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ISTANBUL ANTI-CORRUPTION ACTION PLAN

UKRAINE

PROGRESS UPDATE

This progress update on the implementation of recommendations from the Second Monitoring Round report for Ukraine of December 2010, was adopted at the 13th meeting of the ACN Istanbul Action Plan on 16-18 April 2014.

SUMMARY

The second round monitoring report on Ukraine was adopted by the Istanbul Action Plan monitoring meeting in December 2010. The progress report on implementation of the recommendations adopted in the second round was submitted by Mr Andrei Kukharuk, Head of Division Anti-Corruption Policy of the Ministry of Justice of Ukraine, which acts as the ACN National Coordinator on 14 April 2014. TI Ukraine provided a shadow progress report. The reports were reviewed by the monitoring exerts, including Mr Goran Klemencic, Slovenia and Mrs Olga Savran, OECD. The progress update was discussed and adopted by the Istanbul Action Plan monitoring meeting on 16-18 April 2014. The monitoring meeting thanked the monitoring experts for their preparation for the assessment of progress, and noted that the shadow report provided by the TI Ukraine was very useful for ensuring the objectivity of the assessment.

The monitoring meeting noted that this progress update was prepared in extraordinary circumstances. The third round of monitoring of Ukraine was scheduled for the second half of 2013, aiming to adopt the report in April 2014. But it was cancelled due to the political situation in the country and will be rescheduled as soon as the situation stabilises. The progress updates was prepared at the time when the interim government was embarking on important anti-corruption reforms, as a part of general reforms to address the economic crisis and to ensure the security of the country. The monitoring meeting noted progress regarding 12 out of 19 recommendations, and lack of progress regarding 7 recommendations.

According to TI Ukraine, corruption in Ukraine became more wide spread and unbearable since the second monitoring round. It because one of the reasons for the public protests and change of the government. The monitoring meeting noted that the anti-corruption is on the top of the agenda of the government, and that dialogue with civil society was launched. It also noted some progress in legislative reforms. However, the meeting noted that institutional framework for prevention and combating corruption remains ineffective. The meeting concluded that good reforms have started, but warned Ukraine that, as in the past, reforms may become hostage of vested interests. The table below summarises the assessment, including the recommendations where progress was noted or where it was lacking.

Recommendation	***Progress in implementation***
Recommendation 1.1-1.2: Political will, anti-corruption policy	Lack of progress
Recommendation 1.3: Corruption surveys	Progress
Recommendation 1.4-1.5: Public participation	Progress
Recommendation 1.6: Anti-corruption policy coordination bodies	Lack of progress
Recommendation 2.1-2.2: Elements of bribery offence	Progress
Recommendation 2.1-2.2 bis: Corporate liability for corruption offences	Progress
Recommendation 2.3: Bribery of foreign or international public officials	Progress
Recommendation 2.4-2.5-2.6: Confiscation, immunities	Progress
Recommendation 2.7: Mutual legal assistance	Progress
Recommendation 2.8: Administrative and criminal offences	Progress
Recommendation 2.9: Specialised anti-corruption law-enforcement body	Lack of progress
Recommendation 3.2: Civil service	Progress
Recommendation 3.3: Transparency and discretion	Progress
Recommendation 3.4: Public financial control and audit	Lack of progress
Recommendation 3.5: Public procurement	Progress
Recommendation 3.6: Access to information	Progress
Recommendation 3.7: Political party finance	Lack of progress
Recommendation 3.8: Judiciary	Lack of progress
Recommendation 3.9: Business integrity	Lack of progress

PROGRESS UPDATE

PART I: PROGRESS IN IMPLEMENTING RECOMMENDATIONS

Pillar 1: Anti-Corruption Policy and Institutions

Recommendation 1.1-1.2

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

Measures taken to implement the recommendation:

Determinate and systematic fight against corruption is a component of the Programme of Activity of the Cabinet of Ministers of Ukraine. In this connection, the Government is implementing a number of measures aimed at the fulfilment of this task. E.g. the Government submitted to the Parliament the Draft Law on Introduction of Amendments and Additions to Some Legal Acts of Ukraine in the Sphere of State Anti-corruption Policy in Connection with Fulfilment of the Action Plan for Liberalising the Visa Regime for Ukraine by the EU (No. 4556 of 15 March 2014).

A Draft Concept of reforming the corruption prevention system in Ukraine has also been developed jointly with the civil society, which will be implemented through the development and adoption of a new law on corruption prevention.

Two draft laws on creation of a special law enforcement anti-corruption authority initiated by people's deputies are also undergoing parliamentary review.

This Concept also envisages the development and enactment of a new Anti-corruption Strategy based on survey and statistical data. The Strategy will be implemented through the state target programme approved by the Government. The status of the target programme will guarantee the allocation of funds from the budget for the programme implementation purposes. Monitoring and coordination of the Strategy will be carried out jointly with the civil society by means of control and methodological support of the public authorities in the process of implementation of the planned measures. The Strategy fulfilment reports will be made public.

It should be mentioned that in January 2014 the Government, on the basis of public consultations, approved a new edition of the effective Programme of Prevention and Combatting Corruption for 2011-2015 (Resolution No. 15 of 15 January 2014). The new edition particularises some measures and also envisages the assignment of a high-level official responsible for the Programme fulfilment in each authorised institution. Reports on the Programme implementation will also be made public.

The post of the Government Agent for Anti-corruption Policy Issues was restored in July 2013. Government Resolution No. 949 of 4 December 2013 approved the Provision on the Government Agent

in accordance with which this public official is responsible for preparing proposals on coordination of the activities of the executive authorities in the anti-corruption area and submitting them to the Government.

Assessment of Progress

TI Ukraine stated that the previous government had all the necessary conditions to implement anti-corruption reforms, but it did not have a real political will, and did not implement any anti-corruption measures. The monitoring meeting noted several recent developments regarding the anti-corruption policy. Notably, in March 2014 the interim government has submitted to the parliament the Draft Law on Introduction of Amendments and Additions to Some Legal Acts of Ukraine in the Sphere of State Anti-corruption Policy in Connection with Fulfilment of the Action Plan for Liberalising the Visa Regime for Ukraine by the EU and the a Draft Concept of reforming the corruption prevention system in Ukraine. Draft Concept has been developed jointly with the civil society. On the basis of public consultations, in January 2014, the Government approved a new edition of the current Programme of Prevention and Combatting Corruption for 2011-2015. Having eliminated the post of the Government Agent for Anti-corruption Policy Issues in 2011, the Government restored in in July 2013. While these developments present a positive trend, especially the most recent measures taken by the interim government, actions taken so far fall short of the recommendations adopted in 2010; only drafts have been developed, and little is known about the implementation of the current anti-corruption policy. The monitoring meeting decided that there is **lack of progress** in this area.

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.

Measures taken to implement the recommendation:
Joint order of the Ministry of Justice and the Ministry of Economic Development and Trade No. 2055/5/1153 of 30 September 2013 approved the Conceptual Principles of the National Corruption Evaluation System, which provide for periodic sociological surveys concerning the levels of corruption conducted on Government orders for studying both corruption practices and corruption perception. The outputs of the surveys will be used for development and implementation of corruption prevention and countering measures, as well as for monitoring the effectiveness and efficiency of their implementation.

Assessment of Progress

The monitoring meeting welcomed the approval of the Conceptual Principles of the National Corruption Evaluation System, which requires the government to undertake periodic sociological surveys concerning the levels of corruption. The National Delegation of Ukraine stressed that the results of the corruption studies were used for the update of the current Programme of Prevention and Combatting Corruption. However, it also noted that, according to TI, the results of the last corruption survey conducted in 2012 have not been published yet. The monitoring meeting agreed that there is **progress** regarding this recommendation.

Recommendation 1.4-1.5

- Enhance cooperation with civil society in addressing the corruption phenomena, including

working more closely with a wide range of NGOs, the business community and academia on anti-corruption and good governance.

- Step up efforts to promote active and meaningful involvement of civil society in defining, implementing and monitoring anti-corruption strategy and action plan, including sector-specific programmes and regulations.
- Establish clear policy as well as transparent and not formalistic procedures for involving civil society representatives in the decision-making process.

Measures taken to implement this recommendation:
Effective cooperation with the civil society has been established, which resulted in the adoption of a new edition of the present Programme of Prevention and Combatting Corruption for 2011-2015 and the Concept of the Corruption Prevention System Reform. Order of the Justice Minister No. 589/5 of 2 April 2014 set up a working group, which includes representatives of the civil society, for the development of legal acts in the process of implementation of the Cabinet of Ministers Programme of Activities. The working group has a section for anti-corruption legislation reform.

