the Government adopted a resolution on instilling integrity in the judiciary.¹⁷⁰ Among the measures was instruction to the State Fiscal Service to conduct (jointly with the Ministry of Interior, Security Service, National Securities Commission and the Prosecutor’s General Office, National Bank, Council of Judges), by 1 December 2014, a verification of information in the asset declarations submitted by judges for 2013. The instruction specified that special attention should be paid to inconsistency between official income and assets that are in ownership or possession of judges and their family members. The Government also instructed the Ministry of Interior (jointly with the Prosecutor’s Office and other agencies) to verify compliance of judges with restrictions established by the anti-corruption legislation, in particular with regard to incompatibility with other offices or activities.

No information is available on the results of the mentioned verifications. Overall it is quite unusual for the Government to order inspections of judges. This may affect judicial independence. Compliance with anti-corruption legislation should be controlled by law enforcement and other specialised agencies (e.g. the future National Agency for Corruption Prevention) and should not be based on instructions from political

¹⁶⁹ See, among others: www.epravda.com.ua/columns/2014/11/24/507567, http://news.liga.net/video/politics/4061894-sudi_millionery_ne_mogut_obyasnit_proiskhozhdenie_deneg_video.htm.

¹⁷⁰ Resolution No. 828-p of 3 September 2014, available at: <http://zakon4.rada.gov.ua/laws/show/828-2014-p>.

bodies, like the Government. It is understandable, therefore, that the Council of Judges of Ukraine (body of judicial self-governance) reacted negatively to the Government decision and called it unconstitutional.¹⁷¹

This part of the recommendation has been largely implemented.

Review legal provisions on the disciplinary proceedings, dismissal and recusal of judges to guarantee their impartiality and protection of judicial independence.

The 2010 Law of Ukraine on the Judiciary and Status of Judges, among other issues, determined the procedure for dismissal of judges from office and imposing disciplinary actions on them. The Law on the High Council of Justice (HCJ) was modified as well. The High Council of Judges deals with disciplinary liability of the president, vice-presidents and judges of the Supreme Court of Ukraine, president and vice-presidents and judges of higher specialised courts; it can apply one type of disciplinary sanction to such persons - a reprimand. The HCJ may also decide that the judge does not conform to his position and propose to dismiss such a judge from office to the body that appointed or elected him (President or Parliament).

The procedure for disciplinary proceedings in relation to judges of the Supreme Court of Ukraine and the high specialised courts was changed as well. In particular, Article 42 of the Law on the HCJ was amended to provide that when deciding on disciplinary sanction the HCJ should hear judge's explanation. If a judge is unable to attend the meeting of the HCJ for legitimate reasons, the judge may provide a written explanation on the issues raised and it is to be attached to the case file. Written explanations of the judge should be announced at the HCJ meeting. Repeated failure of the judge to appear is the basis for hearing the case in his absence. The judge in respect of whom a disciplinary action is being taken and/or his representative have the right to give explanations, ask questions to participants of the meeting, state objections, file motions and recusal requests. Similar changes were made to the procedure for consideration by the High Council of Justice of appeals against the decisions of the High Qualification Commission of Judges of Ukraine on the disciplinary liability of judges of local and appellate courts.

With the adoption of the Law on the Judiciary and Status of Judges, the list of persons entitled to file complaint about behaviour of a judge, which may lead to a disciplinary action, was expanded – any natural and legal person may file such complaint. A list of grounds for disciplinary liability of judges and for their dismissal for breach of oath were provided in the law. The High Qualification Commission of Judges has set up a service of disciplinary inspectors. Judicial appeal against decision on disciplinary liability of a judge was limited to consideration in one and only instance in the specific panel of the Higher Administrative Court.

The new provisions on disciplinary liability of judges were assessed by the Venice Commission in its several opinions on various Ukrainian laws and draft laws¹⁷² and by the European Court of Human Rights in its judgment in the case of *Oleksandr Volkov v. Ukraine*¹⁷³.

The following overview of the deficiencies in the current system of disciplinary liability and dismissal proceedings of judges according to the Venice Commission opinion and the ECtHR judgment is based on the publication prepared by the Ukrainian NGO Centre for Political and Legal Reforms¹⁷⁴:

¹⁷¹ See text of the Council of Judges' decision: <http://rsu.court.gov.ua/wp-content/uploads/2014/10/Рішення-PCУ-№-44-Від-14.10.2014.pdf>.

¹⁷² Available at: www.venice.coe.int/webforms/documents/?country=47&year=all.

¹⁷³ *Oleksandr Volkov v. Ukraine*, no. 21722/11, judgment of 9 January 2013, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115871>.

- 1) Composition of the HCJ is not in line with the European standards; HCJ members should work on permanent basis, except for *ex officio* members.
- 2) The HCJ should not review court decisions in specific cases by bringing to liability for mistakes in the application of the law in judicial decision-making.
- 3) HCJ member who made proposal on dismissal of a judge or who initiated disciplinary proceedings against a judge should not take part in the decision-making on the relevant issue.
- 4) Disciplinary liability of judges should be regulated by one law in a clear and predictable manner, preferably in the Law on the Judiciary.
- 5) Judicial ethics should not be mixed with discipline and relevant proceedings.
- 6) Grounds for disciplinary sanctions should be clearly provided in the law and should be foreseeable. The new definition of the breach of oath (a ground for dismissal of a judge) is too vague (includes such elements as “violation of moral and ethical principles of a judge”, “taking actions which denigrate judicial office”, etc.).
- 7) Duplication of grounds for disciplinary sanction and dismissal, no clear separation between them which leads to arbitrary practice.
- 8) The new procedure for appealing against disciplinary decisions applied to judges discriminates against judges of the Supreme Court and judges of the higher specialised courts (Higher Administrative Court, Higher Economic Court and Higher Specialised Court for Civil and Criminal Matters) – judges of local and appellate courts have the right to appeal first to the HCJ against decision of the Higher Qualification Commission of Judges and then to the Higher Administrative Court (HAC), while judges of the Supreme and higher courts have only one avenue of appeal – to the HAC without possibility of further challenge.
- 9) There is no statutory period of limitation for breach of oath, which undermines legal certainty.
- 10) Accusatory character of the disciplinary or dismissal proceedings. The same member of the disciplinary body (the HCJ or the High Qualifications Commission of Judges) plays the role of the prosecutor and judge – first preparing and supporting the case against the judge and then taking part in the decision-making. In reality the adversarial nature of the proceedings is not guaranteed.
- 11) Different disciplinary offences are not matched with a range of sanctions to ensure proportionality. In practice for the similar offence a judge may be not punished at all, receive a reprimand (a disciplinary sanction) or be dismissed altogether.
- 12) Lack of adequate legal remedies for judges who were sanctioned. The HAC proceedings did not provide such remedy in line with the ECHR.

Influence of prosecutors. Another issue with disciplining and dismissal of judges, which came to light in 2011-2013, was influence of prosecutors who often initiated such proceedings. Several chief prosecutors were members of the HCJ, including Prosecutor General, First Deputy Prosecutor General and another Deputy Prosecutor General. The Parliamentary Assembly of the Council of Europe expressed its “*concern about the many credible reports that disciplinary actions have been initiated, and judges removed from office by the High Council of Justice, on the basis of complaints from the prosecutor’s office because the judges in question had decided against the prosecution in a given court case*”. The Assembly noted that such practices were “*incompatible with the principle of the rule of law and should be stopped at once*”.¹⁷⁴ The Council of Europe Commissioner for Human Rights noted in 2012 reports of occasions when disciplinary proceedings against judges had been initiated by members of the HCJ representing the

¹⁷⁴ Roman Kuybida, Maksym Sereda, Disciplinary liability of judges in Ukraine: Problems in legislation and practice, Centre for Political and Legal Reforms, Kyiv, 2013, available (in Ukrainian) at: www.pravo.org.ua/files/A_D_NEW_final.pdf.

¹⁷⁵ PACE Resolution, cited above, § 6.6.

Prosecutor’s Office for alleged breach of oath on the grounds of the substance of the judicial ruling in cases where the judges reportedly did not support the position of the prosecution.¹⁷⁶

This problem was acknowledged by President of Ukraine who in April 2012 submitted a draft law proposing to forbid prosecutors to initiate such proceedings (relevant law was adopted in June 2012). Explanatory note to the draft law stated: “*Due to the role, status and functions of prosecutor under current legislation of Ukraine, a submission by the prosecutor addressed to the High Council of Justice or High Qualification Commission of Judges of Ukraine concerning verification of judicial conduct during consideration of a court case creates a significant risk of influencing how the judge’s position forms when deciding in the case*”.¹⁷⁷ Sometimes prosecutors, who were not satisfied by the first instance court decision not only lodged appeals, but also – not awaiting for outcome of the consideration in the appeal instances – simultaneously filed proposals to the High Council of Justice to dismiss the judge for violating his oath or to the High Qualification Commission of Judges to bring the judge to disciplinary liability.¹⁷⁸

After adoption of the June 2012 amendments this practice has changed, but the role of prosecutors was taken by presidents of the courts of appeal with whom prosecutor have established cooperation. Reportedly, court president, on request of prosecutors, initiate disciplinary proceedings against judges who acquitted the accused in a criminal case.¹⁷⁹ Judges whom the monitoring team met during the on-site visit in November 2014 also referred to practice when criminal cases are opened against judges who deliver acquittals.

Statistics on dismissal. As to practice of dismissals of judges in Ukraine the Government provided the following statistics.

Table 19. Number of dismissals of judges

	2010 (Sep-Dec)	2011	2012	2013	2014	Total
Retirement from office	273	58	65	144	N/a	540
Reaching of 65 years	0	4	4	5	3	16
Due to health reasons	18	9	4	1	2	34
For breach of oath	14	9	9	7	1	40
Due to conviction for a crime	4	5	6	4	1	20
Expiration of the term of office	2	7	11	3	1	24
Dismissed on one’s own request	13	24	10	7	N/a	54
Total	324	116	109	166		715

Source: Government replies to the monitoring questionnaire.

¹⁷⁶ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, February 2012, § 42. Available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2075485&SecMode=1&DocId=1883332&Usage=2>.

¹⁷⁷ Available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=43307.

¹⁷⁸ Interview by the then advisor to the President Andriy Portnov to newspaper “Zakon i Biznes”, 6 June 2012, on-line version available at: http://zib.com.ua/ua/9951-prokurori_vtrachayut_vpliv_na_suddiv_-_portnov.html.

¹⁷⁹ Disciplinary liability of judges in Ukraine: Problems in legislation and practice, Centre for Political and Legal Reforms, 2013, cited above, pp. 51-52.

Violation of judicial ethics. According to analysis carried out by the NGO Centre for Political and Legal Reforms (cited above), practice of disciplinary sanctions for violation of the ethics rules raises concerns. Rules of judicial ethics are found in the framework Law on the Rules of Ethical Behaviour (which covers all kinds of public officials) and in the Code of Judicial Ethics (a new wording of which was approved on 22 February 2013 by the Congress of Judges; it replaced previous version of 2002). According to Article 83 of the Law on the Judiciary, a judge may be brought to disciplinary liability for “systematic or one time grave violation of the judicial ethics rules which undermines the authority of the judiciary”. Analysis of decisions of the High Qualification Commission of Judges showed that it usually did not refer to the specific ethics rule violation of which resulted in the disciplinary proceedings, there was also no justification as to such elements as “systematic”, “grave”, “undermining of the authority of the judiciary”. This is contrary to the legal certainty requirement and may result in unjustified sanctioning of judges.

As to dismissal of judges it is reported that after enactment of the new Law on the Judiciary the HCJ persecuted a number of judges, put pressure on them and used the “phone law”, i.e. influencing judges with regard to specific cases. Relevant reports can be found in the press and have been summarised in the mentioned analysis by the NGO cited above.¹⁸⁰ After several show cases in 2010 of submissions by the HCJ for dismissal of judges such decisions decreased during following years.

Violation of procedural terms. One of the reform measures adopted in 2010 was radical shortening of the procedural terms within which judges are supposed to rule on certain matters. The declared goal of such changes was to ensure speediness of trials, efficient functioning of the judicial proceedings and providing better remedies for the parties. At the same time violation of the unreasonably short terms by judges was determined as one of the grounds for disciplinary measures. Coupled with the extremely large workload of judges it led to the situation where practically any judge is potentially subject to disciplinary sanctions for non-compliance with the judicial procedures’ terms. The above cited report by the NGO Centre for Political and Legal Reforms noted in this regard that in 2/3 of disciplinary cases judges were reprimanded for violation of the terms for case review, while average monthly workload of a local court judge in 2011 was 139.6 cases and in 2012 – 69.3 cases (i.e. 3-6 cases had to be resolved daily to clear the docket). The workload has not been reduced since then – according to the State Court Administration average monthly workload of a local court judge in 2013 was 67.2 cases and 63.3 cases in the first half of 2014 (for the judges of administrative appellate courts, which consider appeals against public administration acts, the workload in 2012 was 264 cases monthly, 176 cases in 2013 but then fell to 33.7 cases in the first half of 2014).

Functioning of disciplinary bodies. In 2011-2012 the High Qualification Commission of Judges received 28,839 complaints on judicial conduct, during first 6 months of 2013 – 7,783. This put a significant burden on the 11 commissioners, who in addition to the disciplinary proceedings also deal with recruitment and transfers of judges. Such workload and lack of published criteria which are used by the Commission to filter complaints may result in selective and arbitrary disciplinary prosecutions.¹⁸¹

It should also be noted that the HQCJ was ineffective from April till December 2014 due to dismissal of its members and delay in appointment of the new ones. This was an unacceptable situation, which undermined functioning of the judiciary. It was also disturbing, because after Maidan events removal of corrupt judges was one of the main public demands and two laws were adopted to launch extraordinary mechanisms to verify judicial conduct and “clean” the judiciary (see below additional details). At the same time the body responsible by the law for disciplining of judges remained dysfunctional for so long.

¹⁸⁰ *Idem*, pp. 35-36.

¹⁸¹ *Idem*, p. 54.

Similar situation still exists with regard to the High Council of Justice. The latter remains ineffective since April 2014 and currently has only 7 members out of 20. The functioning of the HCJ is therefore blocked and it cannot perform its constitutional tasks and, in particular, consider disciplinary cases on higher courts judges and appeals against decisions of the HQCJ.

Publication of disciplinary decisions. The High Qualification Commission of Judges is mandated by the law to publish its decisions on disciplinary liability of judges at its web site. According to the NGO's monitoring from 149 such decisions in 2011 only 115 decisions were published, while in 2012 – for unknown reasons – there were 109 adopted decisions, but 138 were published. Decisions of the Commission to recommend dismissal of judges as a result of disciplinary proceedings are not published at all.¹⁸²

Further reform measures. To execute ECtHR judgment in the case of *Oleksandr Volkov v. Ukraine*, Ukraine has to resolve systemic deficiencies in its law and practice highlighted by the Court. The Government reported that constitutional amendments initiated by the President in 2013 aimed to address these issues; but the law was ultimately rejected in 2014 and no replacement was proposed.

In September 2013 the Council of Europe's Committee of Ministers reviewed situation with execution of this judgment and in particular taking of general measures. It noted that the planned revision of the Constitution would remedy some of the structural shortcomings found by the Court. It would in particular exclude Parliament from the procedure of appointment and dismissal of judges and substantially change the composition of the High Council of Justice which would be from now on composed of a majority of judges elected by peers. It is noted in this context that the Venice Commission, in its opinion, recommended further measures to guarantee the independence of the HCJ by ensuring that the bodies electing or appointing members must themselves be composed in an appropriate manner. At the same time, there appeared to remain a number of additional issues which required action and/or information on the measures adopted and/or envisaged. They concerned most notably the effective judicial control by the High Administrative Court over decisions taken by the HCJ; the definition of "breach of oath"; different procedural safeguards, including limitation periods and an appropriate scale of sanctions, and also respect for the principle of proportionality. The Committee of Ministers noted that in view of the serious structural shortcomings identified by the Court, it was of utmost importance that the Ukrainian authorities retained their reform plans as a top priority and report rapidly on further progress.¹⁸³

Two draft laws on comprehensive reform of the judiciary, including provisions on disciplinary liability and dismissal, have been submitted in the parliament in the end of 2014 – beginning of 2015. Draft law no. 1497 was submitted by MPs and prepared by the civil society experts jointly with the Ministry of Justice and was also under review in the Venice Commission. The alternative draft law – no. 1656 – was proposed by the President and was developed by the Judicial Reform Council under the President. Both draft laws (despite being alternative proposals) were passed in the first reading on 13 January 2015; a working group was established under the relevant parliamentary committee to develop a compromise text. The presidential draft law was adopted as a law on 12 February 2015.

According to the NGO Centre for Political and Legal Reforms, the draft law by MPs takes into account 44 recommendations of the Council Europe bodies given to Ukraine concerning judicial reform, while the

¹⁸² *Idem.*

¹⁸³ Available at: www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp.

presidential draft law – only 30.¹⁸⁴ The adopted law preserved some deficiencies which may undermine judicial independence, in particular the following provisions:

- participation of the parliament's committee in the appointment of judges;
- powers of the President to abolish courts, transfer judges, be present at the taking of judicial oath;
- qualification assessments of judges;
- not separating 'prosecution' and 'adjudication' roles during disciplinary proceedings against judges.

This part of the recommendation has not been implemented by Ukraine.

Other issues

Administrative positions in courts. As a result of the 2010 reform the High Council of Justice was assigned a power to appoint and dismiss judges to/from administrative positions in courts (presidents and deputy presidents of courts). This power of the HCJ was not provided in the Constitution of Ukraine.¹⁸⁵ In view of the previous composition of the HCJ, which was not in line with international standards and was dominated by the representatives of the executive and prosecution service, this undermined independence of the judiciary. It is therefore welcome that these provisions were changed in April 2014 to provide that judges are appointed to administrative positions in courts for one year-term and dismissed by judges of the relevant court. This appears to be the best solution, which ensures independence of the court presidents from public authorities. Such procedure was also kept in the new Law on the Judiciary adopted on 12 February 2015.

Liquidation of courts and transfer of judges. The 2010 Law on the Judiciary assigned the power to liquidate courts to the President of Ukraine. Such power of the President is not provided in the Constitution of Ukraine and the latter includes an exhaustive list of President's power and does not allow establishing new ones through laws. With regard to the similar provision in the draft law the Venice Commission noted: "... one may say that the President is given the power to create and abolish courts by an act of Parliament, i.e. the law under preparation, and that in this sense there will be a clear legal basis. The law will also fix the types of various courts and contain further provisions defining the basic structure of the court system so as to circumscribe the discretion of the President. Thus the regulation, after all, appears to come some way towards meeting the requirement that courts must be established by law ... Even so, it is somewhat disturbing to see that the basic rule on the establishment (and - what is at least as problematic - abolition) of courts on its face appears to run counter to the fundamental principle adopted by the supervisory organs of the ECHR long ago. The formulation of Article 19 conveys a negative message. If the President expected a negative decision from a court, he or she could even abolish the court to ensure that other

¹⁸⁴ See: <http://pravo.org.ua/2010-03-07-18-06-07/lawreforms/1583-kodeks-rekomendatsii-rady-yevropy-shchodo-sudovoi-reformy-i-reformy-prokuratury-v-ukraini.html>. See also comparison of compliance of two draft laws with European standards: http://pravo.org.ua/files/Gap_analysys.doc.

¹⁸⁵ Venice Commission noted in this regard: "26. Another element of concern is the wide scope of the HCJ's competences, which seems to go beyond the scope granted to this body by the Constitution in the field of the appointment of judges to administrative posts. ... Article 131 of the Constitution of Ukraine contains an exhaustive list of powers of the High Council of Justice, which does not include the appointment of judges to administrative posts." Source: Joint Opinion on the Law Amending Certain Legislative Acts of Ukraine in Relation to the Prevention of Abuse of the Right to Appeal by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe, CDL-AD(2010)029, October 2010, available at: [www.venice.coe.int/WebForms/documents/?pdf=CDL-AD\(2010\)029-e](http://www.venice.coe.int/WebForms/documents/?pdf=CDL-AD(2010)029-e).

judges will deal with the case.”¹⁸⁶ The same problem exists with the President’s power to transfer judges from one court to another court of the same level and jurisdiction – it as assigned to him by the 2010 judicial reform and has no constitutional basis.

It is regrettable that these unconstitutional provisions were retained in the draft law no. 1656 submitted to parliament by President Poroshenko in January 2015 and adopted as a law in February 2015 (see above).

Publication of court decisions. In October 2011 the parliament amended the Law of Ukraine on Access to Court Decisions. The power to determine a list of court decisions subject to mandatory on-line publication was delegated to the Council of Judges. The latter, in February 2012, approved relevant regulations and narrowed down the scope of decisions subject to publication compared with the previous system (which required publication of all decisions, including interim decisions). This was a regrettable step which limited access to court decisions; it should be reversed. It appears that this provision was revoked in the new Law on the Judiciary adopted in February 2015.

Automated distribution of cases. Automated distribution of cases among judges was provided for in the 2010 Law on the Judiciary. Regulation of procedure for such distribution was delegated to the Council of Judges.¹⁸⁷ The adopted regulations include a number of exceptions, which in practice allow court presidents to manipulate the system and distribute cases to specific judges.¹⁸⁸ It is important to eliminate such loopholes and regulate in detail the system for case allocation directly in the law. The new Law on the Judiciary adopted in February 2015 did not address this deficiency.

“Lustration” in the judiciary. After Maidan revolution there was a high popular demand to punish corrupt officials and officials who violated human rights, including judges. In response two laws were adopted – On the Restoration of Trust in the Judiciary (adopted on 8 April 2014)¹⁸⁹ and On Cleansing of Authorities (adopted on 16 September 2014; often called the Lustration Law).

The first law (“Law on Restoration of Trust”) provided for establishment of a Special Ad Hoc Commission on the Screening of Judges (“Special Ad Hoc Commission”). The screening had to be applied to judges who adopted decisions violating human rights during the Euromaidan protests in November 2013 – February 2014; decisions depriving the MPs of their mandates; decisions on voting results during 2012

¹⁸⁶ Joint Opinion on the Draft Law on the Judicial System and the Status of Judges of Ukraine by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe, Adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010), CDL-AD(2010)003, §18, available at:

[www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)003-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)003-e).

¹⁸⁷ Decision of 26 November 2010 with the following amendments, available at:

<http://court.gov.ua/969076/polozhenniapasds>.

¹⁸⁸ “For example, if the case of particular interest for the court president was allocated to the judge that refused to pass the decision suggested, the court president could offer the judge a sick leave in order to have the grounds for case reallocation. Similarly, specialization of judges was voted upon recommendations of the court president, usually without any preliminary discussion.” Source: Legal opinion on the Law on the Restoration of Trust in the Judiciary in Ukraine, page 10, May 2014, www.en.pravo.org.ua/files/Opinion_Law_On_Restoration_of_Trust_RK_OS_ENG.pdf.

¹⁸⁹ See Legal opinion by Council of Europe experts on the Law on the Restoration of Trust in the Judiciary in Ukraine, May 2014,

www.en.pravo.org.ua/files/Opinion_Law_On_Restoration_of_Trust_RK_OS_ENG.pdf. See also opinion of other Council of Europe experts on the relevant draft law:

www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic_reform/Appendix_draft_law_of_Ukraine_FINAL010414.pdf.

parliamentary elections; as well as to judges who considered cases or delivered decisions in violation of the European Convention of Human Rights as stated by the European Court of Human Rights. The Special Ad Hoc Commission was composed of 1/3 of retired judges elected by the Plenary Assembly of the Supreme Court of Ukraine; other members are civil society representatives with legal education appointed by the Government Commissioner for Anti-Corruption Policy and the parliament. The Special Ad Hoc Commission after conducting its investigation has to submit its non-binding opinions to the High Council of Justice (while the latter is authorized to propose dismissal of judges based on their breach of oath).

In addition to establishing special procedure for reviewing judicial conduct and decisions, the Law on Restoration of Trust included other important provisions with direct effect. It dismissed all court presidents (as well as deputy court presidents and chamber secretaries) in office at that moment and introduced new procedure for their election (by the judges of the same court and not by the High Council of Justice – see also above; for the period of one year instead of five years). The law also terminated offices of the then current members of the High Council of Justice and High Qualification Commission of Judges of Ukraine and prohibited membership in these bodies of persons who were their members before enactment of the Law.

While the law had good intentions it has turned out to be mostly ineffective. The new procedure for election of court presidents resulted in that the same former court presidents who were dismissed by the law were re-elected, but now by judges of the same courts, which was reportedly explained by strong corrupt and other personal links inside the courts, fear of judges to oppose their former presidents. The High Council of Justice and the High Qualification Commission of Judges of Ukraine were rendered dysfunctional; the HCJ remains so until now (as of February 2015) and the HQCJ was re-launched only in December 2014.

The Special Ad Hoc Commission was composed and started working, but its work cannot deliver any results because of the not functioning High Council Justice. At the same time the term of office of the Special Commission is limited to one year. To date the Commission adopted 8 opinions on judicial conduct.¹⁹⁰ Overall from beginning of its work till 10 December 2014 the Special Commission received 1,587 requests for screening of judges, 841 of which were denied as not complying with the law, 172 screenings were launched.¹⁹¹

The situation was further complicated by the adoption of the Law on Lustration in September 2014. The latter also included a procedure for verifying judicial decisions, which overlapped with the Law on Restoration of Judges. Description of the law and its preliminary assessment can be found in the Venice Commission opinion of December 2014.¹⁹²

In its evaluation of such overlap the Venice Commission mentioned that the Ukrainian authorities have explained that the inclusion of judges in the new law was justified on two grounds: first, the previous law has proved ineffective (the number of cases processed by the special commission is negligible); second, the previous law does not enable to ban the lustrated judge from public service. The Venice Commission found that if the previous law is deemed to be ineffective, it should be repealed and replaced by new, more effective provisions which however duly respect the constitutional rules on the independence of judges. The current overlap creates problems of legal certainty and of co-ordination: if a judge has already been the object of a procedure under the Law on the Restoration of Trust in the Judiciary, he or she should be immune from the application of the Lustration law pursuant to the principle of *ne bis in idem*. If no

¹⁹⁰ Available at: www.vru.gov.ua/add_text/35.

¹⁹¹ Source: www.vru.gov.ua/add_text/61.

¹⁹² Opinion no. 788/2014, CDL-AD(2014)044, available at: [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)044-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)044-e).

procedure has been carried out yet, it is unclear which procedure prevails. The lustration of judges should be regulated in one law only.¹⁹³

The Venice Commission also recommended that the lustration of judges should only be carried out with full respect of the constitutional provisions guaranteeing their independence, and only the High Council of Justice should be responsible for any dismissal of a judge.¹⁹⁴

It is therefore welcome that a draft law was introduced in the parliament (no. 1881 of 29 January 2015¹⁹⁵) to address this overlap and deficiencies of the Law on Restoration of Trust in the Judiciary.

Ukraine is partially compliant with the recommendation 3.8.

New recommendation 3.8.

- *Adopt, without further delay, a constitutional reform to bring provisions on the judiciary in line with European standards and recommendations of the Venice Commission, in particular with regard to appointment and dismissal of judges, their life tenure, composition of the High Council of Justice.*
- *Introduce comprehensive changes in the legislation on the judiciary and status of judges, procedural legislation in particular to revise provisions on the system of judicial self-governance, disciplinary proceedings, dismissal and recusal of judges to guarantee their impartiality and protection of judicial independence.*
- *Ensure sufficient and transparent funding of the judiciary and remuneration of judges that is commensurate to their role and reduces corruption risks.*
- *Make public on Internet all court decisions, including interim ones.*
- *Review system of automated distribution of cases among judges to remove loopholes that allow manipulating the system and ensure that results of automated distribution are public and included in the case-file. Introduce ICT tools in the judicial procedures and court functioning (e.g. electronic filing of lawsuits and other legal documents).*

¹⁹³ Idem, §76.

¹⁹⁴ Idem, §104.c.

¹⁹⁵ Available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53747.

3.9. Private sector

Second Round Recommendation 3.9.

- *Establish a dialogue with business to raise awareness about risks of corruption and solutions for private sector, to solicit inputs for the review of the relevant legislation (Economic Code, Accounting and Audit rules, Tax Code, Public Procurement law, and other legal acts relevant for private sector) with the view to reduce possibilities for corruption.*
- *Together with private sector organisations, promote the development of self-regulation within the private sector (code of conduct, internal control and compliance programmes, and whistle-blower protection).*
- *Promote uniform court and administrative practice in property disputes, licensing, customs regulation and other corruption prone areas.*
- *Adopt and promote legal obligation and clear rules for reporting of corruption by internal and external auditors.*

Corruption risks for business

Corruption remains one of the key risks for doing business in Ukraine, which is demonstrated by various international rankings related to business environment. President Yanukovich declared his government's commitment to increasing Ukraine's ranking. Accordingly, he signed various decrees on specific measures to achieve this goal; that helped the country to climb by a remarkable 28 positions in the World Bank 2014 Doing Business report, making it the fastest improving country that year. However, despite this improvement, Ukraine's global ranking still languished at 112th of 189 countries in the index.¹⁹⁶

A survey conducted by the American Chamber of Commerce in Ukraine in the beginning of in 2014 showed that 99% of companies stated that corruption was wide spread, 81% of companies confirmed that they faced corruption on a regular basis, and 73% believed that corruption increased in 2013. Surveyed companies further noted that while the anti-corruption of Ukraine met international requirements, it was not enforced properly. They also suggested various ways how the government can reduce corruption by cleaning its own administration.¹⁹⁷

At the same time, a survey conducted with support of the UNITER project during 2011 showed that private companies were not prepared to take an active position in fighting corruption. While more than half of the surveyed companies believed that compliance with anti-corruption rules improves company's reputation among investors and shareholders and helps to attract investment on better terms, 49% of them had no clear position on corporate anti-corruption policy and only 19% of companies were ready to dedicate 3-5% of their income to the anti-corruption measures. The survey also indicated that companies tried to adapt to the existing conditions of doing business, and not to counteract them. According to the same survey, less than 10% of companies had a compliance unit, these were mostly foreign companies.¹⁹⁸

¹⁹⁶ World Bank, Doing Business 2014, www.doingbusiness.org/rankings.

¹⁹⁷ Source: www.chamber.ua.

¹⁹⁸ Corruption in Ukraine. Comparative analysis of national surveys: 2007-2009, 2011. Kyiv, 2011. Prepared by the European Research Association in co-operation with Kyiv International Institute of Sociology in the framework of the USAID funded project «The Ukraine National Initiatives to Enhance Reforms (UNITER)» implemented by Pact Inc. Ukraine. Available at (in English): http://uniter.org.ua/data/block/corruption_in_ukraine_2007-2009_2011_engl.pdf.

According to the Global Competitiveness Index (GCI) by the World Economic Forum, Ukrainian companies fell behind most peer countries in ethical behaviour of firms (130th out of 148 nations). The low performance of the country in the indicator is also confirmed by the fact that not a single Ukrainian company has ever entered the World Most Ethical Companies (annual list of the world's most ethical companies compiled by the Ethisphere Institute). The reasons for such poor performance of Ukraine in corporate ethics include the high level of corruption, low level of local competition and poor relations with consumers.¹⁹⁹ A number of companies are members of the UN Global Compact, but only half of them submit reports on anti-corruption measures. These are mostly large companies.

Assessment of ethical behaviour of firms shows that on the one hand business executives understand and advocate the importance of corporate ethics and some of them even seek to do business on the basis of ethical standards. On the other hand, in reality ethical behaviour in every aspects of their activity is rather an exception than a rule. The probable reason for such behaviour can be the possibility to bypass the rules and stay unpunished (for example, by using corrupt practices in B2G relations) as well as failure to solve the problems without irregular payments (bribery). It is for this reason that ethical behaviour of firms is assessed high in B2B relations where there are market mechanisms in place.²⁰⁰

Government - business dialogue

In 2013, the previous Government reported about regular meetings with the business representatives to discuss corruption risks, business environment and other related issues. However, NGOs noted that in the past the Government did not conduct systemic and regular work with the business sector to promote self-regulation and anti-corruption measures. Similarly discussion of anti-corruption or business legislation was not meaningful. Large companies continued lobbying their interests in legislation drafting through business associations and other lobbying structures; in some cases their proposals were submitted through MPs. Small and medium business in reality had no avenues to influence legislation. An example of lack of proper consultations with business entities was drafting of a Tax Code in 2010, first draft of which resulted in public protests from companies and business associations.

A representative of Tax Administration interviewed during the on-site visit noted that the Administration was well aware that tax is area of high risk of corruption. In 2012 the Tax Administration conducted a survey of businessmen and citizens about risks of corruption. They have also conducted their own enquiries into suspicions of corruption among tax inspectorates using the internal security service and have studied the court practice that involved tax disputes. In 2013, the Tax Administration conducted further research where they interviewed 54 business representatives to identify main corruption risks. One of the results was the identification of the e-VAT as one of the main problems for the business. In 2014, a new public council was established at the Tax Administration that brings together 154 members. However, business associations interviewed during the on-site visit noted that in general public councils were the 'echo from the past' and were not very effective as the composition of these councils did not represent well the private sector and the state bodies were not obliged to take the views of the public councils into account in the decision-making process.

According to the Government's report in 2013, the Cabinet Ministers established a telephone and e-mail "hot line" for business complaints (ps@kmu.gov.ua); similar "hot lines" function in the Ministry of

¹⁹⁹ Ukrainian National Competitiveness Report 2013, Foundation for Effective Governance, pp. 41-43, available at: www.feg.org.ua/docs/FEG_report_2013_body_eng_web.pdf.

²⁰⁰ Ukrainian National Competitiveness Report 2013, Foundation for Effective Governance, pp. 41-43, available at: www.feg.org.ua/docs/FEG_report_2013_body_eng_web.pdf.

Internal Affairs (skarga@mvsinfo.gov.ua) and State Tax Service (gromada@sta.gov.ua), as well as on the regional level. According to the government, “interactive service” called “Pulse of the tax administration” which is supposed to receive complaints and proposals of business on tax and customs matters, including reports of illegal actions by employees of the Ministry of Revenues and Fees. However, the NGOs noted that these reporting channels were not effective: reports cannot be anonymous and reporting persons are afraid of repression and do not trust that there will be an effective investigation; there is also no procedure for independent consideration of such report.

During the on-site visit, several business associations demonstrated that anti-corruption work conducted by business associations is on a rise and confirmed that dialogue with the government has started. The AmCham has established an anti-corruption working group and a compliance club, and is a signatory of the Memorandum on business ombudsman. A sectoral association Union of Employers in the Transport sector discussed the challenges in the area of air transport, ports and railway regulations, and is chairing a working group at the Ministry of Infrastructure.

In 2013, responding to the growing complaints from the companies about bribe solicitation by the government, the EBRD initiated a Memorandum of Understanding with the business sector representatives. The Memorandum was eventually signed on 12 May 2014 by the Cabinet of Ministers, EBRD, OECD, American Chamber of Commerce in Ukraine, European Business Association, Federation of employers of Ukraine, and Chamber of industry and commerce of Ukraine, Ukrainian Union of industrialists and entrepreneurs. The Memorandum includes provisions of establishment of a Business Ombudsman which would be a mediator between the public authorities and the business sector in dealing with disputes and allegations of maladministration, including corruption. While there are a lot of media discussions about potential candidates to the position of the Business Ombudsman, there is no official process for his or her selection and appointment yet. In the meantime, to ensure the transparency of this process, the Cabinet of Ministers had adopted a Resolution on 26 November 2014 about establishing of a Council of the Business Ombudsman. The Council should be a permanent advisory body under the Cabinet of Ministers. It should be composed of the Business Ombudsman and his/her Secretariat. The main tasks of the Council are to preparation of the draft law for the establishment of the institution of the business ombudsman, reviewing complaints by businesses, providing consultations and recommendations to state bodies regarding business integrity issues.

Business associations interviewed during the on-site visit noted that they supported the idea of creating the institution of the Business Ombudsman in general, but they stressed that this institution should be provided with sufficient powers if it is to success in the fight against corruption. Such powers could include for instance the right to veto certain corruption-prone regulations or decisions taken by the state administration, a write to appeal against such decisions, a right to request specific information from various state bodies.

