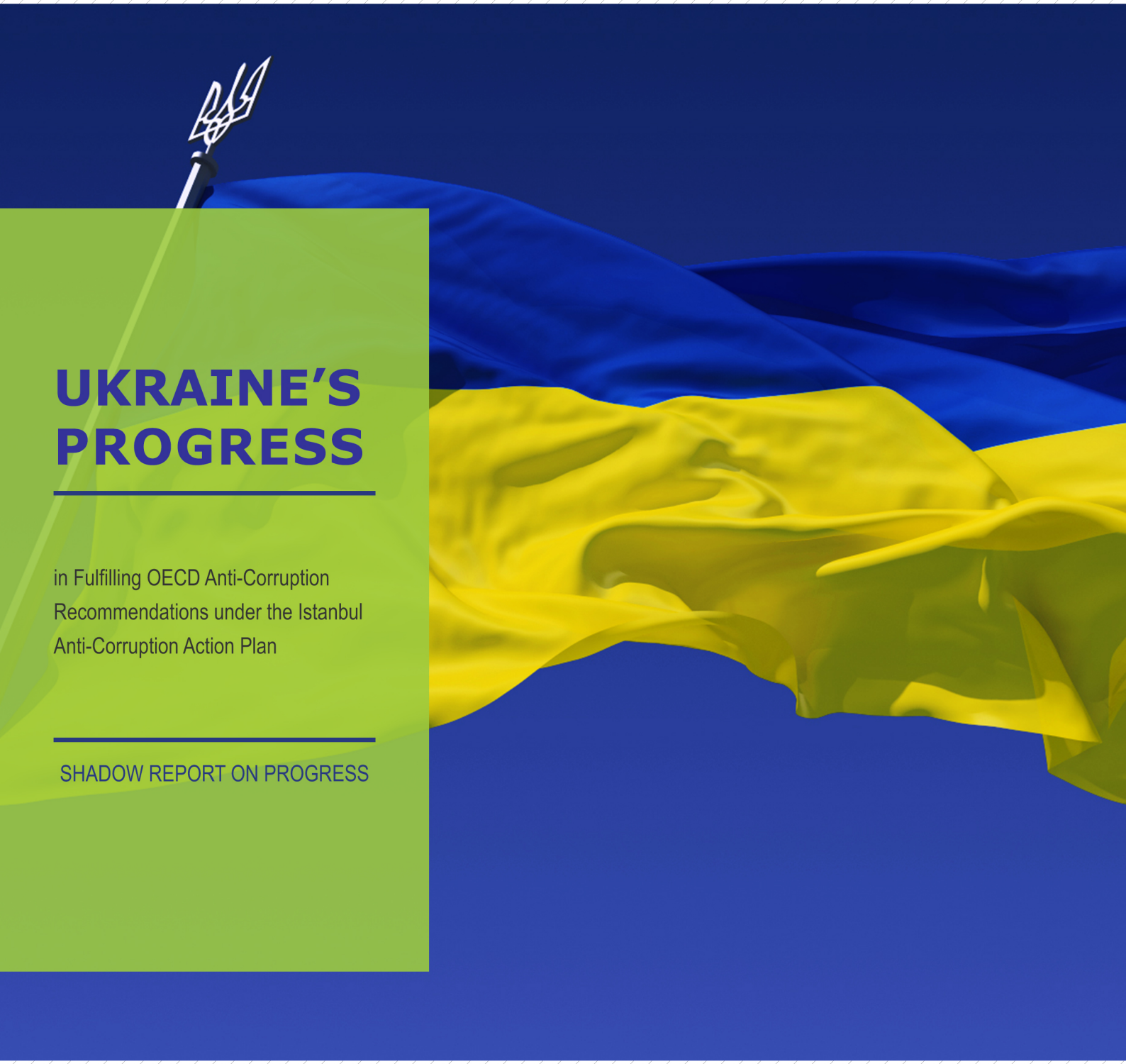

UKRAINE'S PROGRESS

in Fulfilling OECD Anti-Corruption Recommendations under the Istanbul Anti-Corruption Action Plan

SHADOW REPORT ON PROGRESS

Information valid as of February 2014

Shadow Report of Ukraine's Progress in Fulfillment of Recommendations of the Third Evaluation Round under the Istanbul Anti-Corruption Action Plan of OECD Anti-Corruption Network for Eastern Europe and Central Asia

Results of Civic Assessment, February 2014

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SUMMARY

This document aims to reflect the current state of anti-corruption reform implementation in Ukraine. It has been prepared by a group of civic experts with extensive experience of evaluating anti-corruption initiatives effectiveness, who represent the most influential CSOs in Ukraine that work in the sphere of anti-corruption and good governance.

Thematic chapters of this research contain short, and at the same time detailed analysis of key corruption problems in Ukraine, and efforts of authorities to diminish its influence on the state. The study is based on recommendations to Ukraine by the Organisation for Economic Co-operation and Development (OECD) in the scope of the Istanbul Anti-Corruption Action Plan; it embraces assessment of the country's efforts in the sphere of corruption criminalization, conflict of interest regulation, establishment of proper conditions for integrity in public service, and other aspects.

The authors of the study are grateful to the United Nations Development Programme and the Ministry of Foreign Affairs of Denmark for their support of the experts' efforts and for assistance in dissemination of the evaluation results.

United Nations Development Programme (UNDP) partners with people at all levels of society to help build nations that can withstand crisis, and drive and sustain the kind of growth that improves the quality of life for everyone. On the ground in 177 countries and territories, we offer global perspective and local insight to help empower lives and build resilient nations.

In Ukraine, three development focus areas define the structure of UNDP's assistance activities. These include democratic governance and local development; prosperity, poverty reduction and MDGs and energy and environment. In each of these thematic areas, UNDP ensures balance between policy and advocacy work, capacity building activities and pilot projects. UNDP established its presence in Ukraine in 1993.

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KEY TRENDS OF CORRUPTION IN UKRAINE

Starting from 2010, from the second round of OECD anti-corruption monitoring, corruption in Ukraine became even more widespread and pervasive. In fact, corruption became so unbearable for Ukrainians that it served as one of the key reasons for mass protests taking place in Ukraine from mid-November 2013. According to the results of a public opinion survey held by International Foundation for Electoral Systems (IFES), corruption was one of four key problems, and and 47% of citizens were preoccupied by this societal phenomenon[1].

According to the results of Transparency International's Corruption Perceptions Index, Ukrainians consider their country to be one of the most corrupt in the world[2]. Constant accusations of corruption against public officials, assets that don't correspond to officials' stated income, as well as absence of adequate reaction of criminal justice bodies to these facts, whip up the levels of corruption perception. Numerous accusations of corruption connected to Euro 2012[3], or overpriced procurement of gas extraction equipment by «Chornomornaftohaz» state enterprise (so-called «Boyko's derricks»)[4] are vivid examples of the aforementioned. However, mostly low-ranking officials are brought to justice.

Moreover, the authorities did not indicate their willingness to either introduce new anti-corruption reforms, or to apply the existing instruments, especially when representatives of the ruling party, government, or their allies were accused.

The major indicator that characterizes corruption problems in Ukraine is the absence of political will to fight corruption. Despite the adoption of a new anti-corruption strategy and action plan, as well as a number of laws, the most important of which are the new Criminal Procedure Code of Ukraine, laws «On Rules of Ethical Conduct», «On Administrative Services», amendments of anti-corruption legislation on corruption criminalization, liability of legal entities, on conflict of interest, the authorities did not manage to build a holistic anti-corruption infrastructure: neither in the aspect of policy fformulation, nor in legislative frameworks or institutional support.

Moreover, sometimes it seemed that the motive for the reforms were international organizations' demands or recommendations, but not the authorities' realization of corresponding actions' necessity. Thus, the adoption of the Criminal Procedure Code was motivated by Ukraine's obligations towards the Council of Europe, and anti-corruption laws' adoption – by implementation of the Action Plan for visa liberalization with Europe. Even the names of two adopted laws are indicative: the law of Ukraine «On Amendments of the Criminal Procedure Code of Ukraine Regarding Implementation of the Action Plan on European Union Visa Liberalization for Ukraine», and the law of Ukraine «On Amendments of Some Legal Acts of Ukraine for European Union Visa Liberalization for Ukraine Concerning Liability of Legal Entities».

1 http://www.ifes.org/~/media/Files/Publications/Press%20Release/2013/Press%20Release%202013%20IFES%20Ukraine%20survey%20FINAL_UKR.pdf

2 According to the results of Transparency International's Corruption Perceptions Index, in 2009-2013 Ukraine was on 146th, 134th, 152nd, 144th, and 144th places of 176 countries under study.

3 http://www.lastampa.it/2012/06/20/sport/speciali/europei-di-calcio-2012/the-guardian/euro-uefa-urged-to-investigate-bn-corruption-allegations-in-ukraine-tdNOffWLY3Ibn4kSQcXCkJ/pagina.html

4 http://www.kyivpost.com/opinion/op-ed/how-to-return-80-million-to-ukraine-for-the-boyko-towers-2-318198.html,http://www.bne.eu/story5297

However, international organizations' pressure did not lead to resoltution of most urgent and thorny corruption problems. Thus, only 13 of 25 GRECO recommendations have been implemented so far, despite the six years of work and three rounds of progress evaluation[5]. Besides, only a small part of anti-corruption recommendations of the Action Plan on European Union Visa Liberalization for Ukraine (regarding corruption criminalization) has been implemented. Key recommendations of GRECO and the EU on the establishment of anti-corruption institutions, reforms of the prosecutor's office, public service, public procurement system, establishment of the controlling system over conflict of interest prevention, and officials' assets integrity, remained unimplemented.

Lack of political will leads to the absence of a clear vision of the problem and action plan for its solution. It is proven by, among other things, the government's following contradictory steps: dismantling of the Office of the Government Agent for Anti-Corruption Policy in 2011, and its revival in 2013; the government's initiative on authorizing corruption prevention departments to monitor officials' asset declarations (law of Ukraine «On Amendment of Some Legal Acts of Ukraine on Implementation of State Anti-Corruption Policy», May 14, 2013) with the further decision to transfer these functions to the Ministry of Revenue (draft law «On Amendment of Some Legal Acts of Ukraine on Implementation of European Commission Recommendations in the Sphere of State Anti-Corruption Policy» No. 3312 of September 23, 2013).

It seemed that the official to catalyze and represent political will should be President of Ukraine, who in spring 2010 became Head of the National Anti-Corruption Committee. However, this body, whose major task was to form anti-corruption policy and control its implementation, has not assembled since June 2011.

Moreover, on January 17, 2014 the President of Ukraine signed the law of Ukraine «On Amendments of the Law 'On the Judicial System and Status of Judges' and Procedural Laws on Additional Citizens Safety Measures» that was previously adopted with violation of all procedures. Besides, in fact it deprived civil society and media of the possibility to participate in corruption identification and prevention. The law was invalidated at the end of January 2014 under pressure from the public and the international community.

Another factor that nullifies anti-corruption efforts is the unsuccessfully implemented judiciary reform in 2010 that lead to the exacerbation of the crisis in the judiciary and to a decrease of citizens' trust in courts to the lowest rate in recent years. According to Razumkov Centre's research held in September 8 – October 2013, Ukrainians believe that the judiciary is the most corrupt institution in the country: over 83% of respondents mentioned that corruption was a wide-spread phenomenon and it embraced the whole judiciary system[6].

Thus, the situation with corruption threatens not only democracy, but also the country's very existence.

5 GRECO. Joint first and second evaluation rounds. Third annex to the Report of Ukraine's Implementation of Recommendations that has been adopted on 59th plenary meeting (Strasbourg, March 18-22, 2013).

6 http://razumkov.org.ua/ukr/poll.php?poll_id=903

CHAPTER 1. PROGRAM INITIATIVES IN THE ANTI-CORRUPTION SPHERE

Recommendations 1.1.-1.2. of the Report on the Second Round of Monitoring of Ukraine:

- 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.

Recommendation1.1 refers to political will to resist corruption in Ukraine. It's quite difficult to evaluate this phenomenon, taking into account the lack of generally accepted criteria. At the same time, taking into consideration the experience of evaluation under the of Istanbul OECD action plan, opportunities of reforms and achieved results can be contrasted. This analysis shows that the authorities, having had almost ideal opportunities for reforms, did not implement any reform to improve the situation with corruption, and the adopted legislation is fragmentary and insufficient for significant influence on the resolution of the problem.

The most influential political figure in Ukraine is the President, the head of the state, who appoints Government, Prosecutor General, and is supported by the Parliamentary majority. In these conditions implementation of any reforms, including anti-corruption ones, could have had high chances to be successful, at least in the part of effective legislation adoption. An example of that possible efficiency and speed of action is the adoption of the law «On the Judicial System and Status of Judges» and Procedural Laws on Additional Citizens Safety Measures»: it took only four days to submit the draft law for consideration of the Parliament and to sign it by President of Ukraine. Nevertheless, the authorities did not manage to implement key reforms: to create anti-corruption institutions, reform the Prosecutor's Office and criminal justice bodies, public service, create systems of conflict of interest prevention and control over assets and expenditures of public officials, tackle

corruption in public procurement, establish mechanisms of political corruption prevention.

President of Ukraine V. Yanukovych spearheaded anti-corruption reform, and on February 26, 2010 created the National Anti-Corruption Committee (hereafter – NAC) as a consultative body to cardinally improve the situation in the anti-corruption sphere and provide alignment of activities of law enforcement agencies in this sphere. However, after NAC has been established, only three meetings took place: on April 22, 2010, on October 20, 2010, and on June 08, 2011. Thus, the body that had to initiate anti-corruption reforms and control their implementation does not fulfill its functions.

The Government and Parliament have positioned themselves as more proactive anti-corruption players. Several legislative initiatives of the government have been supported by the Parliament: in 2010 – 2014 a number of normative acts, i.e. the new Criminal Procedure Code, laws of Ukraine «On Rules of Ethical Conduct», «On Administrative Services», «On Amendments of the Criminal Procedure Code Code of Ukraine Regarding Implementation of the Action Plan on European Union Visa Liberalization for Ukraine», «On Amendments to Certain Legislative Acts of Ukraine to Harmonize the National Legislation with the Standards of the Criminal Law Convention on Corruption», «On Amendments to Certain Legislative Acts of Ukraine on Implementation of State Anti-Corruption Policy», «On Amendments to Certain Legislative Acts of Ukraine for European Union Visa Liberalization for Ukraine Concerning Liability of Legal Entities» of May 23, 2013.

These laws harmonize, to a large extent, criminal and procedural legislation with international standards, introduce new rules of confiscation of corruption profits and liability of legal entities; coordinate sectoral regulations with the basic law «On Grounds of Corruption Prevention and Counteraction».

However, adoption of these laws did not lead to establishment of functional mechanisms of corruption identification and prevention. For instance:

1) no independent body responsible for formation and implementation of anti-corruption policy has been established as of yet;

2) the conflict of interest notion does not correspond with international standards, there is no system of forms for prevention, identification, settlement of conflict of interests, and cestablishment of responsibility for violation of conflict of interests; no monitoring of implementation of this legislation has been provided;

3) there is no independent controlling mechanism over declaring of assets, income, expenditures and financial obligations by public servants; no single database of public servants declarations has been created, and it makes effective control in this sphere impossible;

4) the issue of protection of persons who voluntarily report on corruption (whistleblower protection) has not been solved yet, and relies up till now on the instruments utilized in criminal justice.