Assessment of Progress

On the basis of the information presented by the National Delegation regarding participation of the civil society in the working group established by the Ministry of Justice for the development of anti-corruption legislation, the monitoring meeting agreed that **progress** was achieved in implementing this recommendation. TI Ukraine confirmed the positive developments in this area, e.g. NGOs participate in a Civil Expert Council established by the anti-corruption committee of the Parliament.

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.

Measures taken to implement this recommendation:
The functions of the Government Agent for Anti-corruption Policy Issues are currently fulfilled by the Justice Ministry.

The post of the Government Agent for Anti-corruption Policy Issues was restored in July 2013. Government Resolution No. 949 of 4 December 2013 approved the Provision on the Government Agent in accordance with which this public official is responsible for preparing proposals on coordination of the activities of the executive authorities in the anti-corruption area and submitting them to the Government. The Government Agent coordinates his activities with the Justice Ministry.

The Justice Ministry is also cooperating with the Parliamentary Committee for Fighting Organised Crime and Corruption. Representatives of the Ministry attend its sessions.

At the same time, the Concept of reforming the corruption prevention system in Ukraine envisages the creation of a separate collegial central executive authority with a special status vested with the function of the state anti-corruption policy formulation and implementation and ensuring the use of proactive anti-corruption instruments (conflict of interest, checking declarations, etc.).

Assessment of Progress

The monitoring meeting noted that since the adoption of this recommendation in 2010, the post of the Government Agent for Anti-corruption Policy Issues was cancelled, and the restored in 2013. No effective measures were taken to strengthen the capacity of this institution, ensure its independence and improve its cooperation with other state and non-governmental organisations. The monitoring meeting decided that there is **lack of progress** in this area since 2010.

Pillar 2: Criminalisation and Law-enforcement

Recommendation 2.1-2.2

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

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

Measures taken to implement this recommendation:

On 7 April 2011, the Supreme Rada of Ukraine adopted the Law on Amendment of Some Legal Acts of Ukraine Concerning Responsibility for Corruption Offences. The Law was enacted on 1 July 2011. This Law introduced amendments to the Criminal Code aimed at implementing the international standards in the system of responsibility for corruption (including criminalisation of trading in influence).

The latest amendments to the Criminal Code and the Code of Administrative Offences aimed at improvement of their provisions imposing responsibility for corruption offences were introduced by Law No. 221-VII of 18 April 2013 on Amendment of Some Legal Acts of Ukraine Concerning Alignment of the National Legislation with the Standards of the Criminal Law Convention on Corruption (hereinafter – law No. 221-VII). The Law was enacted on 18 May 2013.

The amendments introduced, inter alia, a unified concept of "improper benefit" to articles of the Criminal Code imposing responsibility for active and passive bribery, which means money or other property, advantages, benefits, services, non-pecuniary assets offered, promised, given or received without legal grounds thereto. In addition, responsibility is envisaged for offer and promise of a bribe, as well as responsibility for various forms of bribery through a third person or for the benefit of a third person.

The Draft Law on Amendment of Some Legal Acts of Ukraine in the Sphere of State Anti-corruption Policy in Connection with Fulfilment of the Action Plan for Liberalising the Visa Regime for Ukraine by the European Union (No. 4556 of 15 March 2014) initiated by the Government is presently undergoing parliamentary review.

This Draft Law envisages, inter alia:

- Increasing punishment for corruption offences, including imprisonment;
- Criminalising the promise of improper benefit and its acceptance in the private sector;
- Extending provisions on responsibility for bribery (Art. 354 of the Criminal Code) to include persons working in any capacity at private sector enterprises, institutions and organisations.
- The increase of punishment automatically leads to an increase in the period of limitation.

In addition, the Supreme Rada is currently reviewing the Draft Law on the National Bureau of Anti-corruption Investigations (No. 4573 of 26 March 2014) submitted by a group of people's deputies, envisaging the alignment of the Criminal Code provisions on responsibility for illicit enrichment with provisions of the UN Convention against Corruption.

On 17 November 2010 the Law of Ukraine ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, which entered into force in Ukraine as of 1 June 2011 (hereinafter – the Convention). The Convention provisions are implemented in the Law of Ukraine on Preventing and Counteracting Legalisation (Laundering) of Proceeds from Crime or the Financing of Terrorism.

Assessment of Progress

The monitoring meeting welcomed several areas of progress including the adoption of amendments to the Criminal Code and the Code of Administrative Offences in April 2013, which introduced a unified concept of "improper benefit", responsibility for offer and promise of a bribe, as well as responsibility for bribery through a third person or for the benefit of a third person. Ukraine ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, which entered into force in June 2011. The meeting also noted that the draft Law on Amendment of Some Legal Acts of Ukraine in the Sphere of State Anti-corruption Policy in Connection with Fulfilment of the Action Plan for Liberalising the Visa Regime, foresees increasing punishment for corruption offences; criminalising the promise of improper in the private sector; responsibility for bribery of persons working at private sector organisations. The meeting agreed that there is **progress** in this area.

Recommendation 2.1-2.2 bis

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

Measures taken to implement this recommendation:

Law on Amendment of Some Legal Acts of Ukraine in Connection with Fulfilment of the Action Plan for Liberalising the Visa Regime for Ukraine by the European Union concerning Liability of Legal Persons No. 314-VII of 23 May 2013 (hereinafter – Law No. 314-VII) has currently been adopted and will enter into force as of 1 September 2014.

Provisions of this Law introduce amendments to the Criminal Code and Criminal Procedure Code of Ukraine envisaging the possibility of applying criminal sanctions (fines, property confiscation and liquidation of a legal entity) to legal persons.

Criminal sanctions will be imposed by the court on all enterprises, institutions or organisations except public agencies, public authorities of the Autonomous Republic of Crimea, bodies of local government, organisations created by them in the authorised manner, financed fully from a relevant state or local budget, as well as international organisations.

The grounds for imposing criminal sanctions on legal entities will consist in the commission by an authorised person of the legal entity, inter alia, on behalf and in the interests of the legal entity of any of the offences stipulated by parts 1 and 2 of Art. 368-3, 368-4 and 369 (imposing liability for active bribery), and Art. 369-2 (trading in influence) of the Criminal Code.

Authorised persons of a legal entity shall mean officials of the legal entity, as well as other persons eligible, in keeping with the law and constitutive documents of the legal entity or contract, to act on behalf of the legal entity.

Offences stipulated by the aforementioned articles of the Criminal Code shall be considered committed in the interests of the legal entity if they are directed at the receipt of improper benefit by it or the creation of conditions for the receipt of such benefit, and at evading responsibility envisaged by law.

The Parliament is currently reviewing the Draft Law on Introduction of Amendments and Additions to Some Legal Acts of Ukraine in the Sphere of State Anti-corruption Policy in Connection with Fulfilment of the Action Plan for Liberalising the Visa Regime for Ukraine by the European Union (No. 4556 of 15 March 2014) submitted by the Government.

The Draft Law introduces, inter alia, improper fulfilment by an authorised person of a legal entity of corruption prevention functions as grounds for imposing criminal sanctions on a legal entity.

Trainings are presently planned for law enforcement officers concerning the legislation on responsibility of legal entities. In 2013, the Ministry of Justice, jointly with the Council of Europe, organised two events with the participation of experts, law enforcement officials and judges concerning the institution of liability of legal entities.

Assessment of Progress

The Law on Amendment of Some Legal Acts of Ukraine in the Sphere of State Anti-corruption Policy in Connection with Fulfilment of the Action Plan for Liberalising the Visa Regime foresees responsibility for bribery of persons working at private sector organisations. Training about the implementation of this law was not yet provided; it is planned for the future. The monitoring meeting agreed that there is **progress** regarding this recommendation.

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.

Measures taken to implement this recommendation:

Art. 18 (3) of the Criminal Code contains general provisions defining the persons referred to officials.

Officials shall mean persons who permanently, temporary or on special authorisation perform the functions of representatives of public authorities or local government bodies, and also permanently or temporary occupy positions within public authorities, local government bodies, at enterprises, institutions or organisations related to organisational, managerial, administrative and executive functions, or are specifically authorised to perform such functions by a competent public authority, a local government body, a central governmental authority with a special status, an authorised body or an authorised person of an enterprise, institution, organisation, court, or by law.