A representative of the State Administration of Ukraine for Regulatory Policy and Entrepreneurship Development during the on-site visit has informed that this body already played a role of a Business Ombudsman in the area of licences and permits, which is a unique role of ‘voice of companies’ in the government in this area. Private sector representatives interviewed by the monitoring team confirmed that this Administration indeed played this role effectively, and they did not support planned transfer of the Administration to the Ministry of Economy as they need a separate and independent body to channel their concerns.

At the time of preparing this report it was too early to assess the new institution of the Business Ombudsman as it had not started functioning yet.

Deregulation

The public officials interviewed during the on-site visit noted that based on their practical experience the highest risk of corruption from overregulation are present in such sectors as agriculture, environmental protection and construction.

In order to reduce the potential for corruption in regulatory procedures, Ukraine has adopted the Law no. 1193 on reduction of permission procedures, and the Law no. 143 on streamlining procedures concerning permits and certificates. One more Law regarding licencing is under preparation, it will aim to reduce the number of licenced activities from 56 to 39. In December 2014, one more Law was adopted regarding the bodies authorised to issue various permits, which removed the restriction to issue such permits only in Kyiv and allowing local service centres to issues permits starting from 2017. Amendments were prepared to the Law on permits aiming to streamline deadlines, fees and single windows provisions; the amendments will be presented to the new Government for review and submissions to the Parliament. A Law on restricting state controls was also prepared to reduce corruption risks. The public officials interviewed during the on-site visit also noted that there is a plan to further reduce the number of documents necessary for permissions by introducing a declaration principle.

Simplification of business regulations and promoting free market completion are included in the new Anti-Corruption Strategy of Ukraine adopted in October 2014. However, there is no Action Plan yet for the implementation of this strategy, and it would be essential to develop effective actions in this area as soon as possible in cooperation with the representatives of the private sector.

Self-regulation in the private sector

According to Article 13.3 of the Law on Principles for Preventing and Counteracting Corruption (in force since July 2011; will be replaced by the new Law on Corruption Prevention in April 2015), the State promotes the professional ethics rules for certain types of activities by developing codes of conduct of entrepreneurs, representatives of the relevant professions. One practical example of such activity was provided: the Ministry of Justice supported development of the professional ethics rules by notaries, as a result Rules of professional ethics of notaries were adopted by the Ministry's order in March 2013.

Law on Amendment of Some Legal Acts of Ukraine in Connection with Fulfilment of the Action Plan for Liberalising the Visa Regime for Ukraine by the European Union concerning Liability of Legal Persons adopted on 23 May 2013 introduce amendments envisaging criminal measures (fines, property confiscation and liquidation of a legal entity) to be applied to legal persons for crimes committed for their benefit by their representatives. Criminal measures may be imposed by the court on all enterprises, institutions or organisations except public authorities. The grounds for imposing criminal measures on legal entities will consist in the commission by an authorised person of the legal entity, on behalf and in the interests of the legal entity of such corruption offences established in the Criminal Code.

These offences will be considered committed in the interests of the legal entity if they are directed at the receipt of improper benefit by it or the creation of conditions for the receipt of such benefit, and at evading responsibility envisaged by law. The Law on Introduction of Amendments and Additions to Some Legal Acts of Ukraine in the Sphere of State Anti-corruption Policy in Connection with Fulfilment of the Action Plan for Liberalising the Visa Regime for Ukraine by the European Union adopted in May 2014 introduced further that improper fulfilment by an authorised person of a legal entity of corruption prevention functions can be regarded as grounds for imposing criminal sanctions on a legal entity.

According to the new Law on Corruption Prevention adopted in October 2014 legal persons with state or municipal share of ownership or those participating in public procurement, must develop anti-corruption

programmes and appoint officers responsible for their implementation. According to this Law, legal persons, which were subject to criminal measures in relation to the commitment of corruption crimes, will be listed in a unified state register of persons who have committed corruption crimes and will be banned from public procurement.

The new Law on Corruption Prevention and provisions on criminal measures applied to legal persons for corruption offences may have an important nexus. One of the grounds for corporate liability is lack of supervision of the company's management and, in particular, lack of enforcement of measures to prevent corruption (Article 96-3 of the Criminal Code). Such measures are found in the Corruption Prevention Law (see above). While the Criminal Code does not provide explicitly for a defence of preventive measures taken by the company to avoid and discourage corruption acts committed by its employees, it allows the court to take into account during sanctioning measures taken by the legal entity to prevent the criminal offence (Article 96¹⁰ CC).

The above-mentioned legislation, if properly enforced, will provide a powerful incentive for private and state owned enterprise to develop anti-corruption self-regulations, such as codes of ethics and compliance programmes. The government will need to work closely with the companies and business associations to raise their awareness about the new legal provisions and to assist them in implementing legal requirements.

Representatives of the private sector interviewed during the on-site visit further suggested that self-regulation should be promoted further beyond anti-corruption issues. In this respect they noted that there is a need to adopt a Law on Self-Governing/Regulating Organisations, which should provide such organisations not only with rights but also with the responsibilities, which will promote business self-regulations.

Uniform court and administrative practice

Public officials from various courts interviewed during the on-site visit confirmed that the uniform court and administrative practice is their objective, and several measures were taken to achieve this objective. Notably, the Supreme Court is publishing all its decisions, and on this basis develops guidelines for other courts how to deal with specific issues. The Supreme Administrative Court also sends letters, organises training events and provides explanations on various issues, which are however not mandatory to other courts. The Judicial Council promotes specialisation of judges, for instance in the area of tax disputes and disputes with other financial bodies, registration and privatization. There is also a plan to introduce an institute of a court questions about new practice in order to establish best approaches. Various courts also organise meetings of judges where they discuss specific issues, for instance they had meetings on tax and customs decisions. Business associations interviewed during the on-site visit noted that the Anti-Monopoly Committee of Ukraine has the most contradicting practice of fines and decisions; they suggested that this Committee developed a methodology for uniform application of fins.

Regarding the statistics on court decisions, about 1/3 of all cases reviewed by administrative courts involve private sector. About 70-80% of cases that involves private parties' appeals against the state bodies are positively resolved by the courts, but it is common practice that the state bodies appeal decisions that are not in their favour. Business associations stressed that for a private company it is very difficult to win in a court dispute against a state body if this dispute is related to fines or other financial issues.

Reporting of corruption by auditors

Under the Ukrainian legislation, the auditors are obliged to inform their own managers about a potential conflict of interest that can arise in the cause of conducting an audit, but they do not have any obligations to report suspicions of corruption that can be uncovered during the audit. There is an option that allows the

auditors to inform the managers of the audited companies about such suspicions. According to the private sector representatives interviewed during the on-site visit, auditors do inform the managers of companies about corruption risks, but the managers do not react to this information. Disclosure of information about possible violations outside the company would be considered as a violation of confidentiality by the auditor. Officials interviewed during the on-site visit confirmed that the auditors in Ukraine do report about violations outside the company as they value their clients.

Reporting obligations are, however, expected to be introduced in Ukraine in the first half of 2015 as a part of the implementation of the Association Agreement with the EU. The introduction of this reporting obligation will require amendment to the Audit Charter. There is also a plan to develop a law that will regulate the auditing activities. As a result, the auditors will be required to report suspicions of corruption to the head of the public supervisory body. The Ministry of Finance is the public supervisory body in relation to the publicly significant enterprise (there is about 15 000 such enterprises in Ukraine), such as listed companies, banks, insurance and large state owned enterprises. During the on-site visit, the Audit Chamber raised a concern about the role of the Ministry of Finance as the public supervisory body, and suggested that a new and independent public supervisory body should be created instead.

Public officials interviewed during the on-site visit noted that the Federation of Accountants and Auditors of Ukraine is the body that controls the activities of the private auditors, and that such controls should be strengthened in the future. They also noted that cooperation with the Federation was very fruitful: they took part in the development of audit standards in the area of audit and prepared the official translation of International Accounting and Audit Standards that are used for the publicly significant enterprises.

National audit standards that are developed for publicly insignificant enterprises and for the public sectors, such as the state institutions, social funds and small enterprises, were developed by a specialised Council at the Ministry of Finance. Public officials interviewed during the on-site visit did not know if these standards are applied during the audit of the customs and tax administration, and which body – internal audit or the Accounting Chamber – are in charge of this.

A representative of the Ministry of Finance interviewed during the on-site visit has noted that some CEOs of SOEs commission audit to be conducted by external auditors. In the view of the Ministry official this was ‘a waste of money’ as such CEOs often do not have knowledge in the area of audit, and no experience in working with external auditors. At the same time, under the EU Association Agreement, state programmes shall be audited by certified auditors, and this will present a challenge, as the Ministry of Finance does not have such certified auditors among their staff and will not be able to afford hiring large and well known ‘big 4’ companies.

Business Integrity in the Anti-Corruption Strategy

The Anti-Corruption Strategy for 2014-2017 contains section 6 on the Prevention of corruption in private sector. This section was developed in consultations with the private sector. It identifies the main problems as the “merger of business and government”, illicit lobbying of business interests, complicated procedures for business regulations, corruption in control authorities and in the judicial system. The section further includes several measures to reduce corruption risks for the private sector, including the following:

- Simplification of business regulations and promoting free market competition,
- Preventing corruption in public administration and the judiciary, law enforcement and state control bodies.
- Debarment of companies involved in corruption offences from the use of public resource such as public procurement, state loans, subsidies, and tax benefits;
- Establishing obligations for external and internal auditors to report about corruption offences;

- Raising awareness of companies about the law on liability of legal entities for corruption offences and enforcing this law in practice;
- Disclosure of beneficiary owners of companies through the Unified state registry of legal entities and individual entrepreneurs;
- Establishing the office of business Ombudsman who would represent the interests of business community in the government;
- Engaging representatives of business community into development of strategy to promote the implementation of anti-corruption standards in private sector (OECD recommendations on best practices of internal control, ethics and observance of the law and Business principles of Transparency International to combat corruption) and facilitate the development of self-regulation in private sector;
- Ensuring access of entrepreneurs to necessary information, in particular about administrative procedures, rights and responsibilities of entrepreneurs.
- Running pilot projects on “integrity pacts” in infrastructure projects or other projects entailing significant budget expenses through creating trilateral (government – business – civil society) mechanism of control over planning and implementation of such projects.

Box 1. Examples of corrupt schemes in Ukraine affecting business sector

1. According to the Law of Ukraine “On Protection of Economic Competition”, the Anti-Monopoly Committee of Ukraine is entitled to sanction the companies with fines calculated as a share of company’s turnover. As a basis for fine calculation the AMCU has can use the revenue of the whole group of companies (i.e. global revenue) for the previous year. For example, anti-competitive actions and abuse of dominance can be sanctioned by a fine in the amount of up to 10 % of the global turnover, unfair competition, including unfair advertising, – up to 5 % of the global turnover, and failure to provide information to the AMCU or provision of incomplete or false information – up to 1 % of the global turnover. There is no official methodology for fine calculation in Ukraine. In very similar cases the AMCU imposes drastically different sanctions, and the amounts of fines can be very high, up to millions of Ukrainian Hryvnias. In practice, the AMCU uses its right to impose huge fines as a tool for “negotiations” with the companies. Thus, according to business representatives, in the most cases when the AMCU imposed fines amounting several millions, but as result of the negotiations the fines are reconsidered by the AMCU and their amount are considerably decreased, in exchange of alleged illegal payments to the AMCU staff. Besides, the AMCU’s officials use their “pocket law firms” requesting huge legal fees as a tool for decreasing the fines.

2. The EU Association Agreement includes environmental provisions such as Directives on waste management that will need to be implemented within the next 3-6 years. According to civil society and business representatives, the current waste management system in Ukraine not only fails to meet the EU requirements, but also contains corruption schemes. The state enterprise “Ukrainian Environmental Resources” (UER) is one such scheme, according to them. While according to the Ukrainian legislation, domestic and foreign producers of packaging can either ensure collection and recycling of their used packaging themselves, or conclude agreements with third parties, the decision of the Cabinet of Ministers has limited the choice of third parties to the UER. More specifically, foreign packaging producers can import their products in Ukraine only when they present a copy of their agreement with the UER. For many years now, the packaging companies are forced to conclude agreements with the UER and pay for their services, while in reality the UER does not provide any services and does not collect or recycle the used packaging. This monopoly situation without proper state control over the activities of the UER, allows the UER to extract undue advantages from companies for their own benefit. In 2009 packaging companies appealed to court against the Cabinet of Ministers’ decision that created this corruption scheme. After lengthy court proceedings, the State Service on Regulatory Policy and Development of Entrepreneurship has suspended the above Cabinet’s decision in April 2014; but Kiev regional administrative court has reinstalled it in May 2014, thus maintaining this corruption scheme.

3. Transport sector provides a good example of how corruption permeates all areas where government is involved through regulation or control. Sector representatives mentioned the following schemes which existed at the time of the on-site visit: 1) in public transportation local authorities distribute through competitions rights to serve various routes and such competitions can be won only through corrupt influence or by companies affiliated with local officials; 2) in aviation sector central government limits competition by prohibiting entrance of foreign companies and by giving permits for services international directions only to selected Ukrainian companies; 3) in sea ports the Ministry of Ecology set by its regulations excessive requirements to ship’s ballast waters which cannot be complied with and the is compels corruption; 4) the monopoly of the Ukrainian Railways Company and its opaque practice of procurement.

The monitoring team commended Ukraine for developing this section on business integrity, which is an important and ambitious policy commitment. Its implementation would require a lot of effort and resources. It would be important to engage private sector representatives from the outset in the implementation efforts, as well as in the monitoring of implementation.

Representatives of the private sector interviewed during the on-site visit raised the issue of corruption schemes that exist in the valid or new laws and regulations. They provided several examples of such schemes, presented in the box above, and suggested that the Anti-Corruption Strategy or its Action Plan should include focused efforts aiming to eliminate such schemes.

Conclusions

While some measures were taken by the previous government before 2014 to launch dialogue with business and improve business environment, most of these measures were of a window-dressing nature, and corruption remains one of the main risks for companies in Ukraine. New Anti-Corruption Strategy contains a section on integrity in the private sector, which was developed together with the business representatives. Its implementation will be a real challenge, it would be essential to involve private sector in its implementation and monitoring. Creation of the institution of Business Ombudsmen may also provide an important mechanism for public-private dialogue; however, the monitoring team was concerned with the unclear process of its establishment. Introduction of responsibility of legal persons for corruption, if enforced properly, can become a powerful incentive for self-regulation by the private sector. Progress is still limited regarding the unified court and administrative practice and reporting obligations for auditors, but it is expected that further reforms related to the EU association agreement and judiciary reform will contribute to the implementation of these parts of the recommendation.

Ukraine is partially compliant with the recommendation 3.9.

New recommendation 3.9.

- *Rigorously implement provisions of section 6 of the 2014 Anti-Corruption Strategy on the prevention of corruption in the private sector.*
- *Ensure business participation in the development of the Action Plan for the Anti-Corruption Strategy and its implementation and monitoring.*
- *Pursue further simplification of business regulations to reduce opportunities for corruption and eliminate corruption schemes affecting business.*
- *Consider introducing regulations for lobbying, in particular clear regulations for business participation in the development and adoption of laws and regulatory acts.*
- *Ensure that the business has a possibility to report corruption cases without fear of prosecution or other unfavourable consequences.*

Summary Table

	New recommendation	Previous recommendation	Rating for previous recommendation			
			Fully	Largely	Partially	Not compliant
Pillar I. Anti-corruption policy						
Political will and anti-corruption policy	+	1.1.-1.2. Political will, policy documents			+	
Corruption surveys	+	1.3. Corruption surveys				+
Public participation	+	1.4.-1.5. Public participation, Awareness raising and public participation		+		
Awareness raising and public participation	+					
Policy and co-ordination institutions	+	1.6. Co-ordination body and specialised agency			+	
Pillar II. Criminalisation of corruption						
Offences and elements of offences	+	2.1. - 2.2. Offences and elements of offences	+			
	+	2.1.-2.2.-bis Legal persons and money laundering		+		
Definition of public official		2.3. Definition of public official	+			
Sanctions, confiscation	+	2.4.-2.5.-2.6. Sanctions, confiscation, statute of limitations, immunities			+	
Immunities, statute of limitations	+					
International cooperation, MLA	+	2.7. MLA		+		
Application, procedure	+	2.8. Application, interpretation and procedures	+			
Specialised law-enforcement bodies	+	2.9. Specialised law-enforcement bodies		+		
Pillar III. Prevention of corruption						
Integrity of civil service	+ (Previous rec. partly valid)	3.2. Integrity of civil service			+	
Promoting transparency and reducing discretion	Previous rec. valid	3.3. Promoting transparency and reducing discretion			+	
Public financial control and audit	+	3.4. Public financial control and audit			+	
Public procurement	+	3.5. Public procurement			+	
Access to information	+	3.6. Access to information		+		
Political corruption	+	3.7. Party financing			+	
Integrity in the judiciary	+	3.8. Integrity in the judiciary			+	
Private sector	+	3.9. Private sector			+	

Annexes

1. Selected legal acts of Ukraine

Provisions of Criminal Code of Ukraine

Criminal Code of Ukraine²⁰¹

Text with amendments introduced by the Law No. 746 of February 2014, Law No. 1261 of May 2014, Law No. 1698 of October 2014 (Law on the NAB – in force since 25 January 2015), Law no. 1700 of October 2014 (Law on Corruption Prevention – in force since 26 April 2015) and Law adopted on 12 February 2015

Provisions which were recently changed are presented in table

Important changes introduced by these laws are marked in bold; when text is crossed through it means it is longer valid.

GENERAL PART

<i>Version before February 2015 amendments</i>	<i>Version after February 2015 amendments</i>
<p>... Article 45. Discharge from criminal liability in view of effective regret A person who has committed a minor crime or an unintentional crime of moderate severity for the first time, except for corruption crimes, shall be discharged from criminal liability if, upon committing that offense, he/she sincerely repented, actively facilitated solving of the offence, and fully compensated the losses or repaired the damage inflicted.</p> <p>Note. Corruption crimes according to this Code should be considered crimes provided for in Article 191.2, Article 262.2, Article 308.2, Article 312.2, Article 313.2, Article 320.2, Article 357.1, Article 410.2 – in case they were committed through abuse of one's official position, as well as crimes provided for in Articles 354, 364, 364¹, 365², 368-370 of this Code.</p>	<p>Article 45. Discharge from criminal liability in view of effective regret A person who has committed a minor crime or an unintentional crime of moderate severity for the first time, except for corruption crimes, shall be discharged from criminal liability if, upon committing that offense, he/she sincerely repented, actively facilitated solving of the offence, and fully compensated the losses or repaired the damage inflicted.</p> <p>Note. Corruption crimes according to this Code should be considered crimes provided for in Articles 191, 262, 308, 312, 313, 320, 357, 410 – in case they were committed through abuse of one's official position, as well as crimes provided for in Articles 210, 354, 364, 364¹, 365², 368-369² of this Code.</p>

Article 96¹. Special confiscation

1. Special confiscation consists in coercive non-refundable seizure, by a court decision and to the favor of the State, of money, values and other property in the cases stipulated by this Code if the crime has been committed that is provided for in Article 354 and Articles 364, 364¹, 365², 368-369² of Chapter XVII of the Special Part of this Code, or of the socially dangerous act which falls under elements of acts foreseen in these articles.

²⁰¹ One untaxed minimum personal income equals UAH 17 (about EUR 0.85/ USD 1.1 as of January 2015) when used for purposes of sanctioning (fines); when used otherwise (e.g. for qualification of offences) it equals (in 2015) UAH 588 (about EUR 32/ USD 36 as of January 2015)

Article 96². Application of special confiscation

1. Special confiscation shall be applicable if money, values and other property:

1) have been obtained as the result of commission of a crime or constitute proceeds from such property;

2) were intended to be used (used) to induce a person to commit a crime, to fund or to otherwise support the crime or to pay compensation for commission of the crime;

3) were the object of the crime except for those to be returned to the owner (lawful owner) or, if such owner has not been identified, are transferred to the State;

4) were procured, made, adapted or used as means or tools to commit the crime, except for those to be returned to the (lawful) owner who was not nor could not be aware of unlawful use thereof;

2. Where the money, values and other property mentioned in point 1 paragraph one of this Article were partially or fully converted into other property, special confiscation shall be applicable to such fully or partially converted property. Where the confiscation of the money, values and other property mentioned in point 1 paragraph one of this Article is not possible at the moment when the court makes decision on the special confiscation because they have been spent or cannot be separated from the property obtained in a lawful way or have been alienated or are not available because of other reasons, the court shall decide to confiscate an amount of money corresponding to the value of such property.

...

4. Money, values and other property mentioned in this Article and transferred by the offender to another natural or legal person shall be subjected to the special confiscation where the person who accepted such property was or was supposed to be aware that such property was obtained as the result of a crime provided for in Article 354 and Articles 364, 364¹, 365², 368-369² of Chapter XVII of the Special Part of this Code.

5. Special confiscation shall not be applicable to the money, values and other property mentioned in this article which are subjected to be returned to the (lawful) owner according to the law or are intended to be used to compensate damages caused by the crime.

Chapter XIV¹

MEASURES OF CRIMINAL LAW NATURE WITH REGARD TO LEGAL PERSONS

Article 96³. Grounds for application to legal persons of measures of criminal law nature

1. The following shall be grounds for application to a legal person of measures of criminal law nature:

1) commission by its authorized person on behalf and in the interests of the legal person of any of the crimes specified in Articles 209, 306, 368³ (paragraphs 1-2), 368⁴ (paragraphs 1-2), 369 and 369² of this Code²⁰²;

2) failure to carry out duties assigned to its authorized person by law or statutory documents with regard to taking measures to prevent corruption, which resulted in commission of any of the crimes specified in Articles 209, 306, 368³ (paragraphs 1-2), 368⁴ (paragraphs 1-2), 369 and 369² of this Code;

3) commission by its authorized person on behalf of the legal person of any of the crimes specified in Articles 258 - 258⁵ of this Code²⁰³;

4) commission by its authorized person on behalf and in the interests of the legal person of any of the crimes specified in Articles 109, 110, 113, 146, 147, 160, 260, 262, 436, 437, 438, 442, 444, 447 of this Code²⁰⁴.

²⁰² Article 209 CC – Money laundering; Article 306 – Laundering of proceeds from illegal drug trafficking; Article 368-3 (paras. 1-2) – Active bribery of legal person’s official; Article 368-4 (paras. 1-2) – Active bribery of person providing public services (e.g. auditor, notary, mediator, etc.); Article 369 – Active bribery of an official; Article 369-2 – Trafficking in influence.

²⁰³ Article 258 CC – Terrorist act; Article 258-1 – Involving in the commission of a terrorist act; Article 258-2 – Public calls for the commission of a terrorist act; Article 258-3 – Setting up of a terrorist group or terrorist organisation; Article 258-4 - Facilitating the commission of a terrorist act; Article 258-5 – Financing of terrorism.

²⁰⁴ Article 109 CC - Actions aimed at forceful change or overthrow of the constitutional order or take-over of government; Article 100 - Trespass against territorial integrity and inviolability of Ukraine; Article 113 – Sabotage; Article 146 - Illegal confinement or abduction of a person; Article 147 - Hostage taking; Article 160 - Violation of referendum law; Article 260 - Creation of unlawful paramilitary or armed formations; Article 262 - Stealing, appropriation or extortion of firearms, ammunition, explosives or radioactive

Note. 1. The authorised persons of a legal person should mean service persons²⁰⁵ of a legal person, as well as other persons who according to the law, statutory documents of the legal person or contract have the right to act on behalf of the legal person.

2. The crimes specified in Articles 109, 110, 113, 146, 147, 160, 209, 260, 262, 306, 368³ (paragraphs 1-2), 368⁴ (paragraphs 1-2), 369, 369², 436, 437, 438, 442, 444, 447 of this Code shall be recognised as committed in the interests of the legal person if they resulted in obtaining by the legal person of undue benefit or created conditions for obtaining such benefit, or were aimed at avoiding liability provided for in the law.

Article 96⁴. Legal persons to which measures of criminal law nature apply

1. Measures of criminal law nature, in cases specified in subparagraphs 1-2 of paragraph 1 of Article 96³ of this Code, may be applied by court to enterprises, institutions or organisations, other than state agencies, authorities of the Autonomous Republic of Crimea, local self-government bodies, organisations established by them in the prescribed manner that are fully financed from the state budget or local budgets, funds of mandatory state social insurance, Fund for guaranteeing natural persons' bank deposits, as well as international organisations.

2. Measures of criminal law nature, in cases specified in subparagraphs 3-4 of paragraph 1 of Article 96³ of this Code, may be applied by court to entities of private and public law, resident or non-resident in Ukraine, including enterprises, institutions or organisations, state agencies, authorities of the Autonomous Republic of Crimea, local self-government bodies, organisations established by them in the prescribed manner, funds, as well as international organisations, other legal persons set up in accordance with requirements of the national or international law.

If the state or state ownership entity owns more than 25% in the legal person or the legal person is under effective control of the state or state ownership entity, then such legal person bears civil liability in full scope for the illegally obtained benefit and damage caused by the crime committed by the state, state ownership entity or public entities.

Article 96⁵. Grounds for releasing legal entity from application of measures of criminal law nature

1. A legal entity shall be exempt from the application of criminal law nature measures, if from the date of commission by its authorised person of any of the crimes referred to in Article 96³ of this Code and to the date of entry into force of the sentence such terms have passed:

- 1) three years - in case of a minor crime;
- 2) five years - in case of a medium gravity crime;
- 3) ten years - in case of a grave crime;
- 4) fifteen years - in the case of an especially grave crime.

2. The period of limitation for application to a legal person of criminal law nature measures is suspended if its authorised person who committed any of the crimes specified in Article 96³ of this Code, is hiding from the pre-trial investigation bodies and court in order to evade criminal liability and his whereabouts are unknown. In such cases the period of limitation is reinstated from the date of establishment of the location of the authorised person.

3. The period of limitation for application to a legal person of criminal law nature measures is interrupted, if before expiration of the terms specified in paragraphs 1-2 of this Article its authorised person commits again any of the crimes specified in Article 96³ of this Code.

4. Calculation of the limitation period in this case starts from the date of commission by the authorised

material, or obtaining them by fraud or abuse of office; Article 436 - Propaganda of war; Article 437 - Planning, preparation and waging of an aggressive war; Article 438 - Violation of rules of the warfare; Article 442 - Genocide; Article 444 - Criminal offenses against internationally protected persons and institutions; Article 447 - Mercenary.

²⁰⁵ According to Article 18.3 CC (Subject of crime), 'service persons' are the persons who permanently, temporarily or by special authority perform the functions of representatives of authorities or local self-government, as well as permanently or temporarily hold in the bodies of state authority, local self-government bodies, at enterprises, in institutions or organizations such positions as are related to the performance of organizational-executive or administrative-economic functions, or perform such functions by special authority accorded to the person by a state authority, a local government body, a central body of state management with a special status, an authorized body or an authorized official of an enterprise, institution, organization, court, or by law.

person of the legal person of any of the crimes referred to in Article 96³ of this Code. At the same time limitation periods are calculated separately for each crime.

Article 96⁶. Types of criminal law nature measures applicable to legal persons

1. The court may apply to legal persons the following measures of criminal law nature:

- 1) fine;
- 2) confiscation of property;
- 3) liquidation.

2. Fine and liquidation may be applied to legal persons only as main measures of criminal law nature, while confiscation of property – only as an additional measure. When applying the criminal law nature measures the legal person is obliged to compensate inflicted losses and damages in full scope, as well as amount of the obtain unlawful benefit that was received or could have been received by the legal person.

Article 96⁷. Fine

1. A fine is a monetary amount that shall be paid by the legal person according to the court decision.

The court imposes fine based on the two times the amount of the unlawfully obtained unlawful benefit.

2. In case when an unlawful benefit was not obtained or its amount cannot be calculated, the court - depending on the gravity of the crime committed by the authorised person of the legal person - shall impose fines in the following amounts:

for a minor crime - from five thousand to ten thousand times the untaxed minimum personal incomes;

for a crime of medium gravity - from ten thousand to twenty thousand the untaxed minimum personal incomes;

for a grave crime - from twenty thousand to fifty thousand times the untaxed minimum personal incomes;

for an especially grave crime - from fifty thousand to seventy five thousand of untaxed minimum personal incomes.

3. Taking into account economic situation of the legal person the court may impose fine with deferred payment in certain instalments for up to three years.

Article 96⁸. Confiscation of property

1. Confiscation of property is compulsory uncompensated seizure of property of legal person into state ownership and is imposed by the court in case of liquidation of the legal person in accordance with this Code.

Article 96⁹. Liquidation

1. Liquidation of legal person is imposed by the court in case of commission by its authorised person of any of the crimes under Articles 109, 110, 113, 146, 147, 160, 260, 262, 258 – 258⁵, 436, 437, 438, 442, 444, 447 of this Code.

Article 96¹⁰. General rules for applying to legal persons of measures of criminal law nature

1. When applying to a legal person measures of criminal law nature the court takes into account the severity of the crime committed by its authorised person, the degree of implementation of the criminal intent, amount of damage, the nature and amount of the undue benefit that was received or could have been received by the legal person, measures taken by the legal person to prevent crime.

Article 96¹¹. Application to legal persons of measures of criminal nature for multiple crimes

1. For multiple crimes within a single proceedings the court, after applying to the legal person measures of criminal law nature for each crime separately, determines the final main measure by absorbing of less stringent measures with more stringent one.

2. When applying to the legal person measures of criminal law nature for a crime, if there is a pending measure according to the previous sentence (sentences), each of them is executed independently, unless the court imposes liquidation of the legal person under this Code.

SPECIAL PART

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Chapter VI.

Crimes against Ownership

...

Article 191. Misappropriation, embezzlement or conversion of property by abuse of official position

1. Misappropriation or embezzlement of somebody else's property by a person to whom it was entrusted or in whose control administration it was -

shall be punishable by a fine up to 50 untaxed minimum personal incomes, or correctional labor for a term up to two years, or restraint of liberty for a term up to four years, or imprisonment for a term up to four years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

2. Misappropriation, embezzlement or conversion of property by abuse of official position -

shall be punishable by restraint of liberty for a term up to five years, or imprisonment for the same term, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

3. Any such actions as provided for by paragraph 1 or 2 of this Article, if repeated or committed by a group of persons upon their prior conspiracy, -

shall be punishable by restraint of liberty for a term of three to five years, or imprisonment for a term of three to eight years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

4. Any such actions as provided for by paragraphs 1, 2 or 3 of this Article, if committed in respect of a gross amount, -

shall be punishable by imprisonment for a term of five to eight years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

5. Any such actions as provided for by paragraphs 1, 2, 3 or 4 of this Article, if committed in respect of an especially gross amount, or by an organized group, -

shall be punishable by imprisonment for a term of seven to twelve years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and forfeiture of property.

...

Article 209. Legalizing (laundering) proceeds from crime

1. Conducting financial transaction or concluding an agreement involving money or other property obtained as a result of committing a socially dangerous unlawful act which preceded legalization (laundering) of proceeds, as well as carrying out actions aimed at concealing or masking illegal origin of such money or other property or possession thereof, rights to such money or property, source of their origin, location, displacement, **changes of their form (transformation)**, as well as acquiring, possessing or using of money or other property obtained as a result of committing a socially dangerous unlawful act which preceded legalization (laundering) of proceeds, -

shall be punishable by imprisonment for a term of three to six years, with deprivation of right to hold certain positions or engage in certain activities for a term up to two years, with confiscation of money or other property obtained as proceeds from crime, and with confiscation of property.

2. Actions as referred to in paragraph 1 of the present Article, if committed repeatedly or by a group of individuals upon prior conspiracy, or if committed in large amounts, -

shall be punishable by imprisonment for a term of seven to twelve years, with deprivation of right to hold certain positions or engage in certain activities for a term up to three years, with confiscation of money or other property obtained as proceeds from crime, and with confiscation of property.

3. Actions as referred to in paragraph 1 or 2 of the present Article, if committed by an organized group or if committed in large amounts, -

shall be punishable by imprisonment for a term of eight to fifteen years, with deprivation of right to hold certain positions or engage in certain activities for a term up to three years, with confiscation of money or other property obtained as proceeds from crime, and with confiscation of property.

Note. 1. For purposes of this Article, socially dangerous act, which preceded legalization (laundering) of proceeds, shall be an act, which, according to the Criminal Code of Ukraine, is punishable with main sanction of deprivation of freedom (~~except for acts provided for in Articles 212 and 212^t of Criminal Code of Ukraine~~) or a fine of more than 3,000 untaxed minimum personal incomes, or an act committed outside Ukraine, if such act is recognized a socially dangerous unlawful act, which had preceded legalization (laundering) of proceeds according to the criminal law of the State where it had been committed, and is a crime according to the Criminal Code of Ukraine and which resulted in unlawful

obtaining of proceeds.

2. Legalizing (laundering) proceeds from crime is considered to be committed in a large amount if the value of money or other property involved in the crime concerned exceeds 6,000 untaxed minimum personal incomes.

3. Legalizing (laundering) proceeds from crime is considered to be committed in an especially large amount if the value of money or other property involved in the crime concerned exceeds 18,000 untaxed minimum personal incomes.

...

Chapter XV.

Crimes against Authority of State Power, Local Self-Government Bodies and Citizens' Associations

...

Article 354. Bribery of an employee of ~~a state~~ an enterprise, institution or organization

1. An offer or a promise to an employee of ~~a state~~ an enterprise, institution or organization, who is not a service person, **or to a person who works for the benefit of an enterprise, institution or organization**, to provide him/her or a third person with an unlawful benefit, as well as the giving of such benefit for performance or non-performance by the employee of any actions using the position he/she is holding, **or by the person who works for the benefit of an enterprise, institution or organization**, in the interests of the person who offers, promises or gives such benefit or in the interests of a third person –

shall be punishable by a fine in the amount of one hundred to two hundred and fifty untaxed minimum personal incomes, or by community works for the term of up to one hundred hours, **or by correctional labour for the term of up to one year, or by restriction of liberty for the term of up to two years, or by deprivation of liberty for the same term, with a special confiscation.**

2. The same actions committed repeatedly or by a group of persons through a prior conspiracy, –

shall be punishable by fine in the amount of two hundred and fifty to five hundred untaxed minimum personal incomes, or by community works for the term of one hundred to two hundred hours, or by correctional labour for the term of up to two years, **or by restriction of liberty for the term of up to three years, or by deprivation of liberty for the same term, with a special confiscation.**

3. Acceptance of an offer, a promise or receiving by an employee of ~~a state~~ an enterprise, institution or organization, who is not a service person, **or by the person who works for the benefit of an enterprise, institution or organization**, of an unlawful benefit, **as well as a request to provide such benefit** for oneself or a third person, for performance or non-performance of any actions using the position he/she is holding at the enterprise, institution or organization, **or in connection with the person's activity for the benefit of an enterprise, institution or organization**, in the interests of the person who offers, promises or gives such benefit or in the interests of a third person –

shall be punishable by fine in the amount of two hundred and fifty to five hundred untaxed minimum personal incomes, or by community works for the term of one hundred to two hundred hours, **or by restriction of liberty for the term of up to two years, or by deprivation of liberty for the same term, with a special confiscation.**

4. Actions provided for by paragraph 3 of the present Article, committed repeatedly or by prior conspiracy by a group of persons or combined with extortion of unlawful benefit, –

shall be punishable by fine in the amount of five hundred to seven hundred and fifty untaxed minimum personal incomes, or by community works for the term of one hundred and sixty to two hundred and forty hours, ~~or by correctional labour for the term of one to two years,~~ or by restriction of liberty for the term of up to three years, or by deprivation of liberty for the same term, **with a special confiscation.**

5. A person who offered, promised or gave unlawful benefit shall be discharged from criminal liability, if there has been an extortion of unlawful benefit in relation to such person, and if after the offer, promise or giving of the unlawful benefit such person, prior to being notified about a suspicion of having committed a crime, voluntarily reported on the incident to an authority whose service person is authorised by law to notify of suspicion.

