

Actions taken by the Government of Ukraine towards implementation of OECD Recommendations

Introduction

Ukraine is currently passing through an extremely crucial phase in its economic and political development. OECD member countries closely follow the destiny of market-oriented reforms aimed at improving the country's business environment. Ukraine is a country with a large economic and human potential capable of progressing rapidly, given the strong political will to implement the necessary reforms.

The OECD Review, prepared at the request of the Government of Ukraine and published in May 2001, contains a number of practical recommendations with regard to country's economic and political progress.

I. Foreign investment

1. Investment protection

Recommendations:

- Review the necessity of the frequent provisos in favour of generally applicable Ukrainian legislation and delete these provisos wherever feasible. Especially the proviso with respect to national treatment, which is inconsistent with the treaty framework, should be either deleted or at least replaced by a list of exceptions from this principle, to be attached to the Foreign Investment Law.
- Extend the protection of expropriation and nationalisation to indirect and creeping expropriation.

Actions

- The Law of Ukraine "On Investment Activities" grants equitable regime to investors, including foreign investors. This form of the statute aims at preventing a possibility of applying measures of discriminatory nature.
The list of exceptions mentioned in Article 17 of the Law "On Investment Activities" is being reviewed and will be submitted for consideration of interested parties following its amendment.
- With respect to protection for foreign investors against creeping expropriation, Clause 2, Article 19 of the Law of Ukraine "On Investment Activities" stipulates: "Investments may not be nationalised, requisitioned or subjected to actions similar in their consequences without compensation." It should be understood that expropriation, including the creeping expropriation, is an action similar to its consequences to nationalisation and requisition.
- On March 16, 2000, the Verkhovna Rada of Ukraine ratified the Convention on the Settlement of Investment Disputes between States and Nationals of other States.
Ukraine therefore has access to the authoritative international mechanism for reviewing and settling investment disputes founded under this Convention, specifically the International Centre for Settlement of Investment Disputes (ICSID).
Rigorous ethical and professional requirements for Mediators and Arbitrators included in the ICSID Lists, and provisions regarding the representation of the principal existing world legal systems and main forms of economic activities (Article 14) ensure a high

level of legal analysis of disputed situations, and comprehensive and relevant decisions by the ICSID.

Article 26 of the Convention stipulates: “Any negotiating State has the right to demand precedence of the national administrative or judicial means of settling disputes as a condition for submitting a dispute for arbitration pursuant to this Convention.” This provision of the Convention allows the national administrative and judicial systems to prove their effectiveness in settling investment disputes between the State and foreign national. This efficiency is inversely proportional to the number of disputes involving this State submitted to ICSID.

As of today, one case involving Ukraine, *Joseph Lemire vs. Ukraine*, is being considered by the ICSID. In order to speed up the case and due to the lack of serious contradictions, the parties in the case issued an Appeal for Conciliation Procedure pursuant to Article 28 of the Convention; in this case, the dispute is settled in accordance with the Conciliatory Procedure as per Section 3 Chapter III of the Convention.

2. Investment liberalisation

Recommendations

- It is recommended that the remaining cases of foreign investor discrimination (limitations remaining in certain sectors, notably insurance, television and broadcasting) be reviewed with a view to eliminating them wherever feasible.

Actions

- On October 4, 2001, the Verkhovna Rada of Ukraine adopted a new version of the Law of Ukraine “On Insurance” effective as of November 7, 2001 (hereinafter referred to as Law).

The Law completely removes limitations on the interest share of a foreign founder in establishing an insurer, which could not exceed 49 percent earlier, and sets forth identical requirements with regard to authorised capital both for domestic insurers and those established with participation of foreign founders.

According to Article 2 of the Law, recognised as insurers are financial institutions established as economic companies pursuant to the Law of Ukraine “On Economic Companies” and those that have been licensed, in accordance with the established procedure, for pursuing insurance activities. Insurance activities in Ukraine are carried out exclusively by insurers that are resident in Ukraine.

The Cabinet of Ministers of Ukraine issued Resolution No.98 dated February 2, 2001 to approve the Program for Development of Insurance Market in Ukraine for 2001-2004 (hereinafter referred to as Program).

The Program aims, among other things, at removing administrative barriers to entry into specific insurance markets, and at creating equitable conditions for all insurers based on the principle of open competition. The State guarantees to all insured and insurers (domestic and foreign) free choice of types of insurance and equal opportunities in conducting business, creates conducive conditions for development of insurance with the aim of providing for implementation of the right to effective insurance protection and free choice of insurer.

- In order to remove obstacles to attracting foreign investment for development of the telecommunications sector, the Law of Ukraine “On Specifics of Privatisation of Open Joint Stock Company “Ukrtelekom” of July 13, 2000, has amended the Law of Ukraine “On Telecommunications”, which has lifted the restrictions on the share of foreign capital in authorised funds of telecommunications joint ventures, as well as broadcasting support companies.
- The Law of Ukraine “On Television and Radio Broadcasting” regulates the issue of establishing and operating television and radio broadcasting organisations with foreign investment. Implementation of information policies in the area of television and radio broadcasting rests with the State Committee for Information Policy, Television, and Radio Broadcasting.

3. Incentives and privileges

Recommendations:

- Phase out all remaining incentive schemes to the extent that they distinguish between foreign and domestic investors. Once granted, however, privileges should be maintained for the entire time period initially established.

Actions:

- As indicated above (see Clause 1 of Section I), according to the Law of Ukraine “On Foreign Investment Regime”, the national regime does not make distinctions in the status of national and foreign investors. In addition, a number of preferential conditions of implementing investment activities are provided for foreign investors.

4. Special Economic Zones

Recommendations:

- Review the concept of Special Economic Zones (SEZs) with a view to abandoning plans for the creation of new zones and to phasing out of existing SEZs. Incentives already granted to enterprises in the zone should be honoured, however, to avoid undermining investor confidence in the stability of investment conditions.

Actions

- Since August 1999, the Cabinet of Ministers of Ukraine has not authorized the establishment of new SEZs.
- To implement the OECD recommendations with regard to reviewing the concept of Special Economic Zones, the Government passed a decision (Resolution No.184 of the Cabinet of Ministers of Ukraine of February 28, 2001) to carry out a comprehensive analysis of SEZs performance results.

Pursuant to a decision of the Governmental Economic Development Committee of August 31, 2001, it is planned to review the performance results of Special Economic Zones of Investment Activities in May 2002 and make decision on their further operation.