At the same time, to specify the category of officials criminally liable for the commission of offences in the public sector (Articles 364, 365, 368, 368^2, and 369 of the Criminal Code), paragraph 1 of the Note to Art. 364 of the CC stipulates that officials shall mean persons who permanently, temporary or on special authorisation perform the functions of representatives of public authorities or local government bodies, and also permanently or temporary occupy positions within public authorities, local government bodies, at state or community enterprises, institutions or organisations related to organisational, managerial, administrative and executive functions, or are specifically authorised to perform such functions by a competent public authority, a local government body, a central governmental authority with a special status, an authorised body or an authorised person of an enterprise, institution, organisation, court, or by law.

State and community enterprises (for the purposes of Articles 364, 365, 368, 368^2, and 369 of the CC) shall be equalised to legal entities in which the state or community stake exceeds 50 per cent of the authorised capital or constitutes the amount guaranteeing the state or the territorial community the right of decisive influence on such enterprise's business activity.

Officials shall also mean (Art. 18 (4) and paragraph 2 of the Note to Art. 364 of the CC) foreign officials (persons holding positions in a legislative, executive or judicial body of a foreign state, including jurors, other persons exercising public functions for a foreign state, specifically, for a public agency or a state enterprise), as well as foreign arbitrators, persons authorised to settle civil, commercial or labour disputes in foreign states through extrajudicial procedures, officials of international organisations (employees of an international organisation or any other persons authorised by such organisation to act on its behalf), members of international parliamentary assemblies of which Ukraine is a participant, and members and officials of international courts.

In the private sector, liability for corruption offences is applicable to all officials of a legal entity under private law irrespective of its form of incorporation. The range of persons in this category criminally liable for corruption offences is prescribed by Art. 18 and the Note to Art. 364 of the Criminal Code.

Assessment of Progress

The meeting noted that Article 18 of the Criminal Code provides for responsibility for bribery involving foreign and international public officials. It further noted that paragraph 1 of the Note to Article 364 of the Criminal Code clarifies which categories of public officials can be liable for corruption related offences; also Note to Article 368 regarding "officials holding responsible/especially responsible position" was modified to clearly state to which article it applies. The meeting agreed that there is **progress** regarding this recommendation.

Recommendation 2.4-2.5-2.6

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

Measures taken to implement this recommendation:

The Law of Ukraine on Amendment of the Ukrainian Criminal Code and Criminal Procedure Code in Pursuance of Implementation of the Action Plan for Liberalisation of the Visa Regime for Ukraine by the European Union No. 222-VII of 18 April 2013 was enacted as of 16 December 2013 (hereinafter – Law No. 222-VII).

This Law envisages the possibility of applying special confiscation for such offences (amendments to the Criminal Code): abuse of authority or office (Art. 364 of the Criminal Code), forgery in office (Art. 366 of

the Criminal Code), acceptance of an offer, promise or receipt of improper benefit by an official (Art. 368 of the Criminal Code), illicit enrichment (Art. 368-2 of the Criminal Code), offer, promise or provision of improper benefit to an official (Art. 369 of the Criminal Code), abuse of influence (Art. 369-2 of the Criminal Code).

Special confiscation consists in forced forfeiture of money, valuables and other assets on a court decision in favour of the state in cases of commission of offences envisaged by the Special Part of the Criminal Code.

Special confiscation will be applied in cases where the money, valuables or other assets:
- were obtained as a result of commission of an offence and/or are proceeds from such assets;
- were intended (used) for inducing a person to committing an offence, financing and/or material support of an offence or compensation for its commission;
- were the object of an offence, except those that shall be returned to the proprietor (legal owner), and if the owned it not identified shall be transferred into state property;
- were found, manufactured, adjusted or used as means or weapons of an offence, except those that shall be returned to the proprietor (legal owner) who was unaware and could not have been aware of their illegal use.

If the aforementioned money, valuables and other assets were fully or partially transformed into other property, the fully or partially transformed property shall be confiscated. If the confiscation of the aforementioned money, valuables or other assets and other property is impossible at the moment of issuance of a court decision on special confiscation as a result of their having been spent or the impossibility of separating them from legally acquired property, or alienation, or for other reasons, the court shall pass a decision to confiscate a monetary amount equivalent of the value of such property.

Money, valuables and other assets transferred by a perpetrator of an offence to another legal entity or individual are subject to special confiscation if the person accepting the property was aware or should have been aware that such property was obtained as a result of commission of an offence.

Special confiscation shall not be applied to money, valuables and other assets that shall be returned to the proprietor (legal owner) by virtue of law or be used for compensating for the damage caused by the offence.

Procedural aspects of applying special confiscation are regulated by introducing amendments to the Criminal Procedure Code.

It should also be mentioned that the application of special confiscation is already regulated directly by sanctions of some articles of the Special Part of the Criminal Code. This concerns, inter alia, the sanctions envisaged by Art. 209 “Legalisation (laundering) of proceeds from crime” and Art. 306 “Use of proceeds from trafficking in narcotics, psychotropic substances, their analogues or precursors, poisonous or strong substances, or poisonous or strong medicines.”

Draft Law No. 4556 allows the application of special confiscation to all predicate offences.

Assessment of Progress

The Law on Amendment of Some Legal Acts of Ukraine in the Sphere of State Anti-corruption Policy in Connection with Fulfilment of the Action Plan for Liberalising the Visa Regime foresees special confiscation, which addresses one part of this recommendation. No information was provided regarding

the implementation of other part of the recommendation about immunities. The meeting therefore agreed that there is **progress** regarding this implementation, and called on Ukraine to act on the issue of immunities to ensure a more complete implementation.

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.

Measures taken to implement this recommendation:
On 1 June 2011, the Supreme Rada of Ukraine adopted Law No. 3449-VI ratifying the Second Optional Protocol to the 2001 European Convention on Mutual Assistance in Criminal Matters, which entered into force in Ukraine as of 1 January 2012.

The law on ratification of this international treaty contained several statements and reservations, which were afterwards placed with a depositary.

The adoption of a new Criminal Procedure Code of Ukraine, accumulating all the latest global trends and practices, may be considered as absolute implementation of the provisions of this international treaty in the national legislation of Ukraine.

Specifically, Art. 542 (scope of international cooperation during criminal proceedings), Art. 561 (procedural actions that can be taken as part of international legal assistance), Art. 563 (presence of representatives of the competent authorities of the requesting state), Art. 565 (temporary transfer), Art. 545 (central authority of Ukraine), Art. 572 (appealing against decisions, actions or omissions of government authorities, their executives or officials, compensation for the inflicted damage and costs involving international legal assistance provision on the territory of Ukraine), Art. 558 (procedures for fulfilling a request (commission) for international legal assistance on the territory of Ukraine), Art. 567 (questioning on request of a competent authority of a foreign state by video or telephone conferencing), Art. 568 (search, arrest and confiscation of property), Art. 569 (controlled supply, Art. 571 (establishment and operation of joint investigation teams), Art. 556 (confidentiality) of the Criminal Procedure Code of Ukraine.

The public authorities of Ukraine responsible (authorised and central authorities) for the organisation of international cooperation in criminal matters in accordance with Art. 545 of the Criminal Procedure Code of Ukraine include the following:
1. The Prosecutor General's Office of Ukraine files requests for mutual legal assistance in criminal matters during pre-trial investigation and considers relevant requests from foreign competent authorities.
2. The Justice Ministry of Ukraine refers court requests for mutual legal assistance in criminal matters during legal proceedings and considers relevant requests from foreign courts.
3. If different procedures are prescribed for mutual legal assistance by this Code or an effective international treaty of Ukraine, the functions stipulated by parts 1 and 2 of this article shall apply to the authority defined by these legal acts.

Assessment of Progress

Ukraine ratified the Second Optional Protocol to the 2001 European Convention on Mutual Assistance in Criminal Matters in January 2012. There is **progress**.

Recommendation 2.8

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

Measures taken to implement this recommendation:

Articles 172-2 and 173-3 of the Code of Administrative Offences envisaging responsibility for the violation of restrictions on the use of official position for receiving improper benefit in return in the amount not exceeding one hundred tax-free minimum salaries, or the acceptance of an offer/promise of such benefit, and for the offer or provision of such improper benefit to an official were included in the Criminal Code of Ukraine by Law No. 221-VII.

Ukrainian Law of 14 May 2013 on Amendment of Some Legal Acts of Ukraine in Pursuance of the State Anti-Corruption Policy excluded from the list of specially authorised anti-corruption agencies the bodies of the Tax Police, Military Service of Order in the Armed Forced, and internal subdivisions of the Customs Service.

To ensure the technical aspect of relieving those agencies of the functions of drawing up notices of administrative infringements, Draft Law No. 3312 envisages the introduction of relevant amendments to Art. 255 “Persons authorised to draw up notices of administrative infringements” of the Code of Administrative Offences.