5. A person who offered, promised or gave unlawful benefit shall be discharged from criminal liability for a crime provided for in Articles 354, 368³, 368⁴, 369 and 369² of this Code, if after the offer, promise or giving of unlawful benefit such person – before information about this crime was obtained by the agency, whose service person is authorised by law to notify suspicion, from other sources – voluntarily reported about the fact to such agency and actively facilitated solving of the

	<p>crime committed by person who received unlawful benefit or accepted its offer or promise. Such discharge should not be applied in case where the offer, promise or giving of unlawful benefit was committed with regard to persons specified in Article 18.4 of this Code.²⁰⁶</p>
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Note.

<p>1. Person who works for the benefit of an enterprise, institution or organization should mean a person who carries out work and has labour relations with such enterprise, institution or organization.</p>	<p>1. Person who works for the benefit of an enterprise, institution or organization should mean a person who carries out work or provides service according to an agreement with such enterprise, institution or organization.</p>
<p>2. In the present Article unlawful benefit should be understood as monetary funds or other property, advantages, privileges, services, which exceed 1.5 0.5 of untaxed minimum personal income, or intangible assets being offered, promised, given or received without legitimate grounds therefor.</p>	<p>2. In the present Article unlawful benefit should be understood as monetary funds or other property, advantages, privileges, services, which exceed 1.5 of untaxed minimum personal income, or intangible assets, any other benefits of non-tangible or non-pecuniary character, being offered, promised, given or received without legitimate grounds therefor.</p>

3. In Articles 354, 368, 368³ to 370 of the present Code, an offer means expressing to the person who is an employee of an enterprise, institution or organization, or a person giving public services, or to a service person of an intention to give unlawful benefit, while a promise means – an expression of such intent with indication of the time, place and manner of giving unlawful benefit.

4. In Articles 354, 368, 368³, 368⁴ and 369 of the present Code, a crime shall be considered to be repeated if committed by a person who had previously committed any of the crimes provided for by these Articles.

5. In Articles 354, 368, 368³ and 368⁴ of this Code an extortion of unlawful benefit should mean a demand to give unlawful benefit with a threat to take actions or omit to act using one's position, authority granted, power, or service position in relation to the person who gives unlawful benefit, or deliberate creation of conditions under which a person is compelled to give unlawful benefit in order to prevent harmful consequences for his/her rights and legitimate interests.

...

Chapter XVII.

Crimes in the Area of Official Activity and Professional Activity connected with Provisions of Public Services

Article 364. Abuse of authority or service position

1. Abuse of authority or office, that is a wilful, for ~~mercenary motives or other personal interests or interests of third persons~~ **the purpose of obtaining any unlawful benefit for oneself or for other natural or legal person**, use of authority or service position contrary to the service interests by a service person, where it caused a significant damage to legally protected rights, freedoms and interests of individual citizens, or state and public interests, or interests of legal entities, -

shall be punishable by ~~correctional labour for a term up to two years, or~~ arrest for a term up to six months, or restriction of liberty for a term up to three years, **or deprivation of liberty for the same term**, with the deprivation of the right to occupy certain positions or engage in certain activities for the term up to three years, with a fine from two hundred fifty to seven hundred fifty untaxed minimum personal incomes and with a special confiscation.

2. The same act if it caused grave consequences, -

shall be punishable by deprivation of liberty for a term of three to six years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, with fine from five hundred to one thousand untaxed minimum personal incomes and with special confiscation.

²⁰⁶ I.e. foreign public officials and officials of international organisations.

~~3. Any such actions as provided for by paragraph 1 or 2 of this Article, if committed by a law enforcement officer, – shall be punishable by deprivation of liberty for a term of five to ten years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, with special forfeiture and forfeiture of property.~~

Note.

1. Service persons in Articles 364, ~~365–368~~, 368² and 369 of this Code shall mean persons who permanently, temporary or by special authorisation carry out functions of representative of authority or local self-government, as well as permanently or temporarily occupy in state authorities, local self-government bodies, at the state or municipal enterprises, institutions or organizations positions, which are related to performance of organizational and managerial or administrative and economic functions, or perform such functions upon special authorisation given to the person by authorised state authority, local self-government body, central authority of state governance with special status, authorised body or person of an enterprise, institution or organisation, by court or by law.

For the purposes of Articles 364, ~~365–368~~, 368² and 369 of this Code to state and municipal enterprises shall be equalled legal entities in whose statutory capital the state or a local community-owned share exceeds 50 % or is of such amount that gives the state or the local community a right of decisive influence over the economic activity of such enterprise.

2. Service persons shall also mean officials of foreign states (persons who hold positions in the legislative, executive or judicial authority of a foreign state, in particular jurors, other persons who perform functions of the state for the foreign state, in particular for a state authority or a state enterprise), as well as foreign arbitrators, persons authorised to decide on civil, commercial or labour disputes in the foreign state in proceedings that are alternative to judicial, officials of international organisations (employees of an international organisation or any other persons authorised by such organisation to act on its behalf), members of international parliamentary assemblies, in which Ukraine participates, and judges and officials of international courts.

3. For the purposes of Articles 364, 364¹, 365, ~~365–1~~, 365² and 367, significant damage, ~~if it relates to any pecuniary losses~~, shall mean such damage that equals or exceeds one hundred untaxed minimum personal incomes.

4. For the purposes of Articles 364 to 367, grave consequences, ~~if they relate to any pecuniary losses~~, shall mean such consequences that equal or exceed two hundred and fifty untaxed minimum personal incomes.

Article 364¹. Abuse of powers by a service person of a legal entity of private law regardless of its organisational and legal form

1. Abuse of powers, that is a wilful, with the purpose of obtaining unlawful benefit for oneself or for other persons contrary to the interests of the private law legal entity regardless of the organizational-legal form thereof, use by a service person of such legal entity of his/her powers, where it caused significant damage to the legally protected rights or interests of individual citizens, or state or public interests, or interests of legal entities, –

shall be punishable by fine in the amount of **150 to 400** ~~five hundred to two thousand~~ untaxed minimum personal incomes, **or by arrest for a term up to three months, or by restriction of liberty for a term up to two years**, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to two years **and with a special confiscation.**

2. The same act, if caused grave consequences, –

shall be punishable by fine in the amount of **400 to 900** ~~ten thousand to twenty thousand~~ untaxed minimum personal incomes, **or by arrest for a term up to six months, or by deprivation of liberty for a term from three to six years**, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years **and with a special confiscation.**

Note. In Articles **364**, 364¹, 365², 368, 368²–368⁴, 368³, 368⁴, 369, 369² and 370 of the present Code, *unlawful benefit* shall mean monetary funds or other property, advantages, privileges, services, intangible assets being offered, promised, given or received without legitimate grounds therefor.

Note. In Articles **364**, 364¹, 365², 368, ~~368²–368⁴~~, 368³, 368⁴, 369, 369² and 370 of the present Code, *unlawful benefit* shall mean monetary funds or other property, advantages, privileges, services, intangible assets, **any other benefits of non-tangible or non-pecuniary character** being offered, promised, given or received without legitimate grounds

Article 365. Excess of authority or service powers **by an employee of a law enforcement agency**

1. Excess of authority or service powers, that is a wilful commission by **an employee of a law enforcement agency** ~~a service person~~ of acts, which patently exceed the rights or powers vested in him/her, where it caused significant damage to the legally protected rights and interest of individual citizens, or state and public interests, or interests of legal entities, -

shall be punishable by ~~the correctional labour for a term up to two years, or by~~ restriction of liberty for a term up to five years, or by deprivation of liberty for a term of two to five years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years ~~and with fine in the amount of two hundred and fifty to five hundred untaxed minimum personal incomes.~~

...

[Article revoked by the Law no. 746-VII of 21 February 2014]

Article 365¹. *Excess of powers by a service person of a private law legal entity regardless of its organizational and legal form*

1. *Excess of powers, that is a wilful commission by a service person of a private law legal entity regardless of its organizational and legal form of actions that patently exceed the limits of vested powers, where it caused significant damage to the legally protected rights and interest of individual citizens, or state and public interests, or interests of legal entities, -*

shall be punishable by fine in the amount of three thousand to five thousand untaxed minimum personal incomes with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

2. *The same act, if it caused grave consequences, -*

shall be punishable by fine in the amount of ten thousand to twenty thousand untaxed minimum personal incomes with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

Article 365². Abuse of powers by persons who provide public services

1. Abuse of their powers by an auditor, notary, appraiser, or other person who is not a civil servant or an official of local self-governance but engages in professional activity related to provision of public services, including services of an expert, arbitration manager, independent mediator, member of labour arbitration, or arbitrator (during performance of these functions), with the purpose of receiving unlawful benefit for oneself or for other persons, if it caused significant damage to the legally protected rights or interests of individual citizens, or state or public interests, or interests of legal entities, -

shall be punishable by **arrest for a term up to six months, or by restriction of liberty for a term up to three years** ~~fine in the amount of one thousand to three thousand untaxed minimum personal incomes~~ with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years **and with a special forfeiture.**

2. The same act, committed in respect of a minor or a disabled person, a person of advanced age, or repeatedly, -

shall be punishable by **restriction of liberty for a term up to five years, or by deprivation of liberty for a term of three to five years** ~~fine in the amount of three thousand to ten thousand untaxed minimum personal incomes~~ with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years **and with a special forfeiture.**

3. Actions provide for in paragraphs 1 or 2 of this Article, if they caused grave consequences, -

shall be punishable by **deprivation of liberty for a term of five to eight years** ~~fine in the amount of ten thousand to twenty thousand untaxed minimum personal incomes~~ with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and with forfeiture of property or without it **and with a special forfeiture.**

Article 366. Forgery in office

1. Drawing up, issuing by a service person of knowingly false official documents, putting any knowingly false information in official documents, other fabrication of documents, -

shall be punishable by fine in the amount of up to two hundred and fifty untaxed minimum personal incomes, or by restriction of liberty for a term up to three years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years ~~and with special forfeiture.~~

2. The same acts, if they caused grave consequences, - shall be punishable by the deprivation of liberty for a term of two to five years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, with fine from two hundred and fifty to seven hundred and fifty untaxed minimum personal incomes ~~and with special forfeiture.~~

[Article 366¹ enters into force on 26 April 2015 with enactment of the Law of Ukraine “On Prevention of Corruption”]

Article 366¹. Declaring of false information

Submission by the subject of declaring of knowingly false information in the declaration of person authorised to perform functions of the state or local self-government, provided for in the Law of Ukraine “On Prevention of Corruption”, or wilful non-submission by the subject of declaring of such declaration -

shall be punishable by deprivation of liberty for a term up to two years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

Note. Subjects of declaring mean persons who according to paragraphs 1 and 2 of Article 45 of the Law of Ukraine “On Prevention of Corruption” are obliged to submit declaration of person authorised to perform functions of the state or local self-government.

Article 367. Neglect of service duty

...

Article 368. Acceptance of an offer, promise or receiving of an unlawful benefit by a service person

1. ~~Acceptance by a service person of an offer, or a promise~~ **or receiving by a service person of an unlawful benefit, as well a request to provide such benefit for oneself or for a third person to provide him/her or a third person with an unlawful benefit** for the performance or non-performance by such service person of any action in the interests of the person who offers, ~~or promises~~ **or gives** unlawful benefit, or in the interests of a third person, using the authority he/she was provided with or service position, -

shall be punishable by fine in the amount of **1,000 to 1,500** ~~seven hundred and fifty to one thousand~~ untaxed minimum personal incomes, **or by arrest for a term from three to six months, or by deprivation of liberty for a term from two to four years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term of two to three years and with a special confiscation.**

~~2. Receiving by a service person of unlawful benefit for oneself or a third person for performance or non-performance of any action in the interests of a person providing the unlawful benefit, or in the interests of a third person, using the authority he/she was provided with or service position, -~~

~~shall be punishable by fine in the amount of one thousand to one thousand and five hundred untaxed minimum personal incomes, or by an arrest for the term of three to six months, or by deprivation of liberty for the term of two to four years, with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special confiscation.~~

2. Act provided for in paragraph 1 of the present Article, the subject of which was unlawful benefit in substantial amount, -

shall be punishable by ~~fine in the amount of one thousand and five hundred to two thousand untaxed minimum personal incomes, or by~~ deprivation of liberty for the term of three to six years, with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special confiscation.

3. Acts provided for in paragraphs 1 or 2 of the present Article, the subject of which was unlawful benefit in a large amount, or when committed by a service person occupying a position of responsibility, or by prior conspiracy by a group of persons, or if repeated, or combined with extortion of unlawful benefit, -

shall be punishable by deprivation of liberty for a term of five to ten years with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years, with special confiscation and confiscation of property.

4. Acts provided for in paragraphs 1, 2 or 3 of the present Article, the subject of which was unlawful advantage in an especially large amount, or when committed by a service person occupying a position of particular responsibility, -

shall be punishable by deprivation of liberty for a term of eight to twelve years with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years, with special confiscation and confiscation of property.

Note.

1. Unlawful benefit in substantial amount shall mean benefit exceeding one hundred times the untaxed minimum personal income; unlawful benefit in large amount – benefit exceeding two hundred times the untaxed minimum personal income; unlawful benefit in especially large amount – benefit exceeding five hundred times the untaxed minimum personal income.

2. In Articles 368, **368²**, **369** and 382 of the present Code, service persons occupying a position of responsibility shall mean persons specified in paragraph 1 of the Note to Article 364 of this Code, whose positions, in accordance with Article 25 of the Law of Ukraine "On Civil Service", are classified as belonging to **third, fourth, fifth and sixth categories** sub-groups I 4, II 2, II 3, II 4, III 1, III 2, III 3, III 4, IV 1, IV 2, IV 3, as well as judges, prosecutors and investigators, and other (except for those mentioned in paragraph 3 of this Note) heads and deputy heads of **state authorities**, local self-government bodies, their structural units.

3. In Articles 368, **368²**, **369** and 382 of the present Code, service persons occupying a position of particular responsibility shall mean:

1) ~~persons specified in paragraphs 2 and 3 of Article 2.2 of the Law of Ukraine "On the Civil Service",~~ **President of Ukraine, Prime Minister of Ukraine, members of the Cabinet of Ministers of Ukraine, people's deputies of Ukraine, Parliament's Ombudsman, Director of the National Anti-Corruption Bureau** ~~President of the Verkhovna Rada of Ukraine, his First Deputy and Deputy, Prime Minister of Ukraine, Prosecutor General of Ukraine, his First Deputy and Deputy, President of the Constitutional Court of Ukraine, his Deputy and Judges of the Constitutional Court of Ukraine, President of the Supreme Court of Ukraine, his First Deputy, Deputy and Judges of the Supreme Court of Ukraine, president, deputy presidents and judges of the higher specialised courts, President of the National Bank of Ukraine, his First Deputy and Deputy, Secretary to the National Defence and Security Council, his First Deputy and Deputy~~ **members of the National Defence and Security Council;**

2) persons whose positions, in accordance with Article 25 of the Law of Ukraine "On Civil Service", are classified as belonging to civil service positions of **the first and second categories** ~~sub-groups I 1, I 2 and II 1;~~

3) persons whose positions, in accordance with Article 14 of the Law of Ukraine "On Service in the Local Self-Governance Bodies", are classified as belonging to first and second categories of positions in local self-governance bodies.

Article 368¹ was removed under Law no. 2808-VI of 21.12.2010.

Article 368². Illicit enrichment

<i>Version as introduced in 2011 and amended in 2013</i>	<i>Version as amended by the Law on the National Anti-Corruption Bureau (in force since 25 January 2015)</i>	<i>Version as amended on 12 February 2015</i>
<p>1. Receiving by a service person of an unlawful benefit in substantial amount or transfer by such person of such benefit to her close relatives in the absence of the elements provided in Article 368 of the present Code (illicit enrichment) -</p> <p>shall be punishable by fine in the amount of five hundred to one thousand untaxed minimum personal incomes, or by restriction of liberty for the term of up to two years, deprivation of liberty for the term of up to two years with the deprivation of the right to occupy certain offices or engage in certain activities for the</p>	<p>1. Acquiring by a person authorised to perform functions of the state or local self-government in ownership of property, whose value significantly exceeds person's income received from legitimate sources, or transfer by him/her of such property to close relatives -</p> <p>shall be punishable by deprivation of liberty for the term of up to two years with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special forfeiture and forfeiture of</p>	<p>1. Acquiring by a person authorised to perform functions of the state or local self-government in ownership of assets in significant amount, the lawful grounds of acquiring of which was not confirmed by evidence, as well as transfer by such person of such assets to any other person –</p> <p>shall be punishable by deprivation of liberty for the term of up to two years with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special forfeiture and forfeiture of</p>

<p>term of up to three years and with special forfeiture and forfeiture of property.</p> <p>2. Illicit enrichment, if its subject was unlawful benefit in large amount, - shall be punishable by restriction of liberty for the term of two to five years, or deprivation of liberty for the term of two to five three to five years, with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special forfeiture and forfeiture of property.</p> <p>3. Illicit enrichment, if its subject was unlawful benefit in especially large amount, - shall be punishable by deprivation of liberty for the term of five to ten years, with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special forfeiture and forfeiture of property.</p> <p><i>Note.</i> Unlawful benefit in substantial amount shall mean monetary funds or other property, advantages, privileges, services, intangible assets being promised, offered, given or received without legitimate grounds therefor for free or for a price below the market one in the amount exceeding one hundred untaxed minimum personal incomes, in large amount – in the amount exceeding two hundred untaxed minimum personal incomes, in especially large amount – exceeding five hundred untaxed minimum personal incomes.</p>	<p>property.</p> <p>2. Acts provided for in paragraph 1 of this Article when committed by a service person occupying a position of responsibility - shall be punishable by deprivation of liberty for the term of two to five years, with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special forfeiture and forfeiture of property.</p> <p>3. Acts provided for in paragraph 1 of this Article when committed by a service person occupying a position of particular responsibility - shall be punishable by deprivation of liberty for the term of five to ten years, with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special forfeiture and forfeiture of property.</p> <p>Note. 1. Persons authorised to perform functions of the state or local self-government shall mean persons specified in subparagraph 1 of Article 4.1 of the Law of Ukraine on Prevention of Corruption.</p> <p>2. Significantly exceeding in this Article means an amount which two or more times exceeds income mentioned in the declaration of incomes, assets, expenses and financial liabilities for the relevant period submitted by person according to the procedure provided for in the Law of Ukraine on Prevention of Corruption.</p>	<p>property.</p> <p>2. The same acts when committed by a service person occupying a position of responsibility - shall be punishable by deprivation of liberty for the term of two to five years, with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special forfeiture and forfeiture of property.</p> <p>3. Acts provided for in paragraph 1 of this Article when committed by a service person occupying a position of particular responsibility - shall be punishable by deprivation of liberty for the term of five to ten years, with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special forfeiture and forfeiture of property.</p> <p>Note. 1. Persons authorised to perform functions of the state or local self-government shall mean persons specified in subparagraph 1 of Article 3.1 of the Law of Ukraine on Prevention of Corruption.</p> <p>2. Assets in the significant amount in this Article shall mean monetary funds and other property, as well as proceeds from them, if their amount (value) exceeds 1,000 untaxed minimum personal incomes.</p> <p>3. The transfer of assets in this Article shall mean concluding any agreements based on which right of ownership or right of use of assets emerges, as well as providing other person with monetary funds or other property to conclude such agreements.</p>
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Article 368³. Bribery of a service person of private law legal entity regardless of its organisational and legal form

1. An offer **or a promise** to a service person of a legal entity of private law, regardless of its organizational and legal form, to give to him/her or a third person an unlawful benefit, as well as giving of

such benefit, **or a request to provide it**, for performance by such service person of actions or for omission to act using the power granted to such person in the interests of the person who offers, **promises** or gives such benefit, or in the interests of a third person, -

shall be punishable by fine in the amount of **150 to 400** ~~five hundred to one thousand~~ untaxed minimum personal incomes, **or by community works for the term of one hundred to two hundred hours, or by restriction of liberty for the term of up to two years, or by deprivation of liberty for the same term, with a special confiscation.**

2. The same actions, if committed repeatedly or by prior conspiracy by a group of persons, or by an organised group –

shall be punishable by fine in the amount of **350 to 700** ~~three thousand to five thousand~~ untaxed minimum personal incomes, **or by restriction of liberty for the term of up to three years, or by deprivation of liberty for the same term, with a special confiscation.**

3. **Acceptance of an offer, promise or receiving** by a service person of a legal entity of private law, regardless of its organizational and legal form, of an unlawful benefit for oneself or a third person for performance of actions or omission to act using the powers granted to such person in the interests of the person who offers or gives such benefit, or in the interests of a third person, -

shall be punishable by fine in the amount of **500 to 750** ~~five thousand to eight thousand~~ untaxed minimum personal incomes, or correctional labour **for the term of up to two years, or arrest in the term of up to six months, or by restriction of liberty for the term of up to three years, or by deprivation of liberty for the same term**, with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to two years **and with a special confiscation.**

4. Actions, provided for in paragraph 3 of this Article, when committed repeatedly, or by prior conspiracy by a group of persons, or in conjunction with extortion of an unlawful benefit, -

shall be punishable by ~~fine in the amount of ten thousand to fifteen thousand untaxed minimum personal incomes~~ **deprivation of liberty for the term of three to seven years**, with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with confiscation of property **and with a special confiscation.**

<p>5. A person who offered, promised or gave an unlawful benefit shall be discharged from criminal liability, if there has been an extortion of unlawful benefit in relation to such person, and if after the offer, promise or giving of unlawful benefit, such person - prior to being notified about a suspicion of having committed a crime - voluntarily reported on the incident to an authority whose service person is authorised by law to notify of suspicion.</p>	<p><i>Deleted</i> See new note in Article 354 CC.</p>
<p>Note. In Article 368³ and 368⁴ of this Code an unlawful benefit shall mean monetary funds or other property, advantages, privileges, services, which exceed 1.5 of untaxed minimum personal income, or intangible assets being offered, promised, given or received without legitimate grounds therefor.</p>	<p><i>Deleted</i></p>

Article 368⁴. Bribery of a person who provides public services

1. An offer **or promise** to an auditor, a notary, an appraiser, or another person who is not a civil servant, an official of local self-government, but is engaged in professional activity related to provision of public services, including services of an expert, an arbitration manager, an independent mediator, a member of labour arbitration, arbitrator (during execution of such functions), to give to him/her or a third person an unlawful benefit, as well as the giving of such benefit **or request to provide it**, for performance by a person providing public services of actions or omission to act using the powers granted to such person in the interests of the person who offers, **promises** or gives such benefit, or in the interests of a third person, -

shall be punishable by fine in the amount of **150 to 400** ~~five hundred to one thousand~~ untaxed minimum personal incomes, **or by community works for the term of one hundred to two hundred hours, or by restriction of liberty for the term of up to two years, or by deprivation of liberty for the same term.**

2. The same actions, if committed repeatedly or by prior conspiracy by a group of persons, or by an organised group –

shall be punishable by fine in the amount of **350 to 700** ~~three thousand to five thousand~~ untaxed minimum personal incomes, **or by restriction of liberty for the term of up to four years, or by deprivation of liberty for the same term, with a special confiscation.**

3. **Acceptance of an offer, promise or receiving** by an auditor, a notary, an expert, an appraiser, an arbitrator or another person engaged in professional activity related to provision of public services, as well as by an independent mediator or an arbitrator during consideration of collective labour disputes, of unlawful benefit for oneself or for a third person for performance of actions or omission to act using the powers granted to such person in the interests of the person who **offers, promises or** gives such benefit, or in the interests of a third person, -

shall be punishable by fine in the amount of **750 to 1000** ~~five thousand to ten thousand~~ untaxed minimum personal incomes, **or by correctional labour in the term of one to two years, or by arrest in the term of up to six months, or by restriction of liberty for the term of two to five years, or by deprivation of liberty for the same term,** with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years **and with a special confiscation.**

4. Actions, provided for in paragraph 3 of this Article, when committed repeatedly, or by prior conspiracy by a group of persons, or in conjunction with extortion of an unlawful benefit, -

shall be punishable ~~by fine in the amount of twelve thousand to eighteen thousand untaxed minimum personal incomes~~ **deprivation of liberty for the term of four to eight years,** with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with confiscation of property **and with a special confiscation.**

5. A person who offered, promised or gave an unlawful benefit shall be discharged from criminal liability, if there has been an extortion of unlawful benefit in relation to such person, and if after the offer, promise or giving of unlawful benefit, such person - prior to being notified about a suspicion of having committed a crime - voluntarily reported on the incident to an authority whose service person is authorised by law to notify of suspicion.	<i>Deleted</i> See new note in Article 354 CC.
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Article 369. An offer, **promise** or giving of an unlawful benefit to a service person

1. An offer **or a promise** to a service person to give him/her or a third person an unlawful benefit, **as well as giving of such benefit,** for performance or non-performance by the service person of any action using the authority granted to it or official position in the interests of the person who offers, ~~or promises or~~ **gives** such benefit, or in the interests of a third person, -

shall be punishable by fine in the amount of **500 to 750** ~~two hundred and fifty to five hundred~~ untaxed minimum personal incomes, ~~or by community works for the term of one hundred and sixty to two hundred and forty hours,~~ or by restriction of liberty for the term of up to **four** ~~two~~ years, **or by deprivation of liberty for the same term, with a special confiscation.**

~~2. Giving to a service person or a third person of an unlawful benefit for performance or non-performance by the service person of any action using the authority granted to it or official position in the interests of the person who gives the unlawful benefit, or in the interests of a third person, -~~

~~shall be punishable by fine in the amount of five hundred to seven hundred and fifty untaxed minimum personal incomes, or by restriction of liberty for the term of two to four years, or by deprivation of liberty for the same term, with a special confiscation.~~

2. Acts provided for in paragraph **1** of the present Article, when committed repeatedly, -

shall be punishable by deprivation of liberty for a term of three to six years with fine in the amount of five hundred to one thousand untaxed minimum personal incomes, with or without confiscation of property and with a special confiscation.

3. Acts provided for in paragraphs **1 or 2** of the present Article, if the unlawful benefit was given to a service person occupying a position of responsibility, or was committed by prior conspiracy by a group of persons, -

shall be punishable by deprivation of liberty for a term of four to eight years, with or without confiscation of property and with a special confiscation.

4. Acts provided for in paragraphs **1, 2 or 3** of the present Article, if the unlawful benefit was given to a service person occupying a position of particular responsibility, or was committed by an organized group of persons or by a member thereof, -

shall be punishable by deprivation of liberty for a term of five to ten years, with or without confiscation of property and with a special confiscation.

<p>5. A person who offered, promised or gave an unlawful benefit shall be discharged from criminal liability, if there has been an extortion of unlawful benefit in relation to such person, and if after the offer, promise or giving of unlawful benefit, such person - prior to being notified about a suspicion of having committed a crime - voluntarily reported on the incident to an authority whose service person is authorised by law to notify of suspicion.</p>	<p><i>Deleted</i> See new note in Article 354 CC.</p>
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Article 369². Abuse of influence

1. An offer, a **promise** or giving of an unlawful benefit to a person who offers or promises (consents) for such benefit or for giving of such benefit to a third party to influence the adoption of a decision by a person who is authorized to perform state functions, –

shall be punishable by fine in the amount of two hundred to five hundred untaxed minimum personal incomes, or by restriction of liberty for the term of two to five years, **or by deprivation of liberty for the term of up to two years**, with a special confiscation.

2. **Acceptance of an offer, promise or** receiving of an unlawful benefit for oneself or for a third party for the influence on the adoption of a decision by a person who is authorized to perform state functions, or an offer **or a promise** to exert influence for giving of such benefit ~~for oneself or for a third party~~, –

shall be punishable by fine in the amount of seven hundred and fifty to one thousand five hundred untaxed minimum personal incomes, or by deprivation of liberty for the term of two to five years, with a special confiscation.

3. **Acceptance of an offer, promise or** receiving of an unlawful benefit for oneself or for a third party for the influence on the adoption of a decision by a person who is authorized to perform state functions, combined with extortion of such benefit, –

shall be punishable by deprivation of liberty for the term of three to eight years with confiscation of property **and with a special confiscation**.

Note. Persons authorised to perform state functions shall mean persons defined in subparagraphs 1-3 of paragraph 1 of Article 4 of the Law of Ukraine “On Principles for Preventing and Counteracting Corruption”.

Article 370. Provocation of bribery

<p>1. Provocation of bribery, that is a wilful creation by a service person of circumstances and conditions that cause the offering, promising or giving of an unlawful benefit or acceptance of an offer, promise or receiving of such benefit, in order to subsequently expose the person who offered, promised, gave unlawful benefit or accepted an offer, promise or received such benefit, –</p>	<p>1. Provocation of bribery, that is actions of a service person to incite person to offering, promising or giving of an unlawful benefit or acceptance of an offer, promise or receiving of such benefit, in order to subsequently expose the person who offered, promised, gave unlawful benefit or accepted an offer, promise or received such benefit, –</p>
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shall be punishable by restriction of liberty for the term of up to five years, or by deprivation of liberty for the term of two to five years, and with a fine in the amount of two hundred and fifty to five hundred untaxed minimum personal incomes.

2. The same act, when committed by a service person of law enforcement agencies, -

shall be punishable by deprivation of liberty for the term of three to seven years, and with a fine in the amount of five hundred to seven hundred and fifty untaxed minimum personal incomes.

Provisions of Code of Administrative Offences of Ukraine

<i>Current version</i>	<i>As amended by the new Law on Corruption Prevention (in force from 26 April 2015)</i>
<p>Chapter 13-A. Administrative Corruption Offences <i>[Chapter 13-A was added by Law no. 3207-VI of 07.04.2011]</i></p>	<p>Chapter 13-A. Administrative Offences Related to Corruption</p>
<p><i>Articles 172² and 172³ were deleted by Law no. 221-VII of 18.04.2013.</i></p>	
<p>Article 172⁴. Violation of restrictions concerning incompatibility of offices and incompatibility with other types of activity Violation by a person of restrictions established by the law with regard to engaging in entrepreneurial or other paid activity (except for teaching, research and creative activity, medical practice, instructor's and judge's practice in sports) - shall lead to imposing of a fine in the amount of fifty to one hundred twenty five untaxed minimum personal incomes with confiscation of income received from entrepreneurial activity or remuneration received for incompatible work.</p>	<p>Article 172⁴. Violation of restrictions concerning incompatibility of offices and incompatibility with other types of activity Violation by a person of restrictions established by the law with regard to engaging in other paid activity (except for teaching, research and creative activity, medical practice, instructor's and judge's practice in sports) or in entrepreneurial activity - shall lead to imposing of a fine in the amount of 300 to 500 untaxed minimum personal incomes with confiscation of income received from entrepreneurial activity or remuneration received for incompatible work.</p>
<p>Violation by a person of restrictions established by the law with regard to being a member of a governing or supervising council of an enterprise or for-profit organisation (except for cases when a person performs functions of managing shares belonging to the state and represents the state in the council of the partnership (supervisory board), inspection commission of the economic entity), - shall lead to imposing of a fine in the amount of one hundred to two hundred untaxed minimum personal incomes with confiscation of income received from such activity.</p>	<p>Violation by a person of restrictions established by the law with regard to being a member of a board, other governing or controlling bodies, or a supervising council of an enterprise or for-profit organisation (except for cases when a person performs functions of managing shares belonging to the state and represents the state in the council of the partnership (supervisory board), inspection commission of the economic entity), - shall lead to imposing of a fine in the amount of 300 to 500 untaxed minimum personal incomes with confiscation of income received from such activity.</p>
	<p>Actions provided for in paragraphs 1 or 2 of this Article when committed by a person who has been punished with administrative sanction during a year for the same violation, - shall lead to imposing of a fine in the amount of 500 to 800 untaxed minimum personal incomes with confiscation of income or remuneration received from such activity and with the deprivation of the right to hold certain offices or to engage in certain activity for one year.</p>
<p><i>Note.</i> Persons who are liable under this Article shall be persons mentioned in paragraph 1 of Article 4.1 of the Law of Ukraine “On the Principles for Preventing and Counteracting Corruption”, except for deputies of the Supreme Council of the Autonomous Republic of Crimea, deputies of local councils (except those who perform their powers in the relevant council on permanent basis), members of the High</p>	<p><i>Note.</i> Persons who are liable under this Article shall be persons mentioned in subparagraph 1 of Article 3.1 of the Law of Ukraine “On Prevention of Corruption”, except for deputies of the Supreme Council of the Autonomous Republic of Crimea, deputies of local councils (except those who perform their powers in the relevant council on permanent basis), members of the High Council of Judges</p>

<p>Council of Judges (except for those who work in the High Council of Judges on permanent basis), people's assessors and jurors.</p>	<p>(except for those who work in the High Council of Judges on permanent basis), people's assessors and jurors.</p>
<p>Article 172-5. Violation of restrictions established by the law with regard to receiving of gift (donation)</p> <p>Violation of restrictions established by the law with regard to receiving of gift (donation) - shall lead to imposing of a fine in the amount of twenty five to fifty untaxed minimum personal incomes with confiscation of such gift (donation).</p>	<p>Article 172-5. Violation of restrictions established by the law with regard to receiving of gifts</p> <p>Violation of restrictions established by the law with regard to receiving of gifts - shall lead to imposing of a fine in the amount of 100 to 200 untaxed minimum personal incomes with confiscation of such gift</p>
<p>Violation of prohibition established by the law with regard to receiving of gift (donation) - shall lead to imposing of a fine in the amount of fifty to one hundred untaxed minimum personal incomes with confiscation of such gift (donation).</p>	
	<p>The same action when committed by a person who has been punished with administrative sanction or the violation provided for in paragraph 1 of this Article, - shall lead to imposing of a fine in the amount of 200 to 400 untaxed minimum personal incomes with confiscation of such gift and with the deprivation of the right to hold certain offices or to engage in certain activity for one year.</p>
<p><i>Note.</i> Persons who are liable under this Article shall be persons mentioned in paragraph 1, subparagraphs "a" and "b" of paragraph 2 of Article 4.1 of the Law of Ukraine "On the Principles for Preventing and Counteracting Corruption".</p>	<p><i>Note.</i> Persons who are liable under this Article shall be persons mentioned in subparagraphs 1-2 of Article 3.1 of Law of Ukraine "On Prevention of Corruption".</p>
<p><i>[Article as amended by Law no. 1261-VIII of 13.05.2014]</i></p> <p>Article 172⁶. Violation of requirements of financial control</p> <p>Failure to submit or untimely submitting of the declaration on assets, income, expenses and financial liabilities provided for in the Law of Ukraine "On the Principles for Preventing and Counteracting Corruption", - shall lead to imposing of a fine in the amount of ten to twenty five untaxed minimum personal incomes.</p>	<p>Article 172⁶. Violation of requirements of financial control</p> <p>Untimely submitting of the declaration of the person authorised to perform functions of the state or local self-government - shall lead to imposing of a fine in the amount of 50 to 100 untaxed minimum personal incomes.</p>
<p>Failure to notify or untimely notification about opening of a foreign currency account in a non-resident bank, - shall lead to imposing of a fine in the amount of ten to twenty five untaxed minimum personal incomes.</p>	<p>Failure to notify or untimely notification about opening of a foreign currency account in a non-resident bank or about significant changes in the assets, - shall lead to imposing of a fine in the amount of 100 to 200 untaxed minimum personal incomes.</p>
<p>Submission of knowingly false information in the declaration on assets, income, expenses and financial liabilities provided for in the Law of Ukraine "On the Principles for Preventing and</p>	

<p>Counteracting Corruption”, - shall lead to imposing of a fine in the amount of 150 to 300 untaxed minimum personal incomes.</p>	
	<p>Actions provided for in paragraphs 1 or 2 of this Article when committed by a person who has been punished with administrative sanction during a year for the same violations, - shall lead to imposing of a fine in the amount of 100 to 300 untaxed minimum personal incomes with confiscation of income or remuneration and with the deprivation of the right to hold certain offices or to engage in certain activity for one year.</p>
<p><i>Note.</i> Persons who are liable under this Article shall be persons mentioned in paragraph 1, subparagraph “a” of paragraph 2 of Article 4.1 of the Law of Ukraine “On the Principles for Preventing and Counteracting Corruption”.</p>	<p><i>Note.</i> Persons who are liable under this Article shall be persons who according to paragraphs 1 and 2 of Article 45 of the Law of Ukraine “On Prevention of Corruption” are obliged to submit declaration of the person authorised to perform functions or the state of local self-government.</p>
<p>Article 172⁷. Violation of requirements concerning notification of conflict of interests</p> <p>Failure to notify the direct superior in cases provided for in the law of a conflict of interests, - shall lead to imposing of a fine in the amount of ten to one hundred and fifty untaxed minimum personal incomes.</p>	<p>Article 172⁷. Violation of requirements concerning prevention and resolving of conflict of interests</p> <p>Failure to notify by the person in the specified cases and in the specified procedure about existence of a real conflict of interests, - shall lead to imposing of a fine in the amount of 100 to 200 untaxed minimum personal incomes.</p>
	<p>Taking action or adoption of decisions in the situation of a real conflict of interests – shall lead to imposing of a fine in the amount of 200 to 400 untaxed minimum personal incomes.</p> <p>Actions provided for in paragraphs 1 or 2 of this Article when committed by a person who has been punished with administrative sanction during a year for the same violations, - shall lead to imposing of a fine in the amount of 400 to 800 untaxed minimum personal incomes with confiscation of income or remuneration and with the deprivation of the right to hold certain offices or to engage in certain activity for one year.</p>
<p>Note.</p> <p>1. Persons who are liable under this Article shall be persons mentioned in paragraph 1, subparagraphs “a” and “b” of paragraph 2 of Article 4.1 of the Law of Ukraine “On the Principles for Preventing and Counteracting Corruption”.</p> <p>2. In this Article the conflict of interests shall mean a contradiction between personal interests of a person and his/her service powers, the existence of which may influence the objectivity and impartiality of decision-making, as well as the performance or non-performance of actions during exercise of service powers granted to him/her.</p>	<p>Note.</p> <p>1. Persons who are liable under this Article shall be persons mentioned in subparagraphs 1.1-2 of Article 3 of Law of Ukraine “On Prevention of Corruption”.</p> <p>2. In this Article the real conflict of interests shall mean a contradiction between personal interests of a person and his/her service or representative powers, which influence the objectivity or impartiality of decision-making, or performance or non-performance of actions during exercise of service the mentioned powers.</p>
<p>Article 172⁸. Illegal use of information which</p>	<p>Article 172⁸. Illegal use of information which</p>

<p>became know to a person in connection with exercise of service powers</p> <p>Illegal disclosure or use in any other way by a person in his/her interests of information which became known to him/her in connection with exercise of service powers, -</p> <p>shall lead to imposing of a fine in the amount of fifty to one hundred untaxed minimum personal incomes.</p> <p><i>Note.</i> Persons who are liable under this Article shall be persons mentioned in paragraph 1 of Article 4.1 of the Law of Ukraine “On the Principles for Preventing and Counteracting Corruption”.</p>	<p>became know to a person in connection with exercise of service powers</p> <p>Illegal disclosure or use in any other way by a person in his/her interests of information which became known to him/her in connection with exercise of service powers, -</p> <p>shall lead to imposing of a fine in the amount of 100 to 150 untaxed minimum personal incomes.</p> <p><i>Note.</i> Persons who are liable under this Article shall be persons mentioned in subparagraph 1 of Article 3.1 of Law of Ukraine “On Prevention of Corruption.</p>
<p>Article 172⁹. Failure to take measures on counteracting corruption</p> <p>Failure to take measures, which are provided for by the law, by an official or a service person of a state authority, an official of a local self-government body, of a legal entity, their structural units in case of detection of corruption offence, -</p> <p>shall lead to imposing of a fine in the amount of fifty to one hundred and twenty five untaxed minimum personal incomes.</p>	<p>Article 172⁹. Failure to take measures on counteracting corruption</p> <p>Failure to take measures, which are provided for by the law, by an official or a service person of a state authority, an official of a local self-government body, of a legal entity, their structural units in case of detection of corruption offence, -</p> <p>shall lead to imposing of a fine in the amount of 125 to 250 untaxed minimum personal incomes.</p> <p>The same action when committed again by a person during one year after punishment with administrative sanction -</p> <p>shall lead to imposing of a fine in the amount of 250 to 400 untaxed minimum personal incomes.</p>
	<p>Article 188⁴⁶. Failure to comply with lawful demands (orders) of the National Agency for Corruption Prevention</p> <p>Failure to comply with lawful demands (orders) of the National Agency for Corruption Prevention concerning removing violations of the legislation on prevention and counteraction to corruption, failure to provide information, documents, as well as breach of terms for their provision, provision of knowingly false or incomplete information –</p> <p>shall lead to imposing of a fine in the amount of 100 to 250 untaxed minimum personal incomes.</p> <p>The same action when committed again by a person during one year after punishment with administrative sanction for the same violation -</p> <p>shall lead to imposing of a fine in the amount of 200 to 300 untaxed minimum personal incomes.</p>

LAW OF UKRAINE

“On the National Anti-Corruption Bureau of Ukraine”

*[As adopted on 14 October 2014 and enacted on 25 January 2015;
amendments of 12 February 2015 not reflected]*

This Law defines the legal basis for the organization and activities of the National Anti-Corruption Bureau of Ukraine.