- According to the legislation in force, the State guarantees stability of legal regime to investors and subjects of entrepreneurial activities operating in a Special Economic Zone, in case of change in Ukrainian laws on taxation and customs issues.

Pursuant to Ukrainian legislation, the State guarantees preservation within the full scope of all property and non-property rights to investors and subjects of entrepreneurial activities operating within SEZ if such SEZ is liquidated.

Any disputes between SEZ management agencies, subjects of entrepreneurial activities operating within SEZ, investors, and the liquidation commission, which could emerge in connection with liquidation of a zone are settled by Ukrainian courts. Disputes involving a foreign subject of entrepreneurial activities are considered by courts to be agreed by the parties, including foreign courts.

Following ratification by the Verkhovna Rada of Ukraine of the Convention on the Settlement of Investment Disputes between States and Nationals of other States on March 16, 2000, a foreign investor can turn to the International Centre for Settlement of Investment Disputes in Washington, D.C.

5. Foreign investment institutions

Recommendations:

- Ukrainian investment institutions should coherently and consistently implement an investment promotion strategy. Such a strategy would include the following tasks:
 - developing a coherent investment promotion strategy to which all Ukrainian authorities subscribe;

- simplifying interaction between foreign investors and Ukrainian authorities by considering the creation, for instance, of a “one-stop shop” that obtains for foreign investors all required licenses, approvals and permits from the authorities in charge;
- assisting foreign investors in case of difficulties with Ukrainian authorities;
- facilitating an ongoing and systematic policy dialogue between foreign investors in Ukraine and investment policy-makers;
- enhancing both Ukraine's image abroad as an attractive investment location and the image of foreign investment in Ukraine as an agent of growth;
- promoting abroad investment projects in Ukraine;
- promoting linkages between foreign investors and domestic suppliers.

Actions

- On December 28, 2001, the Government adopted a Program for Development of Investment Activities and set up a working group to develop a plan of actions for implementing the program.
- On June 12, 2001, the President of Ukraine issued Edict No. 512/2001 “On Measures to Improve the Investment Environment in Ukraine” dated, instructing the Government to develop a Program to promote the “Investment Image of Ukraine.”

The Program concentrates on taking steps with publicise widely Ukraine's achievements in creating a favourable investment environments and highlighting the Government's actions towards overcoming barriers and obstacles to invigorating investment activities in Ukraine.

The Program is expected to help create an attractive investment image of Ukraine world-wide.

- A key component of Program implementation involves setting up a permanent Co-ordinating Group for stepping up investment activities (hereinafter referred to as the Group) with participation of central government officials.

The Group is to become a “one-stop shop” performing the functions of facilitating solution of problems, protecting investors, intensifying investment activities, supporting investors making investments in sectors of priority significance for Ukraine.

6. Improving the effectiveness of the Foreign Investment Advisory Council

Recommendations

- It is recommended to create a permanent working body to prepare and provide follow-up to Council meetings. Such a body could comprise the top aides of Ukrainian Council members and the chief resident representatives of international Council members.
- Invite into the Council membership some representatives of business associations so as to address the particular interests and problems of small and medium-sized enterprises.

Actions

- The Foreign Investment Advisory Council, attached to the President of Ukraine, has established permanent working groups in the following areas:
 - Reforming property relation and eliminating administrative barriers;
 - power industry;
 - industrial policy;
 - oil and gas sector;

- financial policies;
- telecommunications.

These working groups provide an ongoing support to the activities of the Foreign Investment Advisory Council between its meetings and develop actions to improve the investment environment in Ukraine.

7. Improving the effectiveness of the Chamber of Independent Experts

Recommendations

- Create specialised panels, notably on tax and customs issues;
- extend the Chamber's jurisdiction to enterprises with foreign shareholders (rather than just foreign shareholders in such enterprises); and
- appoint individual experts as mediators of evolving disputes before constituting formal panels.

Actions

- The Chamber of Independent Experts on Foreign Investments attached to the President of Ukraine (hereinafter referred to as Chamber) was established pursuant to Decree No.200/97 of the President of Ukraine dated March 3, 1997, "On the Chamber of Independent Experts on Foreign Investments."

The establishment of the Chamber was connected with expanding activities of foreign investors in Ukraine and, consequently, with a significant increase of discrepancies emerging between foreign investors and State agencies and local government. Its creation was also prompted by the need to involve leading scholars and lawyers, including practising lawyers, both Ukrainian and foreign, in the process of improving Ukrainian investment laws.

Unfortunately, however, the organisational and logistical support to Chamber operations was not too efficient, which has led to insufficient awareness of foreign investors about the Chamber activities and to that the effectiveness of case arbitration was not high.

There were certain difficulties in the process of implementing Chamber decisions. Following case examination and taking a decision, the Chamber should have had certain mechanisms for interaction with central government agencies for them to take appropriate actions. Besides, the Chamber activities could have been more effective, had it become an addressee of requests for examination of investment disputes not just to foreign investors, but also for enterprises with foreign investments.

- For these reasons, the last case was submitted for consideration of the Chamber nearly a year and a half back and *de facto* the Chamber activities has been suspended since that time. In view of these developments and due to the fact that Ukrainian legislation on investments has been significantly improved with the adoption of the Civil, Land, Customs, and Economic Codes, which in a comprehensive manner regulate the issues of economic and other types of activities in the territory of Ukraine, the Presidential Edict No.1071/2001 "On Liquidation of Certain Advisory, Consultative, and Other Bodies" dated November 13, 2001, liquidated the Chamber of Independent Experts.

II. Rule of law

1. Independent legal system

Recommendations

- Adopt the pending draft Civil Code as soon as possible; and during the period prior to adoption of the code, base new legislation on the pertinent provisions of the draft Civil Code.

Actions

- The Verkhovna Rada of Ukraine approved the Civil Code of Ukraine on November 29, 2001.

2. Strengthening the judiciary

Recommendations:

- Strengthen the role of the judicial system and, in particular, improve the competency of judges in commercial disputes;
- proceed as expeditiously as possible with the reorganisation of the court system and the adoption of new rules of procedure.
- establish courts of appeal for economic disputes;
- explore the feasibility of some specialisation of judges by creating either specialised courts or specialised chambers within the courts. Such specialisation should especially be considered with respect to intellectual property, taxation and bankruptcy cases; and
- create an effective system of preliminary protection of creditors' rights and preliminary protection against illegal action or inaction of state authorities.