Assessment of Progress

The monitoring meeting noted that Ukraine has moved corruption related Articles 172-2 and 173-3 from the Code of Administrative Offences to the Criminal Code, and reduced the list of specially authorised anti-corruption agencies by removing the Tax Police, Military Service of Order, and internal subdivisions of the Customs Service from this list. There is **progress** regarding this recommendation.

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.

Measures taken to implement this recommendation:

The Supreme Rada is currently reviewing two draft laws initiated by people’s deputies concerning the creation of an autonomous specialised law enforcement agency responsible for fighting corruption among senior officials (Draft Law on the National Bureau of Anti-corruption Investigations No. 4573 of 26 March 2014 and Draft Law on the National Anti-corruption Service No. 4573-1 of 7 April 2014).

Assessment of Progress

The monitoring meeting welcomed the works of the Parliament regarding the creation of the specialised anti-corruption body with law-enforcement functions, but regrets lack of tangible progress in this crucial area. **Lack of progress**

Pillar 3: Prevention of corruption

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.

Measures taken to implement this recommendation:

Public Service

Currently the general principles of activities as well as the status of public servants working in the state authorities and their administrations are set by the Law of Ukraine of 16 December 1993 No. 3723-XII "On the Public Service" (hereinafter the "Law No. 3723-XII").

In accordance with Article 1 of the Law the public service in Ukraine is defined as professional activities of persons holding positions in the state authorities and their administrations on practical implementation of tasks and functions of the State and getting salaries at the expense of the public funds.

These persons are the public servants having the respective official powers.

Part 1 Article 9 of the Law provides that the legal status of the President of Ukraine, Chairperson of the Verkhovna Rada of Ukraine and his/her deputies, chairpersons of the permanent commissions of the Verkhovna Rada of Ukraine and their deputies, people's deputies of Ukraine, Prime-Minister of Ukraine, members of the Cabinet of Minister of Ukraine, Chairperson and members of the Constitutional Court of Ukraine, Chairperson and judges of the Supreme Court of Ukraine, Chairperson and judges of the Higher Specialized Court of Ukraine, General Prosecutor of Ukraine and his/her deputies shall be regulated by the Constitution and specialized laws of Ukraine.

According to the provisions of part 3 Article 6 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" and part 5 Article 9 of the Law of Ukraine of the Law of Ukraine "On the Central Executive Power Bodies" the positions of the members of the Cabinet of Ministers of Ukraine (Prime-Minister of Ukraine, First Vice-Prime-Minister of Ukraine, vice-prime-ministers and ministers of Ukraine) as well as positions of the First Deputy Minister and Deputy Minister (except for the Deputy Minister – Head of Administration) are qualified as political positions, which are not subject to legislation on the public service.

At the same time according to part 3 Article 31 of the Law of Ukraine of 16 December 1993 No. 3723-XII "On the Public Service" change of heads or composition of the state authorities shall not be the basis for termination of the public service by the public servant at the occupied position at the initiative of the newly appointed chiefs, except for public servants of the patronage service.

In accordance with Article 4 of that Law the right to public service shall belong to the citizens of Ukraine regardless of their origin, social and property status, race and nation, sex, political view, religious

convictions, place of residence, who have got the respective education and professional training and who have gone through competitive selection in due course or through another procedure envisaged by the Cabinet of Minister of Ukraine.

Section IV of this Law regulates the issues of public servicing in the state authorities and their administrations.

In accordance with Article 15 of the Law engaging for the public service on the positions of the third – seventh categories envisaged by Article 25 of the present Law shall be performed on the competitive basis unless the laws of Ukraine provide otherwise.

The procedure for holding competition on engaging for the public service is stipulated in the Regulations approved by the Cabinet of Ministers of Ukraine (Resolution of the Cabinet of Ministers of Ukraine of 15 February 2002 No. 169).

Information on vacant positions of the public servants shall be published and disseminated via mass media not later than one month before the competition.

It shall be prohibited to request from candidates for public service information and documents, submission of which is not envisaged in the legislation of Ukraine.

With respect to persons bidding to occupy a public servant's position there is performed a special examination subject to their written consent according to the procedure envisaged by the Law of Ukraine "On the Fundamentals of Prevention of and Fight with Corruption". In case of engagement for the public service on the competitive basis the special examination is performed upon completion of the competition with respect to the persons, who are recommended to be appointed on the position.

In accordance with Article 17 of that Law the citizens of Ukraine shall swear the Oath if they are engaged for the public service for the first time.

The public servant shall sign the Oath's text which is stored at the place of work. The labour book shall contain an entry on the fact of swearing the Oath.

A probation period up to six months can be set at engagement for the public service.

Moreover, for the purpose of getting practical experience, examination of professional level and business qualities of a person bidding to occupy a public servant's position, such person can be put on traineeship in the relevant state authority for the term up to two months with payment of the salary at the main place of work (Articles 18, 19 of this Law).

In accordance with Article 27 of this Law promotion of a public servant is exercised by occupation of the higher position on a competitive basis, unless the laws of Ukraine and the Cabinet of Ministers of Ukraine provide otherwise, or by awarding a higher rank to the public servant.

A public servant has the right to participate in a competition on occupation of the vacant position. Public servants who achieve the best results in work, take the lead, permanently advance their professional skills and who are enrolled into personnel reserve enjoy the pre-emptive right for promotion at work.

Moreover, the state authorities create personnel reserve for occupying positions of public servants as well as for promotion at work, which is formed from the public servants who have advanced their skills

or passed traineeship and have been recommended for promotion to higher positions.

The procedure for forming of and organizing work with personnel reserve are stipulated by the Regulations on the Personnel Reserve of the Public Service approved by the Cabinet of Ministers of Ukraine (Resolution of the Cabinet of Ministers of Ukraine of 28 February 2001 No. 199).

The grounds for termination of the public service are specified in Article 30 of the present Law.

According to that Article of the Law, besides the general grounds envisaged by the Labour Code of Ukraine, the public service shall be terminated in the following cases:
1) violation of terms of using the right to public service (Article 4 of the present Law);
2) failure to observe the requirement related to the public service envisaged by Articles 16 and 16-1 of the present Law;
3) public servant's reaching of the maximum age for working at the public service (Article 23 of the present Law);
4) resignation of the public servants occupying positions of the first or second category (Article 31 of the present Law);
5) detection or origination of circumstances preventing the public servant to work at the public service (Article 12 of the present Law);
6) public servant's refusal from taking the Oath or violation of the Oath envisaged by Article 17 of the present Law;
7) criminal or administrative prosecution of the public servant for corruption offences connected with violation of restrictions envisaged by the Law of Ukraine "On the Fundamentals of Prevention of and Fight with Corruption".

On 1 January 2015 the new Law of Ukraine of 17 November 2011 No. 4050-VI "On the Public Service" (hereinafter the "Law No. 4050-VI") will become effective. Article 1 of that Law defines public service as professional activities of the public servants on development of proposals on forming the state policy, ensuring implementation and provision of the administrative services.

A public servant is a citizen of Ukraine holding a public service position in the state authority, regulatory body of the Autonomous Republic of Crimea or their administration, getting salary at the expense of the state budget, except for cases envisaged by law, and performing powers which are set for this position and which are directly connected with implementation of tasks and performance of functions of the state authority or regulatory body of the Autonomous Republic of Crimea, in particular, on development of proposals on forming the state policy in the respective sphere; development, expertise and/or revision of draft legal acts, provision of the administrative services, performance of the state supervision (control) over execution of other powers of the respective body.

Part 2 Article 2 of the Law No. 4050-VI provides that this Law shall not apply, in particular, to the President of Ukraine, members of the Cabinet of Ministers of Ukraine, first deputies and deputy ministers; people's deputies of Ukraine; Human Rights Commissioner of the Verkhovna Rada of Ukraine; judges, personnel of prosecutor's offices with ranks; servicemen of the Military Forces of Ukraine and other military units organized in accordance with law, persons of soldiers and senior officers of the internal affairs bodies and other bodies who get special ranks, unless the law provides otherwise.

This Law explicitly stipulates rules and criteria of appointment, promotion and dismissal of public servants, such as, for example: right to public service and restriction of engagement for the public service, requirements for the level of professional competence of a person bidding to occupy a public servant's position, working at the public service and termination of the public servicing, etc.

The new Law is also aimed at streamlining of salaries of the public servants by increasing the role of the position wage in the salary structure and optimization of the number of incentive payments.

