



Anti-Corruption Network for Eastern Europe and Central Asia

Istanbul Anti-Corruption Action Plan

UKRAINE

Progress Report

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In 2013 Ukraine made a number of important legislative changes which were aimed at improving the system of prevention and tackling of corruption in accordance with international standards.

This refers to a pack of anti-corruption Laws adopted by the Verkhovna Rada of Ukraine in April - May 2013.

Consequently on 18 May 2013 the Law of Ukraine "On amending certain legislative acts of Ukraine regarding harmonization of Ukrainian legislation to provisions and standards of the Criminal Law Convention on Corruption" dated 18 April 2013 came into force.

The main statutory amendments consist in:

- replacement of the term 'bribe' by the definition 'undue advantage' that includes not only material but also non-material benefits therefore a content of the 'undue advantage' definition is the same for all corruption crimes regardless of a scope of their commitment;
- abolition of administrative liability for corruption offences associated with a receipt or provision of undue advantage;
- establishment of a criminal responsibility in public sector for an offer and promise of undue advantage and acceptance of such a promise or offer, as well as for bribery committed with involvement of intermediary (trading in influence) and in favour of third parties;
- establishment of more stringent sanctions in comparison with the existing ones against bribery in the public sphere;
- establishment of a responsibility for bribery for all employees of state enterprises, institutions and organizations;
- elimination of a risk of abuse of the true repentance institute through introduction of extra mandatory conditions of eventual release from a responsibility for corruption (introduction of mandatory presence of two factors - extortion and voluntary communication with a pre-trial investigation body, whereas any of these terms had been enough for such an exemption before).

The following Law of Ukraine "On amending certain legislative acts of Ukraine concerning implementation of the state anti-corruption policy" dated 14 May 2013 (entered into force on 9 June 2013) introduced additional legal mechanisms to prevent corruption.

In particular a mechanism was introduced to verify declarations on property, income, expenses and financial liabilities by competent units of the bodies to which a subject to submit the declaration belongs. Meanwhile a declaration form has also been changed – it provides for disclosure by a subject to submit the declaration of information on banks, financial institutions, companies, etc. where they or members of their families have deposits or own shares, on organisations with which they are associated by financial liabilities. In the framework of improving the mechanism of financial control there is also an obligation to submit the declaration not only before employment and during the service, but also in case of dismissal and within a year after that. Besides, the rule of obligatory notification to the tax authorities on opening of foreign currency accounts in a non-resident bank now applies not only to public officials themselves but also to members of their families.

The Law identifies institutions responsible for the control over compliance with the legislation on conflict of interests (authorized internal units in the executive bodies and local government, Council of Judges of Ukraine in the judicial branch of power and a relevant Committee of Parliament in the legislative one).

There is an additional mechanism for preventing and settling conflicts of interests associated with ownership of corporate rights or enterprises by a public official. These assets must be transferred to other persons management within 10 days, except members of the public official's family.

In addition the mechanism for anti-corruption examination was significantly improved. Consequently examination of acting normative legal acts was introduced (according to the annual plan developed by the Ministry of Justice) and of those ones which were subject to state registration. Besides a possibility of holding a public anti-corruption examination of existing legislation was provided.

According to the Law as of 1 January 2014 information from the Unified State Registry of Individuals who Committed Corruption Offences will be publicly available.

One of significant innovations is also strengthening the safeguards for whistleblowers' protection reporting corruption offences by others. In particular the Law stipulates that the whistleblower may not be dismissed or forced to dismissal, brought to disciplinary responsibility or be subjected to other negative measures of influence (transfer, appraisal, change of conditions of labour) in connection with the notification made.

In order to comply with Recommendation 2.8 provided under the Second Round of Monitoring of the Istanbul Anti-Corruption Action Plan the Law reduced a range of specially authorized subjects in the field of combating corruption (excluded the Tax Police, Military Law Enforcement Service in the Armed Forces, the internal security units of the State Customs Service).

The Law of Ukraine "On amending the Criminal and Criminal Procedure Codes of Ukraine regarding implementing the Action Plan for the liberalization of EU visa regime for Ukraine", dated 18 April 2013 (with effect from 15 December 2013) has brought the norms of the Ukrainian legislation in compliance with the provisions of the Council of Europe's Criminal Law Convention on Corruption in relation to introduction of a procedure of confiscation of property and proceeds acquired by criminal means and ensuring its application for office (corruption) crimes.