SECTION I

GENERAL PROVISIONS

Article 1. Status of the National Bureau

1. The National Bureau is a state law-enforcement agency, which is vested with prevention, detection, suppression, investigation and solving of corruption offenses under its competence, as well as prevention of committing the new ones.

The objective of the National Bureau is to counter criminal corruption offenses committed by senior officials authorized to perform the functions of the state or local self-government and which threaten national security.

2. The National Bureau is established by the President of Ukraine in accordance with this and other laws of Ukraine.

Article 2. The legal basis for the National Bureau’s activities

1. The legal basis for activities of the National Bureau includes the Constitution of Ukraine, international treaties of Ukraine, this and other laws of Ukraine, and other legal acts adopted in accordance with them.

Article 3. The main principles of operation of the National Bureau

1. The main principles of operation of the National Bureau are:

- 1) rule of law;
- 2) respect for the rights and freedoms of individuals and legal entities;
- 3) legality;
- 4) impartiality and fairness;
- 5) independence of the National Bureau and its employees;
- 6) subjection to control and accountability to the public and state authorities designated by law;
- 7) openness to democratic civic control;
- 8) political neutrality and non-partisanship;
- 9) cooperation with other state agencies, local self-government bodies, non-governmental organizations.

Article 4. Guarantees of independence of the National Bureau

1. Independence of the National Bureau in its work shall be guaranteed by:

- 1) the special procedure for competitive selection of the National Bureau’s Head and exhaustive list of grounds for termination of office of the Head of the National Bureau which are stipulated by this Law;
- 2) competitive selection of other National Bureau's employees, their special legal and social protection, proper conditions of remuneration of employees;
- 3) stipulated by law procedure for financing and providing material supplies to the National Bureau;
- 4) defined by law protection of the personal safety of employees of the National Bureau, their close relatives and property;
- 5) other means specified by this Law.

2. Using of the National Bureau for party, group or personal interests is prohibited. Activities of political parties within the National Bureau is prohibited.

3. Unlawful interference by state authorities, local self-government bodies, their officials and employees, political parties, civic associations and other individuals or legal entities with the activities of the National Bureau shall be prohibited.

Any written or oral instructions, requirements, orders, etc., sent to the National Bureau and its employees which concern matters of pre-trial investigation in specific criminal proceedings and are not provided for in the Criminal Procedure Code of Ukraine shall be deemed illegal and shall not be fulfilled. In case of receipt of such instruction, requirement or order the employee of the National Bureau shall report about that immediately in written to the Head of the Bureau.

Article 5. The overall structure and number of staff of the National Bureau

1. National Bureau consists of a central and territorial offices which are legal entities of public law.

The Central Office of the National Bureau directly executes tasks assigned to the National Bureau, coordinates and supervises activities of territorial offices.

2. In order to fulfill tasks assigned to the National Bureau, following territorial offices shall be established:

- 1) territorial office located in Lviv and covering Volyn, Ivano-Frankivsk, Lviv, Ternopil regions;
- 2) territorial office located in the city of Khmelnytsky and covering Vinnytsia, Zhytomyr, Rivne, Khmelnytsky and Chernivtsi regions;
- 3) territorial office located in the city of Mykolayiv and covering Kirovohrad, Mykolaiv and Odesa regions;
- 4) territorial office located in Melitopol and covering the Autonomous Republic of Crimea, Zaporizhia, Kherson regions and Sevastopol city;
- 5) territorial office located in Poltava and covering Dnipropetrovsk, Poltava and Sumy regions;
- 6) territorial office located in Kramatorsk and covering Donetsk and Lugansk regions;
- 7) territorial office located in Kyiv and covering the city of Kyiv, Kyiv, Cherkasy and Chernihiv regions.

3. The structure, list of personnel of the territorial offices and regulations on them shall be approved by the Head of the National Bureau.

4. The structure of the central office and territorial offices of the National Bureau includes informational and analytical, operative and detective, operative and technical units, investigative units, units for tracing assets subject to possible forfeiture, prompt response units, protection of participants in the criminal proceedings units, representation of interests in foreign jurisdictions, expert, financial, human resources and other units.

5. The maximum number of employees of the central and territorial offices of the National Bureau shall be 700 people, including not more than 200 of ranked persons.

Article 6. Head of the National Bureau

1. Management of the National Bureau is conducted by its Head, who is appointed upon consent of the Verkhovna Rada of Ukraine and dismissed by the President of Ukraine according to the procedure stipulated by this Law. In case reasons specified in paragraphs 6-10 of the second paragraph of part two of this article exist, Verkhovna Rada of Ukraine upon suggestion of not less than one-third of people's deputies of Ukraine from the Constitutional composition of Verkhovna Rada of Ukraine may express distrust to the Director of the National Bureau, resulting in his resignation.

2. The Head of the National Bureau shall be a citizen of Ukraine, who has a university degree in law, has professional work experience of no less than 10 years, work experience at management positions in public authorities, institutions, organizations or international organizations of no less than 5 years, knows state language and is capable by his/her professional and moral characteristics, educational and professional level, health status to perform relevant official duties.

Person who within two years prior to applying for the competition to fill the position of the Bureau's Head, regardless of duration, was part of the leadership of a political party or was in the employment or other contractual relationship with a political party may not be appointed as the Head of the National Bureau.

Person who does not comply with the limitations specified in paragraph one of Article 19 of this Law may not be appointed as the Head of the National Bureau.

Person who has failed to undergo vetting according to the procedure established by the Law of Ukraine "On Lustration" may not be appointed as Director of the National Bureau in order to restore

confidence in the government and create conditions for the construction of a new system of government in line with European standards.

3. The Head of the National Bureau is appointed for a term of seven years. The same person may not hold this office for two consecutive terms.

4. The powers of the Head of the National Bureau are terminated in connection with expiration of his term in office or his/her death and in case of distrust expression by Verkhovna Rada of Ukraine to the Director of the National Bureau, resulting in his resignation.

The Head of the National Bureau shall be dismissed from his office in case of:

- 1) submission of a written request for termination of office upon his/her own will;
- 2) the appointment or election to another office upon his/her consent;
- 3) reaching the age of 65 years;
- 4) inability to perform his duties due to health reasons in accordance with the opinion of the medical commission, created by the decision of the authorized central executive body that implements the state policy in the field of health care;
- 5) the court's decision on his recognition as incapacitated or limiting his civil capacity, recognition as a missing person or declaring him/her dead;
- 6) the entry into force of conviction against him/her;
- 7) termination of the citizenship of Ukraine or departure for permanent residence outside of Ukraine;
- 8) non-compliance with restrictions on out-of-office and part-time employment stipulated by the Law of Ukraine "On Principles of Prevention and Countering Corruption";
- 9) untimely filing of a declaration of person authorized to perform the functions of the state or local self-government;
- 10) acquisition of citizenship of another state.

Director of the National Bureau may not be dismissed, and the decree of the President of Ukraine on his appointment may not be revoked except for reasons stipulated in this paragraph.

Article 7. The procedure for competitive selection and appointment of the Head of the National Bureau

1. Candidates for the position of t shall be selected by the commission responsible for conducting competition to fill the position of the Head of the National Bureau (hereinafter – the Selection Commission) based on the results of an open competitive selection procedure to fill in this position (hereinafter - the competition). The competition is open to any person meeting the requirements set out in part 2 of Article 12 of this Law.

2. Organization and holding of the competition is carried out by the Selection Commission.

3. The Selection Commission consists of:

- 1) three persons determined by the President of Ukraine;
- 2) three persons determined by the Cabinet of Ministers of Ukraine;
- 3) three persons determined by the Verkhovna Rada of Ukraine.

Members of the Selection Committee may be persons who have impeccable business reputation, high professional and moral qualities, public authority. Persons referred to in subparagraphs 1 - 3 of paragraph 1 of Article 19 of this Law and persons authorized to perform the functions of the state or local self-government in accordance with the Law of Ukraine “On Prevention of Corruption” may not be members of the Selection Commission.

The Selection Commission shall be deemed competent if at least six members are approved in its composition.

4. The decision of the Selection Commission shall be considered as adopted if at the session of the Selection Commission at least five members of the Selection Commission voted for it.

5. The Head and Secretary of the Selection Commission shall be elected by the Commission from among its own members.

Sessions of the Selection Commission are open to the media and journalists. Video and audio recording and live broadcast of the Selection Commission’s sessions shall be ensured at the official website of the President of Ukraine.

Information regarding the time and place of the session of the Selection Commission shall be published on the official website of the President of Ukraine not later than 48 hours before it starts.

The operation of the Selection Commission shall be supported by the agency responsible for the support of activities of the President of Ukraine.

6. The Selection Commission:

- 1) posts announcements about terms and conditions of competition;
 - 2) reviews the documents submitted by candidates for the position of the Head of the National Bureau, selects from all candidates three persons who, according to a justified decision of the Selection Commission, have the best professional experience, knowledge and qualities to perform duties of the Head of the National Bureau, conducts interviews with the three selected candidates at its session;
 - 3) selects through an open ballot among the candidates who passed the interview three candidates who meet the requirements that apply to the Head of the National Office, and, according to a justified decision of the Selection Commission, have the best expertise, knowledge and quality of service required to perform duties of the Head of the National Bureau;
 - 4) discloses information about the candidates who applied for the competition, as well as decision of the Selection Commission about selection of the three candidates for their submission for consideration of the President of Ukraine ;
 - 5) conducts a repeat competition if all candidates were rejected due to their non-compliance to the established requirements for the National Bureau's Head or their failure to undergo special vetting.
7. Not later than two months before the end of the term of office of the Head of the National Bureau or within fourteen days from the date of early termination of his/her powers (dismissal), the Selection Commission shall be established.

The Selection Commission shall place announcement on the terms and conditions of the competition to fill the position of the Bureau's Head in the national print media and on the official website of the President of Ukraine

8. A person who applies to participate in the competition shall submit the following documents in term specified in the announcement:

- 1) an application for participation in the competition, including consent to undergo a special vetting in accordance with the Law of Ukraine "On Prevention of Corruption" and consent for the processing of his/her personal data in accordance with the Law of Ukraine "On Personal Data Protection";
- 2) curriculum vitae which should include: the name, the first and patronymic name (if applicable), date, month, year and place of birth, citizenship, educational background, work experience, position (occupation), place of work, community work (including in elected positions), membership in political parties, including those in the past, work or any other contractual relationship with a political party during the year preceding the submission of the application (regardless of duration), contact telephone number and email address, criminal record or its absence;
- 3) the declaration of assets, income, expenses and financial obligations for the year preceding the year in which the announcement about the competition was made public in the form prescribed by the Law of Ukraine "On Prevention of Corruption";
- 4) other documents stipulated by the laws of Ukraine "On Civil Service", "On Prevention of Corruption".

The information presented in accordance with this paragraph shall be published within three working days after the deadline for submission of applications for the competition on the official website of the President of Ukraine, except for information, which according to the Law of Ukraine "On Prevention of Corruption" is defined as information with restricted access and information regarding contact phone number and email address of the candidate.

9. Special vetting shall be conducted regarding three candidates selected by the Selection Commission for the submission of their candidacies for the submission of the President of Ukraine.

10. Selected by the Selection Commission three candidacies shall be submitted to the President of Ukraine for determining of one candidate.

The President of Ukraine within ten days upon the day of submission for his/her consideration by the Selection Commission makes the submission to the Verkhovna Rada of Ukraine on granting consent to the appointment of the Director of the National Bureau of a candidate chosen from three candidates submitted by the Selection Commission.

After approval of the Verkhovna Rada of Ukraine regarding appointment of the Director of the National Bureau President of Ukraine shall issue the relevant decree.

In case of failure of Verkhovna Rada of Ukraine to grant consent to the appointment of the candidate for the position of the Director of the National Bureau within ten days, the President of Ukraine shall submit to the Verkhovna Rada of Ukraine to seek such consent another candidacy chosen from those submitted by the Selection Commission.

In case Verkhovna Rada of Ukraine has not given consent to the appointment of any candidate, Selection Commission shall conduct the competition again.

Article 8. Powers of the Head of the National Bureau

1. Head of the National Bureau:

1) is responsible for the activities of the National Bureau, including the legality of operative and detective measures, pre-trial investigations carried out by the Bureau, respect for the rights and freedoms of individuals;

2) organizes the work of the National Bureau, determines duties of the First Deputy Head and Deputy Heads of the National Bureau;

3) coordinates and controls activities of central office and territorial offices of the National Bureau;

4) approves the structure and personnel list of the central office and territorial offices of the National Bureau;

5) issues within his/her competence orders and instructions, which are mandatory for employees of the Bureau;

6) appoints and dismisses the First Deputy Head of the National Bureau and two Deputy Heads of the National Bureau, heads of departments of the central office of the National Bureau, Heads and Deputy Heads of territorial offices of the National Bureau;

7) approves prospective, current and operational plans for the work of the National Bureau;

8) establishes the procedure for registering, processing, storing and disposing in accordance with the laws of information, received by the National Bureau, takes measures to prevent unauthorized access to classified information, and ensures compliance with legislation on access to information held by the National Bureau;

9) determines the procedure to encourage persons who assist in the prevention, detection, suppression and investigation of criminal offenses referred to the investigative jurisdiction of the National Bureau;

10) takes decisions on the promotion and disciplinary action against employees of the National Bureau according to the decision of the Disciplinary Board of the National Bureau;

11) assigns within his/her powers in accordance with legislation to employees of the National Bureau the civil service ranks and special ranks of ranked persons, submits to the President of Ukraine proposals on assigning ranks of civil servants and special ranks to senior ranked persons of the National Bureau;

12) submits, according to the established procedure, proposals to improve legislation on matters within the competence of the National Bureau;

13) represents the National Bureau in relations with state authorities, local self-government bodies, non-governmental organizations and law enforcement agencies and other organizations of foreign states, international organizations, etc.;

14) has the right to attend sessions of the Verkhovna Rada of Ukraine, its committees, temporary and special temporary investigatory commissions of the parliament, as well as participate in an advisory capacity in meetings of the Cabinet of Ministers of Ukraine;

15) ensures openness and transparency of the National Bureau's activity pursuant to this Law, reports on the activities of the National Bureau in the manner prescribed by this Law;

16) authorizes the use of the special fund of operative and investigative actions of the National Bureau;

17) conducts other duties according to this and other laws.

Article 15. Heads of territorial offices of the National Bureau

1. Heads of territorial offices of the National Bureau shall be appointed and dismissed by the Head of the National Bureau.

2. Head of the territorial office of the National Bureau:

1) organizes the work of the relevant territorial office for the implementation of the functions of the National Bureau, execution of orders and directives of the National Bureau;

2) appoints and dismisses employees of the relevant territorial office, except for those who are appointed by the Head of the National Bureau;

3) submits proposals to the Head of the National Bureau regarding awarding ranks of civil servants and special ranks for ranked persons according to legislation to the employees of the relevant territorial office;

4) submits to the Head of the National Bureau proposals on the structure and staffing of the relevant territorial office;

5) issues within his/her authority orders and instructions;

6) performs other powers provided by legislation.

Article 9. Employees of the National Bureau

1. Employees of the National Bureau are ranked persons and officers, civil servants and other employees who are employed under labor agreements at the National Bureau.

Ranked persons shall be employees of prompt response units, units for protection of participants in the criminal proceedings and protection of the National Bureau's employees according to this Law, operative units of the National Bureau.

2. Time of service in the National Bureau shall be accounted as insurance record, work record according to the specialty, as well as to the record of civil servant's work in accordance with the law.

2. Citizens of Ukraine who are capable because of their personal, business and moral character, age, educational and professional level and health to effectively perform the relevant duties may be admitted to the service at the National Bureau upon competitive, voluntary, contractual basis. Qualification requirements for proficiency shall be determined by the Head of the National Bureau. Appointments for positions at the National Bureau are performed only upon results of an open competition held in the manner specified by the National Bureau.

4. Ranked persons are covered by the regulation on service of ranked persons and officers of the Ministry of Internal Affairs of Ukraine, as well as Disciplinary Statute of the Ministry of Internal Affairs of Ukraine.

5. Labor relations of the Bureau's employees are governed by the labor legislation, legislation on civil service and signed labor agreements (contracts). Specialists of the National Bureau who do not have special ranks are covered by the Law of Ukraine "On Civil Service". Positions of specialists at the National Bureau are referred to the relevant categories of positions of the central office of the ministry, another central executive authority, their territorial office in the manner stipulated by legislation.

6. The National Bureau's employee shall take a mandatory in-service training regularly, but not less than once every two years.

Article 11. Special ranks of ranked personnel of the National Bureau

1. Ranked personnel of the National Bureau shall have the following special ranks:

1) middle-level ranking officers:

Lieutenant of the National Anti-Corruption Bureau of Ukraine;

Senior Lieutenant of the National Anti-Corruption Bureau of Ukraine;

Captain of the National Anti-Corruption Bureau of Ukraine;

2) senior-level ranking officers:

Major of the National Anti-Corruption Bureau of Ukraine;

Lieutenant Colonel of the National Anti-Corruption Bureau of Ukraine;

Colonel of the National Bureau of Anti-Corruption Investigations;

3) highest-level ranking officers

Major-General of the National Anti-Corruption Bureau of Ukraine.

2 Assignment and deprivation of special ranks, as well as lowering and renovation of special ranks are performed in accordance with procedure stipulated by legislation.

Article 12. Oath of ranked personnel of the National Bureau

1. Citizens of Ukraine who are enrolled for the first time for positions of ranked personnel of the National Bureau and in established cases have undergone determined probation term, shall take the following oath:

"I (name, surname), entering the service of the National Anti-Corruption Bureau of Ukraine, being aware of my great responsibility, swear to stay loyal to the Ukrainian people, strictly abide the Constitution and laws of Ukraine, to respect and protect the rights, freedoms and legitimate interests of human and citizen, honor of the state, to be honest, diligent and disciplined, keep confidential state and other secrets protected by law."

2. A person of the ranked personnel of the National Bureau shall sign the text of the oath that is stored in her personal file. Procedure for taking oath is determined by the Head of the National Bureau.

Article 13. Restrictions for employees of the National Bureau

1. A person cannot be appointed as employee of the National Bureau if he/she:
 - 1) has been declared incapable or whose capacity has been limited by court;
 - 2) has been convicted of committing a crime, if such record had not been expunged or withdrawn in accordance with the law (except for rehabilitated persons), or who was sanctioned with an administrative penalty for committing a corruption offense within the last year, or who was ever convicted of an intentional crime;
 - 3) according to the court decision, was deprived of the right to engage in activities related to performance of state functions or hold relevant positions;
 - 4) has the citizenship of another country;
 - 5) in case of appointment, would be directly subordinated to the person who is his/her close person under the Law of Ukraine "On Prevention of Corruption";
 - 6) did not pass through a special vetting;
 - 7) did not pass a vetting and he/she has ban established in accordance with Law of Ukraine "On Lustration";
 - 8) did not submit a declaration of assets, income, expenditures and financial obligations.

2. Employees of the National Bureau do not have the right:

- 1) to be members or participate in the creation or operation of political parties, to organize or participate in strikes;
- 2) to be agents for the third parties for the National Bureau matters;
- 3) use the National Bureau, its employees and assets in the party, group or personal interests.

Employees of the National Bureau are subject to other restrictions and requirements set by the Law of Ukraine "On Prevention of Corruption".

When appointed for the position at the National Bureau, the person shall be notified of the possibility of him undergoing integrity tests and monitoring of his lifestyle.

3. If an employee of the National Bureau has a conflict of interest while performing official duties, he/she must immediately notify his/her supervisor. This supervisor is obliged to take all necessary measures to prevent or eliminate the conflict of interest by assigning the task to another employee of the National Bureau, personal execution of this task or as otherwise provided by law.

Note. The term "conflict of interest" in this article is used within the meaning it has in the Law of Ukraine "On Prevention of Corruption".

Article 14. Internship of employees of the National Bureau

1. Individuals who have no prior experience in state authorities in positions related to operational activities, pre-trial investigations, after passing the competition to fill the position of the investigator or operative officer are required to take internship at the National Bureau for a period of six months to one year.

2. The procedure of internship at the National Bureau is established by the regulations, approved by the Head of the National Bureau.

3. National Bureau employee may be dismissed based on the results of the internship, if he/she does not meet the requirements that apply to employees of the Bureau.

Article 15. Secondment of prosecutors and other persons to the National Bureau and secondment of employees of the National Bureau to other authorities

1. Prosecutors shall be seconded to the National Bureau for exercising functions of the prosecutor during the pre-trial investigation of criminal offenses referred to the investigative jurisdiction of the National Bureau.

Procedure for seconding prosecutors to the National Bureau is determined by the Law of Ukraine "On Prosecutor's Office" and this Law.

2. Civil servants of other state authorities, institutions, organizations may be seconded to the National Bureau, while staying at the service of the relevant authority or by transferring them to the staff of the National Bureau, in order to perform duties that require special knowledge and skills.

3. Employees of the National Bureau may be seconded to state authorities, institutions and organizations to carry out tasks defined by this Law, while staying at the staff of the National Bureau.

4. Procedure for assignment to the National Bureau of employees of state authorities, institutions, organizations, and a list of positions that can be substituted in these state authorities, institutions and organizations with employees of the National Bureau shall be determined in accordance with legislation.

Article 16. Duties of the National Bureau

1. The National Bureau:

1) carries out operative and detective measures for the prevention, detection, suppression and investigation of criminal offenses referred by law to its investigative jurisdiction;

2) conducts pre-trial investigation of criminal offenses referred by law to its investigative jurisdiction;

3) takes measures to trace and seize funds and other assets that may be subject to forfeiture or special forfeiture in criminal offenses referred to the investigative jurisdiction of the National Bureau, conducts activities on preserving of assets and other property that was seized;

4) cooperates with other state agencies, local self-government bodies and others in order to perform its duties;

5) carries out informational and analytical work with a purpose of identifying and eliminating the causes and conditions that contribute to the commission of the criminal offenses referred to the investigative jurisdiction of the National Bureau;

6) ensures personal safety of its employees and other persons specified by law, protection against unlawful acts against persons involved in criminal proceedings, in criminal offenses related to its investigative jurisdiction;

7) ensures a confidential and voluntary cooperation of individuals who report corruption offenses;

8) reports on its activities in accordance with the procedure established by this Law and informs the public about the results of its work;

9) carries out international cooperation and interaction within its competence in accordance with the legislation and international treaties of Ukraine.

Article 17. Rights of the National Bureau

1. National Bureau and its employees in order to perform their duties have the following rights:

1) to start the operative and detective cases based on order, approved by the appropriate department head of the National Bureau, and carry out, on the grounds and according to the procedure established by law, overt and covert operative and detective actions;

2) to obtain in the prescribed manner through the prosecutor from the law enforcement agencies operative materials and materials of criminal proceedings concerning criminal offenses referred by law to the investigative jurisdiction of the National Bureau;

3) to obtain in the prescribed manner by the decision of the Head of the National Bureau from law enforcement and other state agencies, local self-government bodies, the information necessary to perform duties of the National Bureau, including information on assets, income, expenses, financial obligations of officials that they declared in accordance with the law, information on the use of State Budget funds, management of state or municipal property and also to receive free of charge information on matters within the competence of the National Bureau from automated information and records systems, registers and data banks, held (administrated) by state agencies or local self-government bodies. The use of this information by the National Bureau is conducted in compliance with the legislation on protection of personal data. Agencies to which the said request is addressed, shall provide relevant information within three working days. The National Bureau may extend the deadline for providing information to ten days in case of failure to provide information within the specified period for justifiable reasons upon application of the agency;

4) to get familiar in state authorities, local self-government bodies with documents and other materials necessary for the prevention, detection, termination and investigation of criminal offenses referred by law to the investigative jurisdiction of the National Bureau, including those that contain classified information;

5) upon the relevant court decision and written request of the Head of the National Bureau or his/her deputy to receive from banks, financial and other institutions, enterprises and organizations regardless of ownership information and documents on the operations, accounts, deposits, agreements of individuals and legal entities. Receiving of information containing bank secrecy from the banks shall be conducted according to the procedure and to the extent determined by law. Receiving of information from the Central

Securities Depository, the National Bank of Ukraine and depository institutions, contained in the depository account of the securities system, is made in the manner and to the extent prescribed by the Law of Ukraine "On the Depository System of Ukraine". Subjects to whom these requests are addressed shall provide relevant information and/or documents within three working days. The National Bureau may extend the deadline for providing information to ten days in case of failure to provide information within the specified period for justifiable reasons upon application of the agency;

Upon relevant court decision for the period up to 10 days to seal records, offices, premises (except residential) or other repositories, take under protection, and also seize objects and documents in the manner prescribed by the Criminal Procedural Code of Ukraine;

7) to engage on a voluntary basis, including on a contract basis on the issues of international cooperation, qualified professionals and experts from any institution, organization, control and financial authorities to ensure execution of the National Service's duties;

8) upon the written decision of the Head of the National Bureau or his Deputy approved by the prosecutor, to set up joint investigation teams that include operational and investigative personnel;

9) upon the written decision of the Head of the National Bureau or his Deputy to enter freely - after presenting credentials - to the state agencies, local self-government bodies, military units and checkpoints across the state border of Ukraine and customs control zone;

10) to use with subsequent compensation vehicles that belong to individuals and legal entities (except the vehicles of diplomatic, consular and other representatives of foreign states and organizations, special purpose vehicles) to travel to the scene of crime, to terminate the criminal offense, to follow and detain persons suspected of committing these criminal offenses, bringing to medical institutions of persons that require emergency medical care;

11) to send to the state bodies, local self-government authorities proposals and recommendations that are mandatory for consideration which address the causes and conditions that contribute to the commission of the criminal offenses referred to the investigative jurisdiction of the National Bureau, and receive from these authorities information about the outcome of such consideration within 30 days;

12) to cooperate with individuals, including on contractual basis, on voluntary and confidential basis, to encourage financially and morally persons who assist in the prevention, detection, suppression and investigation of criminal offenses referred to the investigative jurisdiction of the National Bureau;

Control over the effectiveness of the use of funds for these purposes shall be performed by the Accounting Chamber of Ukraine;

13) on the grounds provided by law, to file motions to the court for the invalidation of agreements in accordance with the laws of Ukraine;

14) for the purposes of operational and detective activity to create information systems and maintain operational records to the extent and in the manner provided by law;

15) to keep, carry and use firearms and special equipment and apply physical force in cases and in the manner provided by the Law of Ukraine "On Militia";

16) to give in accordance with the legislation weapons, special personal protective equipment and warning devices to the persons taken under protection when there is a danger to their life and health;

17) to conduct legal cooperation with the competent authorities of foreign states and international organizations on the operational and detective activity, pre-trial investigation on the basis of laws and international treaties of Ukraine;

18) to act as a representative of the state during consideration in the foreign jurisdictional bodies of requests for tracing, seizing, forfeiture and recovery to Ukraine of appropriate assets, protection of rights and interests of the state in matters relating to the duties of the National Bureau, and involve legal counsels with this purpose, including foreign.

2. The National Bureau may on behalf of Ukraine give international instructions on conducting operative and search, investigative actions, conclude cooperation agreements with foreign and international law enforcement agencies and organizations on issues within its powers, to apply on behalf of Ukraine to foreign government agencies in accordance with legislation of Ukraine and procedures of relevant countries, and so on.

3. The National Bureau may establish and participate in the international investigative groups according to this Law and other laws and international treaties of Ukraine, involve foreign experts to the work on fight against corruption, have other functions related to the execution of its duties.

Article 18. The use of physical force, special means and firearms

1. Employees of the National Bureau have the right to use physical force, special means and firearms while on duty in cases, according to conditions and in order provided for in the Law of Ukraine “On the Militia”.

Article 19. Statements and Reports of criminal offenses

1. For receiving statements and reports of criminal offenses, including anonymous, a special telephone line shall be created in the National Bureau, and the possibility of submitting such reports via the official web site of the National Bureau in the internet and by electronic means shall be provided.

2. Anonymous statements and reports of criminal offenses shall be considered by the National Bureau provided that the relevant information relates to a particular person and contains the actual data and can be verified.

3. The procedure of registration, recording and processing of statements and reports of criminal offenses ascribed to the jurisdiction of the National Bureau shall be determined by the Director of the National Bureau.

Article 20. Responsibility of employees of the National Bureau

1. The National Bureau employees independently make decisions within their authority. They shall refuse to execute any orders, instructions or directives that contradict the legislation and take other measures as required by law in such cases.

2. The National Bureau employees are liable to disciplinary, civil, administrative or criminal liability.

3. In case of violation of rights or freedoms of persons by the employees of the National Bureau while performing their official duties, the National Bureau takes within its competence measures for renovation of these rights and freedoms, redress for material and moral damages, bringing guilty persons to legal liability.

Article 21. Legal protection of the employees of the National Bureau and other persons

1. The employees of the National Bureau during performance of their duties represent the public authority, act on behalf of the state and are under its protection. No one, except for authorized public officials in cases determined by law, has a right to interfere in their legitimate activities. In order to ensure the personal safety of employees of the National Bureau and members of their families it is prohibited to disclose in the media information about the place of residence of such persons. Information about the service of employees of the National Bureau shall be disclosed upon the permission of the Head of the National Bureau or his deputy.

2. In case of detention of the employee of the National Bureau or choosing of custody as a preventive measure, he/she shall be kept separately from the other detained persons.

3. People who voluntarily, including on a contractual basis, provide assistance to the National Bureau in execution of its duties are under the protection of the state. Unlawful disclosure of information about such persons or committing other offenses against these persons in connection with his/her relations with the National Bureau shall entail liability under law.

4. Employee of the National Bureau who according to this Law has reported on the wrongful act or inactivity of other employee of the National Bureau, cannot be dismissed or forced to resign, brought to liability or prosecuted for such reporting, except for liability for filing a knowingly false report of a crime. Officials of the National Bureau are forbidden to disclose information about the National Bureau's employees who have reported on the violations.

Article 22. Social protection of employees of the National Bureau

1. The State shall ensure the social protection of employees of the National Bureau under the Constitution of Ukraine, this Law and other legislative acts.

2. The ranking personnel of the National Bureau upon dismissal from service due to age, after the expiration of the agreement (contract), for health reasons, due to redundancy or organizational measures in the event of inability to be employed receive monetary benefits paid at 50 percent of monthly size pay (remuneration) for each full calendar year of service. The National Bureau ranking personnel dismissed from service through family reasons or for other valid reasons as listed by the Cabinet of Ministers of Ukraine shall be paid financial assistance in the amount of 25% of the monthly wage (remuneration) for each full calendar year of service. Financial assistance is not paid to the National Bureau ranking personnel dismissed from work for incompetency, in connection with court conviction that came into effect.

3. In case of loss of life (death) of the National Bureau ranking personnel or employee of the National Bureau while on duty the family of the deceased (perished) and, in case of non-availability, their parents and dependents are paid a lump sum monetary allowance at the rate of ten-year wage (remuneration) of the deceased (perished) at the last occupied position in the manner and on the terms established by the Cabinet of Ministers of Ukraine.