Part 2 Article 46 of this Law provides that the scheme of position wages at the public service positions shall be set by the Cabinet of Ministers of Ukraine annually not later than within one month after adoption of the Law of Ukraine on the State Budget for the next year by setting minimal and maximal position wages for each subgroup of the public service positions based on the following principles:

- The minimal position wage for the public service position of subgroup V-4 shall be set at the level of not less than two-fold minimal monthly salary;
- The minimal position wage for the public service position of subgroup I-1 shall not exceed 10 minimal monthly wages at the public service position of subgroup V-4;
- For each subgroup of the public service positions the difference between the maximal and minimal amount of position wage shall be not less than 30 percent;
- The minimal position wage for each subgroup of the public service positions shall exceed the maximal position wage of the same numeric specification of the subgroup following the numeric specification of the subgroup by not less than 1 percent and not more than 5 percent;
- The minimal position wage for the public service position of subgroup V-3 shall comprise not less than 1.2 times of the minimal position wage for the public service position of subgroup V-4;
- The minimal position wage for the public service position of subgroup V-2 shall comprise not less than 2 minimal position wages for the public service position of subgroup V-4;
- The minimal position wage for the public service position of subgroup V-1 shall comprise not less than 2.5 times of the minimal position wage for the public service position of subgroup V-4.

Besides that, the said Article of the Law explicitly sets the amounts of long-service payments and extra payments for ranks, provides for additional payment to the public servants, whose official duties include legal, financial and economic, professional expertise and/or development or revision of proposals on forming the state policy, draft legal acts and/or laws approved by the Verkhovna Rada of Ukraine and submitted for signature of the President of Ukraine.

The new version of the State Program for Prevention of and Fight with Corruption for 2011-2015 provides for further revision of that Law with a view to the recommendations envisaged by the EU / OECD SIGMA program.

<u>Conflict of Interests</u>

The definition of the term ‘conflict of interests’ is given in the Law of Ukraine “On the Fundamentals of Prevention of and Fight with Corruption”, according to which it means contradiction between the private property and non-material interests of a person or persons close thereto and their official powers, the presence of which may affect objectivity or integrity of decision-making as well as commission or non-commission of actions in discharge of their official powers.

In accordance with Article 14 of this Law persons, who are authorized to perform functions of the State or local self-government and persons likened thereto, shall take measures for non-admission of any possibility of origination of conflict of interest as well as for immediate written notification of the direct chief about such conflict of interests.

Article 15 of the Law of Ukraine “On the Rules of Ethical Conduct” provides that the persons, who are authorized to perform functions of the State or local self-government, despite of their private interests, shall take comprehensive measures for non-admission of conflict of interests and also shall prohibit actions or inaction which may cause conflict of interests or make an impression of its existence.

The persons, who are authorized to perform functions of the State or local self-government, shall not directly or indirectly induce in any manner their subordinates to take decisions, take actions or inaction for the benefit of their private interests and/or interests of third parties.

Moreover, the General Rules of Conduct of the Public Servants approved by the General Department of the Public Service of Ukraine on 4 August 2010 No. 214 and registered by the Ministry of Justice of Ukraine on 11 January 2010 under No. 1089/18384 contain section "Settlement of Conflicts of Interests". According to this section a public servant shall take measures for non-admission of conflict of interests within his/her powers.

The circumstances which may cause conflict of interests shall be eliminated before the public servant is appointed on the position.

If the circumstances which may cause conflict of interests originate after appointment on the position the public servant shall immediately inform his/her direct chief in writing and take urgent measure for elimination of such circumstances.

In case of origination of a conflict of interests or in the presence of grounds when such conflict of interests may arise, the public servant shall adhere to the general rules.

If a public servant learns about the conflict of interests of other public servants s/he shall inform his/her direct chief accordingly.

A public servant, who has informed his/her direct chief about the conflict of interests and who believes that the taken measures are insufficient, may inform in writing the state authority's chief accordingly.

The direct chief shall take all necessary measures aimed at prevention of the conflict if interests by committing of a respective official task to another official, personal performance of the official task or other means as envisaged by law.

If the conflict of interests arises with the public servant being a member of a collective body (committee, collegium, board, etc., such public servant shall not participate in the decision-making process, if his/her non-participation does not affect the powers of that body.

If non-participation of the public servant, who has got the conflict of interests and who is a member of a collective body, in the decision-making process of that body results in loss of powers by that body, participation of such public servant in the decision-making process shall be done under control.

The public servant is recommended to get rid of private interest, with respect to which a conflict of interests may arise, by alienation of corporate rights, assets or property rights, transfer into trust or otherwise.

If it is impossible to eliminate the conflict of interest by replacing the public servant with another person and in the absence of possibility of his/her transfer to another position of the respective category of the public service positions, the chief of the authority, where such public servant works, or his/her deputy in accordance with the distributed powers shall at the earliest possible time but not more than within one working day take a decision on execution of control over the decisions taken by that public servant.

The decision shall specify the form of control, responsible person and requirements for the public

servant on taking decisions with respect to the subject of the conflict of interests.

The public servant shall become acquainted with such decision not later than the next working day following the date of taking the decision on establishing control.

If the conflict of interests arises in connection with the activities of the public servant being part of the collective body, the decision on establishing control over such public servant shall be sent to all members of the collective body.

The control shall be exercised in the following forms:

- A person appointed by the head of the state authority checks contents of the decisions or draft decisions which are taken or being developed by the public servant or the respective collective body on issues connected with the subject-matter of the conflict of interests;
- The public servant considers cases and adopts decisions in the presence of the person appointed by the head of the state authority.

On 1 January 2014 the following provisions of the Law of Ukraine "On the Fundamentals of and Fight with Corruption" became effective.

The persons who are authorized to perform the functions of the State or local self-government as well as official of the legal entities of public law within ten days after their appointment (election) shall transfer to another person the owned enterprises and corporate rights in accordance with the statutory procedure.

In this case the mentioned persons are prohibited to transfer the owned enterprises and corporate rights in management to their family members.

The central executive power body responsible for implementation of the state policy in the field of the public service shall provide methodical support of activities of the authorized subdivisions on prevention, detection and settlement of conflicts of interests in the activities of the public servants and local self-government officials.

The Council of Judges of Ukraine shall exercise control over observance of the requirements for settlement of conflicts of interests in the activities of the judges of the Constitutional Court of Ukraine and courts of law, Chairperson and members of the Supreme Qualification Commission of Judges of Ukraine, Chairperson of the State Judicial Administration of Ukraine and his/her deputies.

The committee appointed by the Verkhovna Rada of Ukraine shall exercise control over observance of the requirements for settlement of conflicts of interests in the activities of the Chairperson of the Verkhovna Rada of Ukraine and people's deputies of Ukraine.

The internal authorized departments shall exercise control over observance of the requirements for settlement of conflicts of interests of other public officials.

Article 172-7 of the Code of Administrative Offences of Ukraine sets liability for the person's failure to inform his/her direct chief in cases envisaged by law about existence of the conflict of interests in the form of a fine from 10 to 150 minimal non-taxable incomes of citizens.

At the same time the Concept of Reform of the System of Prevention of Corruption in Ukraine, which has been worked out together with the general public, provides for development of the new preventive

anticorruption law, which would include comprehensive rules of prevention, detection and settlement of conflicts of interests.

Declarations

According to Article 12 of the Law of Ukraine "On the Fundamentals of and Fight with Corruption" every year before 1 April the subjects of declaring, which under this Law include the persons, who are authorized to perform the functions of the State or local self-government as well as official of the legal entities of public law, shall file at the place of their work (service) declarations on assets, incomes, expenses and financial obligations for the previous year according to the form attached to this Law.

The subjects of declaring who have not had a chance to file declarations before 1 April at their place of work (service) due to their stay on maternity leave, temporary disability, stay outside of Ukraine, stay under arrest, shall file such declarations for the reporting period before 31 December. The subjects of declaring, who resign or otherwise terminate activities connected with performance of the functions of the State or local self-government, shall file declarations for the period not covered by the previously filed declarations. The subjects of declaring, who have resigned or otherwise terminated activities connected with performance of the functions of the State or local self-government, shall file within one year at the place of their work (service) declarations on assets, incomes, expenses and financial obligations for the previous year according to the form and procedure specified in this Law.

The Law provides that high-ranking officials shall publish their declarations in the official printed media of the state power bodies or on the official web-sites disclosing information from the declaration on assets, incomes, expenses and financial obligations. Declaration shall be placed on the official web-site for not less than one year.