Therefore in the criminal and criminal procedure legislation of Ukraine the 'special confiscation' definition is introduced and cases of its application are defined. According to the amendments provided a property equivalent to the subject of the crime or criminal incomes and property transferred to third parties that are unfair purchasers are necessarily subject for confiscation.

In addition, a procedure for special confiscation has been determined, grounds for a temporary attachment of property and its termination, seizure of property and its abolition were specified, the necessity of adding to a resolute part of a sentence of a mandatory reference to special confiscation was approved, and findings to be proven in criminal production were included to factual background confirming that money, valuables and other property subject to special confiscation were received in consequence of a criminal offence and/or which were income from such property or were intended for seducing a person into a criminal offence, for financing and/or material provision of a criminal offense or for awards for its commitment, or was the subject of a criminal offence, including the ones connected with illicit trafficking, or found, produced or used as a means or the instrumentalities of criminal offences.

The recent law in the mentioned pack of anti-corruption legislation is the Law of Ukraine “On amendments to some legislative acts of Ukraine regarding implementing the Action Plan for liberalization of EU visa regime for Ukraine concerning the responsibility of legal entities” of 23 May 2013 (effective from 1 September 2014) with the aim of bringing the legislation of Ukraine in compliance with the provisions of international legal agreements and also with the recommendations of GRECO which established a possibility of imposing criminal law sanctions to legal persons committing corruption crimes on behalf of the legal entity by its authorized persons.

However to present a series of further legislative amendments have been initiated aimed at minimizing corruption.

In particular the Ministry of Justice has drafted a Law of Ukraine “On amendments to certain legislative acts of Ukraine regarding recommendations of the European Commission in the sphere of state anti-corruption policy” so that to comply with the recommendations of the European Commission experts regarding improvement of anti-corruption legislation provisions which were provided in the framework of negotiations on EU visa regime liberalization for Ukraine and a further improvement of the system of preventing and combating corruption.

The draft suggests:

- to strengthen sanctions against criminal corruption offences, providing stricter punishments for individuals and increasing fines for legal persons;
- to introduce an external monitoring of the declarations on property, income, expenses and financial liabilities, dividing authority for verification of declarations between internal competent departments (timely submission of declarations, conflict of interests) and income and tax authorities (reliability of the declared data);
- to establish a responsibility for submission of false statements in the specified declarations;
- to strengthen guarantees of whistleblowers protection reporting corruption offences through establishing in the civil procedure a rule to shift proving of legality of decisions made or operations carried out in cases related to negative consequences to the whistleblower in connection with his notice on the employer or manager, as well as setting a rule about obligatory consideration of anonymous notifications of corruption;
- to establish a responsibility for the promise of illegal benefits and its acceptance by all categories of active and passive forms of bribery;
- to extend the provisions concerning liability for active and passive forms of bribery to those working in any capacity in enterprises, institutions, private sector organizations.

On 11 September 2013 the said bill was approved by the Cabinet of Ministers of Ukraine at its meeting and it was going to be considered by the Verkhovna Rada of Ukraine.

The President of Ukraine introduced a draft law “On amendments into the Constitution of Ukraine concerning strengthening guarantees of judges’ independence” to the Verkhovna Rada of Ukraine.

The said bill provides inter alia:

- refusal from the practice of a person’s first appointment to the post of a judge for a five-year term and implementation of appointment without time limit of judges identified by the President of Ukraine and according to the proposal of the Supreme Council of Justice;
- increasing requirements concerning the age of candidates for a position of a judge from 25 to 30 years and a work experience from 3 to 5 years;
- revision in the order of formation of the Supreme Council of Justice and securing a majority of its members from among judges to be elected by the judges;
- assignment to the powers of the Supreme Council of Justice giving a consent for detention or arrest of a judge;
- settling an issue of establishment and liquidation of courts on the level of law, determination of their network.

Also the Ministry of Justice is actively working on improvement of rules of political parties and electoral campaigns funding.

In particular the bill “On amendments to certain legislative acts of Ukraine as regards the improvement of legislation on elections” was developed.