4. In case of injury (shell-shock, trauma or severe injury) caused to the National Bureau ranking personnel or employee of the National Bureau while performing official duties, as well as disabilities inflicted during military service or no later than in three months after separation from service or after expiration of this period, but because of illness or an accident that occurred while working at the National Bureau relating to performance of official duties, depending on degree of disability, he/she is paid a lump sum financial support of up to a five-year wage (remuneration) at the last position in the manner and on the terms established by the Cabinet of Ministers of Ukraine. Degree of disability of the National Bureau ranking personnel or employee of the National Bureau during his/her work at the National Bureau is determined on an individual basis for each case of damage inflicted on their health in accordance with the law.

5. If the National Bureau employee or his/her family members simultaneously are eligible for a one-time financial assistance on the grounds provided for in this article, and one-time financial assistance or compensation payments established by other laws, payment of the respective sums of money is carried out based on one of the grounds at discretion of the person entitled to receive such payments.

6. The damage caused to the property of the National Bureau's employee or property of his/her family members in connection with performance of his/her duties shall be reimbursed in full amount from the State budget of Ukraine with the following compensation sought from the guilty persons according to the procedure established by law.

7. Other aspects of social protection of civil servants and other employees of the National Bureau are regulated by labor and civil service legislation.

Article 23. Remuneration of the National Bureau's employees

1. Remuneration of the National Bureau's ranking personnel and civil servants shall be determined in accordance with legislation and shall ensure sufficient material conditions for proper performance of their duties taking into account the nature, intensity and danger of work, ensure recruitment and work of qualified staff in the National Bureau, encourage achievement of high performance results, compensate for the physical and mental efforts of the employees.

2. Ranking personnel of the National Bureau are covered by the conditions provided for officers of internal affairs authorities, considering peculiarities set out in this Law. Size of salaries of ranking personnel of the National Bureau shall not be less than remuneration of employees of the National Bureau referred to the appropriate categories of civil service.

3. Remuneration of the National Bureau's employees consists of the basic salary, an additional payment for work experience, additional payment for civil servant rank, science degree, work which provides for access to the state secret.

2. Additional payments for the work experience and for civil servant rank should be paid to the National Bureau's employees according to the Law of Ukraine "On the Civil Service".

Article 24. Financing of the National Bureau

1. The National Bureau is financed from the State Budget of Ukraine . Financing of the National Bureau through any other source is prohibited, except as provided for by international agreements of Ukraine or technical assistance projects.

2. The full and timely financing of the National Bureau is guaranteed in the amount sufficient for carrying out its appropriate activities.

3. Budget of the National Bureau shall provide for creation of a fund for special operative-detective (covert investigative) measures.

Article 25. Material and technical support of the National Bureau

1. The National Bureau shall be provided with the necessary material means, technical devices, equipment and other assets to enable it to perform its functions.
2. It is forbidden to carry out material and technical provision of the National Bureau from the funds of local budgets or any other sources, except for the State budget funds and assistance provided within international technical assistance projects.

Article 26. Control over activity of the National Bureau and its accountability

1. Control over activity of the National Bureau is conducted by the Verkhovna Rada Committee tasked with issues of fighting corruption and organized crime in accordance with the Constitution of Ukraine, laws of Ukraine “On the Democratic Civil Control over Military Organization and Law Enforcement Bodies of the State”, this and other laws of Ukraine.

2. The National Bureau’s Head:

1) informs the President of Ukraine, Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine about the main issues related to activity of the National Bureau and its units, on execution of the National Bureau’s tasks, compliance with legislation, respect for rights and freedoms of persons;

2) annually, not later than by 10 February and by 10 August, submits to the President of Ukraine, Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine a written report on activity of the National Bureau during previous six months.

3. Written report on activity of the National Bureau shall contain information about:

- 1) statistical data on the results of activities, with obligatory indication of the following data:
 - number of registered applications and reports on criminal offences regarding crimes within investigative jurisdiction of the National Bureau;
 - number of operative and detective cases opened by the National Bureau and their outcomes;
 - number of persons indicted in crimes within investigative jurisdiction of the National Bureau;
 - number of persons for whom a court conviction regarding their criminal offense within investigative jurisdiction of the National Bureau came into force;
 - number of persons acquitted in cases regarding committing of criminal offences that are within investigative jurisdiction of the National Bureau;
 - information by categories of persons referred to in paragraph 1 of Article 4 of the Law of Ukraine "On Prevention of Corruption”;
 - information on the amount of losses and damage caused by criminal offenses within the investigative jurisdiction of the National Bureau; current situation and amount of their reimbursement;
 - information on the funds and other property obtained as a result of committing criminal offenses within investigative jurisdiction of the National Bureau, forfeited by the court’s decision, as well as funds in the amount of illicit services or benefits collected and payable to the state and their administration;
 - information on the funds and other property obtained as a result of the criminal offenses within the National Bureau’s investigative jurisdiction that were returned to Ukraine from abroad and their disposal;
 - information about seizure of property, forfeiture of items and the proceeds of crimes within the investigative jurisdiction of the National Bureau, and their preservation;
 - the number of submissions on elimination of causes and conditions that contributed to commission of the criminal corruption offenses;
 - results of conducted integrity tests;

2) Information on cooperation with other state authorities, local self-government bodies, enterprises, institutions and organizations;

3) Information on cooperation with competent authorities of foreign states, international and foreign organizations, agreements on cooperation signed with them and representation of interests abroad;

4) Cooperation with non-governmental organizations and the media;

5) The National Bureau's number of staff, qualification and experience of its employees, their in-service training;

6) Activities of internal control unit of the National Bureau; the number of reports of offenses perpetrated by National Bureau employees; outcomes of their investigation, bringing the National Bureau personnel to liability;

7) The National Bureau's budget and its implementation;

8) Other information concerning results of the National Bureau's operation and performance of the duties ascribed to it.

4. The report of the National Bureau shall be provided for consideration to the Council of Public Control at the National Bureau, which considers it within two weeks from the date of submission. The report of the National Bureau shall be submitted to the appropriate state authorities and made public together with the Council of Public Control's opinion in case of its approval within the prescribed term.

5. The Verkhovna Rada's committee dealing with anti-corruption issues at least once a year conducts open-for-the-public hearings on the topic of activity of the National Bureau, execution of its tasks, compliance with legislation, respect for rights and freedoms of persons.

6. In order to provide an independent evaluation of the National Bureau an external evaluation of its activities may be conducted, including in the form of audit. The results of independent external evaluation of the National Bureau shall be published and included in the written report of the National Bureau.

Article 27. Internal control units of the National Bureau

1. With a view to preventing and detecting offences of the National Bureau's employees, units of internal control shall be established within the National Bureau and subordinated directly to the National Bureau's Head. Internal control units function within the Central Office and territorial offices of the National Bureau.

Head and employees of the internal control units of the Central Office and territorial offices of the National Bureau are appointed and dismissed by the National Bureau's Head.

2. The internal control unit of the National Bureau has the following duties:

1) to prevent commission of offences by the National Bureau's employees according to the laws of Ukraine "On Prevention of Corruption" and "On the Civil Service";

2) to control compliance by the National Bureau's employees with the rules of ethical behaviour, conflict of interest, declaring of assets, income, expenditures and financial obligations;

3) to conduct of integrity testing of the National Bureau's employees and monitoring of their lifestyle;

4) to verify information contained in complaints of natural and legal persons, mass media reports, other sources, in particular information received through a special telephone line, internet webpage, electronic communication means of the National Bureau, regarding involvement of the National Bureau's employees in commission of offences;

5) to conduct internal investigations regarding the National Bureau's employees;

6) to conduct special vetting of the candidates for positions in the National Bureau;

7) to take measures on protection of the National Bureau's employees who inform of illegal action or inaction of other employees of the National Bureau;

8) to advise employees of the National Bureau regarding the rules of ethical behaviour, conflict of interest, declaring of property, income, expenditures and financial obligations.

3. The National Bureau's employee who found out about illegal actions or inaction of another employee of the National Bureau is obliged to immediately notify of it the National Bureau's Head and the National Bureau's internal control unit.

4. The internal control unit of the National Bureau's Central Office shall publish on the official website of the National Bureau the declarations of assets, income, expenditures and financial obligations which were submitted in accordance with the law by National Bureau's Head and Deputy Heads, Heads and deputy Heads of the territorial offices, Head of the Central Office, heads of departments in the Central Office and in the territorial offices of the National Bureau.

Data referred to classified information pursuant to the Law of Ukraine "On prevention of corruption." Shall not be disclosed.

5. If information is discovered about alleged crime committed by the National Bureau's employee the internal control unit of the National Bureau shall immediately notify the Prosecutor General of Ukraine or his/her Deputy.

6. Procedure of activities and powers of the internal control units of the National Bureau are defined by the regulations to be adopted by the National Bureau's Head.

Article 28. Disciplinary Board of the National Bureau

1. A Disciplinary Board consisting of five persons is formed to consider issues of applying disciplinary measures against the National Bureau's employees. The Disciplinary Board includes two persons determined by the Council of Public Control at the National Bureau.

Composition and regulations on the Disciplinary Board of the National Bureau are approved by the Head of the National Bureau.

2. Based on official investigation conducted by the internal control unit, the Disciplinary Board draws a conclusion as to whether a disciplinary misconduct was revealed and the grounds for bringing an employee to disciplinary liability with identification of the type of recommended disciplinary penalty.

3. Decision on applying a disciplinary sanction based on the conclusion of the National Bureau's Disciplinary Board is taken by the Head of the National Bureau. This decision may be appealed in court.

Article 29. Monitoring of lifestyle of the National Bureau's employees

1. The internal control units conduct monitoring of lifestyle of the National Bureau's employees with the purpose of establishing the consistency of the level of life of the employee with assets and income of the employee and his/her family members according to the declaration of assets, income, expenditures and financial obligations, submitted by him/her according to the law.

2. The procedure for monitoring lifestyle of the National Bureau's employees is defined by the Head of the National Bureau.

Lifestyle monitoring is conducted in accordance with the legislation on protection of personal data and should not include excessive interference with the right to respect for private and family life of a person.

3. Establishing a mismatch between the level of life of the employee of the National Bureau and the assets and incomes of the employee and his/her family members is a ground for disciplinary action.

Article 30. Ensuring transparency in the activities of the National Bureau

1. The National Bureau shall regularly inform the public about its activities through the mass media, its official website and other forms. The National Bureau publishes and provides information in response to requests according to the procedure determined by the Law of Ukraine "On Access to Public Information".

2. The National Bureau prepares and publishes, not later than by 10 February and 10 August, in national printed media and at on its own official website a report on its activity during previous six months, which was submitted to the President of Ukraine, Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine.

3. It is forbidden to restrict access to information concerning the overall budget of the National Bureau, its competence, main directions of its activity, and information concerning bringing to liability for committing of offences by the National Bureau's employees.

Article 31. Council of Public Control at the National Bureau

1. In order to ensure transparency and public control over activities of the National Bureau, the Council of Public Control is established at the National Bureau consisting of 15 persons based on an open and transparent competition.

The Council of Public Control at the National Bureau may not include:

- 1) persons authorized to perform state or local self-government functions;
- 2) persons, who regardless of the length of service, were employed by the National Bureau over the last two years;
- 3) persons whose close persons, regardless of the length of service, served as the National Bureau employees over the past two years.

2. Regulations on the Council of Public Control and on its formation procedure are approved by the President of Ukraine.

3. The Council of Public Control at the National Bureau:

- 1) considers information on activities, implementation of plans and objectives of the National Bureau;
- 2) considers reports of the National Bureau and adopts its opinion on them;
- 3) elects two representatives out of its members to be included in the Disciplinary Board of the National Bureau;
- 4) has other rights according to the Council of Public Control Regulations.

SECTION II FINAL PROVISIONS

1. This Law shall enter into force after three months after the date of its publication.

2. To amend the following legislative acts of Ukraine:

...

j) in Article 216:

in the second paragraph of part two add the words "except where the crimes are referred under this article to the investigative jurisdiction of the National Anti-Corruption Bureau of Ukraine";

part four shall read as follows:

"4 The investigators of the State Bureau of Investigations, except as provided for in part five of this article, shall perform pre-trial investigation of criminal offenses committed by officials who hold particularly responsible position in accordance with the part one of Article 9 of the Law of Ukraine "On Civil Service", by persons whose positions are referred to 1-3 categories of positions, judges and law enforcement officers.

Investigators of the State Bureau of Investigation also perform pre-trial investigation of criminal offenses stipulated by paragraph one of part five of this Article if they were committed by officials of the National Anti-Corruption Bureau of Ukraine";

after part four add new part as follows:

"5. Investigators of the National Anti-Corruption Bureau of Ukraine shall perform pre-trial investigation of crimes stipulated in Articles 191, 206-2, 209, 210, 211, 354 (concerning employees of legal entities of public law), 364, 368, 368-2, 369, 369-2, 410 of the Criminal Code of Ukraine, given that at least one of the following conditions is present:

- 1) The crime was committed by:

People's Deputy of Ukraine, Prime Minister of Ukraine, member of the Cabinet of Ministers of Ukraine, First Deputy and Deputy Minister, Chairman of the National Bank of Ukraine, his first deputy and deputy, member of the Board of the National Bank of Ukraine, Secretary of the National Security and Defense Council of Ukraine, his first deputy and deputy;

civil servant whose position is referred to the first and second categories of positions, by a person whose position is equated to the first and second categories of civil service positions;

deputy of the Verkhovna Rada of the Autonomous Republic of Crimea, deputy of the regional council, the city council of Kyiv and Sevastopol, an official of the local self-government whose position is referred to the first and second categories of positions;

judge of the Constitutional Court of Ukraine, the judge of the general jurisdiction court, people's assessor or juror (while performing their functions), Chairman, member, disciplinary inspector of the High Qualifications Commission of Judges of Ukraine, the Chairman, Vice-Chairman, secretary of the section of the High Council of Justice, another member of the High Council of Justice;

Prosecutor General of Ukraine, his Deputy, Assistant to Prosecutor General of Ukraine, the prosecutor of the Prosecutor General's Office of Ukraine, investigator of the Prosecutor General's Office of Ukraine, head of a structural unit of the Prosecutor General's Office of Ukraine, the Prosecutor of the Autonomous Republic of Crimea, of Kyiv and Sevastopol cities, prosecutor of oblast and his deputy, head of structural unit of the Autonomous Republic of Crimea, of Kyiv and Sevastopol cities and oblast prosecution office;

person of the highest command of the interior authorities, of the State Penitentiary Service, of authorities and units of the Civil Protection, by a Customs officer, who was assigned the title of the special state adviser of the tax and customs affairs of III rank and higher, by an official of the State Tax Service authorities who was assigned the title of the special state adviser of the tax and customs affairs of III rank and higher;

the military highest ranking officers of the Armed Forces of Ukraine, Security Service of Ukraine, the State Border Guard Service of Ukraine, the State Special Transport Service, the National Guard of Ukraine and other military formations created in accordance with the laws of Ukraine;

head of a large business entity where share of the state or municipal ownership exceeds 50 percent in overall share capital;

2) the amount of the offense's object or harm caused by it equals or exceeds the amount of 500 or more times the minimum wage set for the relevant year (if the offense is committed by an official of the state authority, law enforcement agency, military formation, local self-government authority, business entity where share of the state or municipal ownership exceeds 50 percent in overall share capital);

3) an offense under Article 369, part one of Article 369-2 of the Criminal Code of Ukraine committed with regards an official who is mentioned in part four of Article 18 of the Criminal Code of Ukraine or in paragraph 1 of this part.

The prosecutor supervising the pre-trial investigation conducted by investigators of the National Anti-Corruption Bureau of Ukraine with his/her decision may refer criminal proceedings in offenses stipulated by paragraph one of this part to the investigative jurisdiction of the National Anti-Corruption Bureau of Ukraine if relevant crime caused or could have caused severe consequences to legally protected freedoms and interests of an individual or legal entity and to the state or the public interest. Severe consequences shall be understood as a threat of causing or causing harm to the vital interests of society and the state, including state sovereignty and territorial integrity of Ukraine, implementation of constitutional rights, freedoms and responsibilities of three or more persons."

In this connection consider part fifth of the current article as part sixth;

k) in part five of Article 218 add a new paragraph as follows:

"The dispute about investigative jurisdiction in criminal proceedings which may belong to the jurisdiction of the National Anti-Corruption Bureau of Ukraine shall be solved by the Prosecutor General of Ukraine or his deputy";

l) in part sixth of Article 232 substitute the words "authority of the State Bureau of Investigations on the territory of jurisdiction of which such person is" with the words " on the territory of jurisdiction of which such person is, the National Anti-Corruption Bureau of Ukraine or the State Bureau of Investigations";

m) in Article 246:

in part five

- in the paragraph 4 after the words "the Security Service of Ukraine" add the words "head of the relevant structural unit of the National Anti-Corruption Bureau of Ukraine, the State Bureau of Investigation";

- in paragraph 5 after the words "the Chairman of the Security Service of Ukraine" add the words "Head of the National Anti-Corruption Bureau of Ukraine, Head of the State Bureau of Investigation";

In part six after the words "security authorities" add the words "the National Anti-Corruption Bureau of Ukraine, the State Bureau of Investigation";

n) in Article 247 substitute the words "by the chairman or upon his determination by another judge" with the words "investigative judge";

o) in Article 480 add paragraph 9 as follows:

"9) The Head and employees of the National Anti-Corruption Bureau of Ukraine";

p) in Article 481:

in paragraph 2 after the words "Secretary of the Accounting Chamber" add the words "Head of the National Anti-Corruption Bureau of Ukraine";

in paragraph 3 after the words "people's assessor while exercising justice" add the words "employees of the National Anti-Corruption Bureau of Ukraine";

q) in part one the Article 545 add the words "except for the pre-trial investigation of criminal offenses referred to investigative jurisdiction of the National Anti-Corruption Bureau of Ukraine which in such cases acts as the central authority of Ukraine";

r) in part four of Article 575 after the words "authority of the State Bureau of Investigation of Ukraine" add the words "National Anti-Corruption Bureau of Ukraine";

s) in paragraph 1 of section X "Final Provisions" after the third paragraph add the new paragraph as follows:

"part five of Article 216 of this Code, which will enter into force on the day the National Anti-Corruption Bureau of Ukraine becomes operational but no later than three years from the date this Code enters into force."

In regard with this paragraph consider paragraphs four - eight as paragraphs five - nine;

t) in paragraph 1 of Section XI "Transitional Provisions" add the following paragraph:

"Before the day the part five of Article 216 of this Code enters into force, the authority of conducting pre-trial investigations of criminal offenses envisioned by it shall be carried out by investigators of prosecution authorities who enjoy authorities of investigators stipulated by this Code.

After the part five of Article 216 of this Code enters into force, materials of criminal proceedings, pre-trial investigation of which is carried out by prosecution authorities shall be sent by investigators of the prosecution authorities to the National Anti-Corruption Bureau of Ukraine";

4) In the Law of Ukraine "On Prosecutor's Office" (Verkhovna Rada of Ukraine, 1991, № 53, p. 793 with subsequent amendments) add the Article 17-1 as follows:

"Article 17-1. Prosecutors of the National Anti-Corruption Bureau of Ukraine

By an order of the Prosecutor General of Ukraine prosecutors are seconded to the National Anti-Corruption Bureau of Ukraine in order to supervise the observance of laws during the pre-trial investigation carried out by investigators of the National Anti-Corruption Bureau of Ukraine.

Prosecutors seconded to the National Anti-Corruption Bureau of Ukraine remain at service of the prosecution authorities.

Number of prosecutors seconded and the order of their service in the National Anti-Corruption Bureau of Ukraine are determined by the Prosecutor General of Ukraine in coordination with the Head of the National Anti-Corruption Bureau of Ukraine.

Prosecutors seconded to the National Anti-Corruption Bureau of Ukraine shall be subordinated directly to the Prosecutor General of Ukraine";

...

3. To recommend to the President of Ukraine to take measures to create a Selection Commission for recruitment of the Head of the National Anti-Corruption Bureau of Ukraine and to establishment the Bureau.

4. Cabinet of Ministers of Ukraine within one month from the date of entry into force of this Law shall:

1) submit for consideration of the Verkhovna Rada of Ukraine proposals on amendments to the State Budget of Ukraine for the current year in order to include expenditures required for the establishment and operation of the National Anti-Corruption Bureau of Ukraine, including expenditures sufficient to supply the National Bureau and its regional offices with administrative buildings, vehicles, communications means, logistics, special equipment for operative and technical divisions and subdivisions of operative documentation, weapons, special protective equipment, other property and information base;

2) submit for consideration of the Verkhovna Rada of Ukraine proposals on regulating procedure for carrying out integrity tests of the persons authorized to perform state or local self-governments functions, as well as suggestions for bringing the legislation of Ukraine in accordance with this Law;

3) take measures to ensure the establishment and operation of the National Anti-Corruption Bureau of Ukraine and its territorial offices;

4) to adopt legal acts arising from this Law and ensure revision by the ministries and other central bodies of executive power of their normative legal acts contradicting this Law.

5. Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine and prosecution authorities shall within three months from the date of entry into force of this Law to ensure the transfer to the National Anti-Corruption Bureau of Ukraine and its territorial offices of information databases assigned to their respective units in part necessary for the establishment and operation of the National Anti-Corruption Bureau of Ukraine and its territorial offices.

6. Open competition for filling the position of the Head of the National Anti-Corruption Bureau of Ukraine shall be conducted in order prescribed in Article 13 of this Law before the entry into force of this Law.

Open competition for filling positions in the central office of the National Anti-Corruption Bureau of Ukraine shall be conducted within two months and open competition for filling positions in the regional offices of the National Anti-Corruption Bureau of Ukraine - within six months from the date of enactment of this Law.

7. Issues of further pre-trial investigations which were initiated before the entry into force of this Law, in criminal proceedings which, according to the law are referred to the investigative jurisdiction of the National Anti-Corruption Bureau of Ukraine, shall be decided by the prosecutor.

8. Before alignment with this Law, laws of Ukraine, other regulations shall apply to the extent that is consistent with this Law.

**LAW OF UKRAINE
“ON PREVENTION OF CORRUPTION”**

[As adopted on 14 October 2014; amendments of 12 February 2015 not reflected]

This Law defines the legal and organizational grounds for the functioning of the system of prevention of corruption in Ukraine, the content and the order of enforcement of preventive anti-corruption mechanisms, rules to eliminate the consequences of corruption offenses.

**SECTION I
GENERAL TERMS**

Article 1. Definitions

1. The terms listed below shall have the following meanings in this Law:

anti-corruption expertise – activity aimed at identifying in normative legal acts or draft legal acts provisions which alone or in combination with other provisions can facilitate the commission of corruption offenses or related to corruption offenses;

direct subordination - the relationship of direct organizational or legal dependence of subordinate person on his/her supervisor, including through the decision (participation in decision) of employment issues, termination of employment, the use of incentives, disciplinary measures, providing guidance, orders, etc., monitoring their implementation;

close persons - persons who live together, bounded by common life and have mutual rights and obligations with the subject referred to in Part One of the Article 3 of this Law (other than those mutual rights and obligations with such subject which are not of a family nature), including persons who live together but are not married, and – regardless of these conditions – husband, wife, father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, brother, sister, grandfather, grandmother, great-grandfather, great-grandmother, grandson, granddaughter, great-grandson, great-granddaughter, son in law, daughter in law, father in law, mother-father in law, mother in law, adoptive parent or adopted, guardian or trustee, a person who is under the guardianship or trusteeship of the mentioned subject,;

corruption offense - the act having signs of corruption that was committed by a person referred to in Part One of the Article 3 of this Law and for which criminal, disciplinary and/or civil liability is stipulated;

corruption - the use by a person referred to in Part One of the Article 3 of this Law granted official authorities or associated with them opportunities to obtain unlawful benefit or receipt of such benefit or receipt of a promise / offer of such benefit for himself/herself or others, or respectively promise / offer or giving of an unlawful benefit to the person referred to in Part One of the Article 3 of this Law or upon his/her request to other persons or entities with a view to persuade the person to unlawfully use granted him/her official authorities or associated with them opportunities;

unlawful benefit - money or other property, advantages, privileges, services, intangibles, any other intangible or non-monetary benefits which are offered, given or received without legal justifications;

potential conflict of interest – presence of a person’s private interest in the area in which he/she exercises his/her official or representative powers that could affect the objectivity or impartiality of his/her decisions or affect the commitment or non-commitment of actions in the exercise of mentioned activities;

gift – cash or another property, advantages, privileges, services, intangibles given/received free of charge or at a price below the minimum market price;

related to corruption offense - an act that does not have evidence of corruption but violates established by this Law requirements, prohibitions and restrictions, committed by a person referred to in the Part One of the Article 3 of this Law, for which the law establishes criminal, administrative, disciplinary and / or civil liability;

private interest - any tangible or intangible interest of a person including that which is caused by personal, familial, friendly, or other off-duty relationship with natural persons or legal entities, including those arising from membership or activity in social, political, religious or other organizations;

real conflict of interest – contradiction between private interest of a person and his/her official or representative activities which affects the objectivity or impartiality of his/her decisions and commitment or non-commitment of actions in the exercise of mentioned activities;

subjects of declaration - persons referred to in paragraph 1, subparagraph "a" of paragraph 2 of Part One of the Article 3 of this Law, other persons who are obliged to file a declaration under this Law;

family members - persons who are married and their children, including adult ones, parents, persons under guardianship and trusteeship, other persons who live together, bound by common everyday life, have mutual rights and obligations (other than persons whose mutual rights and obligations are not of a family nature), including persons who live together but are not married;

elected persons – President of Ukraine, people’s deputies of Ukraine, deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, deputies of local councils, village, town and city mayors

Article 2. Legislation in the area of preventing corruption

1. Relations occurring in the area of preventing corruption shall be governed by the Constitution of Ukraine, international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine, this Law and other laws, and also other legal acts adopted in their furtherance.

Article 3. Subjects covered by this Law

1. Subjects covered by this Law are:

1) persons authorized to perform the functions of the state or local self-government:

a) President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine, his First Deputy and Deputy, , Prime Minister of Ukraine, First Deputy Prime Minister of Ukraine, Vice Prime Minister of Ukraine, ministers, other heads of central authorities of executive power who are not members of the Cabinet of Ministers of Ukraine and their deputies, the Head of the Security Service of Ukraine, the Prosecutor General of Ukraine, the Head of the National Bank of Ukraine, the Head of the Accounting Chamber of Ukraine, Verkhovna Rada’s Commissioner for Human Rights, Chairman of the Verkhovna Rada of the Autonomous Republic of Crimea, the President of the Council of Ministers ARC;

b) people's deputies of Ukraine, deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, deputies of local councils, village, town and city mayors;

c) civil servants, officials of local self-government;

d) military officers of the Armed Forces of Ukraine and of other established under the laws military units, except for military conscripts;

d) judges of the Constitutional Court of Ukraine, other professional judges, members, disciplinary inspectors of the High Qualifications Commission of Judges of Ukraine, officials of the Secretariat of this Commission, the Head, Deputy Head, secretaries of sections of the High Council of Justice and other members of the High Council of Justice, people's assessors and jurors (in the exercise of their functions);

e) persons of ranking and senior staff of internal affairs authorities, of the State Penitentiary Service, the State Service for Special Communication and Information Protection of Ukraine, the tax police, senior staff of authorities and regional offices of the civil defense;

e) officers and employees of the prosecution service authorities, the Security Service of Ukraine, diplomatic service, , the state forest protection, nature reserve fund public protection, central government authority which ensures the shaping and implementation of state tax policy and state policy in the customs area;

f) members of the National Agency for Prevention of Corruption;

g) members of the Central Election Commission;

h) officers and employees of other state authorities, authorities of the Autonomous Republic of Crimea;

2) persons who for the purposes of this Law are equated to persons authorized to perform the functions of the state or local self-government:

a) officials of legal entities of public law who are not mentioned in paragraph 1 of Part One of this Article;

b) persons who are not civil servants, local self-government officials but render public services (accountants, notaries, appraisers and experts, trustees in bankruptcy, independent brokers, members of labor arbitration, arbitrators in the exercise of their functions, other persons stipulated by law);

3) persons permanently or temporarily holding positions related to the implementation of organizational-administrative or administrative-economic duties or specially authorized to perform such duties in the legal entity of private law, regardless of the organizational and legal form, and other individuals who are not officers but have labor relations with companies, institutions or organizations – in cases stipulated by this Law.

SECTION II

NATIONAL AGENCY FOR PREVENTION OF CORRUPTION

Article 4. Status of the National Agency for Prevention of Corruption

1. The National Agency for Prevention of Corruption (hereinafter - the National Agency) is a central executive body with special status, which ensures shaping and implements the state anticorruption policy.

2. The National Agency, within the limits defined by this and other laws, is responsible and controlled by the Parliament of Ukraine and accountable to the Cabinet of Ministers of Ukraine.

3. The National Agency is established by the Cabinet of Ministers of Ukraine in accordance with the Constitution and other laws of Ukraine.

Issues of the National Agency's activities are presented before the Cabinet of Ministers of Ukraine by the Chairman of the Agency.

4. The legal basis for the Agency's work consists of the Constitution of Ukraine, international treaties of Ukraine, this and other laws of Ukraine and also those adopted in accordance with them other legal acts.

Law of Ukraine "On the central executive power authorities" and other legal acts regulating activities of the executive power authorities and also the Law of Ukraine "On Civil Service" apply to the National Agency, its members, officers and employees of its staff, as well as to its functions regarding authorized units to the extent not inconsistent with this Law.

5. The National Agency for Prevention of Corruption shall be competent upon the moment of appointment of more than half of its total quantitative composition.

Article 5. Composition of the National Agency

1. The National Agency is a collegial body consisting of five members.

2. A member of the National Agency shall be a citizen of Ukraine, not younger than 35 years, who has higher education, possesses the state language and capable of performing respective official responsibilities due to his/her proper business and moral traits, educational and professional level, health condition.

3. Members of the National Agency shall be appointed by the Cabinet of Ministers of Ukraine for four years upon results of a competition. The same person cannot hold this position for more than two consecutive terms.

Prime Minister of Ukraine introduces for appointment by the Cabinet of Ministers of Ukraine candidates for members of the National Agency selected by the competition committee, composition of which shall be approved by the Cabinet of Ministers and which organizes and holds the competition.

4. Competition commission shall consist of:

1) a person determined by the Verkhovna Rada of Ukraine upon nomination of its Committee, which is tasked with the fight against organized crime and corruption;

2) a person determined by the President of Ukraine;

3) a person determined by the Cabinet of Ministers of Ukraine;

4) a head of the specially authorized central body of executive power on issues of the civil service;

5) four persons proposed by civil society groups which have work experience in the area of prevention of corruption, selected in accordance with procedure specified in the Regulation on the Competition.

5. Decision of competition commission shall be considered adopted if at the meeting of the competition commission it was supported by at least six members of the competition commission.

Statute on competition and regulation on competition commission shall be approved by the Cabinet of Ministers of Ukraine. Work of the competition commission shall be organized by the Secretariat of the Cabinet of Ministers of Ukraine.

Meetings of the competition commission are open to the media and journalists. Secretariat of the Cabinet of Ministers of Ukraine provides video and audio recording and live video and audio broadcast of relevant information from a meeting of the competition commission at the official website of the Cabinet of Ministers of Ukraine.

Information on the time and place of the competition commission meeting shall be published at the official website of the Cabinet of Ministers of Ukraine no later than 48 hours before it starts.

6. Competition Commission shall:

1) review the documents submitted by candidates for the positions of members of the National Agency; select from all applicants candidates who in accordance with a reasonable decision of the competition commission has the best professional experience, knowledge and qualities for performing official responsibilities of the National Agency's member;

2) disclose at the official web-site of the Cabinet of Ministers of Ukraine information about the candidates who applied for the competition, as well as information on candidates selected for an interview in the competition commission and on the candidate selected by the competition commission for appointment as a member of the National Agency;

3) hold interviews at its meeting with selected candidates, among the candidates who were interviewed, select by an open ballot voting successful candidate for each vacancy who meets the requirements that

apply to a member of the National Agency, and who in accordance with a reasonable decision of the competition commission has the best professional experience, knowledge and qualities for performing official responsibilities of the National Agency's member.

7. No later than two months prior to the expiration of the term of office of the National Agency's member or within fourteen days from the date of his early termination of office the Cabinet of Ministers of Ukraine shall place announcements on the terms and conditions of the competition in the national print media and at the official website of the Cabinet of Ministers Ukraine.

8. A person who applies for participation in the contest shall submit within the specified in the announcement term the following documents:

1) an application for participation in the competition together with an agreement to conduct a special check in accordance with this Law and to the process personal data in accordance with the Law of Ukraine "On Personal Data Protection";

2) curriculum vitae which should include: the second name (all second names in case they were changed), the name (all names, including those changed) and patronymic (if applicable), day, month, year and place of birth, citizenship, information about education, work, position (occupation), place of work, civil work (including elected positions), membership in political parties including those in the past, the presence of labor or any other contractual relationship with a political party during the year preceding the submission of the application (regardless of duration), contact telephone number and email address, presence or absence of criminal record;

3) The declaration of the person authorized to perform functions of the state or local self-government for the year preceding the year in which the announcement about the competition was made public;

4) other documents submittal of which is stipulated in this Law for conducting a special check.

The information in documents submitted in accordance with this part, except for information that is in accordance with this Law is referred to classified information, information about contact phone number, e-mail address of the candidate, shall be published at the official website of the Cabinet of Ministers of Ukraine within three working days after the deadline for submission of applications for the competition.

9. It is prohibited to appoint as a member of the National Agency person who:

1) is judicially declared incapable or whose capacity is limited;

2) has been convicted for a crime, if such record is not canceled or withdrawn in accordance with order stipulated by law (except for rehabilitated persons);

3) was held criminally liable based on a conviction which came into force for committing a corruption offense or related to corruption offense;

4) is not the citizen of Ukraine or acquired the citizenship or nationality of another state;

5) did not pass a special check or refused to give consent for undergoing such check;

6) has not filed in accordance with this Law declaration of a person authorized to perform functions of the state or local self-government for the past year;

7) within one year before applying for the competition to fill this position was a member of governing bodies of a political party, regardless of duration.

10. Office of the National Agency's member shall be early terminated by the Cabinet of Ministers of Ukraine in case of:

1) the appointment or election to another office upon his consent;

2) reaching the age of 65 years;

3) inability to perform his duties due to health reasons in accordance with the opinion of the medical commission, to be created by a specially authorized central executive authority which implements the state policy in the health care area;

4) entry into force of a court decision declaring him/her incapacitated or limiting his/her civil capacity, declaring him/her missing or dead;

5) entry into force of conviction against him;

6) the termination of the citizenship of Ukraine or his/her departure for permanent residence outside Ukraine;

7) submission of dismissal at will, resignation;

8) refusal to take an oath of the civil servant;

9) death;

10) the entry into force of the court decision which discovered systematic violation of this Law if the relevant violations do not contain evidence of a crime.

11. Member of the National Agency whose term of office has expired shall exercise the powers up to his dismissal from office by the Cabinet of Ministers of Ukraine.

Article 6. Chairman of the National Agency

1. Chairman of the National Agency is elected by the Agency for a period of two years from among its members. The same person cannot hold the position for more than two consecutive terms.

2. Chairman of the National Agency:

1) organizes the work of the National Agency, convenes and conducts meetings, signs the minutes of meetings and decisions of the National Agency, ensures their publication at the official web-site of the National Agency, organizes the preparation of the agenda of the National Commission's meetings and submits it for consideration of the Commission;

2) coordinates the work of members of the National Agency, controls the work of employees of its staff;

3) appoints and dismisses in accordance with the legislation on civil service employees of the National Agency staff, except for the Chief of Staff and his deputies;

4) hires and dismisses in the manner stipulated by labor legislation employees of the National Agency;

5) assigns civil servants' ranks to servicemen of the Commission, takes incentive measures, brings employees of the Commission's staff to disciplinary liability;

6) makes decisions in accordance with the established procedure on allocating budget funds which are managed by the National Agency;

7) approves manning table and the budget of the National Agency;

8) represents the National Agency in its relations with courts, other authorities, enterprises, institutions and organizations in Ukraine and abroad, and with the public;

9) convenes and conducts consultations on issues within his/her competence;

10) issues decrees, and instructions within his/her competence;

11) has the right to attend meetings of the Verkhovna Rada of Ukraine, its committees and permanent, ad hoc special and temporary investigatory commissions, as well as participate in an advisory capacity in meetings of the Cabinet of Ministers of Ukraine, other state agencies and local self-government when considering issues related to the formation of and implementation of anti-corruption policy;

12) exercises powers under this Law of a member of the National Agency;

13) exercises other powers in accordance with this Law and other laws.