5) adoption of the law «On Administrative services» did not lead to any changes, inasmuch as the law did not provide for any specific criteria of assessment of administrative services prices, made compilation of administrative services nomenclature more difficult; besides, the complex reforming of administrative services system requires adoption of the Code of Administrative Procedures and the law on administrative charges that haven't been adopted yet.

The reasons for the limited and patchy effect of the legislation in tackling issues of corruption lie in the motives for its adoption. The latter may be characterized rather as the need to succumb to demads of international structures (GRECO and EU amongst them) instead of genuine willingness to see existing strategy and reforms at work. The aforementioned can be confirmed for instance by the names of the laws «On Amendments of the Criminal Procedure Code of Ukraine Regarding Implementation of the Action Plan on European Union Visa Liberalization for Ukraine», «On Amendments to Certain Legislative Acts of Ukraine to Harmonize the National Legislation with the Standards of the Criminal Law Convention on Corruption», «On Amendments of Some Legal Acts of Ukraine for European Union Visa Liberalization for Ukraine Concerning Liability of Legal Entities».

Another indicator that shows the lack of political will to tackle corruption is the authorities' blocking of the body responsible for anti-corruption policy formation and implementation.

Thus, in early 2011, right after the Istanbul's plan recommendation to strengthen the activity of the Government Agent for Anti-Corruption Policy was published, the government eliminated this institution. Later on, in 2013, its work was restarted[7]. However, the status of the Government Agent, as stipulated by the Government decree, deprived the officer of any independence in enrtusted work. Besides, the Government Agent hasn't been supplied with the resources necessary for his/her activity. For instance, the authorized officer's staff consists of 3 persons.

One should pay attention to the fact that the decisions both on the elimination and on the revival of the authorized officer have not been negotiated either with other public bodies or with the civil society. The government hasn't explained the logic of these steps to the society. This could be taken to indicate the lack of clear anti-corruption reforms plan and the authorities' understanding of the problems' essence. Thus, this is the other indicator that characterizes the authorities' political will to resist corruption.

According to the Decree of the President of Ukraine No. 964 of November 05, 2011 «On Primary Measures to Implement the Law of Ukraine «On Grounds of Corruption Prevention and Counteraction», the Ministry of Justice has temporarily received the functions of the specially authorized body for anti-corruption policy and the task to prepare a draft law to institute a body responsible for anti-corruption policy. The Ministry of Justice has prepared the draft law that stipulated that such functions would be vested within its own authority. However, neither the Government

7 Decree of the Cabinet of Ministers of Ukraine of July 11, 2013 No. 484 «Issues of the Government Agent for Anticorruption Policy»: http://zakon4.rada.gov.ua/laws/show/484-2013-%D0%BF

nor Presidential Administration have supported this approach. Thus, the Ministry of Justice keeps on performing the temporary functions of the body authorized for anti-corruption policy issues. Besides, no legislative act specifies these functions.

NAC can neither be considered the body responsible for the anti-corruption policy, as far as it is a consultative body without any coordination authority. Moreover, its members, the highest officials of the state, do not provide for independence of the body and the consistent effective work.

The anti-corruption struggle in Ukraine could have been dramatically worsened with the adoption of the Law «On amendments to the Law of Ukraine «On the Judicial System and Status of Judges» and procedural laws re additional protective measures of citizens' safety». The law established strong governmental control over the activities of the civil society organizations and institutions which received funding from the foreign countries or organizations. It also imposed criminal liability for slander as well as insults to judges and law enforcement agencies representatives. In fact all these amendments would be able to nullify the efforts of the third sector in nurturing political will for fighting corruption. They also eliminated mass media function in struggle against the corruption and any institutions' role in voluntary informing on acts of corruption. Despite the fact that this Law is no longer effective it is still one of the indicators that testify to the lack of political will to fignt corruption.

Another indicator of the real political will is the foucus of the criminal justice system on resisting petty bribery, rather than systematic grand corruption. Thus, in 2010 – 2013 media presented numerous journalist investigations on abuses during preparations to Euro 2012[8], activity of Livela company[9], abuses in procurement of so-called «Boyko's derricks» – natural gas extraction equipment[10] etc. none of these journalistic investigations ended with official investigation and publicizing of the results for citizens.

The aforementioned allows one to note that the anti-corruption activities, implemented by the authorities in 2010 – 2014, show lack of political will to fight corruption, and are mostly oriented at making a certain impression on Ukrainian and international community.

On Recommendation 1.2

The Ministry of Justice has prepared the draft law of the National Anti-Corruption Strategy for 2011 – 2015. It was approved by Presidential Decree No. 1001 on October 21, 2011. Chapter IX of this document provides for its own implementation by means of development and approval of the State Program for Preventing and Combating Corruption for 2011 – 2015, that would structurally correspond with the National Anti-Corruption Strategy and include a list of events, amounts and sources of funding, estimated results, indicators, terms, persons responsible for implementation, and partners in events.

8 http://www.pravda.com.ua/articles/2011/01/17/5796400/

9 http://www.pravda.com.ua/articles/2011/10/24/6691712/

10 http://dt.ua/PROJECTS/boyko.html

The Strategy cites research that identifies eight corruption-provoking factors. However, the analysis does not include information on the most corrupt spheres and the causes of their corruption, citizens' attitudes towards and experience with corruption, the level of citizens' trust in public bodies, or popular readiness to resist corruption (including whistleblowing). Therefore, the Strategy fails to address the most relevant aspects of corruption almost entirely, and the causes of corruption specified within are so general and universal that they can be applied to any country that has endorsed the Istanbul action plan. The document also lacks any statistical data, and as a result, the Strategy does not connect the causes of corruption with the proposed actions to be used against them. Most of the Strategy's actions are simply transferred from the previous 2006 Anti-Corruption Concept «On the Way to Integrity», or from international organizations' recommendations.

We should mention that the general study of the problem of corruption, was has been conducted in the scope of Ukrainian and Canadian anti-corruption project with the aim of further strategy preparation, ended a year after the draft Strategy was adopted in 2012, and were therefore not available to the drafters of the Strategy. Unfortunately, the Ministry of Justice has not published this research.

The Ministry of Justice developed the State Program for Preventing and Combating Corruption for 2011 – 2015 (hereafter the State Program) in 20 days, and it was approved by the Cabinet of Ministers' Decree No. 1240 of November 28, 2011. GRECO recommendations insisted on holding consultations with experts on the State Program, and on involving international experts[11]. However, experts and the public were permitted to see the text of the State Program only after its approval, although, when sending it for international consideration, the Ministry of Justice stated that the State Program had been subject to «intensive consultations» with CSOs.

The State Anti-Corruption Program replicates the National Anti-Corruption Strategy and includes 15 thematic priorities. However, we should mention that the activities of each chapter relate to the topics of the chapters only partially.

The National Anti-Corruption Committee, headed by the President of Ukraine, is responsible for implementing the National Anti-Corruption Strategy. As mentioned above, no meetings of the committee have been conducted after the Strategy approval. Coordination of the State Anti-Corruption Program is performed by the Ministry of Justice. According to the assessment of civic experts, the first coordination event[12] was conducted by the Ministry of Justice only in June 2013. However, during 2013 at least three communication events with civil society, devoted to some issues of State Anti-Corruption Program implementation, took place.

No separate meetings of the government regarding State Anti-Corruption Program implementation have been held. However, the government, under pressure from the civil society, in March 2013 issued a protocol assignment to update the current version of the state program. This

11 GRECO. Joint First and Second Evaluation Round. Addendum to the Compliance Report on Ukraine, adopted by GRECO at its 51st Plenary Meeting (Strasbourg, 23-27 May 2011), p.3.

12 http://www.minjust.gov.ua/photoalbum/718

was preceded by a civic and media pressure campaign regarding the breakdown of proper program implementation.

The Parliamentary Committee for combatting Organized Crime and Corruption constantly focuses on the issues effectiveness of State Anti-Corruption Program implementation. Particularly, in March 2013 a round table meeting[13] was held on the topic «State Anti-Corruption Policy: Civil Society Audit» in the form of committee hearings.

Regional anti-corruption programs have been adopted in 13 oblast (regional) councils, 2 programs are being finalized, and 8 program drafts have been developed, but not submitted for approval. However, these programs are mostly specific chapters of sectoral law enforcement programs that have been adopted without civil society's involvement. These programs are often not fulfilled due to the lack of proper funding. The exceptions are Dnipropetrovsk, Rivne, Sumy, Ternopil, Kharkiv, Kherson regions and Kyiv, where the programs include provisions for funding. Odesa and Poltava oblast state administrations have adopted anti-corruption action plans instead of anti-corruption programs.

Civil society representatives have repeatedly turned the attention of the government to the drawbacks of the State Program and on the non-transparent process of its development. Transparency International Ukraine, Anti-Corruption Council of Ukraine, Ukrainian Institute for Public Policy, Open Society Foundation, Centre for Political and Legal Reforms, Filosofiia Sertsia (Philosophy of Heart) CSO and Nashe Pravo (Our Right) Information and Legal Centre have conducted an independent assessment[14] of the State Anti-Corruption Program's effectiveness, and studied the institutional capacity of the bodies responsible for its implementation, as well as the key obstacles.

From the implementation point of view, the most successful State Program chapters are III, VIII, XIII and XV, where 40% to 50% of all planned activities have been completed. The implementation of other chapters have been less successful. In chapters IV, VI, VII, X, XIV not a single activity has been completed. Activities from other chapters have been partially completed. We should also note that indicators of success are quite relative. In some cases, the implementation indicators are so abstract that implementation of any, even the smallest activity (i.e. once-in-a-year notification on anti-corruption actions) are grounds for considering an action 'implemented'. Primarily, it applies to the actions that provided for informing society on specific steps in the sphere of anti-corruption policy implementation, communication with the civil society and international organizations etc.

In 2013 the government, under pressure from the civil society, updated the State Program significantly. The amended program included recommendations for the civil society and resulted from negotiations with the third sector, notably with Transparency International Ukraine, and the All-Ukrainian Special Panel for Fighting against Corruption an Organized Crime. The new version of the program was adopted at the Government meeting on January 15, 2014[15].

13 http://crimecor.rada.gov.ua/komzloch/control/uk/publish/article?art_id=52019&cat_id=46352&showHidden=1

14 http://ti-ukraine.org/what-we-do/our-publications/2861.html

15 http://www.kmu.gov.ua/control/uk/publish/article?art_id=246977346&cat_id=244276429

Assessment of Recommendation 1.1 implementation: NOT IMPLEMENTED

Assessment of Recommendation 1.2 implementation: PARTIALLY IMPLEMENTED

NEW RECOMMENDATION:

To start a national discussion regarding the new anti-corruption strategy with the involvement of civil society and business representatives; to prepare a new anti-corruption strategy and action plan based on research on state corruption, its causes and conditions, together with representatives of civil society and business, and involve international anti-corruption experts.

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.

Research regarding of corruption in Ukraine, initiated by the Ministry of Justice of Ukraine and supported by the Canadian International Development Agency (CIDA) was finalized in 2012. However, the Ministry of Justice still hasn't publicized its results.

No other similar research undertakings have been initiated by the government.

Assessment of Recommendation 1.3 implementation: PARTIALLY IMPLEMENTED

NEW RECOMMENDATION:

Hold regular research of corruption, both national and sectoral, in order to identify corruption risks, their causes and conditions, tendencies and new corruption vulnerabilities. Special attention should be paid to studying social trust, experience of citizen participation in corrupt practices and corruption perceptions. These studies should be ordered by the government through open competitions. Independent conclusions of these papers should become the basis for formulation, amendment and monitoring of anti-corruption policy implementation.

Recommendations 1.4. – 1.5. of the Report on the Second Round of Monitoring of Ukraine:

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.

Citizen participation in the decision-making process and corruption prevention is regulated by a number of normative acts of Ukraine. They define the following procedures of civil society involvement:

consultations with civil society[16] (obligations for all executive bodies to hold consultations; as well as a procedure that allows civil society to initiate these discussions).

civic councils[17] and other consultative bodies under executive bodies (facilitation of civic councils' establishment and cooperating with them is obligatory for all executive bodies).

regulatory acts analysis[18] by efforts of CSOs (the mechanisms are concentrated on legal regulation of economic relations).

civic expert assessments[19] by efforts of CSOs and with the obligatory support of authorities.

anti-corruption civic expert assessments[20] of current normative acts and draft normative acts (the order of authorities' support for its holding is not specified).

On April 7, 2011 the Verkhovna Rada adopted the law of Ukraine «On Grounds of Corruption Prevention and Counteraction.» The law provides for a number of instruments to facilitate civil society participation in corruption prevention and counteraction. Thus, Section 7 of Article 15 of the law provides for an opportunity for civic anti-corruption experts to review draft and current normative acts. This review is performed by persons, civic unions and any others allowed by legislation.

A positive example of the use of procedures of cooperation with civil society in the anti-corruption sphere is the initiative establishment of the Civic Expert Council with the Verkhovna Rada Committee on Fighting Organized Crime and Corruption.[21] The Civic Council subdivided the thematic areas of CSO representatives in anti-corruption work. In particular, the Civic Expert

16 http://zakon1.rada.gov.ua/laws/show/996-2010-%D0%BF
17 http://zakon1.rada.gov.ua/laws/show/996-2010-%D0%BF
18 http://zakon4.rada.gov.ua/laws/show/1160-15
19 http://zakon4.rada.gov.ua/laws/show/976-2008-%D0%BF
20 http://ti-ukraine.org/what-we-do/our-publications/2507.html
21 http://crimecor.rada.gov.ua/komzloch/doccatalog/document?id=52600

Council concentrates its activity on four topical priorities: 1) monitoring activity; 2) training and methodological assistance in the anti-corruption sphere; 3) civic anti-corruption expert assessments; 4) legislation in the anti-corruption sphere.

However, in general, events initiated by CSOs do not receive positive feedback from authorities. Civil society reports and recommendations usually are either ignored, or adopted only in the parts that did not contradict with the position of the authorities. Only in exceptional cases have events that received huge media and citizens support obliged authorities to act, as happened with the State Anti-Corruption Program 2011 – 2015.

Ukraine's participation in the Open Government Partnership initiative has been a positive incentive in the fight against corruption.[22] However, we should not overestimate its role in stimulating reforms. Ukrainian civic organizations, headed by Transparency International Ukraine, prepared an assessment of Ukraine's implementation of the initiative's requirements.[23]

At the same time, we should pay attention to the fact that the January 17, 2014 approval of the law the law of Ukraine «On Amendments of the Law 'On the Judicial System and Status of Judges' and Procedural Laws on Additional Citizens Safety Measures» (now revoked) created significant obstacles for NGO activities. Particularly, the law required NGOs which receive funding from foreign countries, their bodies, international organizations or foreign nationals to identify themselves as «foreign agents», an insulting notion in terms of the society, and perform the following actions:

Submit to the Register of Civil Society Organizations information on activities performed as foreign agents; conduct a double audit of income and expenditures – one connected with foreign financing, and one for domestic sources;

Report, on a monthly basis, on the staff of managing bodies, on the amount of money and other property received from foreign sources, on plans of its spending and actual usage, on planned programs and actual activity;

Publish this information in national state media Holos Ukrainy and Uriadovyi Kurier.