Inter alia the draft suggests to settle the following issues:

- limiting the size of a party election fund where candidates for deputies are registered in a national constituency, and the size of an election fund of candidates in a single-mandate constituency;
- improvement of provisions regulating voluntary contributions to election funds and ban on use of parties’ own funds for the election campaign including at the initiative of the voters;
- improvement of the mechanism for control and implementation of a comprehensive (not electoral) control of receipt, accounting and use of election funds that will be realized with the participation of the Central Election Commission, district election commissions and banking institutions where an account of the electoral fund has been opened;
- implementation of the interim report on receipt and use of election funds and establishment of a mandatory promulgation of the interim financial statements on the official website of the Central Election Commission;
- adding such cases when parties candidates for deputies of which are included in a party list or individual candidates are warned of violation of the Law of Ukraine “On election of people's deputies of Ukraine” of the terms of provision or failure to provide to the appropriate election commission of a financial report on receipt and use of election funds, as well as provision of false data in the financial report either by the administrator of the accumulative account of the party’s election fund, or by the administrator of the current account of the election fund of the candidate for a deputy in a single-member constituency;
- establishment of requirements towards implementation of pre-election promotion in the media at the expense of the parties election funds, candidates for deputies in single-member

constituencies only after the payment of print space or airtime from corresponding accounts of election funds;

- establishing for the Central Election Commission timing of disclosure on its website of analysed financial reports on receipt and use of the parties election funds (including intermediate), as well as the establishment for District Election Commissions terms of placing official materials of the respective commission at public stands for general familiarization and sending to the Central Election Commission for placing analysed financial reports on receipt and use of the election fund of the candidate to deputies in a single-mandate constituency submitted to the corresponding Commission at the official website.

Currently the draft Law undergoes re-examination in the Venice Commission and an output is expected in October 2013.

In the framework of implementation of anti-corruption initiatives an active cooperation with the public has been carried out. In particular, in the period of 2012-2013 the Ministry of Justice organized a number of joint events with public organizations related to implementation of the State Program on Prevention and Combating Corruption for the Period of 2011 - 2015 approved by the Cabinet of Ministers of Ukraine ordinance No. 1240 of 28 November 2011. As a result of joint activities a number of proposals for improvement of the mentioned Program have been accumulated which the Ministry of Justice will summarize so that to submit appropriate proposals to the Government for consideration.

In 2012 the Law “On rules of ethical conduct” came into force in Ukraine which determined the rules of conduct for persons authorized to perform functions of the state and local government in the exercise of official authority. The law is the legal basis for codes and standards of conduct.

According to the Law the conduct of such persons should be based on the rule of law, political impartiality, tolerance, objectivity, competence and efficiency, confidentiality, abstinence from commitment to illegal decisions or orders, prevention of conflict of interests, avoid undue advantage or gift.

In compliance with the Law the adopted General Rules of Conduct of Public Officials were announced by order No. 194 of 28 September 2012 of the National Agency of Ukraine on Civil Service.

Also a process of introduction of codes or rules of conduct in separate spheres is in progress.

In particular on 28 November 2012 all-Ukrainian conference of employees of the Prosecutor's office accepted and the Prosecutor General's order No. 123 approved the Code of Ethics and Professional Conduct of Prosecutors.

On 22 February 2013 XIth Congress of Judges of Ukraine approved a new Code of Judicial Ethics.

The Rules of Professional Ethics of Notaries was approved by the Ministry of Justice’s order No. 431/5 of 14 March 2013.

On 4 September 2013 the Cabinet of Ministers adopted the ordinance on “Preventing and fighting corruption” which provides a mandatory presence in the executive power bodies or enterprises, institutions and organizations within their control of authorized divisions or persons responsible for prevention and detection of corruption.

The above-mentioned Ordinance approved new model regulations on such divisions providing the exercise of their powers for verification of declarations on property, income, expenses and financial obligations and also for the control of observance of the legislation on conflict of interests.

Ukraine continues an active international cooperation in the field of prevention and combating corruption.

During the 59th Plenary Session of the Group of States against corruption (GRECO) the Third additional report on implementation by Ukraine of the recommendations in the First and Second Rounds of Monitoring was approved. As a result of discussing the report the Organization noted a progress in the implementation of five recommendations. Ukraine will have presented an additional Progress Report to GRECO by 31 December 2013.

Also in December 2013 during the 62nd Plenary Session of the Organization a report on implementation by Ukraine of the recommendations in the framework of the Third Round of Monitoring will be viewed.

In November 2012 a process of review of the implementation by Ukraine of Chapters III and IV of the UN Convention against Corruption was over. In turn Ukrainian experts took part in the review with regards to Chile, Serbia and the Russian Federation.

A procedure of the Third Round of Monitoring of Ukraine in the framework of the Istanbul Anti-Corruption Action Plan started.

The Law of Ukraine No. 3449-VI of 1 June 2011 ratified the second additional Protocol to the European Convention on Mutual Assistance in Criminal Matters which came into force for Ukraine on 1 January 2012.

The provisions of the Protocol have been incorporated in Section IX of the new Criminal Procedure Code which came into force in November 2012.