Actions

- First of all, it should be noted that the court system dating back to the Soviet period has been transformed pursuant to requirements of Article 125 of Ukrainian Constitution into a system of courts of general jurisdiction. Adoption by the Verkhovna Rada of Ukraine of a number of Laws of Ukraine on June 21, 2001, constituting the so-called “small legal reform” represents a significant achievement in implementing the judiciary reform.

In addition, appropriate changes have been made in the Code of Civil Procedure of Ukraine, Code of Economic Procedure of Ukraine, and Code of Criminal Procedure of Ukraine, which bring the rules of procedure in line with the Ukrainian Constitutions and amendments introduced to the Law of Ukraine “On Judicial System”.

- The Verkhovna Rada of Ukraine is now considering a draft Law of Ukraine “On Judicial System” approved in the first reading (Reg.No.5185-D), which comprehensively addresses the global issues of implementing judicial and legal reform in Ukraine.

A full-fledged functioning of a new judicial system requires reforming the codes of procedure. Reforming the codes of procedure should conform to the systematic principle, which provides for a well considered concept of the law and intrinsic consistency of rules and institutions.

The Verkhovna Rada of Ukraine is also currently considering a draft Code of Civil Procedure of Ukraine (letter No.29-100/4 of the Cabinet of Ministers of Ukraine dated January 10, 2002).

Also, submitted for consideration of the Verkhovna Rada of Ukraine is a draft Code of Criminal Procedure (Registration Number 7431 dated June 23, 2001).

- Pursuant to Law of Ukraine “On Introducing Changes to the Law of Ukraine “On Judicial System of Ukraine”, the system of Ukrainian courts of general jurisdiction is represented by local courts, courts of appeal, higher specialised courts, and the Supreme Court of Ukraine. Such a judiciary reform would allow to continue work on building a judicial system.

Introduction of appeal and cassation reconsideration of court decisions represents an important step. These forms of reconsideration of court decisions have replaced an obsolete system of revision of court decisions by means of cassation and oversight.

- In accordance with Article 124, part 2, of the Ukrainian Constitution, the jurisdiction of courts embraces all legal relationships in the State, including economic legal relations. The jurisdiction of courts over civil and commercial disputes is stipulated in the Code of Civil Procedure of Ukraine and Code of Economic Procedure of Ukraine. For instance, according to Article 24 of the Code of Civil Procedure of Ukraine, courts have jurisdiction over:
 - (1) cases of disputes emerging from civil, family, labour, and co-operative legal relations if a private individual is at least one of the parties in the dispute, except for the cases when settlement of such disputes is transferred by law into jurisdiction of other bodies;
 - (2) the cases that arise from administrative-legal relations as listed in Article 236 of this Code;
 - (3) the cases of separate jurisdiction as listed in Article 254 of this Code. Courts also have jurisdiction over other cases referred by law into their competence. Courts also consider cases involving foreign nationals, persons without citizenship, foreign enterprises and organisations.
- Regarding jurisdiction of economic courts, according to Article 12 of the Code of Economic Procedure of Ukraine, the economic courts have jurisdiction over:
 - (1) cases of disputes that arise when concluding, amending, terminating, and implementing economic agreements and on other grounds, as well as on disputes on recognising acts as invalid on the grounds stipulated by law, except: disputes arising when agreeing standards and technical specifications; disputes on establishing prices of products/goods, as well as tariffs for services/work of these prices and tariffs, in accordance with the law, cannot be set by agreement of the parties; and other disputes, which are referred to jurisdiction of other bodies in accordance with Ukrainian law, intergovernmental agreements and treaties;
 - (2) bankruptcy proceedings;
 - (3) cases filed by offices of the Antimonopoly Committee of Ukraine and Accounting Chamber on matters referred by legislative acts into their competence.
- A dispute subject to jurisdiction of economic courts can be submitted by the parties for consideration of the court of arbitration, except for the disputes on recognising acts as invalid, as well as disputes arising from concluding, amending, terminating, and implementing economic agreements related to satisfying State needs.
- It should also be noted that according to Article 12, Part 1, of the Ukrainian Code of Economic Procedure, economic courts have jurisdiction over cases involving disputes on recognising acts as invalid on the grounds stipulated by legislation, except for the cases established by law.

- Courts of appeal function in the Autonomous Republic of the Crimea, oblasts, and cities of Kyiv and Sevastopol. Courts of appeal act as courts of appellate instance with regard to decisions of local courts, as courts of first instance for administrative, criminal, and civil cases referred into their jurisdiction by law, as well as reconsider cases due to newly revealed circumstances.
- In connection with formation of the above system of courts of general jurisdiction according to the changes introduced to the Law of Ukraine “On the Court of Arbitration”, the system of courts of arbitration has been transformed into a three-tier system of specialised economic courts made up of local economic courts, economic courts of appeal, and High Economic Court of Ukraine.

Therefore, the above laws define the concept and system of local, appeal, and cassation courts, delineate their powers and competence with regard to considering cases in the first instance, and as appeal or cassation reconsideration of court decisions.

Chapter 31-A of the Ukrainian Code of Civil Procedure stipulates the procedure for considering by court of complaints of citizens against decisions, actions or inaction of State agencies, legal persons or officials in the area of management activities.

- According to the Law of Ukraine “On Economic Courts”, the High Economic Court is a specialised court, which performs administration of justice in economic relations.

It should also be noted that according to provisions of the Law of Ukraine “On Introducing Changes and Addenda to the Law of Ukraine “On Judicial System of Ukraine” and Law of Ukraine “On Introducing Changes to the Law of Ukraine “On the Court of Arbitration”, specialised panels can only be set up at economic courts.

- The Edict of the President of Ukraine “On Establishing Special Panels for Considering Bankruptcy Cases with Courts of Arbitration of Ukraine” No.333/98 dated April 21, 1998, introduces special panels for considering bankruptcy cases within courts of arbitration of the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol with the view of improving effectiveness of court proceeding of bankruptcy cases.
- According to Order No.19 of July 26, 2001, of the Supreme Economic Court of Ukraine, the following entities have been established:
 - (1) panel of judges of the High Economic Court of Ukraine for considering cases related to protection of intellectual property rights, with its personal composition approved;
 - (2) panel for considering cases related to protection of intellectual property rights within local courts and courts of appeal.
- The Ministry of Justice of Ukraine has prepared a draft Law of Ukraine “On Administrative Courts,” which was submitted to the Cabinet of Ministers of Ukraine on December 19, 2001.

The draft Law of Ukraine establishes the system of administrative courts aimed at assuring the appropriate protection of rights and freedoms of citizens through consideration of cases ensuing from administrative legal relations.