Failure to implement any of these demands was considered grounds for banning the activities of this NGO.

Furthermore, the aforementioned law contained provisions that excluded NGOs, as «foreign agents,» from the list of non-profit organizations, therefore requiring them to pay income tax.

With such actions the authorities have greatly worsened the opportunities of dialogue between civil society and government, and shown their real attitude to the role of the third sector in shaping state policy. We should also pay attention to the fact how quickly (in 4 days) the law was adopted without any consultations with civil society. Nevertheless, due to the massive protests Ukrainian government had to take down the troublesome law. Still we can maintain that the fact of such

22 Cabinet of Ministers of Ukraine order of July 18, 2012, No. 514, and Cabinet of Ministers Decree of June 13, 2012, No. 671

23 http://ti-ukraine.org/system/files/research/ogp_in_ukraine_first_results.pdf

legislation being adopted itself is clear evidence of the government's political will deficiency and lack of desire to cooperate with NGOs in accordance with international democratic standards

Assessment of Recommendations 1.4 – 1.5 implementation: PARTIALLY IMPLEMENTED

NEW RECOMMENDATION:

Implement international standards of cooperation between authorities and civil society in the anti-corruption policy decision-making process, particularly those stated in the Code of Best Practices of Civil Society Participation in the Decision-Making Process, and start the new forms of cooperation, namely dialogue and partnership.[24]

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.

During 2011 – 2013, no unified center for the coordination of anti-corruption policy was established. The latest report by GRECO criticized NAC activity and the order of its establishment. The law «On Grounds of Corruption Prevention and Counteraction» stipulates that a special anti-corruption agency authorized by the Head of State shall coordinate the fulfillment of all anti-corruption strategies that are initiated by the President of Ukraine and other executive bodies. The functions of this body were temporarily assigned to the Ministry of Justice, though according to GRECO recommendations, an independent body should perform them.

From 2009 to early 2011, the institution of the Government Agent for Anticorruption Policy was active in Ukraine. As a result of Presidential administrative reforms, the position was liquidated[25] in February 2011. However, in July 2013 the Cabinet of Ministers of Ukraine renewed

24 Code of Best Practices of Civil Society Participation in the Decision-Making Process adopted by the Council of Europe Conference of International NGOs on October 1, 2009: https://www.coe.int/t/ngo/Source/Code_Ukrainian_final.pdf

25 http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=86-2011-%F0

the position[26] (provided that this position does not increase the threshold of staff of the Cabinet of Ministers of Ukraine's Secretariat). It was established with the aim of increasing the coordination of executive bodies' anti-corruption work. The position of the Government Agent for Anticorruption Policy was adopted by the Cabinet of Ministers of Ukraine on December 4, 2013, and it's staff was partially formed. So it is quite early to speak about the significant influence of this institution on the coordination of state anti-corruption policy. Moreover, as stated before, the Government-Authorized Officer did not receive a guarantee of independence.

Assessment of Recommendation implementation: NOT IMPLEMENTED

NEW RECOMMENDATION:

Establish a body responsible for monitoring and coordinating state anti-corruption policy implementation. The body should have proper guarantees and resources for conducting effective and independent activities, and secure active partnership with civil society both in the process of it's establishment and further activities.

26 http://zakon4.rada.gov.ua/laws/show/484-2013-%D0%BF

CHAPTER 2. INITIATIVES AIMED AT CRIMINALIZING CORRUPTION OFFENCES

Recommendations 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.

Anti-corruption criminal legislation changed several times after the Second Round of Monitoring was finalized.

On April 7, 2011 the law of Ukraine «On Amendment of Some Legal Acts of Ukraine on Liability for Corruption-Related Offences»[27] was adopted. This law, in fact, replicated one of the laws of 2009 the anti-corruption set, which had been previously suspended by the government and later terminated.

The law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine to Harmonize the National Legislation with the Standards of the Criminal Law Convention on Corruption» of April 18, 2013, No. 221 (hereafter Law No. 221)[28] has been included in some legislative acts, notably in the Code of Ukraine on Administrative Offences (hereafter CUAO), Criminal Code,[29] that aims to coordinate Ukrainian legislation with the Criminal Convention against Corruption. This law coordinates Ukrainian legislation with international standards.

The law of Ukraine, «On Amendments to Certain Legislative Acts of Ukraine Regarding Humanization of Liability for Offences in the Sphere of Economic Activity» of November 15, 2011, No. 4025 (Law No. 4025) humanizes (commutes) sanctions for corrupt offences in the private sector.

Thus, we should mention that the recommendation, in this part, should be considered as partially implemented.

According to the data of Unified Report on Criminal Offences for January – December 2013.[30] Sixty-one indictment cases were taken to the court under article 369[2] of the Criminal Code «Abuse of authority» and 202 indictment cases under the articles that provided for liability for offering or giving a bribe or an illegal benefit to a public official. Unfortunately, the data of the report do not give an opportunity to see whether the criminal cases regarding offers of illegal benefits have been investigated, as well as whether there are court decisions to call to account under these articles. However, the statistical data, as well as media information[31] prove that the standards of liability for abuse of authority are practically implemented.

At the same time, corpus delicti of abuse of authority does not coincide with the Criminal Convention against Corruption: article 369[2] of the Criminal Code «Abuse of authority» only includes the cases of influence on decisions of the persons authorized to implement state functions; however, the Criminal Convention against Corruption also includes persons that passively participate in bribery.

Thus, we should mention that this part of the recommendation can be considered partially implemented.

27 http://zakon2.rada.gov.ua/laws/show/3207-17

28 http://zakon4.rada.gov.ua/laws/show/221-18

29 http://zakon2.rada.gov.ua/laws/show/2341-14

30 http://www.gp.gov.ua/ua/stst2011.html?dir_id=110381&libid=100820&c=edit&_c=fo

31 http://zik.ua/ua/news/2012/08/17/364412

Coordinate legally defined active and passive bribery in correspondence with international standards by means of establishing criminal liability for a promise, offer or demand of a bribe, acceptance of an offer or a promise of a bribe as a finalized body of a crime; provide detailed criminalization regarding main offenders and third parties, and those who participate in different forms of bribery through third parties and in the interest of the third party.

As for the criminal liability for a promise, offer or demand of a bribe, acceptance of an offer or a promise of a bribe as a completed body of a crime, the amendments of the Criminal Code introduced by the law No. 221 of April 18, 2013 provide for different approaches to criminalization of these offences.

Thus, criminal liability for a promise, offer or acceptance of a bribe, or offer of illegal benefit is stipulated for a state enterprise employee, who is not a public servant (Article 354 of the Criminal Code);

As regarding officials of the public sector, acceptance of an offer or a promise of a bribe (Article 368 of the Criminal Code), as well as an offer of illegal benefit (Article 369 of the Criminal Code) are criminalized. An offer of illegal benefit to a public servant is not criminally prosecutable.

As for the private sector, only an offer of illegal benefit to a public sector servant is criminalized (Articles 368^3, 368^4 of the Criminal Code) as well as the offer to a person that provides public services. Neither a promise of illegal benefit, nor acceptance of this promise or offer by these persons constitutes a separate body of a crime.

This approach is available in the article 369^2 «Abuse of authority»: an offer is criminalized, however a promise / acceptance of a promise or offer is not regulated.

As for the separate corpus delicti of illegal benefit request, this international standard is not implemented in Ukrainian criminal legislation.

The element of corrupt crime in the interest of third parties is stipulated by the Criminal Code both for the private and public sector.

Criminal liability for giving or receiving illegal benefits does not include employees of enterprises, private sector organizations, or persons working with these enterprises and organizations, who are not staff employees (i.e. working on the grounds of a civil law contract).

Thus, in this part the recommendation can be considered partially implemented.

Practically implement legislative provisions on increasing the highest possible punishment for active and passive bribery, as well as study the issue of increasing the statute of limitations for specific corrupt offences.

Law No. 221 of April 18, 2013 toughens the sanctions for the crimes specified by the sections 2

of the articles 368 and 369 of the Criminal Code of Ukraine: giving or accepting illegal benefits. The highest possible punishment according to these standards is 2 to 4 years of imprisonment.

The statute of limitations for the aforementioned crimes were were also increased increased.

However, it is necessary to mention the following discrepancies between the Criminal Code of Ukraine and the standards set by the Criminal Convention against Corruption:

1) the punishment for making or accepting an offer forms a separate, less severe corpus delicti than for the base crime of giving or accepting illegal benefits. This approach contradicts the approaches set by Convention, in which liabilities should be equal for all types of corrupt behavior;

2) the punishment for the offer or acceptance of a bribe does not provide for imprisonment, which makes extradition impossible;

3) the liability for corruption-related crimes in the private law sphere (Articles 368^3, 368^4 of the Criminal Code) was mitigated by law No. 4025; in particular, imprisonment was replaced with large fines. Again, it contradicts the standards of the Criminal Convention against Corruption, which demands equal liability for all types of corrupt behavior, in both the public and private sector. In addition, this approach makes international cooperation in the form of extradition impossible.

At the same time, it is necessary to mention that the government has submitted the draft law of Ukraine «On Amendments of Some Legal Acts of Ukraine on Implementation of European Commission Recommendations in the Sphere of State Anti-Corruption Policy» (registry No. 3312 of September 23, 2013) for the Parliamentary consideration. The draft law aims to solve a number of problems mentioned above, particularly:

Establish liability for bribing an employee of a private sector enterprise or organization by applying imprisonment as a form of punishment;

Stipulate liability (including imprisonment) for an offer, promise / acceptance of an offer or promise in respect of persons providing public services, as well as public officers in private sector having equalized liability for such kind of corruption crimes and provision / acceptance of illegal benefit;

Establishment of liability for an offer or acceptance of a promise of illegal benefit for public sector servants;

Establishment of liability for the promise or acceptance of a promise for Abuse of authority (Article 369^2 of the Criminal Code).

Adoption of this draft could remove conflicts between criminal legislation and international standards in the sphere of corruption criminalization.

Thus, in this part the recommendation can be considered partially implemented.

Define the notion of bribery in criminal legislation, including illegal non-material benefits.

Law No. 221 of April 18, 2013 substitutes the notion of a bribe with the notion of illegal benefit, that is money or other property, benefits, privileges, services, non-material assets offered, promised or given without legal grounds.

Thus, in this part the recommendation can be considered implemented.

Study the issue of amendments to the legally defined crime of illegal enrichment to make it correspondent with Article 20 of UN Anti-Corruption Convention.

The law of Ukraine «On Amendment of Some Legal Acts of Ukraine on Liability for Corruption-Related Offences» of April 7, 2011 added article 368,[2] «Illegal Enrichment,» to the Criminal Code of Ukraine. The article practically does not differ from the corresponding corpus delicti that was contained in the Criminal Code at the moment of the second monitoring round. Thus, the corpus delicti does not correspond with the standards specified in Article 20 of the UN Convention against Corruption, and the features of the crime virtually coincide with those of abuse of authority and illegal benefit crimes, which leads to confusion in their practical application. For example, a tax service employee was accused of illegal enrichment for demanding a money transfer to a third party's account in return for abstaining from specific actions (not calling to criminal Liability).[32] In a different case, a mayor was condemned for illegal enrichment in the amount of USD 10,000 and Abuse of authority. The mayor received the money from a private entrepreneur for a contract of lease of a territory for mining.[33]

At the same time, the government did not make any efforts (for instance, did not prepare draft laws) for coordinating provisions of the article 368[2] with provisions of the UN Convention against Corruption.

Taking this into account, the recommendation can be considered as not implemented in this part.

Coordinate the law on legal entities' responsibility for corruption in correspondence with international standards and recommendations. Enact the law «On Liability of Legal Entities for Corruption-Related Offences» or similar legislative acts.

The law of Ukraine «On Liability of Legal Entities for Corruption-Related Offences» adopted on June 11, 2009, was abolished by the law No. 2808 of December 21, 2010.

However, being pressed to implement the Action Plan for visa liberalization with Europe, on May 25, 2013 the Parliament adopted the law of Ukraine «On Amendments of Some Legal Acts of

32 http://pik.cn.ua/1830/podatkivets-vidpovist-za-nezakonne-zbagachennya/

33 http://tern.gp.gov.ua/ua/terndoc.html?_m=publications&_t=rec&id=113196&s=print

Ukraine for European Union Visa Liberalization for Ukraine Concerning Liability of Legal Entities» that provided for establishment of an institution of quasi-criminal liability of legal entities for illegal gains' laundering (Articles 209 and 306 of the Criminal Code), terrorist activity (Articles 258-258[5] of the Criminal Code) and corruption (Articles 368[3], 368[4], 369, 369[2] of the Criminal Code). The law comes into action on September 1, 2014.

Although the law is not yet in force, the government has already suggested to introduce detailed amendments into a number of its provisions, i.e. to increase the amount of fines and to make sure that liability is imposed even if the illegal gains were not, in fact, received.[34] Similar changes were also proposed by a group of MPs of Ukraine[35].

Civil society positively appraises the adoption of this law, taking into account the great resistance to its adoption by different social and professional groups. There are opportunities to improve the provisions of the law through bringing them into correspondence with the best international experience and current international standards (particularly in the part of introducing autonomous liability for legal entities autonomous responsible legal entities, specification of grounds for a legal entity liability when management of the company did not provide proper control over adhering to standards of integrity, introduction of a wider list of sanctions that would correlate with the amount and character of the illegal benefit).

At the same time, we should take into account that the notion of liability for legal entities is new for Ukraine, and there is no practice of its application. At the same time, there is a strong opposition to these innovations within society; citizens don't trust the judiciary, thus it would be reasonable to provide proper implementation of the law in the approved version (with the amendments proposed by drafts No. 3312 or 3522), analyze the practice of its implementation and make amendments to the law with consideration of experience gained.

Proceed with measures aimed at implementing FATF and MONEYVAL recommendations in the sphere of illegal gains laundering.

Ukraine is a member of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). In the scope of the 3rd round of evaluation the MONEYVAL report on Ukraine's progress in implementation of key FATF recommendations was approved on December 6, 2012. according to the section 46 of the report Ukraine achieved substantial progress in strengthening the national system of illegal gains prevention by eliminating most of the defects mentioned in the evaluation report[36].

After that, the key problems to be solved by Ukraine were the establishment of liability of

34 Draft law of Ukraine «On Amendment of Some Legal Acts of Ukraine on Implementation of European Commission Recommendations in the Sphere of State Anti-Corruption Policy» (registry No. 3312 of September 23, 2013.).

35 Draft law of Ukraine «On Amendment of Some Legal Acts of Ukraine on Increasing State Anti-Corryption Policy Efficiency (registry No. 3522 of November 6, 2013) .

36 http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%202y/MONEYVAL(2012)31_%20Progress%20Report_UKRAINE.pdf

legal entities and criminalization of all offences stipulated by international conventions regarding terrorism financing.

Besides, MONEYVAL has turned one's attention to the non-correspondence of the national confiscation system with international standards and called on Ukraine to adopt new legislation and inform regularly on its progress.[37]

The issues described above will be assessed by MONEYVAL in the scope of the 4th evaluation round in 2014.