3. Powers of the Chairman of the National Agency shall be terminated in case of:

1) early termination of his office as a member of the National Agency in cases stipulated in paragraph ten of Article 5 of this Law;

2) submission of application for dismissal from office of the Chairman of the National Agency at will without termination of office of Commission's member.

4. The National Agency shall elect from among its members the Deputy Chairman of the National Agency who acts as the Chairman of the National Agency during absence of the latter.

Article 7. Powers of the National Agency's members

1 Member of the National Agency:

1) prepares the issues for consideration by the National Agency, participates in its meetings and voting without a right to abstain;

2) ensures within his/her competence implementation of the decision of the National Agency;

3) exercises the powers and coordinates the work of structural divisions of the National Agency's staff in accordance with the distribution of functional responsibilities determined by the National Agency;

4) on behalf of the National Committee represents the National Agency in relations with state authorities, local self-government, public associations, individuals and legal entities in Ukraine and abroad.

2 Member of the National Agency in the exercise of his/her authorities may:

1) become familiar with the documents that are in the National Agency;

2) to propose for inclusion into the agenda of the meeting of the National Agency issues within its jurisdiction;

3) speak at the National Agency's meetings, to make proposals on issues that are considered, to initiate voting upon them;

4) upon the order of the National Agency conduct inspections on issues which in accordance with this Law are referred to the authority of the National Agency;

5) attend meetings of the Verkhovna Rada of Ukraine, its committees and ad hoc special and temporary investigatory commissions, as well as the meetings held by the Cabinet of Ministers of Ukraine, ministries and other government agencies and local self-government in respect of topics relating the formation and implementation of anti-corruption policy;

6) in case of disagreement with the decision of the National Agency to lay down in writing his dissenting opinion which is attached to the minutes of the meeting of the National Agency;

7) attend events organized by the National Agency.

Article 8. Organization of the National Agency's activities

1. The main form of the National Agency's activities is meetings held at least once a week. The agenda of meetings shall be approved by the National Agency.

Decisions of the National Agency shall be adopted by the majority of votes of its total composition.

Regulation on the National Agency, as well as distribution of responsibilities between the Deputy Chairman and the members of the National Agency for appropriate directions to implement its functions shall be approved by the decision of the National Agency.

2. Staff of the National Agency shall perform organizational, informational, reference and other support of Commission's activities.

Regulation on the National Agency's staff, its structure and regulations on the separate structural divisions of the staff shall be approved by the National Agency. Maximum number of employees of the National Agency shall be approved by the Cabinet of Ministers of Ukraine upon submittal of the National Agency's Chairman.

Chief of Staff and his deputies shall be appointed and dismissed by the National Agency.

3. Regional offices of the National Agency, the territory of which not necessarily coincides with the administrative and territorial division, may be established by decision of the Cabinet of Ministers of Ukraine upon the proposal of the National Agency.

Heads of territorial offices of the National Agency (in case they are established) shall be appointed and dismissed by the decision of the National Agency.

4. Employees of the National Agency Staff and its territorial bodies (if established) on a regular basis, but not less than once every two years, shall undergo mandatory skills improvement trainings.

Article 9. Guarantees of the National Agency's independence

1. National Agency's independence from influence or interference in its activities is guaranteed by:

1) the special status of the National Agency;

2) special procedure of selection, appointment and termination of office of the National Agency's members;

3) special procedure established by law on funding and logistical support of the National Agency;

4) proper conditions of remuneration for members and officials of the National Agency staff stipulated by this Law and other laws;

5) transparency of its activities;

6) by other means stipulated by this Law.

2. In the course of duties performance members and officials of the staff of the National Agency are deemed government officials, acting on behalf of the state and fall under its protection.

3. Use of the National Agency for party, group or private interests is not allowed. Activities of political parties at the National Agency are prohibited.

4. It is prohibited for state authorities, authorities of the Autonomous Republic of Crimea, local self-government and their officers and employees, political parties, associations and other entities to interfere in activities of the National Agency in the course of the performance of its duties.

5. Notification about suspicion of a criminal offense in regard to a member of the National Agency may be performed only by the Prosecutor General of Ukraine (acting Prosecutor General of Ukraine).

Prosecutor General of Ukraine or his deputy has the right to file in accordance with established procedure a request for removal from office of a member of the National Agency for Prevention of Corruption who is suspected or accused of a crime.

6. Members and officials of the National Agency staff, their close persons and property are protected by the state. In the case of a relevant notification by a member of the National Agency the internal affairs authorities shall take the necessary measures to ensure the security of the National Agency's member, his close persons, to save their property.

7. Attempt on the life and health of the member or official of the National Agency staff, his close persons, destruction of or damage to their property, threatening them of murder, violence or destruction of property entail legal liability stipulated by the law.

8. A member of the National Agency has the right for protection provided to him by the interior authorities.

Article 10. The legal status of members, staff officers and regional offices of the National Agency

1. The National Agency's members are civil servants.

2. Employees of the National Agency staff and its regional offices are civil servants and also other employees who perform supplementary functions.

Article 11. Powers of the National Agency

1. The National Agency has the following powers :

1) analysis:

of the state of prevention and countering corruption in Ukraine, of the activities of state authorities, authorities of the Autonomous Republic of Crimea and local self-government on preventing and countering corruption;

statistics, results of studies and other information on the situation with corruption;

2) drafting Anti-Corruption Strategy and State Program of its implementation, monitoring the coordination and evaluation of implementation effectiveness of Anti-Corruption Strategy;

3) preparing and filing as prescribed by law to the Cabinet of Ministers of Ukraine draft of a national report on the implementation of the grounds of anti-corruption policy;

4) the development and implementation of anti-corruption policy, drafting of legal acts on these issues;

5) organization of research on the issues of exploring the situation with corruption;

6) monitoring and control over implementation of legislation on ethical behavior, the prevention and settlement of conflicts of interest in the activities of persons authorized to perform the functions of the state or local self-government and persons equated to them;

7) coordination and rendering methodological help in detection by state authorities, authorities of the Autonomous Republic of Crimea, local self-government corruption risks in their activities and implementation of measures to address them, including the preparation and implementation of anti-corruption programs;

8) implementation in the manner stipulated by this Law of monitoring and verification of declarations of persons authorized to perform the functions of the state or local self-government, storage and disclosure of such declarations, monitoring lifestyle of persons authorized to perform the functions of the state or local self-government;

9) ensuring that the Unified State Register of declarations of persons authorized to perform the functions of the state or local self-government and the Unified State Register of persons who committed corruption or related to corruption offenses are duly kept;

10) approval in accordance with this Law rules of ethical conduct for civil servants and local self-government officials;

11) coordination within the competence, methodological support and performing analysis of the efficiency of the authorized units (authorized persons) on the prevention and detection of corruption;

12) approval of anti-corruption programs of state authorities, authorities of the Autonomous Republic of Crimea, local self-government, elaboration of a typical form of the anti-corruption program of a legal entity;

13) implementation of cooperation with persons who in good faith report possible evidence of corruption offenses and other violations of this Law (whistleblowers), taking measures concerning their legal and other protection, prosecution of perpetrators violating their rights in connection with such reporting;

15) organization of training, retraining and advanced training of civil servants of state authorities and authorities of the Autonomous Republic of Crimea, local self-government officials on issues related to the prevention of corruption;

16) providing clarification, guidance and consulting on issues of application of legislation on ethical conduct, prevention and settlement of conflicts of interest in the activities of persons authorized to perform the functions of the state or local self-government and persons equated to them;

17) informing the public about measures taken by the Commission to prevent corruption, the implementation of measures aimed at forming public awareness of the negative attitude to corruption, , cooperation with state authorities, non-governmental organizations of foreign states and international organizations within its competence;

19) exchange of information with the competent authorities of foreign states and international organizations;

20) other powers stipulated by law.

Article 12. Rights of the National Agency

1. The National Agency for the purpose of carrying out its powers has the following rights:

1) to obtain in accordance with a procedure stipulated by law upon written requests in accordance with the established procedure information necessary to fulfill its objectives from state authorities, authorities of

the Autonomous Republic of Crimea, local self-government, business entities regardless of ownership and their officials, citizens and their associations information necessary to fulfill its objectives;

2) to have direct access to the databases of state authorities, authorities of the Autonomous Republic of Crimea, local self-government, use state, including government communications systems and special communications networks, as well as other technical means;

3) to engage according to established procedure scientists (on a contract basis as well), employees of state authorities, authorities of the Autonomous Republic of Crimea, local self-government in certain activities, participation in studying certain issues;

4) to create commissions and working groups, to organize conferences, seminars and meetings on preventing and countering corruption;

5) to adopt binding legal acts on issues within its competence;

6) to receive statements from individuals and legal entities regarding violation of this Law, conduct upon its own initiative checks of possible facts of violations of this Law;

7) to conduct inspections of work organization on preventing and identifying corruption in state authorities, the authorities of the Autonomous Republic of Crimea, local self-government, in particular regarding the preparation and implementation of the anti-corruption programs;

8) to adopt requirements on violations of legislation on ethical behavior, the prevention and settlement of conflicts of interest, other requirements and restrictions stipulated by this Law;

9) to obtain from persons authorized to perform the functions of the state or local self-government a written explanations about circumstances that may indicate a breach of ethical conduct, prevention and settlement of conflicts of interest, other requirements and restrictions stipulated by this Law regarding the correctness of the information specified in the declarations of persons authorized to perform state functions or local self-government;

10) to file claims (applications) to the court to deem unlawful legal acts and personal decisions issued (taken) with breach of requirements and restrictions stipulated by this Law, to invalidate contracts signed as a result of the commission of a corruption or related to corruption offense,;

11) to approve the methodology of corruption risks assessment in the government authorities activities, to conduct analysis of the anti-corruption programs of government authorities and to make mandatory for review suggestions to such programs;

12) to initiate an official investigation, to take measures to hold liable persons guilty of corruption and related to corruption offenses, to send to specially authorized subjects in the area of countering corruption materials that show evidence of such offenses;

13) other rights stipulated by law.

2. In case of identifying violations of this Law regarding ethical behavior, prevention and settlement of conflicts of interest in the activities of persons authorized to perform the functions of the state or local self-government and persons equated to them, or any other violation of this Law, National Agency shall send to the head of the body, enterprise, institution a requirement to eliminate violations of the law, to conduct service investigation, to bring the perpetrator to the statutory liability.

The requirement of the National Agency is binding. Official to whom the requirement of the National Agency is addressed shall inform the Commission on the results of its fulfillment within ten working days after receipt of the requirement.

3. In case of detecting signs of corruption or related to corruption offenses, the National Agency approves the reasoned opinion and sends it to the specially authorized subjects in the area of countering corruption. Agency's opinion is binding for consideration the results of which shall be delivered to the Agency no later than five working days upon receipt of information about committed offense.

4. State authorities, the authorities of the Autonomous Republic of Crimea, local self-government, individuals and legal entities are required to provide the requested documents or information requested by the National Agency within ten days upon receipt of the request.

5. Legal acts of the National Agency are subject to state registration by the Ministry of Justice of Ukraine and shall be included into the Unified State Register of Legal Acts.

Legal acts of the National Agency after inclusion in the Unified State Register of Legal Acts shall be published in the state language in the official printed publications.

Normative legal acts of the National Agency which passed the state registration come into force on the day of official publication, unless otherwise is provided by such regulations, but in any case not earlier than the day of the official publication.

Article 13. Authorized persons of the National Agency for Prevention of Corruption

1. The authorized persons of the National Agency are the Chairman and members of the National Agency and officials authorized by the National Agency.

2. Authorized persons of the National Agency have the right to:

enter freely the premises of state authorities, authorities of the Autonomous Republic of Crimea, local self-government upon presenting their service ID and have access to documents and other materials necessary for carrying out the inspection;

request the necessary documents and other information in connection with the exercise of their powers considering restrictions stipulated by law;

receive within their competence a written explanation from the officials and employees of the state authorities, the authorities of the Autonomous Republic of Crimea, local self-government;

put up protocols of administrative violations according to the distribution of duties in matters within the competence of the National Agency;

represent the National Agency in the courts in the manner stipulated by law.

3. Unless the National Agency authorizes its persons, they may not be members of commissions, committees and other bodies constituted by the state authorities, local self-government.

4. The Chairman and members of the National Agency, officials and employees of its staff are prohibited to disclose classified information acquired in connection with the performance of their official duties, except in cases established by this Law.

Article 14. Supervision over the National Agency

1. Control over the National Agency's fund spending shall be performed by the Accounting Chamber through the audit of the Commission once every two years.

2. Civil control over the activities of the National Agency is ensured through the Public Council of the Commission, which is established and formed by the Cabinet of Ministers of Ukraine by selecting 15 people on the basis of competition.

The procedure for the organization and conduct of the competition for the formation of the Public Council of the National Agency shall be determined by the Cabinet of Ministers of Ukraine.

Representatives of civil society associations who receive funding from the National Agency to support their activities may not become members of the Public Council.

3. Public Council of the National Agency shall hear reports on the activities, implementation of plans and objectives of the National Agency, approve the annual reports on the activities of the National Agency, give conclusions as a result of expertise of draft acts of the National Agency, delegates his representative to attend meetings of the National Agency in an advisory capacity.

4. National Agency prepares annual reports on its activities, which after approval of the Public Council of the National Agency shall be published on its official website.

Article 15. Social security of members and employees of the National Agency staff

1. State ensures social security of members and employees of the National Agency staff in accordance with the labor and civil service legislation considering peculiarities stipulated by this Law.

2. In case of death (decease) of a National Agency member in the course of performance of his/her official duties, the family of the deceased (dead), and in case of its absence, his parents and dependents shall receive a one-time financial assistance in a sum of ten years wages earned by the deceased (dead) at the last position he held, in accordance with a procedure and terms established by the Cabinet of Ministers of Ukraine. The family of the deceased (dead) retains the right to receive the housing.

3. If persons are eligible at the same time for a one-time financial assistance on the grounds provided for in this article and one-time financial assistance or compensation payments established by other laws, payment of the respective sums of money shall be performed upon only one of the reasons, subject for the choice of the person who is entitled to receive such payments.

4. Harm caused to the property of a member or employee of the National Agency staff or the property of his/her close relatives in connection with performance of official duties shall be reimbursed in full from the state budget of Ukraine, with subsequent recourse of this amount from the guilty persons in order stipulated by law.

Article 16. Remuneration of the members and employees of the National Agency staff

1. Salaries of members and employees of the National Agency staff shall be high enough to ensure sufficient financial conditions for the proper performance of their duties considering the nature, intensity and danger of the work, to ensure recruitment and consolidation of qualified personnel in the Agency's staff, encourage achievement of high results in official activities, compensate costs of intellectual efforts of workers.

2. Salaries of members and officials of the National Agency staff consist of a base salary, long service bonuses, bonuses for rank, bonuses and other allowances established by the legislation on civil service.

Base salary of a member of the National Agency shall constitute 19.5 times the minimum wage. Base salary of the Chairman of the National Agency shall be established in proportion to the base salary of the National Agency's member with a 1.3 coefficient. Base salary of an official of the National Agency staff is set at the level of the respective categories of the Cabinet of Ministers of Ukraine Secretariat.

3. Long-service bonuses and bonuses for rank, bonuses and other allowances shall be paid to the members and civil servants of the National Agency according to the Law of Ukraine "On Civil Service".

Article 17. Financial and logistical support of the National Agency

1. Financial support of the National Agency shall be secured from the State Budget of Ukraine. Financing of the National Agency through any other sources is prohibited, except in cases envisioned by international treaties of Ukraine or projects of international technical assistance.

2. Expenditures for financing the National Agency shall be determined in the State Budget of Ukraine as a separate line at the level sufficient to ensure the proper exercise of the powers by the Commission.

Chairman of the National Agency represents the position of the Commission on issues of its financing at meetings of the Cabinet of Ministers of Ukraine, committees or in plenary sessions of the Verkhovna Rada of Ukraine.

3. National Agency is the senior manager of the State Budget of Ukraine funds allocated for its financing.

Expenses for activities of the National Agency shall include funds for the awareness campaigns and trainings on issues of preventing and countering corruption.

4. The National Agency shall be supplied with all the necessary material resources, equipment and other assets to carry out official duties.

SECTION III

DEVELOPMENT AND IMPLEMENTATION OF THE ANTI-CORRUPTION POLICY

Article 18. Anti-Corruption policy

1. General grounds of anti-corruption policy (anti-corruption strategy) shall be determined by the Verkhovna Rada of Ukraine.

2. Parliament of Ukraine annually by June 1 holds hearings on the state of corruption, approves and publishes an annual report on the implementation of anti-corruption policy grounds.

3. Draft of anti-corruption strategy is prepared by the National Agency on the basis of the state of corruption analysis and results of the previous anti-corruption strategy implementation.

4. Anti-corruption strategy shall be implemented through fulfillment of the state target program which is drafted by the National Agency and approved by the Cabinet of Ministers of Ukraine.

Heads of state authorities are personally responsible for ensuring implementation of the state target program of the anti-corruption strategy.

5. State target program to implement anti-corruption strategy is subject to annual review, taking into account the results of implementation of these measures, conclusions and recommendations of the parliamentary hearings on the situation with corruption.

Article 19. Anti-Corruption Programs

1. Anticorruption programs shall be adopted in:

the Administration of the President of Ukraine, Verkhovna Rada of Ukraine Staff, The Secretariat of the Cabinet of Ministers of Ukraine, the Secretariat of the Commissioner on Human Rights of the Verkhovna Rada of Ukraine, the Prosecutor General Office of Ukraine, the Security Service of Ukraine, the Accounting Chamber of Ukraine, National Bank of Ukraine, ministries and other central executive authorities, regional, Kyiv and Sevastopol city state administrations, target public trust funds – through approval by their supervisors;

the National Security and Defense Council of Ukraine Staff - through the approval by the Secretary of the National Security and Defense Council of Ukraine;

the Accounting Chamber of Ukraine - through the approval by the Chamber Board, and at the National Bank of Ukraine - through the approval by its Management Board;

the Central Election Commission, the Supreme Council of Justice, the Supreme Rada of the Autonomous Republic of Crimea, regional councils, Kyiv and Sevastopol city councils, the Council of Ministers of the Autonomous Republic of Crimea - through the approval by decisions of these authorities.

Anti-corruption programs shall be approved by the National Agency.

2. Anticorruption programs shall envision:

determining the grounds of general departmental policy on preventing and countering corruption in the relevant area, measures for their implementation and the implementation of anti-corruption strategy and target state anti-corruption program;

assessment of corruption risks in activities of an authority, institution, organization and causes which originate them and conditions which facilitate them;

measures to eliminate the identified corruption risks, persons responsible for their implementation, terms and resources required;

education and measures to disseminate information on anticorruption targeted programs;

procedures for monitoring, evaluation of implementation and periodic review of programs;

other measures aimed at preventing corruption and related to corruption offenses.

Article 20. National report on the implementation of the grounds of anti-corruption policy

1. The National Agency shall prepare a draft annual national report on the implementation of the grounds of anti-corruption policy which is no later than April 1-st shall be submitted for to the Cabinet of Ministers of Ukraine.

2. The annual report on implementation of the grounds of anti-corruption policy shall contain the following information:

1) statistics on results of performance of the specially authorized subjects in the area of countering corruption together with the obligatory indication of the following data:

a) the number of statements of corruption or related to corruption offenses registered by each specially authorized subject in the area of countering corruption;

b) the number of operative and detective cases initiated by specially authorized subjects in the area of countering corruption;

c) the number of persons against whom indictments were prepared in connection with criminal corruption and related to corruption offenses they committed, as well as protocols for committing administrative offenses related to corruption;

d) the number of persons with effective court conviction for criminal corruption or related to corruption offenses they committed and those who were held administratively liable for offenses related to corruption;

e) the number of persons with effective acquittal on relevant offenses they committed and regarding whom relevant administrative proceedings were stopped without the imposition of penalties;

f) information separately by categories of persons referred to in Part One of the Article 3 of this Law and by liability types for corruption and related to corruption offenses;

g) the number of persons dismissed from office (work, service) in connection with the prosecution for corruption or related to corruption offenses, as well as people who have been imposed with the main / additional penalty of deprivation of the right to occupy certain positions or engage in certain activities;

h) information on the amount of the damage caused by corruption and related to corruption offenses, the state and amount of reimbursement;

i) information about the funds and other property obtained as a result of corruption or related to corruption offenses, forfeited upon a decision of a court, as well as funds in the amount of illicit services or benefits collected for the benefit of the state;

j) information about the funds and other property obtained as a result of corruption or related to corruption offenses returned to Ukraine from abroad and their disposal;

k) information on the forfeiture of the things and proceeds of criminal corruption offenses;

l) the number of proposals to repeal by the relevant authorities or officials legal acts and decisions issued (taken) as a result of committing a corruption offense, and the results of their consideration;

m) information about acts, decisions deemed illegal in court at the request of an interested individual, association of individuals, legal entities, state authorities, local self-government, published (adopted) as a result of committing a corruption offense;

n) the number of requests to eliminate the causes and conditions that contributed to the commission of corruption and related to corruption offenses or failing to comply with anti-corruption laws;

o) information about cooperation with the relevant authorities of other states, international organizations and foreign non-governmental organizations and cooperation agreements signed with them;

p) information about cooperation with non-governmental organizations and the media;

q) information about staff of specially authorized subjects in the area of countering corruption, qualifications and experience of their employees, improvement of their skills;

r) information about activities of internal security units of specially authorized subjects in the area of countering corruption; number of reported offenses of their employees, the results of consideration of such reports, holding employees of internal security units liable;

- s) size of funding of specially authorized subjects in the area of countering corruption;
- t) other information related to the performance of activities by authorized subjects in the area of countering corruption and fulfilling their responsibilities;
- 2) summarized results of anti-corruption expertise of legal acts and draft legal acts;
- 3) information on results of implementation of measures taken by public authorities to prevent and counter corruption, including those taken in course of international cooperation;
- 4) summarized analysis of the state of corruption which shall contain:
 - a) identified by state authorities, authorities of the Autonomous Republic of Crimea, local self-government corruption factors in their activities and measures they have taken to eliminate specified factors;
 - b) results of sociological and analytical research of the situation with corruption performed by the state authorities, authorities of the Autonomous Republic of Crimea, local self-government, international organizations and civil society associations;
 - c) the state of implementation of international legal obligations in the area of preventing and countering corruption;
 - d) the impact of the taken measures on the level of corruption based on the statistical data and sociological research;
- 5) report on the implementation of the Anti-Corruption Strategy;
- 6) conclusions and recommendations.

3. Specially authorized subjects in the area of countering corruption, other state authorities, the authorities of the Autonomous Republic of Crimea, local self-government shall submit no later than February 15 to the National Agency the information which it needs to prepare a national report on implementation of the grounds of anti-corruption policy.

4. The Cabinet of Ministers of Ukraine shall on the annual basis no later than April 15 review and approve the draft national report on the implementation of the grounds of anti-corruption policy which shall be sent to the Verkhovna Rada of Ukraine within ten working days from the date of its approval.

5. The national report on the implementation of the grounds of anti-corruption policy shall be published on the official website of the Verkhovna Rada of Ukraine.

Article 21. Participation of the public in measures on the prevention of corruption

1. Civil society associations, their members or authorized representatives and individuals in their activity of preventing corruption have the right to:

- 1) report discovered facts of committed corruption or related to corruption offenses, real, potential conflict of interest to specially authorized subjects in the area of countering corruption, to the National Agency for Prevention of Corruption, management or other representatives of authority, institution or organization where these offenses have been committed or employees of which have conflict of interest, and also to the public;
- 2) to request and receive information from state authorities, authorities of the Autonomous Republic of Crimea, local self-government, in the manner stipulated by the Law of Ukraine “On Access to Public Information”, information about activities to prevent corruption;
- 3) conduct, order conducting of public anti-corruption expertise of legal acts and draft legal acts, as a result of such expertise submit proposals to relevant authorities, receive from relevant authorities information about consideration of such proposals;
- 4) participate in parliamentary hearings and other events on the prevention of corruption;
- 5) make proposals to subjects having right of legislative initiative on improvement of the legal regulation of relations arising in the area of prevention of corruption;
- 6) conduct, order conducting research, including scientific, sociological, etc., on the issues of prevention of corruption;
- 7) to conduct events to inform the public on the prevention of corruption;
- 8) exercise public control over the implementation of laws in the area of prevention of corruption by using such forms of control which are not contrary to law;
- 9) perform other activities to prevent corruption which are not prohibited by law.

2. Civil society group, individual, legal entity shall not be denied access to the information concerning the competence of subjects which perform measures to prevent corruption, as well as concerning the main areas of their activities. This information is provided in the manner stipulated by law.

3. Draft laws and other draft legal acts which envision the granting of benefits, advantages to specific entrepreneur entities, as well as delegation of powers of state authorities, authorities of the Autonomous Republic of Crimea or local self-government for the purpose of their public discussion shall be immediately

posted on the official website of appropriate authorities, but no later than 20 working days prior to their consideration with a view to adoption.

4. State authorities, authorities of the Autonomous Republic of Crimea, local self-government shall summarize the results of the public discussion of draft laws and other draft legal acts referred to in paragraph three of this article and publish them in at their web-sites.

SECTION IV

PREVENTION OF CORRUPTION AND RELATED TO CORRUPTION OFFENSES

Article 22. Restrictions on use of official powers or his/her position

1. Persons referred to in Part One of the Article 3 of this Law shall be prohibited to use their official powers or their position and the associated opportunities to obtain an unlawful benefit for themselves or others including use of state or communal property or funds for their personal interest.

Article 23. Restrictions on receiving gifts

1. Persons referred to in paragraphs 1, 2 of Part One of the Article 3 of this Law shall be prohibited to demand, ask, receive gifts for themselves or close persons from legal entities or individuals:

1) in connection with performing by such persons activities connected with functions of the state or local self-government;

2) if the person who gives is a subordinate to that person.

2. Persons mentioned in paragraphs 1, 2 of Part One of the Article 3 of this Law may accept gifts which meet generally accepted notions of hospitality, except as provided by Part One of this Article, if the value of such gifts does not exceed one minimal wage established on the date when the gift was received and the aggregate value of gifts received from one source within the year not exceeds two living wages established for labor-abled person on January 1 of the current year.

Restriction on the value of gift stipulated by this part shall not apply to gifts which are:

1) given to close persons;

2) received as a public discounts for products, services, publicly available benefits, prizes, rewards and bonuses.

3. Gifts received by the persons referred to in paragraphs 1, 2 of Part One of the Article 3 of this Law in capacity of gifts to the State, the Autonomous Republic of Crimea, local community, state or municipal enterprises, institutions or organizations shall be deemed as state or municipal property and transferred to the authority, enterprise, institution or organization in accordance with a procedure determined by the Cabinet of Ministers of Ukraine.

4. Decisions taken by a person referred to paragraphs 1, 2 of Part One of the Article 3 of this Law in favor of a person who has given him/her or his/her close persons the gift shall be deemed as those taken under conditions of the conflict of interest and provisions of Article 67 of this Law shall be applied to such decisions.

Article 24. Prevention of obtaining unlawful benefit or gift and handling them

1. Persons authorized to perform the functions of the state or local self-government, persons equated to them in case of proposal of an unlawful benefit or gift, regardless of private interests, shall immediately take the following steps:

1) reject the proposal;

2) identify, where possible, the person who made the offer;

3) involve witnesses, if possible, including from among employees;

4) notify in written the immediate supervisor (if any) about the proposal or the head of respective authority, entity, institution or organization, and one of the specially authorized subjects in the area of countering corruption stipulated by this Law.

2. If a person falling under the restrictions on the use of office and on the obtainment of gifts has discovered in his/her office property or received property which may be unlawful benefit or gift, he/she shall promptly, but no later than one business day, notify in written about such fact his/her immediate supervisor or head of respective authority, enterprise, institution, organization.

Upon discovery of property which may be unlawful benefit a written act shall be prepared and signed by the person who discovered the unlawful benefit or gift, and by his/her immediate supervisor or head of authority, enterprise, institution or organization.

In case the property which may be the unlawful benefit or gift is discovered by a person who is a head of the body, enterprise, institution, organization, an act on discovering of property which may be the unlawful benefit or gift shall be signed by such person and the person authorized to perform functions of the head of respective authority, enterprise, institution or organization in the head's absence.

3. Items of unlawful benefit and received or discovered gifts shall be stored in the respective authority before they are transferred to the specially authorized subjects in the area of countering corruption.

4. Provisions of this Article shall not apply to cases of receiving a gift under the circumstances provided for by Part Two of the Article 23 of this Law.

5. In case a person referred to in items 1 and 2 of the Part One of the Article 3 of this Law has doubts about the possibility of receiving a gift, he/she is entitled to seek in writing an advice on the matter from territorial office of the National Agency which shall provide an appropriate explanation.

Article 25. Restrictions on other part-time activities

1. Persons referred to in paragraph 1 of the Part One of the Article 3 of this Law are prohibited to:

1) engage in any other paid (other than teaching, research and creative activity, medical practice, instructor and judicial practice in sports) or entrepreneurial activities, unless otherwise is stipulated by the Constitution or laws of Ukraine;

2) become a member of the board, other executive or supervisory bodies or supervisory board of a company or organization that seeks profit (unless the person carrying out the functions of management of shares owned by the state or territorial community and represents the interests of the state or territorial community in the board (supervisory board), audit committee of the business organization unless otherwise is stipulated by the Constitution and laws of Ukraine.

2. Limitation stipulated by Part One of this article, as well as the requirements of Part Two of this Article shall not apply to members of the Verkhovna Rada of the Autonomous Republic of Crimea, local deputies (except those who exercise their authority in the respective council on a regular basis), the High Council of Justice (except those working in the High Council of Justice on a regular basis), people's assessors and jurors.

Article 26. Restrictions after termination of activities connected with the functions of the state, local self-government

1. Persons authorized to perform the functions of the state or local self-government referred to in paragraph 1 of Part One of the Article 3 of this Law who resigned or otherwise stopped the activities connected with the functions of the state or local self-government shall be prohibited to:

1) within one year from the date of termination of the relevant activities enter into employment agreements (contracts) or perform transactions in business with legal entities of private law and natural persons - entrepreneurs if the persons referred to in the first paragraph of this part within one year since the date of termination of the functions of the state or local self-government exercised powers on control, supervision, preparation or taking decisions on the activities of these legal entities or natural persons - entrepreneurs;

2) disclose or otherwise use for their interests information that becomes known to them in connection with the performance of official duties, except for cases stipulated by law;

3) within one year from the date of termination of the relevant activities represent the interests of any person in the cases (including those heard in courts) where another party is an authority, enterprise, institution, organization, where they had been working at the time of termination of their mentioned activities.

2. Violation of restrictions on entering into employment agreement (contract) set out by paragraph 1 of Part One of this Article shall serve as the ground for termination of such contract.

Business transactions committed in violation of paragraph 1 of Part One of this Article may be invalidated.

In case the National Agency detects violations referred to in Part One of this article it shall appeal to the court for termination of the employment agreement (contract) and deeming transaction void.

Article 27. Restrictions of joint work with close persons

1. Persons mentioned in paragraphs "a", "c" - "h" of paragraph 1 of Part One of the Article 3 of this Law may not have in their direct subordination close persons or be directly subordinated to close persons in connection with carrying out official powers.

Persons applying for the positions referred to in paragraph "a", "c" - "h" of paragraph 1 and of the Part One of the Article 3 of this Law are obliged to notify the management of the authority where they seek the position about close persons working at this authority.

The provisions of the first and second paragraphs of this paragraph shall not apply to:

1) people's assessors and jurors;

2) close persons who are directly subordinated to each other in connection with one of them acquiring the status of an elected person ;

3) persons who work in the rural areas (except those which are regional centers) and mountain towns.

2. In case circumstances violating the requirements of Part One of this Article occur, the respective persons or persons close to them shall take steps to eliminate such circumstances within fifteen days.

If during this period the circumstances were not voluntarily eliminated, the respective person or persons close to them shall be within one month from the date of the circumstances' occurrence transferred in accordance with established procedure to another position which eliminates the direct subordination.

If it is impossible to perform the mentioned transfer, the person who is in subordination shall be dismissed.

SECTION V PREVENTION AND RESOLVING OF CONFLICT OF INTEREST

Article 28. Prevention and resolution of conflict of interest

1. Persons referred to in clauses 1 and 2 of part 1, article 3 of this Law shall be obliged:

1) to take measures to prevent the occurrence of actual, potential conflict of interest;
2) to report - no later than the next business day from the date when the person found out or should have found out about having a real or potential conflict of interest – to the immediate supervisor, , and if the person holds the position that does not provide for having an immediate supervisor or the position in a collective body – to report to the National Agency or other authority or a collective body determined by the law, where the conflict of interest occurred while exercising authority, respectively;

3) not to take any actions and not to make decisions under the conditions of a real conflict of interest;

4) to take measures to address actual or potential conflict of interest.

2. Persons authorized to perform the functions of the government or local self-government may not directly or indirectly in any way encourage their subordinates to make decisions, take actions or refrain from actions that violate the law and benefit their private interests or the private interests of third parties.

3. Immediate supervisor or the supervisor of an authority which has the powers to dismiss/initiate dismissal from position within two business days after receiving a notice that her/his subordinate has a real or potential conflict of interest makes a decision aiming to resolve the conflict of interest, and reports about it to a respective person.

When the National Agency receives a notice from a person about the presence of a real or potential conflict of interest, it explains within seven working days to the reporting person the procedure for her/his actions to resolve the conflict of interest.

4. Immediate supervisor or the supervisor of an authority which has the powers to dismiss/initiate dismissal from position who became aware of the conflict of interest of his subordinate person shall take in accordance with this Law measures for the prevention and settlement of conflict of interest of such person.

5. If person doubts whether he/she has a conflict of interest he/she shall seek for an explanation at the territorial office of the National Agency. If the person did not receive confirmation about absence of conflict of interest he/she shall act in accordance with the requirements set out in this section of the Law.

6. If a person has received confirmation about absence of conflict of interest he/she shall be exempted from liability even if it turned out later that there had been conflict of interest in actions regarding which he/she sought clarification for.

7. Laws and other legal acts that define the powers of the government authorities, the authorities of the Autonomous Republic of Crimea, local self-government authorities, the procedure of provision of certain types of state services and other activities related to the functions of the state and local self-governments have to provide for procedure and ways of resolving the conflict of interest of officials whose activities they regulate.

Article 29. Measures of external and self-resolving of conflict of interest

1. Conflict of interest shall be resolved externally by:

1) suspension of a person from fulfilling the task, performing actions, making decisions or participation in making decisions under the conditions of a real or potential conflict of interest;

2) use of external monitoring to control how person fulfils certain task, does certain actions or makes decisions;

3) restricting a person to access certain information;

4) reviewing the scope of person's official powers;

5) reassignment of a person to another position;

6) discharge of a person.

2. Persons referred to in clauses 1 and 2 of part 1 of article 3 of this Act, who have an actual or potential conflict of interest, can independently take steps to resolve it by eliminating the respective private interest

and provide documents that prove it to the immediate supervisor or the supervisor of an authority which has the powers to dismiss/initiate dismissal from position.

Elimination of a private interest shall exclude any possibility of its concealment.

Article 30. Suspension from fulfilling a task, performing actions, decision-making or participating in decision-making

1. Suspension of the person authorized to perform the functions of the state or local self-government, or other similar person from fulfilling a task, performing actions, decision-making or participating in decision-making in the conditions of a real or potential conflict of interest is carried out by the decision of the head of the relevant body, enterprise, institution, organization, in cases where the conflict of interest does not have a permanent nature and given the fact there is a possibility to involve other employees of the respective authority, enterprise, institution, organization in making such decision or taking respective actions.