- Twelve laws of Ukraine providing for changes in the judicial system became effective in July 2001: Laws of Ukraine “On Introducing Changes to the Law of Ukraine “On Judicial System of Ukraine”, “On Introducing Changes to the Law of Ukraine “On Prosecutor’s Office”, “On Introducing Changes to the Code of Criminal Procedure of Ukraine”, “On Introducing Changes to the Law of Ukraine “On Status of Judges”, “On Introducing Changes to the Law of Ukraine “On Self-governing Bodies of Judges”, “On Introducing Changes to the Law of Ukraine “On Qualification Commissions, Qualification Attestation, and Disciplinary Responsibility of Ukrainian Judges”, “On

Introducing Changes to Laws of Ukraine “On Operative and Investigative Activities”, “On the Militia”, “On Pre-trial Incarceration”, “On Administrative Supervision of Persons Released from Penitentiary Institutions”, “On Introducing Changes to the Law of Ukraine “On the Court of Arbitration”, “On Introducing Changes to the Code of Arbitration Procedure of Ukraine”, “On Introducing Changes to the Code of Civil Procedure of Ukraine”.

- In addition, based on two alternative drafts submitted by people’s deputies, a new Law of Ukraine “On Judicial System” is currently being prepared. This draft law is included in the number of urgent bills for consideration of the Verkhovna Rada of Ukraine. The Verkhovna Rada of Ukraine considers the draft laws designated by President of Ukraine as urgent on a priority basis.

III. Company law

Recommendations:

- Develop entirely new legislation for various types of businesses based on relevant provisions of the draft Civil Code. Before preparing drafts, a decision should be taken as to whether all types of businesses should be covered in one comprehensive codification or whether separate laws should be envisaged for different types;
- strengthen shareholders' protection through appropriate provisions on management responsibilities, equal treatment of shareholders as well as provisions against conflicts of interest on the part of corporate managers, supervisors and majority shareholders;
- develop rules concerning fiduciary duties of corporate officials;
- review restrictions on corporate finance in the light of international practice;
- create a company register in line with common practice in western market economies.

Actions

- Development of new legislation for various types of businesses based on relevant provisions of the Civil Code would be possible after enacting the new Civil Code.

At this moment, the main laws of general action, which regulate activities of economic subjects, are represented by the Laws of Ukraine “On Enterprises in Ukraine”, “On Entrepreneurship”, “On Economic Companies”, “On Property”, “On Foreign Economic Activities”, “On State Support of Small Business”, “On the National Program for Support of Small Business in Ukraine” (according to the Law “On the National Program for Support of Small Business in Ukraine”, the State Committee for Support of Entrepreneurship has developed, within its terms of reference, the Measures for Implementing the National Program for the Year 2002 approved by resolution No.463-p of the Cabinet of Ministers of Ukraine dated September 26, 2001), “On Licensing of Certain Types of Economic Activities”, and others.

In addition, there are laws regulating certain sectors and types of activities, namely: “On Power Industry”, “On Oil and Gas”, “On Banks and Banking”, “On State Regulation of Securities Market in Ukraine”, “On Metal Scrap”, “On Insurance”, “On Credit Unions”, “On State Regulation of the Production and Trade in Ethyl, Brandy, and Fruit Alcohol, Alcoholic Beverages and Tobacco Products”, etc.

It is desirable that alongside with general laws specialised laws are used, which would account for the specifics of certain types of economic activities.

- Collaboration between the **State Commission on Securities and Stock Markets (SCSSM)** and international donor organisations, including OECD, USAID TACIS, and others has resulted in producing a number of normative documents of the

Commission aimed at settling the problems related to corporate governance and strengthening the protection of shareholder (investor) rights. The most important of these are Regulations on the Procedure for Increasing/Decreasing the Authorised Fund Amount of Joint Stock Company approved by SCSSM decision No.158 of October 16, 2000, draft Law of Ukraine "On Joint Stock Companies", numerous decisions and clarifications.

The priority tasks, which could be considered as short-term operational strategy of the SCSSM in the area of corporate governance consist in eliminating the legislative lacunae, still remaining in corporate law, as well as implementing a package of measures towards introducing and developing generally acceptable principles of corporate governance, namely:

- improving the legislative base, which regulates corporate relations, primarily through approval by the Verkhovna Rada of the Law of Ukraine "On Joint Stock Companies," and drafting a new version of the Law of Ukraine "On Securities and Stock Market";
- developing national standards of corporate governance/Corporate Governance Code;
- development of recommended internal documents of joint stock companies (Regulations on General Meeting of Company Shareholders, Regulations on Officials of Governing Bodies, Regulations of the Board of Directors, Regulations of the Auditing Commission, Regulations of the Supervisory Council, Statute of Joint Stock Company, Regulations on Calculation and Payment of Dividend);
- conducting educational events and introducing training programs on corporate governance.

IV. Taxation

Recommendations

- Move ahead with the process of adopting the Tax Code, which should have the following parameters:
 - improve the language of the Draft to eliminate numerous inconsistencies and ambiguities;
 - follow international standards concerning the deductibility of business expenses, the determination of depreciation allowances, and the rules of accounting for income and expenses;
 - rationalise the system of penalties so that the amount of the penalty bears a closer correspondence to the gravity of the taxpayer's violation;
 - prior to the adoption of a new Tax Code no new legislation should be enacted that would increase the tax liability of enterprises or investors;
 - establish tax ombudsman offices staffed with tax experts who would provide assistance to businesses in filing their tax declarations and in resolving problems that businesses may encounter in their dealings with the tax authorities; and
 - tax authorities should also be authorised to issue written interpretations of the law to taxpayers, which would be binding on the tax authorities.

Actions

- The Verkhovna Rada passed the Tax Code in the second reading in November 2001 (Resolution No.2827-III of the Verkhovna Rada of Ukraine dated November 29, 2001).

It should be noted that it is the first time that such a comprehensive document on taxation issues is ever created in Ukraine.