We should also mention that the national system of illegal gains' prevention has received a positive assessment in the 3rd report on the state of implementation of the Action Plan for visa liberalization with Europe.[38]

Taking into account the high level of implementation of MONEYVAL 3rd evaluation round's recommendations, the recommendation can be considered partially implemented.

Assessment of Recommendations 2.1 – 2.2 implementation: PARTIALLY IMPLEMENTED

NEW RECOMMENDATION:

Enter amendments to the criminal legislation on coordination with international standards in the sphere of corruption criminalization, notably regarding the following:

Including all categories of private sector enterprises' and organizations' employees;

Establishment of liability for a promise / acceptance of a promise of an illegal gain regarding all forms of corruption-related crimes, as it is provided by the Criminal Convention against Corruption (the punishment should be equal to key crimes of passive / active bribery and should provide for international legal aid opportunities);

Establishment of liability for a request of an illegal gain;

Expanding the corpus delicti under the article 369[2] «Abuse of authority» to encompass the cases of decision making by all persons listed in the Criminal Convention against Corruption, but not only the persons authorized for implementation of state functions.

Taking into account the contradictory practice of application of the article 368[2] of the Criminal Code «Illegal Enrichment» by criminal justice bodies and by courts, provide generalization and analysis of this practice, as well as taking to consideration the awareness-raising experience, prepare amendments into the criminal legislation regarding coordination of this standard in correspondence with the article 20 of the UN Convention against Corruption.

37 http://www.coe.int/t/dghl/monitoring/moneyval/Activities/2012_AnnualReport_en.pdf, p. 35.

38 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

Establish a working group assembled of governors, representatives of criminal justice bodies, business and civil society to monitor application of the law on liability of legal entities; prepare necessary methodological materials for criminal justice bodies' employees and for judges; organize training seminars for the specialists who would apply the law; organize a wide informational campaign for explanation of the law provisions and necessity to ensure business-sector integrity; involve civil society and business into the campaign; prepare amendments to the law on the basis of the monitoring results.

Secure implementation of recommendations of MONEYVAL 4th evaluation round that will take place in 2014.

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.

It should be noted, at the onset, we should build on that the UN Convention against Corruption and Criminal Convention against Corruption do not establish any international standards of the «public servant» notion; these acts only provide basic features and list several examples of a «public servant», and appeal to national legislation for details.

According to the law of Ukraine «On Amendment of Some Legal Acts of Ukraine on Liability for Corrupt Offences» the «public servant» notion has been amended in the Criminal Code and now includes all categories of persons with this status both in Ukraine and abroad.

In particular, the note to the article 364 of the Criminal Code stipulates that the public servant category includes persons that perform functions of local or central authority representatives permanently, temporarily or according to a specific assignment, as well as those who permanently or temporarily perform organizational or administrative and economic functions in central and local public bodies, state or communal enterprises and organizations according to a specific assignment of a public body in commission, local authority, central executive body with a specific status, a body or person of an enterprise / organization authorized by court or law.

Foreign officials according to the Criminal Code are the following: officials of foreign countries (persons who occupy positions in legislative, executive or judicial body of a foreign country, including jury members and other persons that perform state functions for a foreign country, particularly

for a state body or enterprise); as well as foreign arbitrators, persons authorized to adjudicate civil, commercial and labor disputes in foreign states as an alternative to court proceedings; officials of international organizations (employees of international organizations or any other persons authorized by this organization to act on its behalf), members of international Parliamentary assemblies where Ukraine takes part; judges and officials of international courts.

Taking this into account we state state that there is no problem of non-correspondence of «public servant» notion in Ukrainian legislation with international standards. It's a different matter that not all categories of persons that should be liable for corruption-related crimes are recognized as such by the Criminal Code of Ukraine (see above).

Thus, we can consider this recommendation IMPLEMENTED

Recommendations 2.4 – 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.

Make amendments to the Criminal Code with the aim of securing obligatory confiscation of corruption-related gains. Secure that the scheme of confiscation allows confiscation of huge gains or property of the correspondent value, or financial sanctions of the correspondent level. Review correspondent mechanisms to make the procedure of identification and arrest of corruption gains in the process of prejudicial inquiry and criminal investigation eefective and efficient.

The law of Ukraine «On Amendments of the Criminal Procedure Code of Ukraine Regarding Implementation of the Action Plan on European Union Visa Liberalization for Ukraine»[39] No. 222-

39 http://zakon2.rada.gov.ua/laws/show/222-18

VII (regarding special confiscation) establishes procedures of special confiscation. It will be applied for the crimes specified in the articles 364, 366, 368, 368-2, 369, and 369-2 of the Criminal Code of Ukraine. The law came into force on December 15, 2013.

The article 96^2 of the Criminal Code of Ukraine stipulates that special confiscation shall be applied in cases when money, valuables and other property:

have been received as a result of a crime and / or are gains of this crime;

have been planned to use or have been used for persuading a person to commit a crime, for financing and / or supply supporting a crime and rewarding for its commission;

have been a target of crime (but for the ones that were to be returned to their lawful owner). In case the lawful owner can not be identified they pass into the ownership of the state;

have been created, applied and used as a means of crime, but for the ones that were to be returned to their lawful owner who did not know and could not know about their illegal use.

Besides, funds and other property can be confiscated when it has been converted (in full or partially) into another kind of property. If the confiscation of funds or property is impossible according to the judicial decision about special confiscation due to the money or property usage or impossibility of appropriation the lawfully acquired property or alienation or due to other reasons, the court can decide to confiscate funds amounting the cost of the property.

In addition Chapter 16 and 17 of the Criminal Procedure Code of Ukraine provide for the detection and arrest of the corruption-related incomes at the phase of prejudicial inquiry and criminal prosecution.

A problematic issue remains that special confiscation is only used for limited articles of the Criminal Code and even not for all corruption-related. For instance, crimes connected with corruption in the private sector do not fall under the procedures of the special confiscation, which contradicts the requirement of UN Convention against Corruption and Criminal Convention against Corruption.

No steps have been undertaken to facilitate effective and efficient operation of mechanisms for discovery and arrest of corruption-produced gains at the stages of pre-trial investigation and criminal prosecution. Inter alia, no specialized subdivision or body have been launched. Besides, Ukraine does not have facilities, which permit to effectively run the finances or other property, which is seized during the criminal proceedings, especially in cases of entire property complexes, enterprises, vessels and aircrafts, etc.

Therefore, in this part the recommendation can be considered to be partially implemented.

Analyze effectiveness of legislation regarding judges' and MPs' immunity in the order of

priority to provide transparency and efficiency of the procedure of lifting of immunity that would be based on the criteria of objectivity and would not allow abuse.

Partially limit judges' and MPs' immunity by means of introducing functional immunity and allowing arrest at the crime scene.

Specify how all or a part of investigative measures can be applied to persons with immunity in the process of arrest and criminal investigation.

In 2012 Parliament upheld 2 draft legislations promoting amendments to the Constitution of Ukraine on Immunity of Certain Officials (No. 3251, 10530) and sent it to the Constitutional Court of Ukraine to obtain the court determination. However, the Constitutional Court ruled that only people's deputies' deprivation of immunity would be constitutional. Neither immunity of judges, judges of Constitutional Court nor President would be repealed through the amendments.

New 2012 Criminal Procedure Code of Ukraine of Ukraine contains Chapter 37 (articles 480-483) concerning the peculiarities of criminal proceedings of particular class of person. Judges and people's deputies (MPs) cannot be arrested without Parliamentary permission.

Regulations on commencement of investigations were also amended. Before it was impossible to commence an action against a people's deputy without Verkhovna Rada consent. Nowadays bodies of investigation have an opportunity to institute a proceeding without any permission of the Parliament.

Assessment of Recommendations 2.4 – 2.6 implementation: PARTIALLY IMPLEMENTED

NEW RECOMMENDATION:

To make amendments to The Criminal Code of Ukraine, introducing a provision about universal rules of special confiscation confiscation applicable to all infringements, which can evoke criminal incomes;

To form a body (subdivision of existing one), responsible for detection, inquiry of finances or other property, which can be the subject of following confiscation in criminal proceeding;

To establish effective mechanisms for running the arrested funds and property in order to save their value.

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.

Official numbers regarding requests for mutual legal assistance linked to corruption offences are lacking. The Web-site of Prosecutor General's Office of Ukraine gives only general information. According to it:

- during 2012 Prosecutor General's Office of Ukraine examined 1690 inquiries about international cooperation during criminal proceedings (1969 in 2011), 712 of which are petitions of Ukrainian bodies of pre-trial investigation (1030) and 978 petitions of foreign authorities(939).

- Out of the afore-mentioned pool, 1114 petitions were examined, pertaining to the following issues: international cooperation in a criminal proceeding (1206 in 2011), uptake of a criminal proceeding (165 for 2012 and 164 for 2011), extradition of persons (411 in 2012 and 599 in 2011).

- Ukrainian bodies of pre-trial investigation applied the inquiries about international legal assistance in criminal proceedings to proper authorities from 47 countries, mostly to the Russian Federation (396), the Republic of Belarus (32), the Federal Republic of Germany (20), the Italian Republic (19), the Republic of Latvia (17), the USA (912) and others (the State of Israel, the French Republic, the Republic of Azerbaijan, Georgia, etc.)

- Prosecutor General's Office of Ukraine received and motioned on of international inquiries about legal assistance from 41 countries, mostly from the Russian Federation (255), the Republic of Moldova (83), the Czech Republic (70), the Republic of Bulgaria (44), the Republic of Poland (41), the Republic of Belarus (37) and others (the Republic of Azerbaijan, the Federal Republic of Germany, the Republic of Kazakhstan, the Republic of Latvia, etc.)

The number of inquiries connected with corruption cases is unknown.

Besides, there are jurisdictional hurdles for receiving or providing mutual international legal assistance. For instance, Ukraine hasn't still had mutual treaties with world countries about extradition of infringers. Thus, apart from European countries, such treaties are concluded only with Brazil, India, Panama, Egypt, and Iran. Moreover, extradition is mentioned also in some bilateral treaties to which Ukraine is party in criminal cases.

However, although Ukraine has a treaty of this kind with the United States of America (Treaty between Ukraine and the United states of America on Mutual Legal Assistance in Criminal Matters as

of June 22, 1998, ratified by Ukraine according to February 10, 2000 law), it doesn't have regulations about extradition. It allows, in particular, Petro Melnyk, Rector of National University of State Tax Service of Ukraine, who is suspected in serious corruptive crime, to abscond in the USA from August 2013.

After ratification of the Second Additional Protocol to European Convention on Mutual Assistance in Criminal Matters (June 1, 2011), Verkhovna Rada approved:

- June 2, 2011 – law «On Amendments of Some Legal Acts of Ukraine concerning Extradition of Persons[40]». According to it, there was an amendment to the law of Ukraine «On Remand» regarding temporary and extradition arrest;

- June 16, 2011 – law «On Amendments of Some Legal Acts of Ukraine in Connection with Ratification of Second Additional Protocol to European Convention on Mutual Assistance in Criminal Matters» [41], according to which there was an amendment to the Law of Ukraine «On Ratification of the European Convention on Extradition of 1957, the Additional Protocol of 1978 to the Convention»: bodies, empowered according to the subsection 1 article 15 of Convention are the Ministry of Justice of Ukraine (cases that have moved into investigation stage) and Prosecutor General's Office of Ukraine (pre-trial investigation cases).

Ukrainian legislation (in particular, regulations of Chapter IX of the Criminal Procedure Code of Ukraine, articles 30-32, Law «On Corruption Prevention and Counteraction») conforms to articles 43-50 of Convention in the part of international cooperation. The law-prescribed mechanisms for asset recovery (article 33 of Law «On Corruption Prevention and Counteraction», Law «On Prevention and Counteraction of the Legalization (Laundering) of the Proceeds from Crime, and Terrorism Financing», article 568 and etc., the Criminal Procedure Code of Ukraine) also conforms to the regulations of Convention articles 51-59.

Assessment of Recommendation 2.7 implementation: MAINLY IMPLEMENTED

Recommendation 2.8 of the Report on the Second Round of Monitoring of Ukraine:

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.

40 http://zakon3.rada.gov.ua/laws/show/3453-17
41 http://zakon3.rada.gov.ua/laws/show/3529-17

According to the law of Ukraine No. 221-VII as of April 18, 2013 «On Amendments to Some Legislative Acts of Ukraine for Bringing the National Legislation in Correspondence with the Standards of the Criminal Law Convention on Corruption»[42] the Code of Ukraine on Administrative Violations excluded the articles 172-2 («Violation of Restricts to Use Official Position») and 172-3 («Proposal or Providing Undue Benefit»). At the same time they adopted the articles 368, 369 in new edition, amended the articles 368-2, 368-3, 368-4 of the Criminal Code of Ukraine.

Thus, the problem of separation of administrative and criminal liability for providing/receiving undue benefit is implemented by this Law. Besides, the draft law No. 3312 determines to deprive the right to make administrative protocols on violations, related to corruption of officials of tax service and Military Police in the Armed Forces.

In accordance with the part 2 of the article 172-5 of the Code of Ukraine on Administrative Violations («Violation of the determined by law restrictions concerning receiving gifts (donations)»), violation of the determined by law restriction concerning receiving gifts (donations) is subject to a fine from fifty to one hundred personal exemptions of citizens with confiscation of such gift (donation).

The subject of violation in this article is the persons, mentioned in the paragraph 1, subparagraphs «a», «b» of the paragraph 2 of the first part of the article 4 of the law «On Grounds of Corruption Prevention and Counteraction». That is they are officials of foreign states, international organizations, officials of private law entities. At the same time, they are notaries, auditors, other similar officials who provide public services.

The concept of «breach of the determined by law restriction concerning receiving the gift (donation)» means violation of the determined by the part 1 of the article 8 of the Law «On Grounds of Corruption Prevention and Counteraction» absolute restriction to receive the gifts (donations) from legal entities or individuals:

for the decisions, actions or inactions in the interest of a donor which are accepted, made both by this person or with the assistance of other officials and bodies;

if the person who gives a gift (donation) is in subordination to such person.

It is evident that «receiving a gift (donation) for the decisions, actions or inactions in the interests of the donor which are accepted, made directly by such person» and «receiving a gift (donation) for the decisions, actions or inactions in the interests of the donor, which are accepted, made by other officials and bodies with the assistance of this person» taking into consideration the provision of the part 2 of the article 9 of the Code of Ukraine on Administrative Violations (according to which «administrative responsibility for violations, determined by this Code, comes if these violations do not provide criminal liability by their nature») shall be egulated by the following:

art. 368;

42 http://zakon4.rada.gov.ua/laws/show/221-18

or parts 3 or 4 of art. 368-4;

or parts 2 or 3 of art. 369-2 of the Criminal Code of Ukraine.

One will have to settle this conflict of laws in favor of the provisions of the Criminal Code of Ukraine by canceling the part 2 of the article 172-5 of the Code of Ukraine on Administrative Violations.

Thus, the recommendation 2.8. shall be considered IMPLEMENTED IN FULL.

NEW RECOMMENDATION:

To continue reform of the legislation concerning administrative corruption-related violations in the part of removing the conflicts with the Criminal Code of Ukraine, optimize the number of the bodies which can issue protocols regarding corresponding violations and separation of their powers.

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.

Public authorities have not taken any measure to fulfill this recommendation. There are no draft laws, or concepts according to which it shall be prepared.