2. Suspension of the person authorized to perform the functions of the state or local self-government, or other similar person from fulfilling a task, performing actions, decision-making or participating in decision-making in the conditions of a real or potential conflict of interest, as well as involving other employees of the respective agency, enterprise, institution, organization in such decision-making or taking respective actions, shall be carried out by a decision of the head of the agency or respective structural subdivision, for which the person works.

Article 31. Restricting access to information

1. Restricting access of a person authorized to perform the functions of the government or local self-government, or other similar person to certain information is carried out by the decision of the head of the agency or respective structural subdivision for which the person works for in instances where the conflict of interest is associated with such access and is of a constant nature, as well as if there is a possibility for the person to continue proper execution of its authority under such restriction, and if there is a possibility to commission another employee of the agency, enterprise, institution or organization, with work involving certain information.

Article 32. Reviewing the scope of official powers

1. Review of the scope of official powers of a person authorized to perform the functions of the state or local self-government, or other similar person is carried out by the decision of the head of the agency, enterprise, institution, organization or respective structural subdivision for which the person works if a conflict of interest in its activities is of permanent nature related to a specific authority of the person, and given the possibility for the person to continue proper performance of her/his official tasks under such review, and in case of vesting another employee with the respective authority.

Article 33. Exercising powers under external control

1. A person authorized to perform the functions of the government or local self-government, or other similar person, exercises official powers under the external control, if suspension of the person from fulfilling a task, performing actions, decision-making or participating in decision-making under a real or potential conflict of interest, restricting of person's access to information or reviewing its powers are impossible and there is no reason for her reassignment to another position or discharge.

2. External control is carried out in the following forms:

1) inspection by an employee, appointed by the head of the agency, enterprise, institution, organization, of the status and results of performing tasks, taking actions, content of the decisions or draft decisions, that are made or being developed by the person or a respective collective agency on issues related to the conflict of interest;

2) performance of tasks, taking actions, considering cases, drafting and making decisions by the person in the presence of an employee appointed by a head of the agency;

3) participation of the authorized person of the National Agency in the work of the collective body as an observer without voting right.

3. Decision on the implementation of external control shall include indication of the form of control, employee authorized to administer control, as well as duties of the person in connection with the use of external control of his/her performance of respective tasks, taking actions or decision-making.

Article 34. Reassignment, discharge of a person due to the conflict of interest

1. Reassignment of a person authorized to perform the functions of the state or local self-government, or other similar person to another position due to presence of a real or potential conflict of interest is carried out by the decision of the head of the agency, enterprise, institution, organization in case if the conflict of interest in the activities of the person is of permanent nature and cannot be resolved by suspension of that person from fulfilling the task, taking actions, decision-making or participating in decision-making,

restricting access of the person to information, reviewing its powers and functions, eliminating the private interest and if there is a vacant position, that has characteristics that correspond to the person's personal and professional qualities.

Reassignment to another position may be carried out only upon consent of the person authorized to perform the functions of the state or local self-government or equivalent persons.

2. Discharge of a person authorized to perform the functions of the state or local self-governments, other similar persons from their positions in connection with the conflict of interest is carried out if the actual or potential conflict of interest in its activities is permanent and cannot be resolved by other means including absence of the person's consent to reassignment or eliminating the private interest.

Article 35. Peculiarities of resolving conflict of interest arising in the activity of certain categories of persons authorized to perform the functions of the government or local self-government.

1. Rules for resolving conflict of interest in the activities of the President of Ukraine, People's Deputies of Ukraine, members of the Cabinet of Ministers of Ukraine, heads of central executive bodies, which are not part of the Cabinet of Ministers of Ukraine, judges of the Constitutional Court of Ukraine and judges of courts of general jurisdiction, the chairmen, vice-chairmen of oblast and district councils, city, village, settlement heads, secretaries of city, village and settlement councils, deputies of local councils are determined by the laws governing the status of the respective persons and the basis of the organization of respective bodies.

2. In the event of a real or potential conflict of interest of a person authorized to perform the functions of the state or local self-governments, or other similar person, who is a part in a collective body (committee, commission, board, etc.), this person has no right to participate in decision-making process of this body.

Any relevant member of the collegial body or participant of the meeting who is directly related to the question under consideration may state about conflict of interest of such person. Statement about conflict of interest of member of the collegial body shall be included into the minutes of meeting of the collegial body.

If non-participation in decision-making process of an agency of a person authorized to perform the functions of the state or local self-governments, or other similar person, who is a part of that collective body, results in loss of competence by this agency, the person's participation in decision-making should be subject to external controls. The respective collective agency makes the decision on exercising external control.

Article 36. Preventing conflict of interest when a person owns enterprises or equity rights

1. Persons referred to in clause 1, subclause "a" of clause 2 of part 1 of article 3 of this Law shall, within thirty days after the appointment (election) to the position, transfer the management of enterprises and equity rights that she/he owns to another person in the manner prescribed by law.

In this case, the persons referred to in clause 1, subclause "a" of clause 2 of part 1 of article 3 of this Law, shall not transfer the management of the enterprises and equity rights that they own to their family members.

2. Persons referred to in clause 1, subclause "a" of clause 2 of part 1 of article 3 of this Law transfer enterprises that they own, which are unitary based on how they were incorporated (founded) and how their authorized capital was formed, by concluding a contract on property management with a business entity.

3. Persons referred to in clause 1, subclause "a" of clause 2 of part 1 of article 3 of this Law, transfer their equity rights by one of the following ways:

1) conclusion of the contract on property management with a business entity (but not the contract on management of securities and other financial instruments);

2) conclusion of a contract on management of securities, other financial instruments and funds meant for investment in securities and other financial instruments, with a securities trader who is licensed by the National Securities and Stock Market Agency to manage securities;

3) conclusion of a contract on the establishment of venture unit investment fund for managing transferred equity rights with assets' management company that is licensed by the National Securities and Stock Market Agency to conduct asset management activities.

Transfer of equity rights as payment of the cost of securities of venture unit investment fund is made after registration by the National Securities and Stock Market Agency of emission of securities of such collective investment institution.

4. Persons referred to in clause 1, subclause "a" of clause 2 of part 1 of article 3 of this Law, may not conclude contracts mentioned in parts two and three of this article with business entities, securities traders and asset management companies, where family members of such persons are employed.

5. Persons referred to in clause 1, subclause "a" of clause 2 of part 1 of article 3 of this Law, appointed (elected) for the position, within one day after transferring the management of the enterprises and equity

rights that they own, are required to notify in writing about it the National Agency and provide a notarized copy of the concluded contract.

SECTION VI RULES OF ETHICAL CONDUCT

Article 37. Conduct requirements of individuals

1. General requirements for the conduct of persons referred to in clause 1, subclause "a" of clause 2 of part 1 of article 3 of this Law, which they are obliged to follow when exercising their official or representative powers, grounds and procedure for bringing to liability for the breach of these requirements are established by this Law, which shall be the legal ground for the codes or standards of professional ethics.

2. The National Agency approves the general rules of ethical conduct for state servants and self-government officials.

State authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities if necessary develop and ensure compliance with industry codes or standards of ethical behavior for their employees and other persons authorized to perform the functions of the state or local self-governments, persons similar to them that conduct activities in the sphere of their control.

Article 38. Compliance with the law and ethical norms of conduct

1. Persons referred to in clause 1, subclause "a" of clause 2 of part 1 of article 3 of this Law shall strictly comply with the law and generally accepted ethical standards of conduct, be polite in their relations with citizens, supervisors, colleagues and subordinates while exercising their official powers.

Article 39. Priority of interests

1. Persons referred to in clause 1 of part 1 of article 3 of this Act, when representing the state or territorial community, act solely in their interests.

Article 40. Political neutrality

1. Persons referred to in clause 1, subclause "a" of clause 2 of part one of article 3 of this Law are required to be politically neutral, avoid demonstrations in any form of their own political beliefs or opinions, not use official authority for the interests of political parties or branches, or individual politicians, while exercising their official powers.

2. The provisions of part one of this article shall not apply to elected persons and persons who hold political positions.

Article 41. Impartiality

1. Persons referred to in clause 1, subclause "a" of clause 2 of part one of article 3 of this Law, shall act impartially, in spite of private interests, personal attitude to any persons, their own political views, ideological, religious or other personal views or beliefs.

Article 42. Competence and efficiency

1. Persons referred to in clause 1, subclause "a" of clause 2 of part one of article 3 of this Law, in good faith, competently, promptly, efficiently and responsibly perform official functions and professional responsibilities, decisions and instructions of the agencies and persons to which they are subordinate, accountable or under their control, do not allow the abuse and inefficient use of state and municipal property.

Article 43. Non-Disclosure of Information

1. Persons referred to in clause 1, subclause "a" of clause 2 of part one of article 3 of this Law shall not disclose or use in another way confidential and other information with restricted access, which has become known to them in connection with their official powers and professional obligations, except as required by law.

Article 44. Refraining from execution of illegal decisions or orders

1. Persons referred to in clause 1, subclause "a" of clause 2 of part one of article 3 of this Law, in spite of private interests, refrain from execution of decisions or orders of the administration, if they are against the law.

2. Persons referred to in clause 1, subclause "a" of clause 2 of part one of article 3 of this Law independently evaluate the lawfulness of decisions or orders provided by the administration and the possible harm that would be caused in case such decisions or orders are executed.

3. If a person referred to in clause 1, subclause "a" of clause 2 of part one of article 3 of this Law receives decisions or orders to execute that the person regards as unlawful or threatening to legally protected rights, freedoms and interests of individual citizens, legal entities, state or public interests, the person shall immediately notify in writing about it the head of the agency, enterprise, institution, organization, where he/she works and elected persons – the National Agency.

SECTION VII FINANCIAL CONTROL

Article 45. Submission of declarations of persons authorized to perform the functions of the state or local self-government

1. Persons referred to in clause 1, subclause "a" of clause 2 of part one of article 3 of this Law, are required to file the declaration of a person authorized to perform the functions of the state or local self-government (hereinafter – the Declaration of person authorized to perform functions of the state or local self-government) annually until April 1 - for the last year and in the form, which is determined by the National Agency, through the official website of the National Agency.

2. Persons referred to in clause 1, subclause "a" of clause 2 of part one of article 3 of this Law who terminate activities related to the functions of state or local self-government shall submit a declaration of the person authorized to perform the functions of the state or local self-government, for a period not covered by previously submitted declarations.

Persons who terminated activities related to the functions of state or local self-governments are required the next year after the termination of activity to file in accordance with procedure stipulated in Part One of this article a declaration of the person authorized to perform the functions of the state or local self-government for the past year.

3. A person who aspires to hold the position specified in clause 1, subclause "a" of clause 2 of part one of article 3 of this Law, prior to appointment or election to the respective position shall file in the manner prescribed by this Law a declaration of a person authorized to perform state functions or local self-government for the past year.

4. In case the subject of declaration has identified errors in the declaration he filed, the National Agency upon his/her written application allows him/her to correct them within ten calendar days.

Bringing the declarant to liability for failure to submit, late submission of the declaration of a person authorized to perform the functions of the state or local self-government, or submission of it with deliberately false information does not release the declarant from the obligation to file a declaration with trustworthy information.

Article 46. Information to be included in the declaration

1. The declaration shall contain information on:

1) last name, first name and patronymic, registration number of the taxpayer registration card (series and number of the passport of a citizen of Ukraine, if persons due to their religious beliefs refuse to accept the registration number of the taxpayer registration card and notify the respective central executive authority responsible for shaping tax policy about it, and have a stamp in the passport of the citizen of Ukraine about it) of the declarant and its family members, address of registration and of actual residence, place of work (military service), or place of future work (military service), current position, or aspired position, and category of the position (if available) of the declarant;

2) real estate owned by the declarant and members of its family on the right of private ownership, including joint ownership, or rented by them or used by them based on other right of use, irrespective of the form of the transaction, by which such a right was acquired. The information shall include data on:

a) the type, property characteristics, location, date of obtaining the property into ownership, rent or other right of use, value of the property on the date when it came into ownership, possession or use;

b) if the real estate property is in joint ownership, the information specified in clause 1 of part one of this article shall be provided for all the co-owners of such property. If the real estate property is rented or the other right of use is applicable, the information specified in clause 1 of part one of this article shall be provided about the owner of such property;

3) valuable movable property the value of which exceeds 50 minimum wages established as of January 1 of the reporting year and which belongs to the declarant or members of its family on the right of private ownership, including joint ownership, or is in its possession or use regardless of the form of the transaction by which such right was acquired. Such data includes:

a) information on the type of property, characteristics of the property, the date of obtaining the property into the ownership, possession or use, value of the property on the date when it came into ownership, possession or use;

b) information on the vehicles and other self-propelled machines and mechanisms shall also include data on their make and model, year of manufacture, the identification number, if any. Information on vehicles and other self-propelled machines and mechanisms should be reported regardless of their value;

c) in the case if movable property is in the joint ownership the information required in clause 1 of part 1 of this article shall be provided for all the co-owners of such property. If movable property is in the

possession or use, the information required in clause 1 of part 1 of this article shall be provided for the owners of such property;

4) securities, including stocks, bonds, checks, certificates, promissory notes belonging to the declarant or members of its family, including the information about the type of the security, its issuer, the date of obtaining ownership of securities, quantity and par value of the securities. If the securities are transferred to another person for management, the information required in clause 1 of part 1 of this article shall be provided on that person as well;

5) other equity rights that belong to the declarant or its family members, with indication of the name of each business entity, its organizational and legal form, code of the Unified State Register of Enterprises and Organizations of Ukraine, the share in the authorized (share) capital of the company, enterprise, organization, in monetary and percentage terms;

6) intangible assets owned by the declarant or its family members, including intellectual property objects that can have value in monetary terms. Information on intangible assets include data on the type and characteristics of such assets, the value of assets at the time of obtaining them into ownership, and the date when the right to them appeared;

7) received (accrued) income, including income in the form of salaries (monetary allowance) obtained at the main place of work, and concurrently for other work, honoraria, dividends, interest, royalties, insurance payments, charitable aid, pension, income from sale of securities and equity rights, gifts and other income.

Such information includes data on the type of income, source of income and its size. Information about gifts and other income not defined in paragraph 1 of this clause, shall be indicated only if the value of the gift or size of income exceeds 50% of the minimum wage established on the date of receipt of gift. . The declaration does not include information about the gifts received in cases described in clauses 1, 2 of part two of article 23 of this Law;

8) monetary assets, including cash, funds in bank accounts, contributions to credit unions and other non-bank financial institutions, funds lent to third parties, as well as assets in the form of precious (bank) metals. Information on monetary assets includes information on the type, size and currency of the asset, as well as the name and code of the Unified State Register of Enterprises and Organizations of Ukraine of the institution where respective accounts were opened or to which respective contributions were made. Funds placed on one bank account, contribution to credit unions and other non-bank financial institutions as well as asset in the form of precious (bank) metals, cash, funds lent to third parties, the value of which does not exceed 50 minimum wages set as of January 1 of the reporting year, are not subject to declaring.

9) financial obligations, including loans received, accommodations, leasing obligations, the size of funds paid towards the principal amount of the loan (credit) sum and interest on the loan (credit), obligations under insurance contracts and non-state pension provision contracts, money lend to others. Information on financial obligations include data on the type of obligation, its size, currency of obligation, details about the person in whose favor such obligations arose in accordance with clause 1 of part one of this Article, and the date when the obligation appeared. Such information is provided only if the value of the obligation exceeds 10 monthly subsistence minimums established for able-bodied person as of January 1 of the reporting year. If the value of the obligation does not exceed 50 minimum wages established as of January 1 of the reporting year, only the overall value of such financial obligation is indicated.

If real estate or movable property constitute the subject matter of the transaction to ensure the performance of the obligation, the declaration shall indicate the type of property, its location, price and information about the owner of the property, in accordance with clause 1 of this article. If guarantee is the means of ensuring the received obligation, the declaration must indicate information about the guarantor that is specified in clause 1 of part 1 of this article;

10) expenditures and all transactions made within the reporting period, based on which the declarant obtains or terminates the right of ownership, possession or use, including joint ownership, of real estate or movable property, intangible and other assets, as well and of financial obligations referred to in clauses 2-9 of this article.

Such information is indicated only if the size of the respective expenditure exceeds 50 minimum wages established as of January 1 of the reporting year . In addition, such information includes data on the type of transaction, its subject matter and information about the name of the counterparty;

11) position or job, that is being or was performed concurrently: data on position or job (paid or not) that is performed under the agreement (contract), name of the legal entity or individual for whom the person is or was employed concurrently with indication of the code of the Unified State Register of Legal Entities and Individual Entrepreneurs, or last name, first name and patronymic of an individual with indication of her registration number of the taxpayer registration card;

12) participation of the declarant in management, revisionary or supervisory bodies of public associations, charities, self-regulatory or self-governing professional associations, membership in such associations (organizations) with indication of the names of the respective associations (organizations) and their code of the Unified State Register of Legal Entities and Individual Entrepreneurs.

2. The information referred to in part one of this article shall be provided regardless of whether the declarant is in Ukraine or abroad.

3. Information required by clause 10 of part one of this article is not indicated in the declarations of persons who aspire to hold positions specified in clause 1 and subclause "a" of clause 2 of part one of article 3 of this Law.

4. Income and expenditures of the declarants shall be indicated in the currency of Ukraine.

The cost of property, property rights, assets and other objects of declaration referred to in part one of this article shall be indicated in the currency of Ukraine at the time acquisition of their ownership or last monetary valuation.

The cost of property, property rights, assets and other objects of declaration which are in possession of the subject of the declaring shall be indicated in case it is known to the subject of the declaring or had to become known to him/her in result of the commission of the relevant transaction.

5. Income/expenditures received/made in foreign currency, for the purposes of indication in the declaration are calculated in the national currency of Ukraine based on currency (exchange) rate of the National Bank of Ukraine effective for the date of receipt of income/making expenditures. As regards income/expenditures received/made abroad, the state where they were received/made is indicated.

6. In case of refusal of a family member of a subject of declaring to provide any information or its part for inserting in the declaration, subject of declaring shall indicate this in the declaration indicating all known to him/her information about such family member stipulated by paragraphs 1-12 of part one of this Article.

Article 47. Accounting and disclosure of declarations

1. Submitted declarations are included to the Unified State Register of Declarations of Persons Authorized to Perform the Functions of the State or Local Self-government that is formed and maintained by the National Agency.

The National Agency provides open round-the-clock access to the Unified State Register of Declarations of Persons Authorized to Perform the Functions of the State or Local Self-government at the official web-site of the National Agency.

Access to the Unified State Register of Declarations of persons authorized to perform the functions of state or local self-government at the official web site of the National Agency is granted through the ability to view, copy and print the information, as well as a set of data (electronic record), organized in a format that allows its automatic processing by electronic means for further reuse.

Information in the declaration about the registration number of the taxpayer registration card or series and number of Ukrainian passports, address of residence, date of birth of natural persons regarding whom information is contained in the declaration, location of objects that are listed in the declaration, constitute information with restricted access and are not available in the open access.

2 Information about the person in the Unified State Register of Declarations of persons authorized to perform the functions of state or local self-government shall be stored all the time during which individual performs functions of the state or local self-government and for five years after the termination of performing such functions, except for the last declaration filed by a person which is stored for a lifetime.

Article 48. Control and verification of declarations

1. The National Agency conducts the following types of control regarding declarations filed by the declarants:

- 1) control with respect to timeliness of filing;
- 2) control with respect to the accuracy and completeness;
- 3) logical and arithmetic control.

2. The National Agency conducts a complete examination of declarations in accordance with this Law.

3. Procedure for conducting controls provided for by this article, as well as complete examinations of declarations are determined by the National Agency.

Article 49. Verification of timeliness of declaration filing

1 Control for timely filing is made within fifteen working days from the date on which such declaration must be submitted.

2. State authorities, authorities of the Autonomous Republic of Crimea, local self-government, as well as legal entities of public law shall within seven working days inform the National Agency about the

termination by declaration subjects who work for them of activities related to the public function or local government.

3 If in the result of control it is found that the subject of declaring did not submit a declaration, the National Agency shall notify in written such subject of declaring of that fact, and the subject shall submit declaration within ten days upon receipt of such notification in the manner specified in the Part One of Article 45 of this Law.

At the same time the National Agency shall notify in written about the fact of failure to file the declaration to the head of state authorities, authorities of the Autonomous Republic of Crimea, its staff, local self-government, legal entities of public law, where the relevant subject of declaring is employed and specially authorized subjects in the area of countering corruption .

Article 50. Complete examination of declarations

1. Complete examination of declarations shall be carried out within ninety days from the date of filing of declarations and is meant to ascertain the reliability of the declared data, accuracy of evaluation of the declared assets, examination for the presence of the conflict of interests and signs of illicit enrichment.

Declarations of officials that have responsible and highly responsible status, of declarants who hold positions associated with high levels of corruption risks, the list of which is approved by the National Agency, are subject to mandatory complete examination.

Declarations filed by other declarants in case of discrepancies discovered in result of arithmetical and logical control shall also be a subject to complete examination.

National Agency conducts complete examination of a declaration, as well as independently conduct a complete examination of information to be indicated in the declaration regarding family members of the subject of declaring in cases stipulated by part six of Article 46 of this Law.

2. When results of the complete examination of the declaration show false information included in the declaration, the National Agency shall notify in writing the head of the relevant public authority, the authority of the Autonomous Republic of Crimea, its office, local self-government agency, public legal entity, where the respective declarant works, and other specially authorized entities in the field of combating corruption in the manner provided by parts two and three of article 15 of this Law.

Note. When speaking about official persons having responsible and highly responsible status, this article refers to people whose positions are listed in part one of article 9 of the Law of Ukraine "On State Service", or assigned in accordance with article 25 of the said Law and by the Part One of the Article 14 of the Law of Ukraine "On Service at Local Self-Government" to categories 1-3, as well as judges, prosecutors and investigators, directors, deputy directors of state authorities which jurisdiction covers all the territory of Ukraine, their staff and independent structural subdivisions, heads and deputy heads of state authorities, authorities of the Autonomous Republic of Crimea which jurisdiction covers the territory of one or more regions, the Autonomous Republic of Crimea, Kyiv and Sevastopol, heads of state authorities of the Autonomous Republic of Crimea, which jurisdiction covers the territory of one or more areas, of the city of republican significance in the Autonomous Republic of Crimea or regional significance, the district in the city, region-level towns, military officials who are senior officers.

Article 51. Monitoring lifestyle of declarants.

1. The National Agency selectively monitors lifestyles of declarants in order to establish correspondence between their level of living and property and income received by them and their family members according to the declaration of a person authorized to perform the functions of the state or local self-government, that is filed in accordance with this Law.

2. Lifestyle monitoring of the declaring subject is performed by the National Agency on the basis of information received from individuals and legal entities, as well as from the media and other open sources of information, which contains information about the discrepancy between the standard of living of the declaring subjects and their declared property and income.

3. Procedure for monitoring lifestyles of the declarants is determined by the National Agency.

Lifestyle monitoring shall be carried out in compliance with the legislation on personal data protection and should not involve undue abuse of the right to privacy and family life of a person.

4. Established inconsistency of the level of living and property and income declared by the declarant serves as a ground for complete examination of declaration. In case the National Agency finds out discrepancies in living standards it shall give opportunity to the declaring subject within ten working days to provide a written explanation about this fact. In the case lifestyle monitoring reveals characteristics of a corruption or related to corruption offense, the National Agency shall inform the specially authorized subjects in the area of countering corruption about those.

Article 52. Additional measures of financial control

1. When a declarant or its family member open a foreign currency account in a non-resident bank the respective declarant is obliged to notify in writing within ten days the National Agency according to the procedure it established, indicating the account number and location of the non-resident bank.

2. If there are significant change in the declarant's material status, namely - receipt of income, purchase of property for the sum exceeding the 50 minimum wages established as of January 1 of the respective year, the mentioned declarant within ten days from the receipt of income or property purchase is obliged to notify about it in writing the National Agency. This information is brought to the Unified State Register of Declarations of persons authorized to perform the functions of the state or local self-government and published on the official website of the National Agency.

3. Procedure for informing the National Agency on opening of a foreign currency account in non-resident banks, as well as on significant changes in material status is determined by the National Agency.

SECTION VIII

PROTECTION OF WHISTLEBLOWERS

Article 53. State protection of persons assisting in prevention and combating corruption

1. A person providing assistance in preventing and combating corruption (a whistleblower) – is a person who, having reasonable belief that the information is accurate, reports violations of the requirements of this Law by another person.

2. Persons providing assistance in preventing and combating corruption, are under state protection. When there is a threat of life, dwelling, health and property of persons assisting in preventing and combating corruption, or of their close persons in connection with the made notification about violation of requirements of this Law, law enforcement agencies may apply to them legal, organizational and technical and other measures, aimed to protect against illegal attempts and envisaged by the Law of Ukraine "On Ensuring the Safety of Persons Involved in Criminal Proceedings".

3. A person or its family member shall not be discharged or forced to resign, brought to disciplinary liability or subjected to other negative measures of impact by a supervisor or employer (reassignment, certification, changing working conditions denial of appointment to a higher position, wage cutting, etc.) or to the threat of such measures of impact in connection with notification the person makes about violation of the requirements of this Law by other person.

Information about the whistleblower may be disclosed only upon his/her consent except for cases stipulated by law.

4. The National Agency, as well as other state authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities provide conditions for their employees to notify about violations of requirements of this Law by other persons, in particular through the phone lines, official websites, electronic means of communication.

5. Reporting about violation of requirements of this Law may be done by an employee of a respective agency without attribution (anonymous).

Requirements for anonymous reports on violations of requirements of this Law and proceedings of their consideration are determined by this Law.

Anonymous report on violation of the requirements of this Law shall be considered if the information provided in the report is about a specific person, contains the actual data that can be verified.

Anonymous reports about violations of requirements of this Law are subject for review within fifteen days from the date of their receipt. If it is impossible to verify the information contained in the report within the said term, head of the relevant agency or his deputy shall prolong term for report's review up to thirty days from the date of its receipt.

If the information contained in the report on violation of the requirements of this Law is confirmed, the head of the relevant agency takes measures to terminate the revealed violation, eliminate its consequences and bring the offenders to disciplinary liability and, in case of detection of a criminal or administrative offense, the head shall also inform specially authorized subjects in the field of anti-corruption.

6. The National Agency constantly monitors implementation of the law regarding protection of denunciators, conducts an annual review and revision of state policy in this area.

7. Officials of state authorities, authorities of the Autonomous Republic of Crimea, officials of local self-government authorities, legal entities of public law, their structural subdivisions in case of a corruption or related to corruption offense or receiving information on the commission of such offense by employees of relevant state authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities, legal entities of public law, their structural subdivisions are required, within their powers to take measures to stop such violations and immediately report them to specially authorized subject in the field of anti-corruption.

SECTION IX

OTHER MECHANISMS FOR PREVENTING AND COMBATING CORRUPTION

Article 54. Prohibition for state authorities and local self-government authorities to receive benefits, services and property

1. State authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities are prohibited to receive free of charge money or other assets, intangible assets, property advantages, benefits or services, except as provided by applicable laws or international treaties of Ukraine, from individuals and legal entities.

2. Illegal receipt from individuals, legal entities free of charge money or other property, intangible assets, property advantages, benefits or services in presence of appropriate grounds entails liability officials of state authorities, authorities of the Autonomous Republic of Crimea, local self-government.

Article 55. Anticorruption expertise

1. Anti-corruption expertise is carried out in order to identify contributing factors or those that may contribute to the commission of corruption offenses in the effective legal acts and drafts of legal acts, and in order to develop recommendations for their elimination.

2. Mandatory anti-corruption expertise is carried out by the Ministry of Justice of Ukraine, except for anti-corruption expertise of draft legal acts submitted for consideration to the Verkhovna Rada of Ukraine by the People's Deputies of Ukraine, which is carried out by the Committee of the Verkhovna Rada of Ukraine, the scope of which includes the question of fighting against corruption.

The Ministry of Justice determines the procedure and methodology for conducting their anti-corruption expertise, as well as the procedure for announcement of its results.

3. All drafts of legal acts submitted for consideration to the Cabinet of Ministers of Ukraine shall be subject to mandatory anti-corruption expertise, which shall be carried out by the Ministry of Justice.

4. The Ministry of Justice carries out anti-corruption expertise of legal acts in accordance with its approved annual plan. The said expertise is carried out according to the laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine in the following areas:

- 1) rights and freedoms of humans and citizens;
- 2) powers of state authorities and local self-government authorities, persons authorized to perform the functions of the state or local self-government;
- 3) provision of administrative services;
- 4) allocation and expenditure of state budget and local budgets;
- 5) tenders' procedures.

Anti-corruption expertise of legal acts of state authorities, whose legal acts are subject to state registration is carried out during such registration.

5. The National Agency may, at their own initiative, carry out anti-corruption expertise of draft legal acts submitted for consideration to the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine, following the procedures it established.

The Cabinet of Ministers of Ukraine forwards to the National Agency all relevant draft legal acts for conducting anti-corruption expertise.

The National Agency shall inform the respective Committee of the Verkhovna Rada of Ukraine or the Cabinet of Ministers of Ukraine about carrying out anti-corruption expertise of the respective draft legal act, which shall serve as basis for suspension of its consideration or approval, but for no longer than 10 days.

The Public Council of the National Agency is engaged to participate in its anti-corruption expertise.

6. Results of the anti-corruption expertise of effective legal acts in the cases when factors that contribute or may contribute to corruption offenses are detected, shall be subject to mandatory disclosure at the official website or a relevant authority which performed the appropriate expertise.

7. A public anti-corruption expertise of existing legal acts and draft legal acts may be carried out upon the initiative of individuals, public associations and legal entities.

A public anti-corruption expertise of legal acts, draft legal acts, as well as the disclosure of its results are carried out by at the expense of respective individuals, public associations, legal entities or other sources not prohibited by the legislation.

8. Results of anti-corruption expertise including public one are subject to compulsory consideration by subject of publication (approval) of the appropriate act, its successor or authority to which relevant legislative powers in this area were transferred.

9. The National Agency holds periodic reviews of legislation for the presence of corruptogenic standards and submits to the Ministry of Justice proposals to include them into the plan of anti-corruption expertise

provided for by part four of this article. The National Agency may engage public associations, scientific institutions, also on the terms of state order on the basis of open competition, to participate in the said monitoring.

Article 57. Special inspection

1. A special inspection (also in regard to information submitted impersonally) is conducted regarding persons running for positions that lead to having responsible or particularly responsible status and positions with high corruption risk list of which shall be approved by the National Agency.

Special inspection shall not be conducted in regard to:

1) candidates for the post of the President, candidates for People's Deputies of Ukraine, candidates for deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, local councils and for positions of village, settlement and city heads, and regarding the information submitted in person;

2) citizens who are drafted to the military service upon conscription of officers and upon conscription to military service during mobilization, for the special period, or involved in the execution of their duties in accordance with staffing tables of a wartime;

3) applicants who hold positions in state authorities, authorities of the Autonomous Republic of Crimea, local self-government and appointed as a result of transfer or promotion to positions within the same authority or appointed as a result of transfer to positions in other state authorities, authorities of the Autonomous Republic of Crimea, local self-government;

4) applicants who hold positions in state authorities, authorities of the Autonomous Republic of Crimea, local self-government which are terminated and therefore such people are appointed as a result of transfer to other authorities which inherit powers and functions of authorities being terminated;

5) persons when considering their inclusion in the lists of people's assessors and jurors.

If the appointment, election or approval for offices is performed by local council, a special inspection is conducted in the manner stipulated by this Law in regard to appointed, selected or approved for the relevant positions persons.

2. The head (deputy head) of the state authority, authority of the Autonomous Republic of Crimea, local self-government authority or their staff, where the person is running for a position, is responsible for organizing special examination, except for instances determined by law. Head of the relevant state authority, authority of the Autonomous Republic of Crimea, local self-government or their staff may determine the unit responsible for conducting a special inspection.

Peculiarities of conducting a special inspection regarding candidates for positions of judges are stipulated by the Law of Ukraine "On the Judicial System and Status of Judges".

In regard to candidates for other positions who are appointed (elected) by the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine, the conduct of special examination is imposed, respectively, to the Head of the Presidential Administration of Ukraine, Head of the Verkhovna Rada of Ukraine Staff, Minister of the Cabinet of Ministers of Ukraine or their deputies.

Organization of a special inspection in the newly created state authorities is assigned to the central executive authority that implements the state policy in the civil service until the establishment at such newly formed authority of unit responsible for this.

3. Information about a person running for a position referred to in the part one of this article, is subject to special inspection, namely regarding:

1) existence of the court decision which came into force and according to which such person was held criminally liable, including corruption offenses, ;

2) existence of the court decision which came into force and according to which such person was held administratively liable for corruption or related to corruption offenses;

3) the reliability of the information specified in the declaration of a person authorized to perform the functions of the state or local self-government;

4) person's possession of equity rights;

5) health condition (specifically regarding person's registration with psychiatric or drug rehabilitation institutions of health care), education, the presence of an academic degree, or an academic rank.

6) person's relation to the military duty;

7) whether an individual has access to state secrets, if such access is required under the qualification requirements for a position;

8) application to a person of a ban to hold the relevant position envisioned by provisions of the Law of Ukraine "On Lustration".

The candidate for a transfer to a position at another state authority, authority of the Autonomous Republic of Crimea, local self-government who already undergone special inspection before shall inform the appropriate authority which in the prescribed manner requests information on its results.

Note. Positions which are deemed responsible or particularly responsible are positions envisioned by Part One of Article 9 of the Law of Ukraine "On civil service" positions referred in accordance with Article 25 of the said Law and the Part One of the Article 14 of the Law of Ukraine "On Service in Local Government" to the first - third categories, as well as positions of judges, prosecutors and investigators, heads and deputy heads of state authorities whose jurisdiction extends to the entire territory of Ukraine, their staffs and independent structural units, heads and deputy heads of state authorities, authorities of the Autonomous Republic of Crimea, jurisdiction in the territory of one or more regions, the Autonomous Republic of Crimea, Kyiv and Sevastopol, heads of state agencies, authorities of the Autonomous Republic of Crimea, jurisdiction in the territory of one or more areas of the city in the Autonomous Republic of Crimea or regional significance, district in the city, region-level towns and positions to be displaced by higher military officers.

Article 57. Procedure of conducting a special inspection

1. Special inspection shall be conducted with the written consent of the person who runs for a position within a period not exceeding twenty-five calendar days from the date when consent for the special inspection is granted.

In the person does not grant such consent the question of her appointment to the position is not considered.

Procedure of conducting a special inspection and form of a for a special inspection shall be approved by the Cabinet of Ministers of Ukraine.

2. For carrying out a special inspection the person running for a position, submits to the respective authority:

- 1) a written consent to carrying out special inspection;
- 2) an autobiography;
- 3) a copy of citizen of Ukraine passport;
- 4) copies of documents on education, academic ranks and academic degrees;
- 5) medical certificate on health condition following the form approved by the Ministry of Healthcare of Ukraine regarding person's registration with psychiatric or drug rehabilitation institutions of health care;
- 6) a copy of a military service card (for military persons or persons liable for call-up);
- 7) a certificate of access to the state secret (if available).

Person running for a position also submits to the National Agency in the manner specified by part one of article 45 of this Law, the declaration of a person authorized to perform the functions of the state or local self-government.

Persons mentioned in the seventh paragraph of Article 56 of this Law shall submit documents stipulated by this part of the article for a special inspection within three business days after the relevant election or approval.

3. After obtaining the written consent of a candidates for the position to conduct a special inspection, an authority where such person seeks the position not later than the next day shall send to the appropriate state authorities in charge of conducting a special inspection of the information provided in the part three of article 56, or to their territorial bodies (in case any) the request for inspection of information about a person who is a candidate for the respective position in accordance with a form approved by the Cabinet of Ministers of Ukraine.

Request shall be signed by the head of the body, the position in which the person seeks, and in his absence - a person acting as the head or one of his deputies according to the distribution of responsibilities.

Copies of the documents mentioned in part two of this article shall be attached to the request.

Regarding candidates for positions (other than a judges positions), appointment (election) to which is performed by the President of Ukraine, the Verkhovna Rada of Ukraine or the Cabinet of Ministers of Ukraine, such request shall be sent to the relevant government agencies (their territorial bodies), respectively, by the Head of the Presidential Administration of Ukraine, Head of Verkhovna Rada of Ukraine Staff, the Minister of the Cabinet of Ministers of Ukraine (their deputies or other official designated by them) through a central executive body that implements the state policy in the field of civil service.