- Finalising of the draft Tax Code is in progress, taking into account the requirements with regard to alleviating tax burden, expanding the tax base, improving the practices of tax administration and providing incentives for innovative investment activities, and including measures toward implementation of tax reform.
 - in order to clearly define the types of financial aid, the draft clarifies the terms of “repayable” and “non-repayable” financial aid, as well as regulates the procedure of taxation for these types of aid;
 - the criteria have been clarified with regard to referring capital assets to fixed assets, for which the taxpayer charges depreciation;
 - the procedure has been settled for including an excise tax and rental payments, which pass in transit and do not effect the amount of taxed profits, into the gross revenue and total costs of payers of taxes on profit;
 - the terms are finalised for including the costs related to professional training and retraining of personnel into total costs;
 - the procedure is being specified for including expenditures related to voluntary life insurance of private persons into total costs;
 - expenditures have been specified related to payment or accrual of interest on debt obligations, which payers of tax on profit have the right to refer to total costs;
 - special procedure has been established for referring contributions for social actions to total costs;
 - when preparing the draft Tax Code for consideration in the third reading and in order to bring the tax accounting closer to national rules (standards) of accounting, a new definition was introduced for the moment of emergence of gross revenues and total costs, and taxation of barter transactions based on general principles.
- The level of penalties would be determined depending on the nature of violation both in absolute amount, and based on tax-free minimum personal incomes, and as a percentage of the unpaid tax liability amount.
- According to the requirements of Sub-clause 2, Clause 4, Abstract of the Minutes of a Meeting of the Government Economic Development Committee of June 23, 2000, ministries and other executive agencies have been directed to abstain from initiating any changes in tax legislation before the Tax Code is approved by the Verkhovna Rada of Ukraine.

V. Property protection and secured lending

1. Ownership system

Recommendations

- Proceed with the adoption of a new land code that would liberalise private ownership of land for all purposes. Foreigners should be able to own land on the same conditions as Ukrainian citizens.

Actions

- On October 25, 2001, the Verkhovna Rada of Ukraine adopted a new Land Code of Ukraine (which became effective on January 1, 2002). This document allows finally securing ownership of land, introducing market mechanisms for management of land

resources, establishing realistic prices for land, and untangling the problem of a socially equitable division of land among the population.

Approval of the Land Code of Ukraine is a logical continuation of positive trends in the development of country's economy and the course of reform. The Land Code of Ukraine is based on the principle of precedence of private land ownership, protection of rights and legitimate interests of landowners.

- A significant feature of the market orientation of the Land Code of Ukraine consists in recognising the possibility of obtaining the right of private ownership of land by private persons (citizens of Ukraine, foreign nationals, and persons without citizenship) and legal persons, territorial communities, the State, foreign states on the grounds and in the cases with due account for the limitations set forth by the Code.
- These provision reaffirm an important constitutional principle to the effect that foreign nationals and persons without citizenship legally residing in Ukraine should enjoy the same rights and freedoms as Ukrainian citizens.

Even so, one of the restrictions with regard to transferring land plots into ownership is contained in Article 22 of the Land Code of Ukraine, whose part four stipulates that **agricultural land cannot be transferred into ownership of foreign citizens**, persons without citizenship, foreign legal persons, and foreign states. Change in the purpose of land is only allowed according to the procedure stipulated by Article 20 of the Land Code of Ukraine.

2. Intellectual property protection

Recommendations

- Enhance investigative powers and administrative capacities of enforcement authorities;
- increase fines for intellectual property violations;
- increase the compensation to infringed parties;
- authorise the preliminary seizure of unauthorised products by the courts; and
- develop specialised expertise within the court system, possibly by creating a special chamber for intellectual and industrial property violations.

Actions

- Articles 176, 177 of the Ukrainian Criminal Code provide for establishing liability for violation of copyright and allied rights and establishing liability for violating the rights of industrial property. According to parts one and two of Article 112, the cases involving offences falling under Article 176 and Article 177 of the Ukrainian Criminal Code are subject to investigation by investigating agencies of internal affairs, and should such an act be committed by an official, using his/her official capacity with regard to subordinate, this offence should be investigated by investigator of the Prosecutor's Office.

With regard to a person guilty of offences stipulated in Article 176 and Article 177 of the Ukrainian Criminal Code, a court might impose a penalty, in particular, of a fine at the amount of 100 to 1000 tax-exempt minimum personal incomes.

- It should also be noted that the Law of Ukraine "On Introducing Changes to Certain Legislative Acts of Ukraine with Regard to Strengthening Liability for Violation of Intellectual Property Rights" No.2362-III dated April 5, 2001, amended Article 512 of the Ukrainian Code of Administrative Offences towards raising the amount of fine for violating intellectual property rights.

- The grounds and procedure for conducting a pre-trial arrest of unlicensed products have been stipulated by Article 53 of the Law of Ukraine “On Copyright and Allied Rights”. According to part two of the said article, if there are sufficient data on committing such violation of copyright and/or allied rights, which entail criminal liability under law, the agency of inquiry, investigation or a court are obliged to take action to assure search and arrest of:
 - (1) copies of products (including computer software and databases), recorded performances, phonograms, video recordings, broadcasting programs, which are assumed to be infringing articles, as well as the means of defeating technical copyright protection systems;
 - (2) materials and equipment intended for their manufacture and reproduction;
 - (3) documents, invoices, and other articles, which could serve as proof of illegal actions.
- On January 30, 2002 the President of Ukraine signed the Decree on Urgent Activities to Increase the Copyright Protection in the Process of Production, Export, Import and Distribution of Laser Compact Discs.

4. Loan Guarantees

Recommendations

- Create the legal framework for an active loan market and reduce the government budget deficit.

Activities

- National Bank of Ukraine has already developed a number of documents to develop mortgage-lending system in Ukraine.

First of all, the Draft Law of Ukraine On Mortgage Lending and Factoring Transactions with Mortgage Liabilities submitted to Verkhovna Rada for review, deserves attention. The Draft Law has an objective to regulate legal relationships concerning the alienation by the mortgagee of debtors' liabilities that occurred with regard to mortgage loans, the payments on which should be protected from an inflation-associated devaluation, while the mortgages should be able to freely alienate the liabilities on them.

In addition, in compliance with an assignment of the Cabinet of Ministers of Ukraine (CMU) the National Bank of Ukraine developed a Draft Law On Specific Features of the Establishment and Operations of Mortgage Institutions in Ukraine.

- The National Bank of Ukraine has also developed a Draft Structure for the Draft Law On Land Evaluation, the development of which was envisaged by the Land Code of Ukraine and by the Resolution of the CMU dated 10.01.2002 _ 6.
- Currently a Draft Decree of the President of Ukraine On Measures to Develop the Mortgage Market in Ukraine is being developed at the National Bank of Ukraine as well, as proposals for a Draft Law On Mortgage.