The opposition (People's Deputy A.A. Kozhemiakin) submitted the draft law «On the National Investigation Bureau of Ukraine» (registration No. 3042 as of August 01, 2013) to the consideration of the Verkhovna Rada. This draft law determines the creation of a usual body of pre-trial investigation, but not an autonomous specialized body for anti-corruption investigation.

As of October 31, 2013 the Advisor to the President Andrii Portnov declares that the law on the national investigation bureau, which establishment is determined by new Criminal Procedural Code of Ukraine, will be developed after adoption of a new law on the Office of the Prosecutor General[43].

The settlement of the problem does not come further that conversation and forecasts.

At the same time in September 2013 the Center for Political and Legal Reforms developed the draft law «On the National Investigation Bureau» as the autonomous specialized body for

43 http://www.ukrinform.ua/ukr/news/zakonoproekt_pro_dergbyuro_rozsliduvan_mogut_predstaviti_u_vr_naybligchim_chasom_1878648

anti-corruption investigations, structurally independent from the current law enforcement bodies and safety bodies, intended to high-ranking corruption and secured by the adequate guarantees of independence, powers and resources in accordance with the international standards and best international practices.

Assessment of Recommendation 2.9 implementation: NOT IMPLEMENTED.

We consider it appropriate to place the current edition of the recommendation.

CHAPTER 3. PREVENTION OF CORRUPTION IN PUBLIC SERVICE

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 whistleblower. 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.

Legislation on integrity in public service

To reform the civil service legislation introducing the clear separation of political and professional servants, having implemented the principles of legality and impartiality, competitive system of appointment and career development on the basis of merits and skills and other framework requirements, which are applied to all public servants, in accordance with the best European and worls practices.

To analyze and reform the rules on recruitment, elevation on position, applying disciplinary liability and dismissal of public servants and develop clear guidelines and criteria for these procedures for the purpose to limit the discretion and arbitrary decisions of managers, to ensure the professionalism of public service and prevent it from politization.

To analyze and reform the schemes of labor payment for the purpose to provide that the changeable part of salary does not amount the dominating part and will be introduced in transparent and objective way on the basis of clear determined criteria.

To provide a decent salry [of public servants].

To fix clear and balances set of rights and obligations for public servants.

The recommendation in the part of the reform of public service has not yet been implemented. The Law of Ukraine «On Civil Service» in its new edition was adopted on November 17, 2011, however each year its coming into force was postponed. Under the Law of Ukraine as of December 19, 2013 No. 714 coming into force the new edition of the Law of Ukraine «On Civil Service» was postponed for the third time – this time to 2015.

Postoponing the implementation of the new Law is motivated by the fact that the other law which determines the grounds of public service in local self-government – the Law of Ukraine «On Service in Local Self-Government Authorities» is not arranged with the new edition of the Law «On Civil Service». Besides, among the basic motives of postponing the reform of public service is the absence of funds in the state budget.

At the same time, we need to emphasize that a more likely reason for of postponing the reform of public service is incongruence of the new Law with the international standards, its complexity and implementation difficulty to use. The law is criticized by national and international experts alike.

For example, the experts of the Center for political and legal reforms note that «despite the detailed regulation and positive character of significant number of innovations, the new Law of Ukraine «On Civil Service» contains a number of significant defects which cast doubts in its ability to provide the high-quality reform of this institute alongside high standards of democratic states»[44]. Among the basic problems of the Law the experts of the Center name the following:

inadequate guarantees for impartiality and professionalism of servants, caused by unclear separation of the senior public servants and political positions, as well as insufficient limitations for public servants regarding political activity;

- complicated and inconsistent classification of public positions;
- combination of fundamentally different and institutionally conflicting functions of public regulation, implementing public policy and control of meeting the legislation in the sphere of public service in one authority – «Duly authorized central body of executive power for public service»;
- preservation of discretionary character of salary bonuses for public servants[45] etc.

Inconsistency of the Law of Ukraine «On Civil Service» with international standards is noted and mentioned in SIGMA conclusion – «Support for Improvement in Governance and Management», OECD and EU initiative[46]. Thus, according to SIGMA experts' opinion, the Law does not correspond to the European standards and best practices, especially, in such issues as appointment to civil service and civil service itself; positions classification (dividing positions into groups, subgroups, separation of political and administrative positions, appointmentment of assistants (advisors) of political persons); termination of public service; labor payment: components of salary, transparency and motivation of labor payment for public servants; disciplinary liability, etc. Besides, this Law translates into budgetary expenditures. In 2010 EU agreed to provide about 70 mln EUR for introducing the program of sectorial budget assistance for reforming public administration in Ukraine. The corresponding agreement should have been signed before the end of 2012. The requirements of funding were adoption of clear plans for approval of the legislation on public service and Code of Administrative Procedure in accordance with the European standards, plan of institutional development in the sphere of administrative justice and administrative service

44 http://www.pravo.org.ua/publichna-administratsiia/derzhavna-sluzhba/833-2012-02-06-09-03-15.html

45 For example, in accordance with part 5 of the article of the Law, public servants whose official duties include legal, financial and economic, professional expertize and/or developing or editing recommendations on forming the state policy, draft normative and legal acts and/or laws, adopted by the Verkhovna Rada, submitted for signature to the President of Ukraine, the employees of the Administration of the President of Ukraine, the Apparatus of the Verkhovna Rada of Ukraine, Secretariat of the Cabinet of Ministers of Ukraine amd Ministies, which powers include providing foring and implementing the state legal, financial and budget policy, received the additional payment in the amount of 100% of the salary by the assignment subject

46 http://webcache.googleusercontent.com/search?q=cache:http://youkraine.eu/media/attachments/Sigma_Comments.doc

provision, as well as corresponding indicators of evaluation. As a result of adoption of a new law on public service Ukraine lost the possibility to receive this assistance[47].

Thus, taking into consideration the necessity to rethink the reforms and radical changes of the law on public service, the necessity to make the corresponding amendments to the law on public service in the local self-government authorities, in this part the recommendation 3.2 shall be considered **NOT IMPLEMENTED.**

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.

Ukraine does not have a unified law for conflict of interests regulation, having favoured a different approach, introducing instead a system of norms for preventing and settling conflict of interests in the regulatory acts, which determine the status, powers and procedure of their implementation by public servants and authorities of state power and local self-governnce. This principle is enshrined, especially, in the second part of the article 14 of the Law of Ukraine «On Grounds of Corruption Prevention and Counteraction», which determins that the laws and other regulatory acts determining the powers of state power authorities, self-governement bodies, procedure of providing some types of public services and conducting other types of activities, related to executing the functions of the state, local self-government, shall determine the procedure and ways of conflict of interests regulation.

There are currently a number of basic, general requirements concerning conflict of interests which is fixed in the law on the grounds of corruption prevention and counteraction:

Definition of conflict of interests (article 1) which comprises only potential conflict of interests and does not include the situation of real and apparent conflict of interests;

General limits for using the powers on the position (article 6);

Requirement concerning the incompatibility of the position with executing other function, not related to public service (article 7);

47 http://ua.korrespondent.net/business/economics/1580349, http://www.pravda.com.ua/articles/2012/02/28/6959609/

Restraints for receing gifts (article 8);

Restraints for employment of relatives (article 9);

Restraints for the persons which were dismissed from public position (article 10);

General provisions for counteraction, regulation of conflict of interests, as well as institutional providing the control for meeting these rules (article 14).

The general norm for counteraction of conflict of interests is included in the Law of Ukraine «On Rules of Ethic Conduct» as of May 17, 2012.

In addition, the laws of Ukraine «On Amendments to Some Legislative Acts of Ukraine related to the adoption of the Law of Ukraine «On Grounds of Corruption Prevention and Counteraction» as of May 17, 2012 and «On Amendments to Some Legislative Acts of Ukraine related to Implementation of the State Anti-Corruption Policy» as of April 18, 2012 have provided the same general norms to a large number of special laws, which determine the status and powers of a number of public servant categories.

In addition, the problem of these laws is that they contain only too general formualtions under that follow an overall pattern that a public servant must avoid conflict of interests and inform his manager on the possibility of its arising. The manager, in his or her turn, shall take measures to prevent conflict of interests in a way, determined by the legislation.

No special legal provisions concerning preventing conflict of interests and its removal taking into consideration the specifics of the regulation sphere exist with very few exceptions, for example, in the Procedural Codes.

In some way these issues are settled by the General rules of a public servant conduct, approved by the order of the Chief Administration of the Public Service of Ukraine as of Auiguts 04, 2010 under No. 214, which give more detailed responses what a public servant shall do in different situations related to a potential or real conflict of interest, as well as provides the examples for regulating some situations. However, operability of these Rules is doubtful, because they overcome the frame of the law, as well as have the level of institutional order, which applies only to a narrow category of public servants.

One more important problem is the absence of institutional support necessary to follow the rules for conflict of interest management.

Article 14 of the Law on the Grounds of Corruption Prevention and Counteraction determines that the control of compliance with these rules is made by the authorized subdivisions (persons) for the issues of corruption prevention and counteraction, which are established (determined) by the state authorities, the authorities of the Autonomous Republic of Crimea, their apparatus, bodies

of local self-government and legal entities of public law uder the decision of the body manager or legal entity of public law in the procedure determined by the legislation (excepts judges and people's deputies of Ukraine). At the same time, no law or regulation stipulates the procedure for such control or consequences thereof.

Obviously, such mechanism of control does not correspond to criteria or independence and is not efficient because it comprises the management level of the correpsong body.

The mechanism for compliance with norms concerning the conflict of interest and effective and dissuasives anctions is not provided, only an administrative fine for failure to inform his or her manager in cases, determined by law, on conflict of interest (170 UAH – 2,550 UAH). However, the legislation does not determine the cases when a person shall inform on conflict of interest, the procedure of such informing, and the fact of adinistartive liability for failure to inform on conflict of interest does not bear disciplinary fines, for example, dismissal from the position (par. 2 of part 2 of rt. 22 of the Law of Ukraine on the Grounds of Corruption Prevention and Counteraction).

It should emphazied that the absence of efficient instruments for prevention of conflict of interest is one of the most important criteria which was not implemented by Ukraine in the process of realization of the Action Plan for liberalization of visa regime with EU[48].

Thus, in this part the recommendation 3.2 can be considered as PARTIALLY IMPLEMENTED.

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.

The situation with review of asset declarations of public servants is similar to prevention of conflict of interest.

Ukraine has a decentralized system of collection, storage and inspection of public servants' declarations. Declarations are submitted and stored in paper to HR service, where a servant works. Review of declarations is conducted by the authorized subdivisions for corruption prevention which do have neither sufficient levels of independence, not required powers and resources to conduct effective review of declarations. Submission of false information in the declaration is not punishable[49].

48 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

49 The first part of the article 172[6] of the Code of Ukraine on administrative violations determines the liability only for failure to submit or delay to submit the declarations. The penalty for such action amounts from 10 to 25 personal exemptions of the citizens (correspondingly, 170 UAH – 425 UAH). Any sanctions for false information in the property declaration are not determined.

Such a system is ideal for hiding incomes and property of public servants. No power structure initiates to introduce effective control system of servants' income according to the international standards as the Action Plan for liberalization of visa regime requires, which witnesses the absence of political will to real changes in the anti-corruptiuon policy.

It should be mentioned that declarations of high-ranking officials, which are to be published within 30 days from the date of their submission by placing on the official web-sites of the state authorities and local self-governement bodies, are published for a term of no less than one year.

Such changes enable the civil society to control property status of officials; however these norms of the Law are often not implemented[50]. In addition, even in the cases, when journalist investigations showcase non-compliance with the declared and actual incomes or property status, no investigation is launched to check the uncovered facts[51].

One should, nonetheless, note as positive the changes envisaged by the law No. 2837, which decrease the treshold for the one-time purchase that shall be noted on the declarations starting 2014. This has been lowered from UAH 150 thousand to UAH 80 thousand. In addition, under the amendments in the law officials shall indicate not only amounts on bank accounts, but banking establishments (including abroad), where they are placed, as well as names of enterprises, establishments, and companies etc., parts in the authorized capital, which the declarant and his family members own. Due to this, the possibilities for launching corrupt shcemes where proxy relations are basis have diminished and conflict of interest identification will become easier.

Thus, in this part the recommendation 3.2 shall be considered as PARTIALLY IMPLEMENTED.

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.

On May 17, 2012 the Parliament approved the Law of Ukraine «On Rules of Ethical Conduct» which is a legislative set of rules of ethical conduct for public servants. Taking into consideration the provisions of this Law a number of sectorial ethical codes is approved or changed, including, in particular, amendment to the General rules of conduct of public servants, approved by the order of the Chief Administration of Civil Service of Ukraine as of August 04, 2010 under No. 214 (as of September 29, 2012), the Rules of conduct and professional ethics of line employees and management of internal affairs of Ukraine (as of February 22, 2012) were approved, Code of professional ethics

50 http://www.pravda.com.ua/news/2013/12/26/7008589/

51 For example, see a series of journalist investigations in online publication «Ukrainska pravda». Especially, http://www.pravda.com.ua/articles/2011/05/19/6214823/, http://www.pravda.com.ua/articles/2012/08/21/6971183/, http://www.pravda.com.ua/articles/2011/12/15/6839225/

and conduct of officials of prosecutor's office (as of November 28, 2012), Code of judicial ethics (as of February 22, 2013), Rules of professional ethics of notaries of Ukraine (as of March 14, 2013).

In addition, a number of ethical codes was approved before, amongst the Code of conduct for officials which functional duties that comprise border management (as of July 05, 2011), approved in accordance with the recommendations of the Action Plan for liberalization of visa regime with EU.

Concerning ethical institutional infrastructure it is practically not established, and corresponding functions are partially made by subdivisions for corruption prevention and human resources subdivisions. The authority to be responsible for proper implementation of ethical standards is lacking.

Worthwhile mentioning is also the issue of training of the servants in the sphere of ethical behaviour.

The website of the National Agency on Civil Service does not have the information concerning conducted training on the issues of ethics, but it is mentioned that for 9 months 2013 there has conducted training in corruption prevention and counteraction for more than 50,000 public servants and officals of local serl-governement, or 15.6% all employees.

In addition, it would be logical on implementing such important acts which determine the standards of conduct to conduct training of all servants without exception.

Thus, in this part the recommendation 3.2 shall be considered as PARTIALLY IMPLEMENTED.

Reporting and whistleblower

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.

Legislation of Ukraine does not contain obligations for public servants to inform on suspicions regarding possible cases of corruption, excluding the cases when it concerns grave or especially grave offences.

Protection of the persons who inform on corruption is provided only within criminal justice which does not correspond to the international standards.

Draft law No. 3312, submitted to the Parliament by the Government for taking into consideration the remarks of EU experts within the Action Plan for liberalization of visa regime, determines the provision concerning the possibility of anonymous informing on corruption and shifting the burden of proof as to legality of employee penalty onto the employer.

Obviously, these two provisions are not enogh to establish an effective system of cooperation with and protection of whistleblowers, as it is determined by the resolution of Parliamentary Assembly of European Council 1729 (2010) «Protection of «Whistle-blowers»»[52].

Thus, in this part the recommendation 3.2 shall be considered as NOT IMPLEMENTED.