4. Special inspection is performed by:

1) the Ministry of Internal Affairs of Ukraine and the State Judicial Administration of Ukraine – regarding the information about bringing a person to criminal liability, criminal record, its removal, repayment;

2) Ministry of Justice of Ukraine and the National Agency on Securities and Stock Market – regarding the presence of individual corporate rights belonging to a person;

3) National Agency – regarding the presence in the Unified State Register of persons who have committed corruption and corruption related offenses information about the candidate; as well as the truthfulness of information indicated by the person in the declaration of the person authorized to perform the functions of the state or local self-government for the past year;

4) central executive body that implements the state policy in the field of health care, the appropriate executive body of the Autonomous Republic of Crimea, the structural unit of the regional, Kyiv and Sevastopol city state administration (regarding person's registration with psychiatric or drug rehabilitation institutions of health care) ;

5) central executive body that implements the state policy in the field of education, the relevant executive authority of the Autonomous Republic of Crimea, the structural unit of regional, Kyiv and Sevastopol city state administration, the central body of executive power to the educational institution is subordinated, the head of the educational institution – regarding the education , the presence of the candidate's academic degree, academic rank;

6) The Security Service of Ukraine - regarding the presence of person's access to state secret, as well as the relationship of a person to military duty (in terms of personal and quality accounting of military bound persons of the Security Service of Ukraine);

7) Ministry of Defense of Ukraine, Military Commissars of the Autonomous Republic of Crimea, regions, cities of Kyiv and Sevastopol – regarding person's relation to military duty (except for quality accounting of military bound persons of the Security Service of Ukraine).

Other central executive authorities or specially authorized subjects in the area of countering corruption may be involved in conducting special inspection in order to verify information about the person referred to in this Article or the authenticity of documents provided for in this Article.

Article 58. The results of a special inspection

1 The results of the special inspection signed by the head of the authority which carried out the inspection and in his absence - a person who performs his duties, or deputy head of the body according to the distribution of functional responsibilities, shall be submitted to the authority that sent the appropriate request within seven days upon the receipt of the request.

During a special inspection, authorities (departments) conducting it can interact and exchange between themselves information regarding individual, particularly regarding individuals who apply for positions holding which constitutes a state secret. Such interaction and exchange carried out according to the procedure established by the Cabinet of Ministers of Ukraine.

2 The decision on appointment (election) or refusal of appointment (election) for position connected with performing the functions of the state or local self-government shall be taken after a special inspection.

In the case the results of the special inspection establish facts of discrepancies present in the autobiography and/or declaration of a person authorized to perform the functions of the state or local self-government, for the previous year, the official (agency) that organizes special inspection shall provide the candidate for the position with the opportunity to provide a written explanation of such fact and/or to fix this discrepancy within five business days.

In the case the results of the special inspection establish information about the applicant for the position, that does not meet the requirements established by the legislation for the position, the official (agency) that is responsible for the appointment (election) for this position, shall refuse applicant the appointment (election) to the position.

In the case the results of the special inspection and of review of the above explanations by candidate for the position establish facts of submission by him of forged documents or false information the officer (agency) that is responsible for the appointment (election) to this post, shall report to the law enforcement agencies within three business days about the established facts and shall refuse the appointment (election) to the position to the applicant.

The person regarding whom the results of the special inspection found circumstances which constitute grounds for denial of his/her appointment (election) shall be deemed as the one who have not passed special inspection.

The powers of the person referred to in paragraph eight of Part One of the Article 56 of this Law shall be early terminated without termination of the council deputy powers and relevant person shall be

dismissed from the relevant position without decision by relevant council if he/she failed to pass special inspection or did not provide consent for a special inspection within the term stipulated by this Law.

Decision refusing the appointment (election) for the position taken in result of a special inspection may be appealed in court.

3. The agency, for position at which the person is running, on the basis of the information received is preparing a certificate on the results of a special inspection form of which is approved by the Cabinet of Ministers of Ukraine. As for the candidates for positions (other than a judges positions) appointment (election) to which is carried out by the President of Ukraine, the Verkhovna Rada of Ukraine or the Cabinet of Ministers of Ukraine, such certificate shall be prepared by the relevant structural unit of the Presidential Administration of Ukraine, the Verkhovna Rada of Ukraine Staff or the Secretariat of the Cabinet of Ministers of Ukraine.

Persons in respect of which a special inspection was carried out, have the right to familiarize themselves with the certificate of results of the special inspection and in the case of disagreeing with the results of the inspection can submit to the respective state agency, local self-government their comments in writing. These comments shall be reviewed within seven days upon the day of their receipt.

Information on the results of a special inspection and documents regarding carrying it out are confidential, unless they contain information constituting a state secret. The documents which were filed for a special inspection by a person who sought to occupy the position, in case of his/her appointment (election) to such position shall be sent for storage to the personal file and in case of refusal of appointment (election) shall be returned to such person on receipt, unless the falsity of these documents was established and other cases provided by law.

Certificate on special inspection results shall be attached to the documents submitted by the person or to the personal file, if the decision on her appointment (election) to a position was taken.

Article 59. Uniform State Register of Perpetrators of Corruption or Related to Corruption Offenses.

1. Information about persons brought to criminal, administrative, disciplinary or civil liability for corruption or related to corruption offenses, as well as about entities which were imposed to measures of criminal law in connection with the commission of the corruption offense, shall be inserted into the Unified State Register of persons who have committed corruption and related to corruption offenses which is established and kept by the National Agency. Information concerning persons who are members of the personnel of the agencies that conduct operative and investigative or intelligence-gathering or counterintelligence activities, whose affiliation to the above authorities constitute a state secret, and who were brought to liability for commission of corruption offenses shall be included to the restricted section of the Unified State Register of Perpetrators of Corruption or Related to Corruption Offenses.

Regulations on the Unified State Register of Perpetrators of Corruption or Related to Corruption Offenses, procedure of its establishment and maintenance are approved by the National Agency.

Entry of information about individuals brought to liability for corruption or related to corruption offenses, as well as entry of information about legal entities subject to the measures of criminal and legal nature in connection with the commission of corruption or related to corruption offenses shall be made in the Unified State Register of Perpetrators of Corruption Offenses, within three business days from the from the date of receipt by the National Agency from the State Judicial Administration of Ukraine of an electronic copy of the court decision that entered into force, from the Unified State Register of Judgments.

Information about the imposition of a disciplinary sanction for corruption or related to corruption offenses shall be entered into the Unified State Register of persons who have committed corruption and corruption related offenses within three working days upon receipt by the National Agency, sent from the personnel department of the state authority, authority of the Autonomous Republic of Crimea, authority of the local self-government, as well as enterprise, institution and organization, duly certified paper copy of the order imposing disciplinary action,

2. Information from the Unified State Register of Perpetrators of Corruption or Related to Corruption Offenses, about entries regarding the person to the said Register, or about absence of information regarding this person is provided:

at the request of state authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities for the purpose of conducting a special inspection of information about persons running for positions connected with the functions of state or local self-government;

at the request of law enforcement agencies if it is necessary to obtain such information in the course of criminal or administrative proceedings or at prosecutor's request made in the course of his supervision of compliance with and enforcement of laws;

in the case of application of an individual (or an authorized person by the individual) or an authorized representative of a legal entity requesting information about themselves or the entity represented.

4. The National Agency ensures publication on its official web site of information from the Unified State Register of Perpetrators of Corruption or Related to Corruption Offenses, within three business days after entries to the Register are made.

The below information about an individual that was prosecuted for corruption or related to corruption offenses is available for free round-the-clock access:

- 1) last name, first name, patronymic;
- 2) place of work, position at the time of commission of a corruption or related to corruption offense;
- 3) legal components of a corruption or related to corruption offense;
- 4) punishment (penalty);
- 5) way of committing a disciplinary corruption offense;
- 6) type of disciplinary sanction.

The below information about a legal entity that was subject to measures of criminal and legal nature is available for free round-the-clock access:

- 1) name;
- 2) legal address, code in the Unified State Register of Legal Entities and Individual Entrepreneurs;
- 3) legal components of a corruption offense, that lead to application of the measures of criminal and legal nature;
- 4) type of measures of criminal and legal nature that were applied.

This information is not regarded as confidential about a person and cannot be of restricted access.

Article 60. Requirements for transparency and access information

1. Persons specified in paragraphs 1,2 of the part one of article 3 of this Law, as well as persons permanently or temporarily holding positions related to administrative and regulatory or administrative and economic duties or specifically authorized to perform such duties in legal entities of private law, regardless of the legal and organizational form, are prohibited:

- 1) to refuse to provide information to individuals or legal entities in the information, who have the right to obtain such information according to the legislation;
- 2) to provide in an untimely manner, to provide misleading or incomplete information that shall be provided in accordance with the law.

2. Information that cannot be of restricted access:

1) information about sizes, types of charitable and other assistance provided to individuals and legal entities or obtained from them by the persons referred to in clause 1 of part 1 of article 3 of this Law, or state authorities, local self-government authorities;

2) information about sizes, types of wages, financial aid and any other payments from the budget to the persons specified in clause 1 of part 1 of article 3 of this Law, as well as received by such persons in the course of transactions that are subject to compulsory state registration, as well as gifts stipulated by this Law .

3) transfer to due persons of management of enterprises and corporate rights which shall be performed in the manner stipulated by this Law;

4) conflict of interests of persons referred to in items 1 and 2 of Part One of the Article 3 of this Law and measures to resolve it.

SECTION X

CORRUPTION PREVENTION IN THE ACTIVITIES OF LEGAL ENTITIES

Article 61. General provisions of corruption prevention within activities of a legal entity

1. Legal entities ensure development and implementation of measures that are necessary and reasonable for preventing and combating corruption within activities of a legal entity.

2. Head, founders (participants) of a legal entity provide regular assessment of corruption risks of its activities and implement appropriate anti-corruption measures. Independent experts may be engaged to identify and eliminate corruption risks within activities of a legal entity - in particular, for conducting audits.

3. Officials and officers of legal entities, other persons performing work and having labor relations with legal persons:

- 1) not commit and not engage in commission of corruption offenses related to the activities of the legal entity;

2) refrain from conduct, which may be considered as willingness to commit a corruption offense related to the activities of the legal entity;

3) instantly inform the officer responsible for the prevention of corruption within activities of the legal entity, head of the legal entity or founders (participants) of the legal entity about instances of incitement to commit a corruption offense related to the activities of a legal entity;

4) instantly inform the officer responsible for the prevention of corruption within activities of the legal entity, head of the legal entity or founders (participants) of the legal entity about instances when other employees of the legal entity or other persons commit corruption or related corruption offenses.

5) instantly inform the officer responsible for the prevention of corruption within activities of the legal entity, head of the legal entity or founders (participants) of the legal entity about occurrence of a real, potential conflict of interests.

Article 62. Anti-corruption program of a legal entity

1. Anti-corruption program of a legal entity is a set of rules, standards and procedures meant to identify, combat and prevent corruption within activities of the legal entity.

2. Anti-corruption program is obligatory for approval by the heads of:

1) state, municipal enterprises, business partnerships, the state or municipal share of which exceeds 50 percent, average number of employees for the accounting (fiscal) year exceeds fifty, and gross revenue from sale of goods (works, services) during this period is more than seventy million hryvnas.

2) legal entities that are participants of pre-qualification, participants of the procurement procedure in accordance with the Law of Ukraine "On Public Procurement".

3. Anti-corruption program is approved after its discussion with employees of the legal entity. Text of anti-corruption program shall be in constant open access for employees of the legal entity.

4. Provisions of the anti-corruption program are included in employment contracts, internal regulations of the legal entity, and may also be included in the contracts that are concluded by the legal entity.

5. The position of a Commissioner of Anti-Corruption Program (hereinafter - the Commissioner) who will implement the anti-corruption program and whose legal status is determined by this Law, shall be established at legal entities mentioned in part 2 of this Article.

6. Anti-corruption program of legal entities referred to in part 2 of this Article shall be approved by the National Agency.

Article 64. Requirements for the anti-corruption program of a legal entity

1. The anti-corruption program of legal entities referred to in part 2 of Article 62 of this Law, shall contain:

1) scope of its application and range of individuals that are subject to its provisions;

2) an exhaustive list and description of anti-corruption measures, standards, procedures and their execution (application) manner, in particular the procedure for periodic assessments of corruption risks within activities of a legal entity;

3) professional ethics rules of employees of a legal entity;

4) rights and obligations of employees and founders (participants) of the legal entity in connection with preventing and combating corruption in the legal entity;

5) rights and obligations of the Commissioner as the official responsible for corruption prevention and of his subordinate employees (if any);

6) procedure for regular reporting by the Commissioner to the founders (participants) of the legal entity;

7) procedure for proper supervision, control and monitoring of compliance with anti-corruption program within activities of the legal entity, as well as evaluating its results, implementation of planned activities;

8) privacy terms and conditions applicable when the Commissioner is informed by employees about the facts when they are incited to commit a corruption or related to corruption offense or about corruption offenses committed by other employees or persons;

9) procedures for the protection of employees who have provided information on corruption or related to corruption offenses;

10) procedure for informing the Commissioner by employees about occurrence of a real, potential conflict of interests, as well as the procedure for settling detected conflicts of interests;

11) procedure for individual counseling by the Commissioner of employees of the legal entity regarding the application of anti-corruption standards and procedures;

12) procedure for periodic trainings of employees in the field of preventing and combating corruption;

13) application of disciplinary actions to employees who violate the provisions of the anti-corruption program;

- 14) procedure for application of measures to respond to the revealed facts of corruption or related to corruption offenses, in particular, informing the authorized state bodies, conducting internal investigations;
- 15) procedure for amending the anti-corruption program.

Article 64. Legal status of the Commissioner

1. The Commissioner is an officer of a legal entity who is appointed by the head of the legal entity or its participants (founders) in accordance with the labor legislation and in the manner prescribed by the approved anti-corruption program.

2. An individual under the age of thirty years, who has completed a degree in economics or law, and who is capable based on professional and moral qualities, professional level, health condition to perform the required duties, may be the Commissioner.

3. A person cannot be appointed to the position of the Commissioner if the person:

1) has previous convictions that are outstanding or unquashed according to procedures established by the law;

2) is found to be legally incompetent or partially competent by the court;

3) was discharged from the positions in state authorities, state authorities of the Autonomous Republic of Crimea, local self-government authorities due to violation of the oath, or in connection with commission of a corruption or related to corruption offense - within three years following the date of such discharge.

Work at positions referred to in paragraph 1, subparagraph a) of paragraph 2 of part 1 of Article 3 of this Law, as well as any other activity that creates an actual or potential conflict of interests is considered to be incompatible with the activities of the Commissioner.

In case circumstances of incompatibility occur, the Commissioner within two days from the date when such circumstances occurred shall notify the head of the legal entity and simultaneously submit letter of resignation.

5. The Commissioner may be early discharged from his position in case of:

1) termination of employment contract at the Commissioner's initiative;

2) termination of employment contract at the initiative of the head of the legal entity or its founders (participants). Person holding the position of the Commissioner in a legal entity referred to in part 2 of Article 63 of this Law may be discharged after the consent of the National Agency is granted;

3) inability to exercise authority due to health issues according to the conclusion of the medical commission, which is created by the decision of specially authorized central executive body implementing the state policy in the field of healthcare;

4) entry into force of the court decision on finding him/her incompetent or limiting his/her civil competence, declaring him/her missing or dead;

5) entry into force of a judgment of conviction against him;

6) death.

6. The Head of the legal entity shall inform the National Agency within two business days about the discharge of the person from the Commissioner's position and provides an immediate submission of a new candidate for this position.

SECTION XI

LIABILITY FOR CORRUPTION OR RELATED TO CORRUPTION OFFENSES AND ELIMINATION OF THEIR CONSEQUENCES

Article 65. Liability for corruption or related to corruption offenses

1. For commission of corruption or related to corruption offenses, persons referred to in part one of article 3 of this Law are subject to criminal, administrative, civil and disciplinary liability as prescribed by law.

In the case of commission of a crime on behalf of and in the interests of the legal entity by an authorized person on its own or in conspiracy with a legal entity in the cases determined by the Criminal Code of Ukraine, measures of criminal and legal nature apply.

Person who committed corruption or related to corruption offense but the court did not apply to such person punishment or imposed penalty in the form of deprivation of the right to occupy a position or engage in activities related to the implementation of the functions of the state or a local self-government or equaled to such activity shall be brought to disciplinary liability in the manner stipulated by law, 3. Official investigation is conducted in accordance with the procedure established by the Cabinet of Ministers of Ukraine in order to identify the causes and conditions that contributed to the commission of a corruption or related to corruption offense or to non-compliance with the requirements of this Law in other way, upon the recommendation of the specially authorized subject in the field of anti-corruption or a by a regulation of the

National Agency upon the decision of the head of the agency, enterprise, institution, organization, for which the person who has committed such an offense works.

4. Restrictions on prohibiting a person who was discharged from the position in connection with the prosecution for a corruption offense, to engage in activities related to the functions of the state, local self-government, or other similar to this activity, take place solely on a reasoned decision of the court, unless otherwise provided by the law.

5 The person who was notified of the suspicion of having committed an offense in the area of service activity shall be subject to suspension from the exercise of powers at his/her position in the manner prescribed by law.

The person against whom the protocol on administrative offense connected with corruption was drawn, unless otherwise provided by the Constitution and laws of Ukraine, may be suspended from official duties by a decision of the head of authority (institution, enterprise, organization) in which he/she is employed until the end of the case investigation in court.

In case proceedings on administrative violations related to corruption were stopped due to the absence of the event or corpus delicti of the administrative offense, average earnings during forced absence associated with removal from office shall be compensated to suspended from official duties person.

Article 66. Compensation of losses and damage to the State as a result of a corruption offense

1. Losses and damage caused to the state as a result of a corruption or related to corruption offense shall be compensated by the person who committed the offense, in the manner prescribed by the law.

Article 67. Unlawful acts and transactions

1. Legal acts, decisions issued (approved) with violation of this Law, shall be annulled by the agency or official authorized to approve or annul relevant acts, decisions, or may be found unlawful in the course of court proceedings at the request of an interested individual, associations of citizens, legal entity, prosecutor, state authority, in particular the National Agency, local self-government authority.

The authority or the official shall send to the National Agency within three working days a copy of the decision about annulment or received for enforcement of the court decision on deeming illegal the relevant acts or decisions.

2. Transaction concluded as a result of violation of this Law may be revoked.

Article 68. Restoration of rights and lawful interests and compensation of losses, damage, caused to individuals and legal entities as a result of a corruption offense

1. Individuals and legal entities whose rights were violated as a result of a corruption or related to corruption offenses and who experienced pain and suffering as well as pecuniary damage, losses, have the right for restoring their rights, compensation of losses, damages in accordance with the law.

2. Losses, damage, caused to an individual or legal entity as a result of unlawful decisions, actions or omissions by the subject carrying out activities to prevent and combat corruption, shall be reimbursed from the State Budget of Ukraine in accordance with the law. The state, Autonomous Republic of Crimea, local self-government authority that compensated losses, damages caused by an unlawful decision, act or omission of the subject carrying out activities to prevent and combat corruption, have the right of recourse (regress) to the person who caused losses, damage, in the amount of paid compensation (except for compensation of payments related to labor relations, compensation for pain and suffering).

Article 69. Confiscation of illegally obtained property

1. Funds and other property obtained in the result of the commission of a corruption offense are subject to confiscation or special confiscation upon the court's decision in accordance with the law.

SECTION XII

INTERNATIONAL COOPERATION

Article 70. International cooperation in preventing and combating corruption

1. Ukraine in accordance with the international treaties it has concluded carries out cooperation in the field of preventing and combating corruption with foreign states, international organizations that conduct activities aimed to prevent and combat corruption.

2. International legal assistance and other forms of international cooperation in cases of corruption offenses are carried out by the competent authorities in accordance with the law and international treaties of Ukraine, approved by the Verkhovna Rada of Ukraine.

Article 71. International treaties of Ukraine in the field of preventing and combating corruption

1. If international treaties of Ukraine, approved by the Verkhovna Rada of Ukraine establish rules other than those provided by the law on preventing and combating corruption, rules of international treaties shall apply.

Article 72. International exchange of information in the field of preventing and combating corruption

1. Competent authorities of Ukraine can provide the relevant foreign authorities with information and get information from them, including that with restricted access, concerning questions of prevention and combating corruption with compliance with the requirements of the legislation and international treaties of Ukraine, approved by the Verkhovna Rada of Ukraine.

2. Provision of information to foreign authorities on issues related to preventing and combating corruption, is only possible if these authorities and the competent authority of Ukraine can establish a regime of accessing the information, which makes disclosures for other purposes impossible or disclosing of it in any way impossible, including by unauthorized access.

Article 73. Measures to return to Ukraine funds and other assets obtained as a result of corruption offenses, and disposition of confiscated funds and other property obtained as a result of corruption offenses

1. Ukraine takes measures to return to Ukraine funds and other assets obtained as a result of corruption offenses, and disposes of these funds and other assets in accordance with the law and international treaties of Ukraine, approved by the Verkhovna Rada of Ukraine.

**Section XIII
FINAL PROVISIONS**

1. This Law shall enter into force on the next day after the day of its publication and shall become effective six months after its entry into force.

2. To declare the following legislative acts as annulled:

1) The Law of Ukraine "On Principles of Prevention and Countering Corruption";

2) Law of Ukraine "On the rules of ethical conduct"

3. Declarations of persons authorized to perform the functions of state or local self-government for the period before January 1, 2015 shall be filed to the National Agency for the Prevention of Corruption to the extent and in the form stipulated by Annex to the Law of Ukraine "On Principles of Prevention and Countering Corruption".

4. Amend the following legislative acts of Ukraine:

...

5. Cabinet of Ministers of Ukraine shall:

1) Within three months from the date of entry into force of this Law ensure adoption of the Regulation on competition for the selection of candidates for the positions of Members of the National Agency and Regulation of the operation of the relevant competition commission.

2) within six months from the date of entry into force of this Law submit to the Verkhovna Rada of Ukraine proposals on bringing the legislation into compliance with this Law;

ensure the adoption of legal acts stipulated by this Law, except those referred to in subitem 1 of this item;

bring its legal acts into compliance with this Law;

ensure bringing into compliance with this Law legal acts of ministries and other central authorities of executive power;

establish a National Agency for the Prevention of Corruption.

6. Before this Law is brought into compliance and other legislative and other legal acts shall apply to the extent not inconsistent with this Law.

2. Sanctions for main corruption criminal offences

Offence (Criminal Code)	Before July 2011	As amended by Law no. 3207-VI (in force since 1 July 2011)	As amended by Law no. 221-VII (in force since 18 May 2013)	As amended by Law no. 1261-VII (in force since 4 June 2014)
Passive bribery of public official – <i>Acceptance of offer/promise</i> (Art. 368)	<i>Not covered</i>	<i>Not covered</i>	- fine (750-1,000 untaxed incomes*), OR - correctional labour (1-2 years).	- fine (1,000-1,500 untaxed incomes), OR - arrest (3-6 months), OR - deprivation of liberty (2-4 years), AND - deprivation of the right to occupy certain positions or engage in certain activities (<3 years) AND - special confiscation.
Passive bribery of public official – <i>Receiving of benefit</i> (Art. 368)	- fine (750-1,500 untaxed incomes), OR - deprivation of liberty (2-5 years), AND - deprivation of the right to occupy certain offices or engage in certain activities (<3 years)	- fine (500-750 untaxed incomes), OR - correctional labour (<1 year), OR - arrest (<6 months), AND - deprivation of the right to occupy certain offices or engage in certain activities (<3 years)	- fine (1,000-1,500 untaxed incomes), OR - arrest (3-6 months), OR - deprivation of liberty (2-4 years), AND - deprivation of the right to occupy certain offices or engage in certain activities (<3 years) AND - special confiscation.	- fine (1,000-1,500 untaxed incomes), OR - arrest (3-6 months), OR - deprivation of liberty (2-4 years), AND - deprivation of the right to occupy certain positions or engage in certain activities (<3 years) AND - special confiscation.
Active bribery of public official – <i>Offer or promise</i> (Art. 369)	<i>Not covered</i>	<i>Only offer covered:</i> - fine (100-250 untaxed incomes), OR - restriction of liberty (<2 years)	- fine (250-500 untaxed incomes), OR - community works (160-240 hours), OR - restriction of liberty (<2 years)	- fine (500-750 untaxed incomes), OR - restriction of liberty (2-4 years), OR - deprivation of liberty (2-4 years) AND - special confiscation.
Active bribery of public official – <i>Giving of benefit</i> (Art. 369)	- fine (200-500 untaxed incomes), OR - restriction of liberty (2-5 years)	- fine (250-750 untaxed incomes), OR - restriction of liberty (2-5 years)	<i>Only offer covered:</i> - fine (500-750 untaxed incomes), OR - restriction of liberty (2-4 years), OR - deprivation of liberty (2-4 years), AND	- fine (500-750 untaxed incomes), OR - restriction of liberty (2-4 years), OR - deprivation of liberty (2-4 years) AND - special confiscation.

Offence (Criminal Code)	Before July 2011	As amended by Law no. 3207-VI (in force since 1 July 2011)	As amended by Law no. 221-VII (in force since 18 May 2013)	As amended by Law no. 1261-VII (in force since 4 June 2014)
Active bribery in private law legal persons – <i>Offer, promise or giving</i> (Art. 368 ³)	<i>Not covered</i>	<i>Only offer and giving of benefit covered:</i> - fine (100-250 untaxed incomes), OR - restriction of liberty (<2 years)	- special confiscation <i>Only offer covered:</i> - fine (500-1,000 untaxed incomes).	- fine (150-400 untaxed incomes), OR - community works (100-200 hours), OR - restriction of liberty (<2 years), OR - deprivation of liberty (<2 years) AND - special confiscation.
Passive bribery in private law legal persons – <i>Acceptance of offer or promise, receiving of benefit</i> (Art. 368 ³)	<i>Not covered</i>	<i>Only receiving of benefit covered:</i> - fine (500-1,000 untaxed incomes), OR - restriction of liberty (<5 years), OR - deprivation of liberty (<3 years), AND - deprivation of the right to occupy certain offices or engage in certain activities (<2 years)	<i>Only receiving of benefit covered:</i> - fine (5,000-8,000 untaxed incomes), AND - deprivation of the right to occupy certain offices or engage in certain activities (<2 years).	- fine (500-750 untaxed incomes), OR - correctional labour (<2 years), OR - arrest (<6 months), OR - restriction of liberty (<3 years), OR - deprivation of liberty (<3 years), AND - deprivation of the right to occupy certain offices or engage in certain activities (<2 years) AND - special confiscation.

* “Untaxed income” – untaxed minimum personal income, equals UAH 17 (about EUR 0.85/USD 1.1 as of January 2015).

3. Statistics on corruption offences

Criminal cases investigated by law enforcement agencies with indictments sent to court (2011-2014)

Offence (Criminal Code)	2011*	2012	2013	2014 (Jan-Nov)
Passive bribery of public official (Art. 368)	502	1274	1072	1000
Active bribery of public official (Art. 369)	No data	No data	142	124
Active and passive bribery of an employee of state company or institution (Art. 354)	No data	No data	8	11
Abuse of authority of public official (Art. 364)	326	479	247	160
Abuse of office in private law legal entity (Art. 364-1)	5	41	17	14
Abuse of office of persons providing public services (Art. 365-2)		6	1	1
Illicit enrichment (Art. 368-2)	1	12	2	1
Active and passive bribery in private law legal persons (Art. 368-3)	12	79	75	63
Active and passive bribery of persons providing public services (Art. 368-4)	8	16	12	11
Trafficking in influence (Art. 369-2)	7	44	80	115
Embezzlement with the use of one's office (Art. 191, paras. 2-5)	126	270	410	493
Money laundering (Art. 209)	272	283	109	50 (Jan-Aug)

* Data for offences introduced by the Law no. 3207-VI is provided starting from July 2011 when amendments came into force.

Source: Statistics by the Prosecutor's General Office

Court statistics on consideration of corruption cases in trial (first instance) courts in 2012-2013

Crime (Criminal Code article)	Number of cases pending in the beginning of the reporting period		Cases received during reporting period		Number of accused persons		Sentences delivered		Convicted persons	
	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013
Crimes in the sphere of service activity and professional activity related to provision of public services, Articles 364-370 (Total), from them:	2857	2589	5484	648	10393	4515	2715	1319	3112	1617
- Abuse of office (Art. 364)	980	790	1410	165	3031	1285	752	356	817	379
- Passive bribery (Art. 368)	806	765	1260	185	2579	1288	967	505	1043	583
- Active bribery (Art. 369)	36	41	152	12	220	68	101	27	105	27
- Bribe provocation (Art. 370)	4	0	4	0	14	0	3	0	4	0

Source: Court statistics, State Court Administration, http://court.gov.ua/sudova_statystyka/

Sanctions applied by first instance courts for corruption offences in January-June 2014

Crime (Criminal Code article)	Number of convicted	Type of sanction													Released from punishment		
		Imprisonment 1 year	Imprisonment 1-2 years	Imprisonment 2-3 years	Imprisonment 3-5 years	Imprisonment 5-10 years	Imprisonment 10-15 years	Imprisonment 15-25 years	Restriction of liberty	Arrest	Correctional labour	Public works	Fine (as main punishment)	Deprivation of right to hold office	Confiscation	Released on parole	Released due to amnesty
Bribery of employees of state enterprise, institution, organisation (Art. 354)	4											3				1	
Abuse of office (Art. 364)	93		1	1	11	3		2		2			6	13	56	6	5
Abuse of office by service person of private law entity (Art. 364-1)	8											6			2		
Abuse of office by persons providing public services (Art. 365-2)																	
Passive bribery (Art. 368, para. 1)	14											12			1		1
Passive bribery (Art. 368, para. 2)	120		3	1	7							57		12	51		1
Passive bribery (Art. 368, para. 3)	41			1	2	2						2		6	34		
Passive bribery (Art. 368, para. 4)	54				4	2						1		5	47		
Illicit enrichment (Art. 368-2)	6											4			2		
Active bribery in private sector (Art. 368-3, paras. 1-2)	3											3					
Passive bribery in private sector (Art. 368-3, paras. 3-4)	16											12		3		4	
Active bribery of person providing public services (Art. 368-4, para.1)																	
Passive bribery of person providing public services (Art. 368-4, paras. 3-4)	6		1		1							2		1	2		
Active bribery (Art. 369, para. 1)	8										2	5				1	
Active bribery (Art. 369, para. 2)	25											15			9	1	
Active bribery (Art. 369, para. 3)																	
Active bribery (Art. 369, para. 4)	14	1	1	1	2									1	9		
Active trafficking in influence (Art. 369-2, para. 1)	3											3					
Passive trafficking in influence (Art. 369-2, paras. 2-3)	28											21			5	2	

Source: Court statistics, State Court Administration, http://court.gov.ua/sudova_statystyka/fdhfgh/

Sanctions applied by first instance courts for corruption offences in 2013

Crime (Criminal Code article)	Number of convicted	Type of sanction												Released from punishment			
		Imprisonment 1 year	Imprisonment 1-2 years	Imprisonment 2-3 years	Imprisonment 3-5 years	Imprisonment 5-10 years	Imprisonment 10-15 years	Imprisonment 15-25 years	Restriction of liberty	Arrest	Correctional labour	Public works	Fine (as main punishment)	Deprivation of right to hold office	Confiscation	Released on parole	Released due to amnesty
Bribery of employees of state enterprise, institution, organisation (Art. 354)	4									1		2			1		
Abuse of office (Art. 364)	317		2	7	20	9		5	2	5		14		20	240	2	11
Abuse of office by service person of private law entity (Art. 364-1)	44		2	1	1							29			9		2
Abuse of office by persons providing public services (Art. 365-2)	1				1												
Passive bribery (Art. 368, para. 1)	48				1			2	1	2		40		13		1	1
Passive bribery (Art. 368, para. 2)	267	1	5	4	8	4						126		78	117	1	
Passive bribery (Art. 368, para. 3)	295	2		14	37	12		7				19		16	204		
Passive bribery (Art. 368, para. 4)	121				6	7	2	1				8			97		
Illicit enrichment (Art. 368-2)	16											11			4		
Active bribery in private sector (Art. 368-3, paras. 1-2)	2											2					
Passive bribery in private sector (Art. 368-3, paras. 3-4)	42				3			1				36		7			1
Active bribery of person providing public services (Art. 368-4, para.1)	3											3					
Passive bribery of person providing public services (Art. 368-4, paras. 3-4)	3														2		1
Active bribery (Art. 369, para. 1)	14										3	9			1	1	
Active bribery (Art. 369, para. 2)	42				1			2				27			12		
Active bribery (Art. 369, para. 3)	3														3		
Active bribery (Art. 369, para. 4)	21				3							1		1	17		
Active trafficking in influence (Art. 369-2, para. 1)	1											1					
Passive trafficking in influence (Art. 369-2, paras. 2-3)	26		1									16			9		

Source: Court statistics, State Court Administration, http://court.gov.ua/sudova_statystyka/5533iopoioipo/

Sanctions applied by first instance courts for corruption offences in 2012

Crime (Criminal Code article)	Number of convicted	Type of sanction													Released from punishment		
		Imprisonment 1 year	Imprisonment 1-2 years	Imprisonment 2-3 years	Imprisonment 3-5 years	Imprisonment 5-10 years	Imprisonment 10-15 years	Imprisonment 15-25 years	Restriction of liberty	Arrest	Correctional labour	Public works	Fine (as main punishment)	Deprivation of right to hold office	Confiscation	Released on parole	Released due to amnesty
Bribery of employees of state enterprise, institution, organisation (Art. 354)	4											2			2		
Abuse of office (Art. 364)	543		6	14	48	11		17	5	11		53		39	347	15	16
Abuse of office by service person of private law entity (Art. 364-1)	40		1	1		1						23			14		
Abuse of office by persons providing public services (Art. 365-2)	2														2		
Passive bribery (Art. 368, para. 1)	100			2	1			2	3	2		75		1	6	7	1
Passive bribery (Art. 368, para. 2)	356	2	10	5	36	14		2				95		45	189	3	
Passive bribery (Art. 368, para. 3)	246	3	2	6	42	14		8				13		37	157		
Passive bribery (Art. 368, para. 4)																	
Illicit enrichment (Art. 368-1)	14		1									9			4		
Active bribery in private sector (Art. 368-3, paras. 1-2)	1											1					
Passive bribery in private sector (Art. 368-3, paras. 3-4)	21							1				18		2	2		
Active bribery of person providing public services (Art. 368-4, para.1-2)																	
Passive bribery of person providing public services (Art. 368-4, paras. 3-4)	4											3			1		
Active bribery (Art. 369, para. 1)	14							2				6			5		1
Active bribery (Art. 369, para. 2)	45			1	1			1				23		2	18		1
Active bribery (Art. 369, para. 3)	10				1									2	9		
Active bribery (Art. 369, para. 4)	15			1	3									2	11		
Active trafficking in influence (Art. 369-1, para. 1)																	
Passive trafficking in influence (Art. 369-1, paras. 2-3)																	

Source: Court statistics, State Court Administration, http://court.gov.ua/sudova_statystyka/52013/

Administrative sanctions for corruption offences (2012-2013; number of persons sanctioned by courts)

Offence (Code of Administrative Offences article)	2012	2013	2014 (Jan-Nov)
Violation of restrictions on the use of official position (Art. 172-2)	1150	491	3
Offer or provision of unlawful benefit (Art. 172-3)	109	19	-
Violation of incompatibility of offices and concurrent employment restrictions (Art. 172-4)	207	197	127
Violation of restrictions on acceptance of gifts (Art. 172-5)	24	22	66
Violation of financial control requirements (Art. 172-6)	330	749	921
Violation of requirements of reporting a conflict of interest (Art. 172-7)	83	182	635
Unlawful use of information that became known to a person in connection with the discharge of his/her official functions (Art. 172-8)	14	15	13
Failure to take anti-corruption measures (Art. 172-9)	13	21	53

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