VI. Financial sector

1. Banking activities

Recommendations

- Consider confining the “Council of the NBU” to an advisory role in order to dispel doubts about the NBU's independence;

- Proceed with the adoption of the law on banks and banking but review the remaining restrictions on foreign bank operations in favour of a national treatment policy.
- Require audits in accordance with International Auditing Standards for all banks.
- Enact legislation on the bankruptcy of banks providing effective protection of depositors.
- Reconsider plans of introducing a national deposit insurance system.
- Restructure the Savings Bank.
- Liquidate bankrupt banks.

Actions

- Most transition economies have central bank councils, the functions of which are limited to counseling on monetary and credit policy, or have an advisory character. In Ukraine, the NBU Council has a wide range of authorities established by Article 9 of the law “On the National Bank of Ukraine;” exercising these authorities may contradict NBU activities in the operational regulation of monetary and credit market, although it often comes too late.

Taking these aspects into account, we consider that it would be expedient to initiate amendments to the applicable law “On the National Bank of Ukraine,” with a view to limiting the role of the NBU Council to an advisory one.

- In December 2000, a new law “On Banks and Banking Activities” was adopted. The law established some additional requirements to the creation of banks with foreign capital, as well as specific features of the registration of banks with foreign capital. The provisions of this law do not envisage any limitations to the participation of foreign capital in the banking system of Ukraine.

The National Bank of Ukraine is developing a Draft Law ‘On Changes to the Law on Banks and Banking Activities’ as a legislative initiative; these changes would, for instance, include the following provisions: to cancel requirements to obtain preliminary allowance in order to set up a bank with foreign capital, and to amend the law with specific provisions with regard to the registration procedure for the affiliated branches of the foreign banks.

- To date, Ukrainian audit companies and auditors execute the audit of the banks in accordance with the National Audit Norms, approved by the decision of the Audit Chamber of Ukraine as of 18.12.98 _ 73, that were developed on the basis of International Audit Standards.
- According to the Law On Banks and Banking Activities, the supervisory authorities of the National Bank of Ukraine should be applied not only to the banks, but also to the entities, who have a direct relationship to the bank activities as affiliated branches and subsidiaries of the banks or foreign banks institutions in Ukraine. Such approach has the aim to prevent a negative influence on the financial performance of the bank and to create guarantees for the protection of the interests of the bank clients.

On September 20, 2001, the Verkhovna Rada passed the Law On the Guarantee Fund for the Deposits of Physical Entities, which established the procedures to reimburse deposits to the bank investors, who were the participants (or temporary participants) in the Fund; the law also establishes that the Fund shall guarantee to all bank depositors, who are participants (or temporary participants) in the Fund, that their deposits, including interest, would be reimbursed in the amount of deposits on the day of occurrence of deposit inaccessibility, but not more than UAH 1,200 per deposits in each of such banks.

- A comprehensive program to restructure the Savings Bank of Ukraine is being developed in cooperation with the International Monetary Fund within the Extended Fund Facility (EFF) program, and with the World Bank taking into consideration the conclusions of the inspection held in 2001. The program will envisage specific measures to improve the Savings Bank operations in accordance with all prudential NBU requirements.

In order to ensure the financial stability of the Savings Bank and to protect the interests of its depositors and creditors, on April 13, 2001 the National Bank of Ukraine signed a written agreement with the Savings Bank, according to which the Saving Bank undertook to implement a whole range of measures in 2001 to facilitate the stable banking activity, to rule out the violations of banking legislation and to adhere to the regulatory and legal acts of the NBU and to the internal regulations of the Savings Bank.

During 2001, on a monthly basis, the National Bank of Ukraine monitored the adherence to the provisions of the said agreement, in particular, compliance with the economic standards, norms of compulsory reserves, reserve forming to cover possible expenditures of the active transactions, etc. In addition, the NBU reviewed on a monthly basis how the Savings Bank adhered to the schedule of indebtedness for the organizations of fuel and energy complex. The amounts of indebtedness of FEC enterprises before the Savings Bank are gradually decreasing.

The issue of the allocation of UAH 87.1 million from the State Budget to replenish the Savings Bank capital on an irrevocable basis has also been positively resolved.

In compliance with the assignment of the President of Ukraine as of 25.12.2001, the National Bank of Ukraine together with the Cabinet of Ministers of Ukraine elaborated the issue of the Savings Bank activities and sent a letter to the President of Ukraine with the proposals to determine the terms and approaches to solve the problems of the Savings Bank.

In the end of the last year a routine annual comprehensive inspection of the Savings Bank was completed and its findings were discussed at the meeting of the NBU Commission on Supervision and Regulation of Bank Activities. These findings are now being studied in detail.

- As of 01.01.2002 thirty five commercial banks were undergoing a liquidation process; 17 of these banks were being liquidated by the decision of the National Bank of Ukraine, 15 banks – by the decision of economic courts and 3 banks – by the decision of the shareholders' meetings.

Since the beginning of 2001 several banks were excluded from the State Registry of the Banks; six of them were excluded due to the completion of a liquidation process, and three banks – due to reorganization, as they were affiliated with other banks.

- In order to increase the efficiency of liquidation procedures and to discuss the current situation in the banks under liquidation, a series of consultations was held with the representatives of liquidation commissions and territorial divisions of the National Bank of Ukraine.

2. Stock market

Recommendations

- Develop legislation to define clearly the fiduciary duties of financial intermediaries (especially investment funds, investment companies and securities traders) and ensure proper enforcement of these duties.

- Strengthen the self-regulatory system of securities traders with a view to raising professional standards.
- Consider reducing the number of trading systems to consolidate the market.

Actions

- The “General Approaches to the Development of Stock Market in Ukraine in 2001 – 2005,” were approved by the Decree of the President of Ukraine _ 198/2001 as of March 28, 2001. Item 20.21 of the Activities to Implement these General Approaches to the Development of Stock Market in Ukraine in 2001 – 2005 envisages “approval of the requirements to the professional associations of the stock market participants as to the self-regulated organizations” and “a gradual transfer of the part of authorities for the pre-license activities, training, re-training and initial certification of the specialists to self-regulated organizations with a simultaneous strengthening of control over their activities”.
- It is considered expedient that the task of determining the fiduciary obligations and to ensure a proper compliance with these obligations” should be transferred to the self-regulated organizations of the professional stock market participants, as well as the function to organize respective divisions (for instance, courts of arbitrations, etc.), which would facilitate to the proper compliance with the obligations based on the mutual trust.
- There are no current plans to consolidate trading systems.