Structural subdivisions for disciplinary measures and conflict of interests

To providethe presence and functioning of structural subdivisions, responsible for disciplinary proceeding, administration of conflict of interests issues (providing consultations how to avoid, recommendations how to liquidate conflict of interests) and, possibly, property declaration (consultation, assistance in filling in, responsibility for primary declaration collection etc.) or clear imposing corresponding duties on the other subdivisions.

Amendments to the Law on the Grounds of Corruption Prevention and Counteraction made by the Law of Ukraine «On Amendments to Some Legislative Acts of Ukraine which concern Implemenation of the State Anti-Corruption Policy» as of May 14, 2013 have consolidated the status of the subdivisions for corruption prevention and detection.

They have the powers to control the submission of public servants' asset declarations, reliability of the information in these declarations, as well as control of compliance with conflict of interest regulations.

On the methodological side, the activities of authorized subdivisions pertaining to prevention and detection of the conflict of interest in activities of civil servants and local government officials are bolstered by the central executive body responsible for civil service policy implementation.

We believe the imposition control functions in the sphere of declaration and conflict of interest regulation on the authorized subdivisions is not an optimal decision because of dependence of such subdivisions on their management. On the other hand, their functions could be to provide methodological and educational provision of anti-corruption policy in the scope of the corresponding body.

Thus, in this part the recommendation 3.2 shall be considered as PARTIALLY IMPLEMENTED.

Taking into consideration the abovementioned, the recommendation 3.2 shall be considered as PARTIALLY IMPLEMENTED.

NEW RECOMMENDATION:

To review the Law of Ukraine «On State Service», approved in 2011 taking into consideration the proposals of SIGMA program, civil society, to agree it with the law on service in the local self-governement bodies and provide its proper implementation, monitoring of their implementation

52 http://www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1729.htm

and the following revision taking into account the experience gained.

To adopt the law on implementation of effective mechanisms of detection and prevenetion of conflict of interest and provide implementation of this law by the independent institution and effective, proportional and dissuasive methods. To develop necessary methodological materials and organize training for all categories of public servants.

To adopt a new law on implementation of the declaration system of incomes, expenses and property of public servants, providing, inter alia for:

submission of online declarations;

implementation of the open unified electronic database of declarations;

establishment of an independent body with sufficient authority to control the completeness and accuracy of declarations;

effective sanctions for breaching the requirements of the legislation on declaration.

To provide the establishment of effective institutional infrasctructure for ethical standards of condut for public servants, possibly with imposing the powers to give explanations for their using by the authorized subdivisions. To impose on the one of the bodies of state power the monitoring of the practice of using the ethical standards and giving the explanations for the purpose of correction of flaws in practical application. To provide periodic training of servants in ethical issues on the constant basis.

To adopt a law on personal protection of individuals who inform on corruptional violations, creating internal and external channel for information, proptection system of "whistle-blowers" from undue pressure and persecution, as well as measures to stimulate the information on corruption, creation (imposing on the one of existing) institution which can monitor and analyze the practices of using the law and take measures to its proper using, imposing sanctions for hiding facts of corruption-related offences. To organize the extensive nationwide information campaign with explanation of the law provisions. To conduct permanent training for good-faith reporting on corruption.

In case of establishing independent bodies, responsible for safeguarding adherence to the rules on conflict of interest regulation and asset declaration, they shall refocus the activities of subdivisions to such functions as providing consultation for prevention of corruption, avoidance of conflict of interests and filling in of declarations, analysis of corruption risks in the departments, formulation and monitoring of anti-corruption policy at the departmental level.

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.

On adoption of Code of Administrative Procedures

The draft of the Code of Administrative Procedures was revoked from the Parliament on December 12, 2012. As of January 2014 the draft is being processed in the Ministry of Justice. The draft was submitted by the Ministry of Justice for consideration of the Cabinet of Ministers of Ukraine (letter as of February 22, 2013 under No. 7.1-9/30) and in accordance with the order of the Prime-Minister of Ukraine as of June 04, 2013 under No. 22844/1/1-13 on establishment of working group for development of conceptual approaches to improve administrative procedure of the draft of the Code of Administrative Procedures by the letter of the Minister to the Cabinet of Ministers of Ukraine as of June 06, 2013 under No. 7561/0/2-13 it was returned to the Ministry of Justice for processing[53].

As the draft code is at the latest revision, the final position[54] concerning its provisions is absent for free access.

On ensuring transparency and discretion in public administration

In May 2013 the Law of Ukraine «On Grounds of Corruption Prevention and Counteraction» was amended, its amendments determine conducting the anti-corruption expert assessment of draft laws which are considered by the Parliament. Conducting such expert assessment is imposed on the Parliamentary Committee on Fighting Organized Crime and Corruption.

There are no texts of the Committee's anti-corruption expert assessment reports available. However, the results of the civic anti-corruption expert assessments are publicly available.

Civic Exert Council under the Parliamentary Committee on Fighting Organized Crime and Corruption was established with a basic task of conducting civic anti-corruption expert assessment of draft laws[55], which are considered in the Parliament. At the end of the reporting period (end February) the Civic Expert Council were prepared and published analysis of over 140 draft laws, almost 1/3 of them being Government-promoted draft laws.

From January 01, 2014 the information from the Unified state register of persons who

53 http://www.minjust.gov.ua/section/422
54 http://www.dkrp.gov.ua/info/1026.htm
55 http://crimecor.rada.gov.ua/komzloch/doccatalog/document?id=52600

committed corruption-related offences should be open. The present register is created in 2012 by the Ministry of Justice of Ukraine, which provides its operational upkeep and updates. However, the Ministry of Justice has not opened the Register data for 2012-2014 explaining that the law is not retroactive, and only data starting from 2014 will be opened. The mentioned position of the Ministry of Justice is controversial to the Constitution; because in fact it puts at a disadvantage those people who were registered before 2014 (the information on them is not disclosed). In addition, the Law on the Grounds of Corruption Prevention and Counteraction makes no exception what information shall be disclosed.

Another problem of the Register is the fact that the information can be viewed only by using the "Search" functionality. If you do not know the surname of the person, you are not able to find the information on him/her. In our opinion, it significantly reduces the useful effect from introduction of such an important tool.

As far as increased transparency in the areas of thematic corruption risks is concerned, relevant tasks were envisaged by the National Anticorruption Strategy for 2011 - 2015 and the State Programme for Preventing and Countering Corruption for 2011-2015. At the same time, the government did not did not venture into corruption-analysis in these spheres and did not scrutinize the progress made due to measures taken. Hence, it would be problematic to assess whether the Government actions to improve transparency and discretion in risk areas have been effective, as no relevant measurements were done.

Thus, the recommendation 3.3 shall be considered as PARTIALLY IMPLEMENTED.

NEW RECOMMENDATION:

To adopt Code of Administrative Procedures.

To conduct periodic research of corruption risks in the spheres which can be most affected by corruption for designing relevant anti-corruption measures.

To provide access to the data of the Unified state register of persons committed corruption-related offences starting from the date of its creation, in the format, which allows the user to access the infromation without necessarily using the "Search" functionality.

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 previsions related to public procurement, and ensure that state officials are subject to this provision.

In accordance with the data of the Statistics Service of Ukraine the total amount (actual expenses) in 2012 under the concluded agreements for goods, works and services, which are provided for public money, was about 202.39 billion UAH. The Parliament adopted the Law of Ukraine «On State Procurement» as of June 01, 2010 under No. 2289-VI, which determines the legal and economic grounds of public procurement of goods, works and services for public funds.

However, despite the adoption of the mentioned Law, as well as taking a number of other measures of organizational nature at present we can see ineffective and inappropriate use of public fundsmoney in connection with imperfection of legislative base regulating the procurement process. Some provisions of the Law have gaps, which result in inappropriate and ineffective use of public money.

For example, one of the procedures of procurement of goods, works and services for public money is the procurement procedure with one participant, which according to the law shall be used as an exception (part 2 of the article 39 of the Law). The official statistics proves that procurement with one participant for the last years has become one of the most common procurement procedures. Thus, under the data of the Statistics Service of Ukraine the total amount of money (actual expenses) in 2012 under the concluded agreements for procurement of goods, works and services for public funds with one participant was 137.2 billion UAH (or about 68% of total amount of public procurement in the reporting year). In addition, in 2011 this figure was 53 billion UAH (or about 39% of the total amount of public procurement in the reporting year). This fact does not correspond to the constitutional grounds on providing protection of competitiveness by the state in business activity (article 42 of the Constitution of Ukraine), it has been repeatedly underlined for the Constitutional Court of Ukraine (in particular, the Resolution as of October 09, 2008 under No. 22-рп/2008).

At present, procurement of goods (works, services) by the state, government and municipal, as well as commercial companies, which have a state share exceeding 50 per cent, make purchases for funds other than public funds outside of the Law's provisions. Implementation of the mentioned provision leads to increasing corruption-related risks in the process of conducting corresponding

procurement, ineffective spending of enterprises' money etc. The mentioned intiative does not correspond to the European standards in the sphere of public procurement. Thus, the article 1 of the Directive 2004/18/EU of the European Parliament and Council as of March 31, 2004 on coordination of procedures for conducting tenders on purchasing goods, works and services provides distribution of the mechanism of public procurement for concluding procurement agreements, if the customer is the state, regional or city council, bodies guided by public law, associations, based on one or more power structure, guided by public law. In 2012 the government, state, municipal enterprises, as well as commercial companies, where state or municipal share exceeds 50 per cent, concluded agreements on procurement of goods (works, services) for total amount of 163.3 billion UAH, which necessitates proper control of transparency, efficiency and effectiveness of procurement by the mentioned subjects.

The Law does not provide mechanisms to prevent funds withdrawal abroad and tax evasion in the process of public procurement. For the last two months there are significant cases of participation in the procurement procedures of companies-non-residents, which do not have a permanent respresentative office on the territory of Uklraine. In addition, actually receiving revenue in Ukraine, such companies do not pay any taxes in Ukraine. Especially this problem concerns companies-residents of the Republic of Cyprus. It needs to be noted that on October 29, 1982 the Agreement between the Government of USSR and the Governement of Cyprus on avoidance of double taxation of income and property (hereinafter referred to as «the Agreement») was concluded. In addition, according to the article 7 of the Law of Ukraine «On Succession of Ukraine» Ukraine applies the agreements of USSR on avoidance of double taxation, which have force until new treaties enter into force. The article 4 of the Agreement determines that the incomes, which are received by the person in one state of the Agreement with permanent residence in another country of the Agreement, are subject to taxation in the first state only in the case when the incomes are received via the established there permanent respresentative office. Thus, if a resident of the Republic of Cyprus receives the revenues from business activities in Ukraine not via his official representative office, this revenue is not subject to taxation in accordance with the legislation of Ukraine. However, in spite of the mentioned gaps in the legislation, the Law on State Procurement does not contain a clause stating that non-residents, who do not have a permanent representative office in Ukraine, are not allowed to participate in the procedure of public procurement.

The Law does not determine the mechanism to prevent the conflict of interest in persons-members of the committee for tenders. During organizations and conducting the procedures of public procurement there are many cases when a person-member of the committee for tenders of the corresponding customer has a contradiction between personal interests and his or her powers concerning organization and conducting the procurement procedures (conflict of interest). As a result, such conflict of interest of the person can affect the objectiveness and impartiality of tender proposal assessment and relevant decision-making. In addition, the Law does not contain the definition of «conflict of interest» and does not determine the mechanism of its management.

The Law contains a number of other gaps and defects. Thus, the article 2 of the Law determines

unreasonable high price threshold, when the Law is not applied. For example, tender procedures are applied only in the cases, when the value of the works is equal to or exceeds 1 million UAH, Futhermore, in accordance with par. 5 of part 2 of the article 8 of the Law it is determined that the Authorized central body of executive power, which implements the state policy in the sphere of public procurement in the process of procurement monitoring, informs on such facts to the Antimonopoly Committee of Ukraine as a body of appeal. However, the Law does not directly determine which measures should be taken by the Antimonopoly Committee after receiving such notice.

The article 10 of the Law stipulates that the customer shall provide the infromation about the procurement case to the Authorized central body of executive power for publication of this information on the web-portal ran by this body. This formulation does not actually determine the obligatory publishing the information on procurement, because the Law provides the duty of the customer to provide the information, but the Law does not stipulate direct duty of the Authorized body to publish the received information on the official web-site.

Public control of all processes of public procurement, starting from planning and finishing by delivery of certain goods and services, can significantly reduce the corruption-related component. But for now, such control is inefficient and faces a number of obstacles. Openness and accessability of information is declared in the Law of Ukraine «On Government Procurement»[56], which requires from the customer to publish the announcement and documentation of tenders both in printed hardcopy and on the web-site of the Authorized body. At the same time, whereas procurement, which falls under the tender procedures, can be traced through the web-site www.tender.me.gov.ua or other resources, the information on procurement, which does not fall under the tender procedures, can be received only through a request for access to public information.

Access to public information concerning purchasing goods and services for public funds is often complicated. Responses to the public requests may either be late, insufficient or irrelevant. The approach of the officials to important public information as to their property contradicts the Standard of the European Union on maximum openness of using funds of taxpayers, determined by the Directive 2004/18/EU. The closed procedures and troubled access to public information suggest significant corruption-related components in the process of public procurement.

On June 07, 2012 the law determining implementation of the procedure of electronic reverse auction was adopted in Ukraine. This law should have allowed the launch of the procedure of e-procurement starting from 2013 in the country. But its implementation was postponed indefinitely due to technical unpreparedness both of customers and potential participants of the auction.

At present, the biggest problem is that Ukraine does not have a unified definition of a procurement item and clear list of the goods and services which can be included in the system of electronic auctioning. This is an obstacle of automatization of the auctions. Besides, these days there is lack of standard operating procedures for conducting e-procurement, as are requirements regarding

56 http://zakon2.rada.gov.ua/laws/show/2289-17

the e-platform, information protection and rules for access to its possibilities. Another problem is technical unpreparedness of public power bodies to use the system of e-auction. Often distant locations lack the necessary high-speed Internet connection, institutions do not have electronic signatures, and senior officials cannot use them. In order for electronic trading in Ukraine become a reality, it is necessary to settle technical problems and spend significant resources to the thematic training of power bodies.

The Strategy of System of the State Finance Administartion Development[57], approved by the Decree of the Cabinet of Ministers as of August 01, 2013 determines that the Antimonopoly Committee of Ukraine exercises the supervisory functions on the legitimacy in the process of public procurement. Nevertheless, numerous studies show that the majority of Ukrainian tenders receive the applications from 2.8% participants, and more than 50% of general amount of contracts are won by the same 30% participants.

The independence of the Antimonopoly Committee as a body of appeal is provided by the existence of a permanent administrative panel for hearing claims on violation of the legislation in the sphere of public procurement. However, there is a special procedure of appointment to the position and dismissal from the position of public officials of the Antimonopoly Committee, special procedural grounds of the activities of the Antimonopoly Committee, providing social guarantees, protection of personal and property rights of servants of the Committee at the level of the servants of law enforcement bodies of Ukraine. However, unfortunately these guarantees are oftentimes left unimplemented.