The Law of Ukraine "On Amending Certain Legal Acts of Ukraine in Connection with Adoption of the Law of Ukraine "On Information" (new version) and the Law of Ukraine "On Access to Public Information", which has been adopted by the Parliament on 27 March 2014 and forwarded for signature of the Acting President, set the rule according to which public disclosure of declarations shall be done through their publication in the official printed media only in case of absence of the official web-site of the relevant state authority.

The above-mentioned Concept of Reform of the System of Prevention of Corruption in Ukraine provides for improvement of the system of the officials' declaration of their property status, in particular, it provides for detailed form of declaration, introduction of the electronic system of filing of declarations and publicly open register of declarations.

Codes of ethics.

The Law of Ukraine "On the Rules of Ethical Conduct" sets unified rules of conduct for the persons, who are authorized to perform functions of the State or local self-government, and contains, inter alia, the provisions on objectivity, political integrity, competency, abstaining from illegal decisions, prohibition of conflicts of interests and receipt of gifts. It also sets the principle that violation of the rules of ethical conduct may result in disciplinary, administrative, criminal and material liability.

Also the Order of the General Department of the Public Service of Ukraine of 4 August 2010 No. 214 approved the General Rules of Conduct of the Public Servants, which consolidated the standards of ethical conduct, integrity and prevention of conflicts of interests in activities of the public servants and methods of settlement of conflicts of interests. They are based on the Constitution of Ukraine, the Law of Ukraine "On the Rules of Ethical Conduct" and certain principles set in Article 3 of the Law of Ukraine "On the Public Service", which are aimed at raising the profile of the public service and strengthening of

reputation of the public servants as well as informing the citizens on the norms of conduct, which they should expect from the public servants.

The sectoral codes of conduct for certain categories of persons are being gradually put into practice. For example, such codes exist for judges and prosecutors.

Provision of information about corruption and persons informing about corruption (whistle-blowers).
For the purposes of maximal exposure of corruption there exist the measures, which facilitate provision of information about the facts of corruption offences, prevent application of negative consequences to whistle-blowers, ensure proper response procedures in relation to the received information.

According to Article 20 of the Law of Ukraine "On the Fundamentals of and Fight with Corruption" the persons, who assist to prevent and fight with corruption, are protected by the State. The State shall ensure that the law enforcement bodies take legal, organizational, technical and other measures aimed at protection of illegal infringements on life, health, housing and other assets of the persons, who assist to prevent and fight with corruption, as well as persons being close thereto.

The state protection of the persons, who assist to prevent and fight with corruption, is performed in accordance with the Law of Ukraine "On Ensuring Security of the Persons Who Participate in the Criminal Proceedings".

A person shall not be dismissed or forced to be dismissed, disciplined or subject to other negative influence (transfer, attestation, change of labour conditions, and alike) by the chief or employer in connection with such person's provision of information on violation of the requirements of this Law by another person.

The same provisions exist in the laws, which regulate activities of the respective state authorities.

The draft law No. 4556 provides for improvement of the system of protection of whistle-blowers. In particular, it is proposed to provide that the whistle-blowers shall include the persons, who have informed in good faith about the fact of corruption. It is also planned to oblige the state authorities to ensure conditions for provision of information about such facts, including via specialized hotlines, official web-sites, means of electronic communications. Besides that, it is proposed to provide such information anonymously. At the same time in case of violation of the protection guarantees for whistle-blowers in case of legal controversies, the burden of proof of legality of the decision taken against the whistle-blower shall be imposed on the employer.

Internal subdivisions on disciplinary measures and conflicts of interests.
The Law of Ukraine "On the Fundamentals of and Fight with Corruption" provides for establishment of the authorized subdivisions (appointment of persons) on prevention and detection of corruption in the state authorities, regulatory bodies of the Autonomous Republic of Crimea, their administrations, local self-government bodies and legal entities of public law, under decisions of the heads of the state authorities or legal entities of public law. Standard Regulations on such subdivisions (persons) are approved by the Resolution of the Cabinet of Ministers of Ukraine of 4 September 2013 No. 706.

The subdivisions (persons) on prevention and detection of corruption have been established (appointed) almost in all ministries, other central executive power bodies, regional, city state administrations, which in accordance with the granted powers should ensure observance of the requirements of the Law of Ukraine "On the Fundamentals of and Fight with Corruption", decrees of the President of Ukraine and resolutions of the Cabinet of Ministers of Ukraine on enforcement of fight with corruption acts in the

field of the public service. Their powers include provision of consultations on conflicts of interests, control over their regulation, verification of existence of declarations.

The Concept of Reform of the System of Prevention of Corruption in Ukraine provides for strengthening guarantees of independence of such subdivisions by virtue of introduction of the mechanism of coordination of the structure, staffing levels and plans of work of the subdivisions, appointment, dismissal, provision of incentives and prosecution of their heads by the special body on issues of the anticorruption policy.

Assessment of Progress

The monitoring meeting noted that there were important developments regarding the civil service reform in Ukraine. A new law on Civil Service that was adopted in 2011 will enter into force in 2015; however. While this Law introduced a range of new provisions, they do not address the present recommendation; besides the Law does not meet the European standards and good practice. Several provisions of the Law "On the Fundamentals of and Fight with Corruption" became effective in January 2014, and require high level public officials to publish their asset declarations in the official sites of their organisations. However, as noted by TI Ukraine, mechanism for the verification of declarations is still missing. The meeting agreed that there is **progress** in this area.

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.

Measures taken to implement this recommendation:

Findings of the Council of Europe's evaluation of the draft Administrative Procedure Code drafted by the Ministry of Justice are currently undergo examination.

The Law of Ukraine of 14 May 2013 "On introducing amendments to some legislative acts of Ukraine on implementation of the state anti-corruption policy" introduced amendments into the Law of Ukraine "On fundamentals of prevention of, and combat against, corruption".

In compliance with the said amendments, the government introduced an anti-corruption examination of normative and legal acts along with an anti-corruption examination of normative and legal bills.

That said, the anti-corruption examination of normative and legal bills Ukrainian MPs submit for consideration by the Supreme Rada of Ukraine is carried out by the dedicated Committee of the Supreme Rada of Ukraine whose mandate encompasses the matter of combat against corruption.

The Law also guarantees conduct of a public anti-corruption examination.

In March 2013, a public expert council was established under the Supreme Rada Committee on matters of combat against organized crime and corruption. In cooperation with the civil society actors the Committee ensures conduct of anti-corruption examination of bills submitted by MPs.

Assessment of Progress

The meeting welcomed the adoption of the Law "On introducing amendments to some legislative acts of Ukraine on implementation of the state anti-corruption policy" in 2014, which introduced an anti-corruption examination of normative and legal acts along with an anti-corruption examination of normative and legal bills, and which guarantees conduct of a public anti-corruption examination. The meeting agreed that this action constitutes **progress** in implementing this recommendation.

Recommendation 3.4

- Clarify the main directions of reforms in the area of public financial control, in order to effectively delineate key functions such as external and internal audit and financial inspections. As a long-term goal, develop the external and internal audit functions to signal corruption and fraud cases to the KRU or to law-enforcement bodies.
- As a short-term goal, improve the effectiveness of KRU by focusing on financial inspections as its one and only task. Ensure that the inspection service focuses on investigating important cases; develop an intelligence function/unit, which maps the areas of high risk of corruption as a basis of the planning of inspections. Improve KRU's relations with law enforcement bodies, by collecting information about what happened with the material they have provided to the bodies; by using this information to analyse why the KRU's material is not taken into account by the law enforcement bodies; by starting a dialogue with the bodies how to improve the KRU material; and by drafting new guidelines for their inspectors based on the wishes of the law enforcement bodies. Develop the capacity and task of KRU to analyse their findings in terms of where and how preventive measures should be developed: i.e. ensure that KRU reporting should include recommendations for the managers of public institutions to take measures to improve the systems to prevent the type of violations of laws and regulations which were detected.

Measures taken to implement this recommendation:

Presently, such key functions as external audit, internal audit and supervision are legislatively delineated. More specifically, external audit is exercised by the Chamber of Accounts whose status and authority are set forth in the Constitution of Ukraine and the Law of Ukraine 'On the Chamber of Accounts". Meanwhile, the powers of the State financial Inspection were established by a relevant legal act– that is, the Law of Ukraine «On main principles of exercise of the public finance control in Ukraine" (the title of the Law is cited per its reworded version № 5463-VI of 16 October 2012) – and the Statute on the State Financial Inspection of Ukraine approved by decree of the President of Ukraine of 23 April 2011 № 499. The internal audit units were established per the Procedure of formation of structural units of internal audit and conduct of such an audit at ministries, other central executive agencies, their territorial branches and budget-funded institutions administered by ministries, other central executive agencies. This Procedure was established by Resolution of the Cabinet of Ukraine of 28 September 2011 № 1001 and per the Concept of development of the public internal finance control for the period through 2017 approved by Resolution of the Cabinet of Ukraine of 24 May 2005 № 158- p (as amended).