3. Accounting and audit

Recommendations

- Align speedily Ukrainian accounting and auditing standards with international practice, in particular for publicly traded companies and financial institutions (reference points are the International Accounting Standards, as developed by the International Accounting Standards Committee, and International Standards of Auditing, as developed by the International Federation of Accountants).
- Modify the Ukrainian commercial chart of accounts to facilitate the application of internationally recognized accounting standards. (“Companies are still required to produce two separate sets of accounts, one for tax purposes, the other for financial reporting.”)
- Ensure that financial statements are tax neutral and use a reconciliation statement to link tax computation to such financial statements.
- Implement effectively the existing 1998 Presidential Edict and the October 2000 Law “On Small and Medium-Sized Enterprises” for a simplified reporting system for SMEs.

Actions

- According to the Law of Ukraine “On Accounting and Financial Reporting in Ukraine,” which establishes the legal foundation for the regulation, organization and keeping of accounting and financial reports in Ukraine; and to the resolution of the Cabinet of Ministers of October 28, 1998 No. 1706, “Approval of the Program to Reform the Accounting System in Conformance with International Standards,” financial records of economic entities shall be maintained on the basis of the national accounting standards that are coordinated with international accounting standards (IAS). The Ministry of Finance has approved 25 provisions (standards) of accounting, taking into consideration the economic and legal environment in Ukraine; in general these standards are consistent with IAS.

- On September 30, 1998 the Ministry of Finance of Ukraine issued Instruction No. 196 which approves the “Provisions for Simplified Accounting Method for Small Businesses,” that are recognized as subjects of small entrepreneurship in accordance with the applicable legislation; the Provisions came into force in the beginning of 1999.
- Instruction No. 39 of the Ministry of Finance of February 25, 2000 approves a shortened financial reporting for small businesses, while the Instruction on “Procedures to Introduce the Chart of Accounts” also envisages the shortened correspondence of entries in the accounting registries of such subjects.

VII. Trade and currency regimes

Recommendations

- Adopt and implement international trade policy disciplines and commitments, which would facilitate Ukraine’s accession to the World Trade Organisation;
- remove remaining non-tariff trade barriers and, especially, bring the country’s technical standards and certification procedures into conformity with international practice; and
- review the suitability of currency regulations, notably the exports proceeds surrender requirement.

Actions

- In order to bring the national legislation in correspondence with the requirements of GATT/WTO system, the Ukrainian party developed the Schedule of Introduction of Priority Draft Legislation that included 20 draft laws, including such important acts as Customs and Tax Codes, Laws on Insurance Services, on Copyright, on the Regulation of Agricultural Production, and sent this document to the Working Group member-countries on the admittance of Ukraine to WTO.
- To date, the Verkhovna Rada of Ukraine passed 16 of 20 draft laws of the Schedule, including the Customs Code. The legal environment has been significantly changed in such important sphere of trade relations as trade aspects of copyright. Verkhovna Rada of Ukraine passed 7 laws that bring the national copyright protection system in correspondence with international requirements.
- On January 30, 2002 the President of Ukraine signed the Decree on Urgent Activities to Increase the Copyright Protection in the Process of Production, Export, Import and Distribution of Laser Compact Discs.
- On September 5, 2001, and Edict of the President of Ukraine on “Additional Activities to Facilitate the Entry of Ukraine to WTO” became effective, which envisaged the implementation by the Government and certain bodies of executive power of a range of political and organizational activities aimed at an urgent completion of negotiations about the admittance of Ukraine to WTO.

In compliance with the Presidential Decree, the government developed the Program of Activities to Complete the Entry of Ukraine to WTO, which presents a comprehensive plan for the central executive government to efficiently prepare and conduct negotiations about the entry of Ukraine to WTO in order to complete the process as soon as possible.

- In order to reduce the non-tariff barriers to the trade, to create favorable conditions for economic growth and to protect Ukrainian citizens from low quality and unsafe products, the national system of technical regulation is being reformed.

The priority area in the reform of the technical regulation system is its adaptation and convergence to the European practice in accordance with article 51 and 56 of the

Agreement on Partnership and Cooperation between Ukraine and EU (APC) and with the requirements of GAAP/WTO.

- On June 20, 2001 the laws On Standardization, On Accrediting of the Bodies to Assess Correspondence, and On Confirmation of Correspondence became effective.

The adopted laws in the sphere of technical regulation correspond to the objectives to reform the national economy and have been developed in an absolute accordance with the requirements of the Agreement on Technical Barriers in Trade (TBT) of WTO.

Adoption of these laws corresponds to the needs and requirements of Ukrainian industry, of the trade partners and ensures the recognition of the national technical regulation system, the elimination of technical barriers in international trade, mutual simplification of the products access to the market.

- Agreements were signed to develop 11 normative and legal acts (technical regulations) on the basis of the European directives of the New Approach. State Standardization Committee determined the methodology for the development of technical regulations on confirmation of correspondence on the basis of the European directives of the New Approach; the respective recommendations were given to the managers of organizations involved in the development of the technical regulations. In accordance with the Provision on Work Groups to Develop Draft Normative and Legal Acts of Ukraine Taking into Account the Main Provisions of EU Legislation, approved by the resolution of the 5th session of Intersectoral Council for the Coordination of Ukrainian legislation with the EU legislation (ICC), the State Standardization Committee issued an instruction as 19.11.01 No. 551, to create the working groups in order to develop and follow-up the legislative process of the above technical regulations.

Heads of the working groups were assigned. Working groups' composition was formed with the consideration of ICC recommendation. By 01.02.01 the first versions of technical regulations on the confirmation of correspondence had been developed on the basis of the New Approach directives, including Modules to Assess Correspondence and Rules to Mark and Use the National Correspondence Sign.

- Harmonization of standards occurs in accordance with the Standardization Plan for 2001, approved by Resolution No. 277-p of the Cabinet of Ministers of 11.07.01. It envisages the development of over 1,300 national standards that would introduce international standards. By year-end 2001, 293 standards had been approved. The Standardization Plan for 2002 is being developed.
- According to Edict No. 797 of the President of Ukraine of 05.09.01 it is planned to introduce at least 500 standards coordinated with the international and European ones on an annual basis.

VIII. Privatisation and enterprise reorganisation

1. Privatisation

Recommendations:

- Expand the list of privatisable large-scale enterprises, especially extending privatisation to energy and telecommunications (taking into account developments in OECD market economies).
- Develop a transparent, predictable, methodical and stable process for case-by-case privatisation.
- Establish clear qualification requirements for the selection of privatisation advisers.