Analysis of the audit results by the bodies of the state and civil control, as well as numerous claims of the participants and customers of public procurement confirm a significant number of problems in this sphere: numerous violations, collusion and other issues. Thus, the Department of the Civil Service for Combating Economic Crimes of the Ministry of Internal Affairs of Ukraine for the first quarter of 2013 has stopped and cancelled more than 250 procurements from more than 500 conducted tenders, which were attended by police officers. Thus, 60% of decisions on cancellation of tenders were taken because of the presence of the police at the tenders.

The fee for filing a complaint to the Antimonopoly Committee of Ukraine on violation in the process of conducting procurement amounts to:

5,000 UAH – in case of complaint on the procedure of public procurement of goods ans services;

15.000 UAH – in case of complaint on the procedure of public procurement of works.

This fee for filing a complaint affects the ability to appeal the procedure of public procurement of goods ans services in regions. But state-commissioned research on the effect from the introduction of fee was not conducted.

57 http://zakon4.rada.gov.ua/laws/show/774-2013-%D1%80

Thus, the recommendation 3.5 shall be considered UNFULFILLED.

NEW RECOMMENDATION 3.5

To revise the law on public procurement based on the comments of the European experts taking into account in the new edition including provisions on tender procedure of conducting procurement by state enterprises not depending on the fact for which money the procurement is conducted, creating the mechanism to prevent conflict of interest in public procurement.

To establish the system for banning participation in procurement procedures (debarment). To establish a register of unfair participants in public procurement.

To introduce the requirement to include anti-corruption declarations and codes of ethics as a part of tender documentation. To introduce the system of e-procurement.

To strengthen the capacities of the Antimonopoly Committee. To conduct training for integrity in public procurement, especially for servants of procurement organizations, private sector and law enforcement bodies.

The provided 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.

The Law of Ukraine «On Access to Public Information», adopted in 2011, changes the approaches to understanding what public information means. Under the Law it is a priori open, except the cases, determined by law. Undisclosed information is: 1) confidential information; 2) secret information; 3) service-related information.

Government bodies have particular difficulties in the process of using the provisions of the Law and revising own practice on service information. The following are cases which have been registered:

- definition of exclusively «public information» (i.e. creation of a list of information sources that

would be available for public access);

- including to the service information which is determined by legislative acts as open (for example, general plans of settlements);
- limiting access to information which has social interest.

In fact, the test called to determine possibility of imposing limited access upon such information was not used (under a set of requirements, determined by Law). Such test in practice, including judicial practice, is named «three-part», because the limitation of the access to information can be made under a set of requirements, determined in part 2 of the article 6 of the Law «On Access to Public Information»: 1) in interests of national security, territorial integrity or public order for the purpose to prevent disorder or crime, for the health of population, for protection of the reputation or rights of other people, for prevention of disclosing the information, received confidentially, or for maintaining the authority and impartiality of justice; 2) disclosing information can harm these interests; 3) the harm from disclosure of such information outweighs the public interest in its reception.

Also, according to the information, received by human rights defenders from authorities concerning regulatory acts with the mark «For Official Use Only», the number of these acts can be more than 140[58]. Although the regulatory acts may not have such marks and are published for everybody.

In accordance with part 1 of the article 3 of the Law of Ukraine «On Access to Public Information» the right to access to public information is guaranteed via Parliamentary, civil and state control of observance of rights to access to public information. However, the Law does not determine an independent body with a function of «an informational commissioner». The draft law in the process of its consideration was planned to provide the Parliamentary Human Rights Ombudsperson with a set of authorities to conduct independent control and assessment of the right to access to public information. The text, which has been adopted, omits these powers.

On June 07, 2012 an Expert Council for Access to Public Information headed by the Parliamentary Human Rights Ombudsperson was established[59]. Also, after discussions with the representatives of non-governmental organizations the Ombudsperson appointed one of her representatives as a Representative of the Ombudsperson for Access to Public Information and Protection of Personal Data. Preliminary analysis shows that in fact an independent body as «an informational commissioner» is established. But, on the other hand – it has no legal status and it means that its possibilities are conditioned only by the status and rights of the Ombudsman herself.

It should be emphasized that despite a set of changes to the Law of Ukraine «On Protection

58 http://stop-x-files-ua.org/?p=7626

59 http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1781:2012-06-18-14-07-32&catid=14:2010-12-07-14-44-26&Itemid=75

of Personal Data»[60] (three laws were adopted to change), civic experts note the discrepancy of this Law to the legislation on access to public information. Thus, personal data, except from impersonal personal data according to the access regime are considered as information with limited access (part 2 of the article 5. It contradicts with the law on access to public information. According to this law, confidential information is the one that is restricted for natural persons and legal entities, besides the authorities and which can be published in the procedure, determined by them in accordance with the conditions determined by them.

In practice the authorities in their desire to limit the access to public information can refer to correspondent legislative restrictions concerning protection of personal data. So, numerous changes to the law were adopted, but they, according to the civic experts' opinion, did not contribute to the compatibility of this law with the law on access to information.

Also, we need to note that the Parliament registeres initiatives, directed at worsening of the situation of access to public information. There is constant «competition» of civic society to influence on their rejection or mitigate the threats. For example, MPs continue to submit initiatives, which concern restriction of access to public information in the correlation of access to public information and personal data, for example, the draft law No. 3301 as of September 20, 2013 proposing to make all information on any individual confidential.[61]. Thus, in accordance with the European approaches it will not count the specific status of officials.

Summarizing the practice of implementing the Law of Ukraine «On Access to Public Information» by administrative courts, which has been conducted by the Higher Administartive Court in 2013, one can determine that there is a number of problems related to misunderstandings of the law by judges, officials, as well as related to conflicts in legislation on access to public information and on information etc.[62].

The majority of abovementioned problems can be settled by using the draft Law on Amendments to Some Regulatory Acts of Ukraine in connection with adoption of the Law of Ukraine «On Information» (in its new edition) and the Law of Ukraine «On Access to Public Information» (registration No. 0947 as of April 02, 2013), submitted to the Parliament by the Cabinet of Ministers of Ukraine. However, it has not been considered in the second reading yet.

It is also advisable to form a joint working group involving representatives of the civic society and media in order to analyze the practice of law implementation and to prepare relevant amendmetnts to bridge the existing gaps.

Thus, the recommendation 3.6 shall be considered as PARTIALLY IMPLEMENTED.

NEW RECOMMENDATION:

60 http://zakon2.rada.gov.ua/laws/show/2297-17

61 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=48450

62 http://zakon4.rada.gov.ua/laws/show/v0011760-13

To analyze the practice of law application by the authorities and prepare together with the civil society and media the amendments to the law, directed to eliminate the reasons, which complicate the access to public information.

To approve the draft Law of Ukraine «On Amendments of Some Legal Acts of Ukraine in connection with adoption of the Law of Ukraine «On Information» (in new edition) and the Law of Ukraine «On Access to Public Information» (registration No. 0947 as of April 02, 2013).

To exercise on a constant basis training for public servants, judges concerning the requirements of the Law on Access to Public Information. To involve in such training the representatives of the civic society and media for the purpose of establishing a dialog with the civil society and media.

To consider the possibility of establishing an autonomous independent body for monitoring and control of performance of legislation on access to public information.

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.

The forbidden sources of donations to political parties are exhaustively listed in Article. 14 of the Law on Political Parties in Ukraine. The parties cannot be funded by the state and local authorities; enterprises and institutions with shares owned by state, local self-governance bodies or foreign natural/legal persons; foreign states and foreign natural and legal persons; charitable and religious organizations; anonyms; and political parties that did not form the electoral bloc with political party in question. Certain restrictions on sources of party funding used to be provided by the Law on Associations of Citizens, but in 2012 it was replaced by the Law on Civic Associations, which is no longer applicable to political parties.

The Law on Political Parties in Ukraine fails to limit the value of donations to political parties, neither does it provide for any restrictions on donations from legal entities, which provide goods and services for any public administration, something that is inconsistent with the CoE Recommendation 2003 (4). The election laws (namely, the 2011 Law on Parliamentary Elections, 1999 Presidential Election Law and 2010 Local Election Law) provide that electoral funds of parties/local party organizations/candidates in the respective elections can be formed only from donations granted by Ukrainian nationals and from own funds of the respective electoral contestants. The value

of donations of Ukraine's nationals to the electoral funds in all elections is limited. In particular, in the Parliamentary elections donation of a citizen to electoral fund established by party is limited to 400 minimum monthly wages (roughly EUR 36,400, which is one of the highest among the countries in the region), while donation of a citizen to the electoral fund of a single-mandate MP candidate is limited to 20 minimum monthly wages (EUR 1,800). In presidential elections, the value of donation to the presidential candidate's electoral fund cannot exceed 400 minimum monthly wages (EUR 36,400), while in local elections – 10 minimum monthly wages (EUR 900).

Importantly, all tree election laws provide that own donations of the electoral contestants to their election funds cannot be limited by value and number of transactions. It means that the provisions in the election laws governing the sources and value of donations can be easily circumvented. For instance, a political party may receive a big donation (e.g., exceeding 400 minimum monthly wages) from a legal person (legal persons are not allowed to make donations to electoral funds) and transfer it to its electoral fund as party's own donation.

Since 2010, no measures have been taken to improve the system of sanctions for violations of legal provisions governing political funding.

On 28 November, 2011, the Cabinet of Ministers approved the State Programme for Preventing and Countering Corruption for 2011 – 2015. The State Programme suggests an Action Plan of measures to be taken to fight corruption for the period ending in 2015. While one of its chapters is entirely dedicated to political finance reform, the major efforts to reform political finance are scheduled 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 Programme suggests 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 the annual financial reports of political parties and their property statements on the Central Election Committee website, to introduce liability of the managers of electoral funds for failure to submit the 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. Obviously, all these measures fail to address the key international recommendations pertaining to introducing 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 addresses a number of GRECO recommendations on political finance reform. In particular, it suggests establishing 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. It is unclear, however, whether this draft law is adopted by the legislature.

Article 18 of the Law on Political Parties in Ukraine provides that the Ministry of Justice, the Central Election Commission and the respective territorial/district election commissions are the key bodies 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 to control 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 pertaining to control of the party activities. It only requires that parties must provide the Ministry and other controlling bodies with the «necessary documents and explanations».

The 2011 Law on Parliamentary Elections provides 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 a Procedure was approved on 12 July, 2012. It stipulates 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 (since such control is limited to only arithmetical checkups), it fails to provide for any mechanisms allowing the CEC to supervise funding from the sources other than electoral funds. Hence, the overall institutional mechanism of Parliamentary election campaign funding is weak.

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, it is questionable whether the territorial election commissions (which are established in a short term 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 checkups.

Article 17 of the Law on Political Parties in Ukraine (as amended) requires that all registered political parties must annually publish their financial statements on incomes and expenses and property statement in the national media. However, there are no provisions in place requiring these statements be submitted to any public authority for review either before or after their publication. Further, there are no legal requirements in the legislation as to the content and format of the party financial/property statements. Some party reports are available on the Internet, but its difficult to assess whether all parties in fact publish them. The Ministry of Justice also does not have this information, since political parties are not obliged to forward it to the Ministry of Justice. The published reports contain only general information on the total amount of funds received by the

party during the reporting period, total amount of expenses and value of party property[63].

Being non-profit organizations, political parties are required to annually file with the respective tax authorities the tax reports on use of their funds (the report template (in Ukrainian[64])). These reports are not subject to any publication and their key purpose is to calculate the tax liabilities rather than to ensure financial transparency in funding of parties.

Under the 2011 Parliamentary Election Law (Art. 49.6), the managers of the electoral funds of parties and MP candidates nominated in single mandate election districts must submit to the Central Election Commission the financial reports on the receipt and use of their electoral funds. The managers of the electoral funds established by single mandate district candidates must file these reports no later than on the 10th day following the Election Day, while the managers of party funds are obliged to file the reports no later than on the 15th day after the day of voting. The submitted reports must be analyzed by the CEC. If the latter detects any violations of the provisions of the Parliamentary Election Law while analyzing the reports, it must inform on that the respective law enforcement agencies. The reports submitted by managers of the party electoral funds must be posted on the CEC website[65], while the reports submitted by the MP candidates are not subject to any publication. Although the Parliamentary Election Law fails to provide any requirements to the content of the reports, such requirements are listed in the CEC Resolution No 123[66], adopted on 25 July 2012. In accordance with this Resolution, the reports must present a detailed information on each donor (such as name, place of residence, date of birth etc.), the value of each donation, as well as on each expense covered from the electoral fund. The main problem is that the Parliamentary Election Law fails to clearly state that these reports must be published in full. As the result, the reports on the receipt and use of electoral funds published on the CEC website present only limited and very general information on election campaign finance, such as information on the total amount of funds transferred to the party electoral fund account and on expenses for certain types of election campaigning (e.g., publication of the campaigning materials, campaigning in the media and «other» expenses; see, for example, financial report of the Party of Regions[67]). It is unclear from the reports how much money was given to the electoral fund of a party by the party itself or by natural persons. The information on donors who made significant donations is not disclosed either.

The 1999 Presidential Election Law provides that the managers of the electoral funds established by the presidential candidates no later than on the 15th day following the day of election must submit to the CEC financial reports on the receipt and use of electoral funds. In contrast to the Parliamentary Election Law, the submitted reports are not required to be analyzed by the CEC. Also, there is no provision in the Law requiring these reports be published. Alike the Parliamentary Election Law, the Presidential Election Law contains no requirements to the format of the campaign

63 http://oporaua.org/news/3743-4-z-5-parlamentskyh-partij-tyho-opryljudnyly-finansovi-zvity
64 http://minrd.gov.ua/podatki-ta-zbori/zagalnoderjavni-podatki/podatok-na-pributok-pidpri/formi-zvitnosti/53040.html
65 http://www.cvk.gov.ua/metod/formy/konsolid_zvity/perelik_zvity.htm
66 http://zakon0.rada.gov.ua/laws/show/v0123359-12/print1360666825527971
67 http://www.cvk.gov.ua/metod/formy/konsolid_zvity/PRegioniv.pdf

finance statements. Such requirements were introduced by the CEC Resolution No 148[68] of October 9, 2009. Under this Resolution, the financial reports must present detailed information on each donor, each donation, and each expense.

In accordance with the 2010 Local Election Law (Article 63.4), the managers of the electoral funds established by local party organization, mayoral candidates and candidates for local councilors are required to file with the respective territorial election commissions (TECs) financial reports on the receipt and use of electoral funds. These reports must be submitted with the TECs no later than on the 5th day following the Election Day and must be published in the local printed media within 5 days following their receipt. In contrast to the Parliamentary Election Law, there is no requirement in the Local Election Law that TECs analyze financial reports. Also, it is up to the TECs to decide in which local printed media the financial reports shall be printed. Given the significant number of printed media in some regions, such an approach can restrict the possibility of effective public scrutiny of the financial reports. Under the Local Election Law, the requirements to the format and content of the reports are to be established by the CEC. On September 3, 2009, the CEC adopted Resolution No 338[69] providing for the requirements to the financial reports on the receipt and use of electoral funds. According to this Resolution, the reports must present detailed information on donations to the electoral funds and their use, including information on each donor, donation and expense. It is difficult to say whether the published reports were actually the same as the reports submitted to the TECs as local media, in which they were published in 2010 local elections, are not available on the Internet.