On 19 September 2014, the Law «On introducing amendments to Article 98 of the Constitution of Ukraine (with regard to the authority of the Chamber of Accounts)» was enacted. The Law extended the Chamber's mandate by granting it the authority to exercise control over the process of budget revenue collection, which should ensure a robust control over execution of the state budget.

The reworded Article 98 of the Constitution of Ukraine establishes grounds for the Chamber of Accounts to exercise control functions with regard to execution of the state budget as a holistic process, as the revenue part constitutes an integral component of the notion of state process.

The approval by the government of the Strategy of development of the Public Finance Management System has been a major milestone in the area of improvement of the public internal finance control, with internal audit and internal control being two components thereof. In accordance with Section IX of the Strategy, the public internal finance control is set to advance in two stages, with the first stage being a medium-term one and covering the period between 2013 and 2014, while the second stage encompass a longer period of 2015-2017.

At the first stage it is envisioned to implement the following measures:
1) support and development of activities pertinent to internal control, including, inter alia, finance management, responsibility (accountability) and internal audit. In the frame of this direction, it is planned to provide training to leadership and junior staff of internal audit units, as well as budget-funded institutions, on organization of internal control, including finance management and accountability; as well, it is planned to have training to raise awareness and provide consulting with regard to matters of internal audit and internal control;
2) to monitor problems of implementation of requirements normative and legal acts set out in respect to matters of internal audit and internal control it is planned to ensure participation of representatives of a central harmonization unit in public agencies' collegiums on consideration of internal audit units' performance, development of an integrated automated database on their performance and running the respective monitoring, as well as to evaluate/revise normative and legal acts on matters of internal audit;
3) in the frame of the normative and legal, and methodological fundamentals of internal control and internal audit it is planned to develop a special form for internal audit units to report their performance, to identify the procedure of assessment of the quality of internal control and internal audit, to improve the Methodological recommendations on organization of internal control by administrators of budget funds at their institutions and subordinated budget-funded institutions with regard to matters of financial administration and responsibility (accountability) of heads of such institutions, a normative and legal act on matters of organization of internal control, including finance management and responsibility (accountability) of the head of a budget-funded institution;

At the second stage, it is envisioned to implement the following measures:
1) continuous support and development of internal control, including finance management and responsibility (accountability), and internal audit by means of workshops, training and consulting sessions, conferences, briefings, roundtables, pilot projects on matters of internal control, including finance management and responsibility (accountability), and internal audit;
2) development of proposals on organizational and structural changes in the State Financial Inspection and the Finance Ministry by evaluating the degree of internal audit units' maturity and operational capacity, drafting proposals on the State Financial Inspection further conducting the centralized internal audit (the state financial audit) with account of a possibility for internal audit at budget-funded institutions, and fostering the advancement of an independent external audit body (the Chamber of Accounts), development of proposals to have the State Financial Inspection focus solely on conduct of examinations, and development of proposals on operation, within the Finance Ministry, of a dedicated unit on harmonization of internal control and internal audit.

Assessment of Progress

The monitoring meeting noted several measures implemented in the area of the public finance management, including the broadening of the mandate of the SAI though constitutional change in 2014, and the adoption of the Strategy of the development of the system of state financial management. However, the meeting stressed that these measures did not address the recommendation, and did not result in any tangible changes in practice. The meeting agreed therefore that there is **lack of progress.**

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.

Measures taken to implement this recommendation:

On 10 April 2014, the Parliament passed a new Law «On performing public procurement», which, inter alia, reduced the list of cases not falling within the purview of the Law (from 44 to 10 ones); in addition, the Law defines the notion of customer in line with the principles of the EC Directives, brings the procedures of procurement from a sole supplier in line with the European states' good practices, and eliminates the rule of publishing information about procurements in printed media, while having established instead a mandatory procedure of unveiling the respective information by posting it on a Web portal.

As well, Art. 17 of the Law identifies grounds for denial of the bidder of taking part in a procurement tendering. Specifically, in compliance with the said clause, the customer makes the decision to deny the bidder's participation and is obligated to decline his tender bid, where:

- the customer is in possession of conclusive evidence that a (prequalification) bidder has offered, given or agreed to give, directly or indirectly, any customer's official, public official of any other public agency a reward in any form (a job offer, a valuable item, a service, etc.) for the purpose to influence the making of the decision about election of the winner in the procurement tendering procedure or election by the customer of a certain procurement procedure;

- a customer's authorized (official) person or a person of the prequalification tenderer was held liable for a corruption offense in the sphere of public procurement;

- during the previous three years, the economic agent was held liable for anticompetitive concerted actions related to tender fraud;

- a private individual who participates in a tender or in a prequalification has been convicted for a crime committed for financial gain, and his/her conviction has not yet been expunged or removed from official records in the manner prescribed by law;

- a (public) official of the tenderer or the prequalification participant authorized by that tender or prequalification participant to act on his behalf during the procurement procedure has been convicted for a crime committed for financial gain, and his/her conviction has not yet been expunged or removed from official records in the manner prescribed by law;

- the competitive (qualification, quotation) bid was submitted by a procurement tenderer who appears an entity affiliated with other participants in the procurement procedure and/or with a member(s) of the customer's bid committee;

- a (prequalification) tender has been recognized as a bankrupt and subject to an effective liquidation procedure.

In compliance with the new Law, it is the Antimonopoly Committee of Ukraine that has remained the appeal body with regard to procurement procedures. The Antimonopoly Committee is a central executive agency which enjoys a special status.

For the sake of nonpartisan and efficient protection of entities' rights and legal interests associated with their participation in public procurement tendering, there has been established a permanent administrative collegium mandated to canvass claims against alleged violation of the public procurement law (hereinafter referred to as the Collegium) formed by a panel of three authorized Committee officers. A sufficient administrative capacity of this appeal body is secured by both the Committee's special status and the procedure of appointment of the panel (the authorized Committee officers).

The Law has retained a clause about a fee for filing a claim to the appeal body. Resolution of the Cabinet of Ukraine of 28 July 2010 № 773 holds that the fee for filing a claim, in compliance with Art. 18 of the Law, amounts to UAH 5,000 where the claimer lodges a complaint against the procedure of procurement of goods and services; where the claimer challenges procurement of works, the fee rises up to UAH 15,000. Evaluation of the number of claims considered by the Ministry of Economic Development between 2008 and 2010 and by the Appeal Body in 2011-2012 proves that the introduction of the fees did not reduce the number of claims filed by bidders.

Assessment of Progress

The meeting noted the adoption of the new Law «On performing public procurement» in 10 April 2014, and agreed that this presents **progress** in relation to this recommendation. The meeting also noted that urgent and effective implementation measures are further needed to ensure the implementation of the recommendation.

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.

Measures taken to implement this recommendation:

In compliance with Article 17 of the Law of Ukraine «On access to public information», the parliamentary control over observance of the human right to access to information is exercised by the Supreme Rada's Ombudsman, ad-hoc investigative commissions of the Supreme Rada, and MPs.

In the structure of the Ombudsman's Secretariat, there is a dedicated unit on matters of observance of

the right to access to public information.

In public agencies there likewise are dedicated units or officers responsible for matters of access to public information. The agencies have also established lists of information for internal use only.

The Law of Ukraine «On protection of personal data» was brought in line to the European standards. The process was completed in two stages. The amendments introduced to the Law on 3 July 2013, which took effect 1 January 2014, improved the institutional component of personal data protection: that is to say, control over compliance with the respective legislation is exercised by the Supreme Rada's Ombudsman or by the court of law.

A dedicated unit on matters of personal data protection was established under the Ombudsman. The unit is led by a special representative of the Ombudsman.

On 27 March 2014, the Supreme Rada passed the Law "On introducing amendments to some legislative acts of Ukraine in connection with the adoption of the Law of Ukraine «On information» (as reworded) and the Law of Ukraine «On access to public information».

The amendments in question eliminated the presumption of confidentiality of personal data by foreseeing that such data may be attributed by law to the category of confidential information.

The Law established that personal data related to a public official's official duties, information of budget funds, public or communal property received by that person may not be classified as personal data. The Law also provides for an unrestricted access to general maps of settlements, detailed plans of territories, and other kinds of information.

In addition to the already established responsibility for an unlawful denial of provision of information, the Law provides for liability for failure to disclose information or its ungrounded attribution to classified information.

The Law also provides for revision of documents bearing the label "for internal use only" and other types of restricting access labels on documents (bar secret ones) for the sake of ensuring their consistency with the Law «On access to public information» and their declassification where they prove inconsistent with the said Law.

The Ministry of Justice together with the civil society and the State Registration Service is currently busy with drafting a bill that will ensure an unrestricted access to the State Register of Property Rights and the State Land Cadaster.

Assessment of Progress

The monitoring meeting noted that a dedicated unit on matters of observance of the right to access to public information was established in the Ombudsman's Secretariat that is responsible for the control over observance of the human right to access to information according to the Law of Ukraine «On access to public information». It also noted that the Parliament adopted the Law "On introducing amendments to some legislative acts of Ukraine in connection with the adoption of the Law of Ukraine «On information» (as reworded) and the Law of Ukraine «On access to public information» in March 2014, which clarified regulations regarding confidentiality of information and information for official use, and introduced responsibility for failure to provide information. The meeting decided that these measures constitute **progress**.

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.

Measures taken to implement this recommendation:

The Ministry of Justice has evaluated the effective legislation of Ukraine regarding funding political parties' activities and electoral campaigns; as well, the Ministry has completed the examination of the European standards, recommendations of European and international organizations, including GRECO, international experiences of the legal regulation of the issue of funding political parties' activities and electoral campaigns.

On 21 November 2013 the Supreme Rada passed the Law «On introducing amendments to some legislative acts of Ukraine on improvement of the legislation concerning conduct of elections».

Norms of the Law improved the rules of funding of the Parliamentary electoral campaign. More specifically, the Law provides for submission by administrators of a party or a parliamentary candidate's electoral fund of interim (prior to the ballot day) financial reports on how that electoral fund has been spent.

To tighten control over collection and use of electoral funds' resources, such financial reports are subject to evaluation by the Central Electoral Commission and county electoral commissions, respectively; as well, there has been established a requirement to make findings of such evaluations publicly available.

Where findings of the evaluation of such a financial report suggest violation of the requirements of the Law in question, the Central Electoral Commission or a respective county electoral commission informs law-enforcement agencies thereof for the sake of their further investigating and reacting thereto.

Norms of the Law that set forth the replacement of a selective control over collection, account and spending of resources from electoral funds with the general control also seek to ensure a greater control in this particular area. It is also foreseen to engage banks, with which one opens an account to manage an electoral fund, in the exercise of additional control over such funds.

The Parliament currently considers a bill «On introducing amendments to some legislative acts of Ukraine (with regard to funding political parties' activities)» (ref. registration № 3709 of 29 November 2013).

Assessment of Progress

The monitoring meeting noted that there important measures were taken in relation to political party financing, including the the adoption of Law «On introducing amendments to some legislative acts of Ukraine on improvement of the legislation concerning conduct of elections», which provides for additional measures to control financial reporting by the political parties. However these measures were

not related to this recommendation the meeting therefore decided that there is **lack of progress**.

Recommendation 3.8

- Initiate a constitutional reform to bring provisions on the judiciary in line with European standards and recommendations of the Venice Commission, in particular with regard to appointment and dismissal of judges, life tenure, and composition of the High Council of Justice.
- Ensure sufficient and transparent funding of the judiciary and exclude possibility of financing of the judiciary by private donations and local self-government.
- Implement provisions on the financial disclosure of judges.
- Review legal provisions on the disciplinary proceedings, dismissal and recusal of judges to guarantee their impartiality and protection of judicial independence.

Measures taken to implement this recommendation:

The Law of Ukraine "On judicial administration and the status of judges" has gone into effect 30 July 2010. That said, the legislation in this particular area has been continuously improved, including, inter alia, the Law "On renewal of trust in the judicial system" passed by the Supreme Rada on 8 April 2014. The Law changed the approach to appointment of judges to administrative positions –they now are elected by their peers by the secret ballot procedure; the Law also provides for a balanced representation of courts of different tiers in the Council of Judges of Ukraine, which is a supreme body of the judiciary's self-regulation. The legislation also holds that the first appointment of a judge to office is made by the President on the basis of, and in the frame of, the Supreme Council of Justice's decision without conducting any extra checks. Thus, the President's powers with regard to appointment of judges appear solely ceremonial. Meanwhile, the procedure of formation of the Supreme Council of Justice was designed in such a manner so that judges would form the majority therein.

Subsequent to the results of amendments to Art. 32 of Law of Ukraine «On the Supreme Council of Justice» introduced by Laws of Ukraine of 13 May 2010 № 2181 - VI «On introducing amendments to some legislative acts of Ukraine in respect to prevention of abuse of the right to appeal», of 17 May 2012 № 4711 - VI « On introducing amendments to some legislative acts of Ukraine due to the adoption of Law of Ukraine «On fundamentals of prevention of and combat against corruption» and of 07 July 2010 года № 2453 - VI « On judicial administration and the status of judges », powers of the Supreme Council of Justice exercised in the process of consideration of the matter of dismissal of a judge under special circumstances were specified and criteria to characterize the notion of "oath-breaking" were established.

The effective law of Ukraine rules out a possibility to fund operation of courts of law through private contributions and at the expense of local self-government bodies.

In accordance with requirements of Part 7 par. 4 Art. 17 of Law of Ukraine of 07 July 2010 № 2453-VI (as amended) « On judicial administration and the status of judges», the unity of the general jurisdiction courts is secured, inter alia, by funding their operation exclusively out of the state budget of Ukraine. Art. 142 of the Law maintains that budget allocations on courts of law fall under the list of protected expenditure items of the state budget of Ukraine and may not be sequestrated over the current financial year.

It should be emphasized that ensuring fair justice, guarantees of judges' independence forms a component of the new Ukrainian Government's Action Plan, with revision of the legislation on justice and the status of judges constituting one of the avenues of its implementation.

Assessment of Progress

The monitoring meeting welcomed the adoption of the Law "On renewal of trust in the judicial system" in April 2014. The meeting agreed that the provisions of the law and other measures recently taken by the interim government present the moves in the right direction. However, there is no tangible progress yet in implementing the recommendation in this areas. **Lack of progress**.

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.

Measures taken to implement this recommendation:

The Government has engaged in a meaningful dialogue with the business community, including that on anti-corruption activities. More specifically, the business community was engaged in the debate over a signing of a joint Anti-Corruption Memorandum which provides for establishing the institution of the business Ombudsman to address the problem of protection of businesses' interests. An agreement was reached with the US Chamber of Commerce to cooperate and to jointly develop instruments to combat corruption in the private sector.

Bill № 4556 provides for incorporation in the effective legislation of norms about prevention of corruption in the private sector. In accordance with the approach suggested in the bill, corporations ensure development and application of measures aiming at prevention of corruption. Such measures appear necessary and well-grounded to prevent corruption in a corporation's operation and encourage employees to abide by law, including:

Establishment of rules and procedures to detect and prevent corruption in a corporation's operation, development of recommendations on their application, establishment a code of ethics for the corporation's employees, creation of conditions conducive to whistleblowers;
Identification of officers responsible for compliance and such officers providing the owner(s) of the corporation or individual(s) authorized by him/her and acting on his/her behalf with regular reports based on findings of monitoring;
Exercise by the owner or a person authorized by him/her of a proper oversight and control over compliance with the rules and procedures of detection and prevention of corruption in the corporation's operation;
Conduct of periodical training of persons tasked to monitor compliance with the rules and procedures of detection and prevention of corruption;
Running a regular evaluation of efficacy of application of the rules and procedures of detection and prevention of corruption, taking disciplinary action against individuals violating such rules and procedures;

Taking measures in response to detected facts of corruption offenses, including informing authorized officers of public agencies, conducting internal investigations, developing measures aimed at prevention of such offenses in the future.

Assessment of Progress

The National Delegation reporting about measures taken to develop a dialogue with the private sector, including the possibility of creating an institution of a Business Ombudsman. Draft Law on Amendment of Some Legal Acts of Ukraine in the Sphere of State Anti-corruption Policy in Connection with Fulfilment of the Action Plan for Liberalising the Visa Regime for Ukraine by the European Union also foresees a number of provisions related to corruption prevention in the private sector. The monitoring meeting welcomed these measures, but noted that most of the presented measures are only at the stage of development, and do not present tangible results. The meeting decided that there is **lack of progress** in this area.

PART II: OTHER MAJOR ANTI-CORRUPTION DEVELOPMENTS

No information was provided on other anti-corruption developments.