According to the information of the Ministry of Justice provided upon request of one of the CSOs, the actions to be undertaken by the Ministry to push the reform of political finance will be limited to implementation of the OSCE/Venice Commission recomenadations pertaining to transparency of campaign finance (see paragraph 17.1 above). The Ministry response to the said CSO request for information can be provided, if necessary.

Thus, the recommendation 3.7 shall be considered as PARTIALLY IMPLEMENTED.

NEW RECOMMENDATION:

To review the legislation on financing political parties and financing election campaigns taking into account the necessity to bring in correspondence with the standards of the European Council, especially:

To make clear determining and regulation of donations;

To prevent abuses during election campaigns related to financing from the sources, which are not determined by law;

68 http://zakon0.rada.gov.ua/laws/show/v0148359-09/print1360666825527971
69 http://zakon0.rada.gov.ua/laws/show/v0338359-10/print1360666825527971

To arrange provisions on financing election campaigns, which are contained in the laws on election of the President of Ukraine, on election of People's Deputies of Ukraine and local elections;

To provide access of the public to information on expenses for election campaigns, including during election campaigns;

To bring the norms on financing political parties via banking system in line with the international standards under the principles, determined for financing election campaigns in Ukraine;

To indtroduce independent audits of financing political parties and election campaigns;

To report annually on the sources of financing of political parties in full and check these reports by an independent body;

To impose and use effectively the efficient, proportionate and dissuasive sanctions for violations in the sphere of financing political parties and election campaigns.

Recommendation 3.8 of the Report on the Second Round of Monitoring of Ukraine:

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.

The President of Ukraine has submitted the draft Law of Ukraine «On Amending the Constitution of Ukraine on Strengthening Guarantees of Independence of Judges»[70] for consideration of the Parliament as of July 04, 2013. Previously the conclusion of Venice Commission was received concerning the draft law.[71] The submitted draft law has no comments regarding duplication of powers of the High Council of Justice and High Qualification Commission of Judges of Ukraine concerning the necessity to narrow the immunity of judges to the functional one.

The draft law has been addressed to the Constitutional Court of Ukraine, which has returned a positive conclusion[72]. Yet, the experts warn that on preserving dependent on political power judiciary convention, majority of members in the High Council of Justice will be still politically influenced, despite the fact that these members, in accordance with the European Standards, will be elected by

70 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47765

71 http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)014-e

72 http://ccu.gov.ua/uk/doccatalog/list?currDir=220985

the judiciary convention.

In 2010 the Law of Ukraine «On the Judicial System and Status of Judsges[73] was adopted, which explicitly and comprehensively regulated the issues of labor payment of judges (came in force in 2012). In 2011 the Law of Ukraine «On Court Fee[74] was adopted, which had increased the payments for applying to court and determined their crediting to a special fund. The special fund is spent on the needs of the judiciary. At the same time the heads of the superior courts and the Supreme Court of Ukraine, the Head of the State Court Administration of Ukraine defend the draft laws of judicial budgets in the government and Parliament. After these persons appeal to the government, it sometimes provides additional funding on the needs of some judges (from the stabilization fund). But this system does not seem independent.

The article 130 of the Constitution of Ukraine[75] defines that «The state provides financing and appropriate conditions for functioning of courts and judges. The state budget of Ukraine has specially determined expenses for maintenance of the courts.» According to the Law of Ukraine «On Sources of Financing of Bodies of State Power»[76] as of 1999 (articles 1-3) courts conduct their activities exclusively through government funding in the scope, determined by the Law on The State Budget of Ukraine for a corresponding year, and the funds for their financing, including financial provisions for judicial activity in Ukraine, are determined in the State budget of Ukraine by a special line. The courts are prohibited to establish non-budgetary funds and have non-budgetary special accounts.

According to the Law of Ukraine «On the Judicial System and Status of Judges»[77] (Article 142) financing of all judges in Ukraine is conducted at the expense of the State budget of Ukraine. But in practice there are problems with providing the premises for the courts and housing for the judges. Usually local self-governments contribute to solve these problems.

Data on the budget of the judiciary for each of the last 3 years, as well as on the assessing part of covering the real needs of the judiciary in financing are available in the Report on the Work of the State Court Administration of Ukraine for 2010-2012[78] (pages 2-8). Data on payment of judges' labor of different categories and its comparison with average salary in the country are available in the Report on the Work of the State Court Administration of Ukraine for 2010-2012 (page 8). The average salary of a judge in 2013 amounts to 19,090 UAH. The average slary in Ukraine from January to August 2013 ranged from 3,000 UAH to 3,429 UAH. That is the average salary of a judge is about 5-6 times higher than the average salary in Ukraine.

In accordance with the Law of Ukraine «On the Judicial System and Status of Judges» as of 2010 the judges should submit their own declarations on income and expenses and the members of their

73 http://zakon2.rada.gov.ua/laws/show/2453-17
74 http://zakon2.rada.gov.ua/laws/show/3674-17
75 http://zakon1.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/print1373539537114933
76 http://zakon1.rada.gov.ua/laws/show/783-14
77 http://zakon2.rada.gov.ua/laws/show/2453-17
78 http://dsa.court.gov.ua/userfiles/Zvit%20DSA.pdf

families for publishing on the Internet. Afterwards the requirement to publish them was cancelled. According to the Law of Ukraine «On Grounds of Corruption Prevention and Counteraction» only information from the declarations of the judges of the Constitutional, Supreme and high specialized courts shall be published either on the Internet or in official publications. The norms pertaining to declarations are changed annually, and the prohibition of retroactive application of the law and cancelling by it the previous requirements released the judges from the duty to submit (publish) the declarations. At present the judges shall submit all declarations to the secretariat of their court. The Law of Ukraine «On Access to Public Information» in the issues of access to declarations of the judges is applied differently: some courts provide such information, while others fail to do so.

How the legislation on disciplinary proceedings, dismissal and recusal of judges was reformed during the last three years to secure the judges' nonpartisanship and protection of the judges' independence?

The law of Ukraine 'On the Judicial System and Status of Judges', 2010 with amendments of the same year to the law of Ukraine 'On the High Council of Justice of Ukraine'[79] changed the system of disciplinary liability: a number of disciplinary bodies was reduced, and grounds for an admonish and dismissal were set. At the same time, these grounds allow discretionary interpretation. Dismissal can take place without a disciplinary procedure and limitations period. The disciplinary procedure is not competitive, and the disciplinary bodies are not independent.[80].

Amendments[81] to the procedural codes of 2010 provide that in all cases of proceedings the issue of recusal is to be solved by a judge (or with his / her participation in a bord) who is actually recused. It hardly facilitates any impartiality. There were cases observed when disciplinary bodies evaluated validity of self-recusation and made judges accountable due to the reasons of disciplinary liability.

The law of Ukraine 'On the Judicial System and Status of Judges', 2010 had a negative influence on the bodies of judges self-administration – they became totally dependant on the authorities. It also stipulated the political bias of High qualification commission of judges of Ukraine (there is a number of certain facts that prove this political bias) despite the fact that most of the judges there have been elected by the Congress of Judges of Ukraine.

Besides, most of the courts' heads have been substituted. Later MPs S. Kivalov and D. Shpenov, active developers of the law 'On the Judicial System and Status of Judges', introduced the draft law «On Improvement of Certain Provisions of Judicial Power Organization» (No. 0929[82] of December 12, 2012). In case of its adoption, court heads will resume their controlling authority and will receive the right to define judges' specialization. It would provide them with the opportunity of avoiding the automated distribution of cases among judges through an absolutely legal procedure.

79 http://zakon4.rada.gov.ua/laws/show/22/98-%D0%B2%D1%80

80 http://pravo.org.ua/files/A_D_NEW_final.pdf

81 http://zakon2.rada.gov.ua/laws/show/2453-17

82 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=0929&skl=8

After changing the key personnel of the Supreme Court of Ukraine in 2013 (experts say that the new Supreme Judge, loyal to the authorities and well-tried on the position of the Head of the Council of Judges of Ukraine, has been elected) the process of preparation of the law on resuming the authority of the Supreme Judge of Ukraine, that were significantly restricted by the law[83] of 2010 has started.

Thus, the recommendation 3.8 can be considered as PARTIALLY IMPLEMENTED.

NEW RECOMMENDATION:

To finalize the procedure of amendment of the Constitution of Ukraine regarding Ukrainian judiciary reform coordination with the Council of Europe standards and conclusions of Venice Commission of the Council of Europe.

Provide participation of correspondent legislative initiatives of CSOs and Council of Europe experts in the negotiation and preparation process.

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 whistleblower 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.

During the reporting period state bodies have made no systemic arrangements for establishing dialogue with business to increase awareness of corruption risks. Problematic questions were considered with the participation of government representatives at the thematic meeting initiated by business associations such as Ukrainian Union of Industrialists and Entrepreneurs, American Chamber of Commerce (ACC), Chamber of Commerce and European Business Association (EBA). Occasionally officials participate in different business forums organized by domestic and foreign companies during which they tend to avoid open dialogue with businesses on anti-corruption issues. On the other hand, business carefully induces the public debate on this issue, because downright disclosure of corruption-related information can adversely affect its future activities, including additional pressure of state bodies.

National Anti-Corruption Strategy for 2011-2015 and State Program on Corruption Prevention

83 http://zakon2.rada.gov.ua/laws/show/2453-17/print1361270088143512

and Counteraction for 2011-1015 aimed to strengthen the dialogue between business and government in anti-corruption efforts. However, these documents and notably a special section on «reducing corruption in the private sector» do not offer any concrete measures for strengthening the dialogue between government and business in anti-corruption efforts. Also according to the conclusions of an independent public monitoring the implementation of these documents is ineffective. Furthermore, there is no information about the interaction between business and government in the fight against corruption even in official annual reports on the results of measures of preventing and counteracting corruption in the 2011 and 2012 years prepared by the Ministry of Justice. New tax code is an example of absence of a proper and made-in-advance collection of business recommendations for reforming the corresponding legislation. The initial draft of the Tax Code has caused a series of public dissatisfied statements on the part of business and business associations and resulted in protracted street rallies held by entrepreneurs to defend their legitimate interests and rights.

Practice shows that membership in business associations and other lobbying structures allows powerful companies incite to the government with the proposal of reforming the corresponding legislation through the official written application. If necessary, legislative amendments may be done by people`s deputies of Ukraine who have the right of legislative initiative. However, the lobbyism law is still missing in Ukraine. Medium and small businesses are mostly deprived of a real opportunity to unilaterally influence the process of reform pertaining to the relevant legislation.

Ukraine saw establishment of a governmental electronic (ps@kmu.gov.ua) and telephone «hot line» (0-800-507-309) with business, and similar «hot lines» in the Ministry of Internal Affairs (skarga@mvsinfo.gov.ua) and in the Ministry of Revenue and Duties of Ukraine (gromada@sta.gov.ua). Using these «hot lines» entrepreneurs can give their proposals or can complain about the actions of the representatives of the executive power, including corruption-related offences. Similar practice prevails at the regional level, but is ineffective. In the chapter 20 Law of Ukraine On Grounds of Corruption Prevention and Counteraction established the State protection of persons who assist in preventing and counteracting corruption. Telephone hotlines operate in order to expose corruption in different government authorities. However, the procedure of independent review of claims submitted is virtually absent, so potential whistleblowers are apprehensive of being accused of corruption themselves. In other words, whistleblower-protection systems are still lacking in Ukraine.

Attitude to corruption in the private sector remains tolerant and functional in Ukraine. Corruption in the private sector is profitable for businessmen and anti-corruption arrangements are of primary importance for those Ukrainian companies which have foreign business partners or foreign investors. Big business at the same time appears to be the object and the subject of corruption, because it often lobbies for conducive legislation. In Ukraine small business usually appears to be the subject of corruption. During the reporting period, government and business community made no systematic attempts aimed at fostering business self-regulation as well as joint activities of the private sector and the government have been undertaken. Although experts and representatives of business community have repeatedly offered an opinion about the necessity of adopting the law on activities

of the self-regulating industry associations and passing the functions of certification and licensing on it, proposals for amendments to laws and other legal acts on taxation and state supervision (control) were prepared.

The research supported by the UNITER project showed low willingness of private companies to take an active position in the fight against corruption in Ukraine. According to its results, almost half of Ukrainian enterprises (49%) have no clear position on the issues of corporate anti-corruption policies, nearly one in three (32%) companies is not ready to pay 3-5% of its income for an effective fight against corruption, and only one in four companies (19%) is willing to pay a share of its income for an effective fight against corruption. More than a half of the respondent companies believe that the observance of Ukrainian and international anti-corruption legislation improves the image of companies among the investors and shareholders and helps to raise capital (mostly national) on better terms. The survey also shows that most companies are trying to adapt to the current situation rather than resist it. The results of expert research have shown that it is mostly foreign companies that develop and implement appropriate policies for an effective corruption prevention system setup (compliance). Half of the surveyed companies do not have an organized compliance system, because they believe that compliance is the responsibility of the company workers. Only less than 10% (mostly foreign companies) have a full-scale compliance department.

We should note that in Ukraine mainly private companies (members of the UN Global Compact) are dealing with issues of implementing codes of conduct, internal controls and compliance programs. Thus, for Ukrainian companies with foreign business partners, especially in countries with strict anti-corruption law, anti-corruption measures are an important issue that they are trying to keep in the focus gradually moving from the introduction of codes of ethics to control its execution and implementation of a coherent anti-corruption policy. Meanwhile, medium and small businesses are hardly involved in the implementation of these anti-corruption practices in their work.

No intstitution with the status of a Business Ombudsman has been founded in Ukraine yet. Agreement on the establishing of such a body, which would control the compliance with the rights and interests of entrepreneurs, was achieved in February 2013 at the meeting of the President of Ukraine Viktor Yanukovych with the Head of the European Bank of Reconstruction and Development (EBRD) Suma Chakrabarti. The main regulations of the work of the Business Ombudsman were spelled out in the memorandum, which was planned to be signed by the EBRD and representatives of the business and authorities in July 2013. Despite the fact that the draft of this document was prepared in time, it was never signed by the Ukrainian side.

Experts believe that the Business Ombudsman can be an effective arbiter in the relationships between business and government. Yet, to increase the efficiency of the Business Ombudsman, the right to examine regulations on the activities of entrepreneurs and right of legislative initiative should be granted to this entity. Currently, business protection issues are formally assigned to the State Service of Ukraine on Regulatory Policy and Entrepreneurship Development. According to official

data, this service covers 80% of all problems between business and government, only the conflicts in the tax and customs sphere are out of its authority.

Hereby, the recommendation 3.9 can be considered NOT IMPLEMENTED

NEW RECOMMENDATION:

Establish on an ongoing basis (possibly with the help of the Business Ombudsman) dialogue with businesses to increase awareness of corruption risks and available solutions for the private sector, collect business recommendations for reforming the corresponding legislation (economic legislation, legislation on accounting and auditing, tax code, public procurement law and other laws relating to private sector) to reduce the corruption.

Promote the development of self-regulation in the private sector (the codes of conduct, internal control and legal program (compliance), defense of the accusers of corruption acts) together with the private sector bodies.

Ensure cooperation with business in terms of explanation and practice of the new anti-corruption standards set by the law concerning liability of legal persons.

Introduce legal obligations and oversee their implementation regarding obligations to report on corruption irregularities by internal and external auditors, as well as clear rules for such action.