- Announce publicly the planned privatisations well in advance, and provide full information on the financial situation of the enterprises concerned.
- Offer equal participation conditions for all parties concerned that cannot be changed after such an announcement.
- Ensure that the tender commission be independent with no interference in the commission's activity unless otherwise stipulated by current legislation.
- Ensure that there be no investment request prior to the sale.

Actions

- The privatization of the electric power sector is under way. In 2001, controlling stakes of 6 power companies were successfully sold. Currently, the State Property Fund has submitted to the Cabinet of Ministers the refined plans for the placement of controlling stakes of 9 power companies, the sales of which is planned to be completed in the current year. It is also planned to complete privatization of those power companies, in which the state does not have majority ownership. At the same time, opportunities for further privatization of heat supply and energy-generating companies are being considered.
- Current plans call for the completion of a privileged subscription to the shares of OJSC "Ukrtelecom" by February 1, 2002.
- The Law of Ukraine "On the State Privatisation Program for 2000 – 2003" established transparent privatization procedures, including privatization of strategically important enterprises. The State Property Fund of Ukraine is developing and publishing the schedules of share holdings, unfinished construction objects, and so on.
- In order to consolidate efforts of government institutions, private sector and international organizations with regard to further improvement of the privatization process in Ukraine through the analysis of the process and through the development of recommendations based on the best international practice and Ukrainian privatization experience, an Advisory Group on Privatization was established.

On the basis of the Group meetings, the criteria for transparent privatization that correspond to the best international practice were determined:

- Public announcement of the auction, which should contain clear and complete information about the auction conditions;
- Equal conditions for all interested parties;
- Majority shareholding should be offered for sale at the privatization auction;
- Price offered by a buyer is the only criterion to make decision about the winner; there should not be investment demands before the sales;
- In cases when advisors are invited to assist in privatization process, they should meet clear qualification requirements;
- After the auction announcement, the auction procedures and conditions of privatization cannot be changed;
- Tender commission should be independent; any interference in the commission activities is prohibited;
- Free access to a company being privatized should be ensured, including site visits to the enterprise, cooperation with its management, obtaining of financial and operational information about the company.

It should be noted that the above criteria correspond to the OECD recommendations.

The Advisory Group on privatization is permanently analyzing the correspondence of privatization transaction with the transparency criteria. The last meeting of the Group concluded that most privatization transactions of 2001 were in line with these criteria.

- Qualification conditions for the privatization advisors have been developed and set forth in the corresponding provisions of the SPFU.
- Information about the scheduled auctions is published in the mass media in the legally established terms. Financial information about the auctioned object is provided in sufficient amounts. When strategic enterprises are offered for bids, an investor can obtain more detailed information about the financial status of the object that is being privatized. Procedures of information provision and its volume correspond to international standards.
- The conditions of sale of an object to be privatized are not subject to change.
- Tender commissions are independent according to the Law of Ukraine. There are no exclusions from this provision.
- According to the Law of Ukraine “On the State Privatization Program for 2000 – 2003,” the auction conditions at which share holdings are sold do not envisage demand for the buyers to make investments as a precondition of a contract.

2. Legislation on bankruptcy

Recommendations

- Simplify the initiation of bankruptcy proceedings to the extent possible by all parties and, in particular, lift the requirement that creditors must have their claims confirmed by a court decision before filing for bankruptcy, even if their claims are undisputed or otherwise obvious.
- Launch comprehensive training programmes for bankruptcy judges and trustees in bankruptcy.
- Enhance the abilities of bankruptcy judges in handling intricate business processes and protecting creditor and shareholder interests, perhaps by creating a centralised pool of specialised bankruptcy judges and assigning complex bankruptcy / reorganisation cases to them.

Actions

- Procedures to initiate bankruptcy case have been maximally simplified for all parties. In case of cancellation of the requirement that the creditors should have a court confirmation of their demands, economic courts will be overloaded trying to recognize the irrefutability of the creditors’ demands due to the objections of the debtors.
- Conditions and procedures of the restoration of solvency of a subject of entrepreneurial activities who is the debtor, or his recognition as a bankrupt and initiation of a liquidation procedure, of the full or partial satisfaction of the creditors’ demands, are established by the Law of Ukraine as of 30.06.99 “On Making Changes to the Law ‘On Bankruptcy’”, in which the latter law is stated in the following wording: “Law of Ukraine on Restoration of Solvency of a Debtor, or on Recognizing Him as Debtor”.

This law establishes that the creditor is a physical or legal entity, who has legally and documentarily confirmed demands to the financial obligations of a debtor and to the payment of arrears; as well as the state tax institutions and other governmental institutions that exercise control over the correct and timely payment of taxes and dues (compulsory payments).

- On January 10, 2002 the Verkhovna Rada of Ukraine adopted the first reading of the draft law “On Making Changes to Some Laws of Ukraine” developed by the Ministry of Economy and European Integration of Ukraine together with the interested ministries and institutions. This draft law envisaged that during the review of a bankruptcy case of an especially hazardous enterprise, or natural monopoly, the chairman or deputy chairman of an economic court can appoint two additional judges to the court composition and appoint one of them to be the chairman.

IX. The government

Recommendations

- To reorient the government officials from the micro-management of economy to a strategic formulation of the framework of favorable conditions for the development of private sector;
- To restructure government bureaucracy in order to increase the efficiency, transparency, accountability, predictability and honesty;
- To develop the legal system and, first and foremost, to put in place the system of bodies and institutions in order to ensure an efficient and sustainable protection of the interests of contractual rights, as well as protection of businesses, from the abuse of power by the government bodies;
- To implement the strict budget limitations in public and private spheres;
- To continue deregulation of business activities, paying a special attention to the stimuli for SME;
- To implement and expand the planned privatization of large state-owned enterprises;
- To increase the role of Antimonopoly Committee in order to identify any harm to the Ukrainian consumers from the existing and proposed subsidies and regulatory acts, including the ones related to privatization and regulation of enterprises having certain components of ‘natural monopolies’, i.e., to reveal facts of violation of the competition rules.

Actions

- The President of Ukraine issued the following relevant Edicts: ‘On the System of Central Executive Government Bodies, No. 1572’, ‘On Changes in the Structure of Central Executive Government Bodies, No. 1573’, ‘On the Composition of the Cabinet of Ministers of Ukraine, No. 1574’ of December 15, 1999; ‘On Strategy to Reform the System of Public Service, No. 599’ of April 14, 2000; and ‘On the Next Steps to Further Implement the Administrative Reform, No. 345’ of May 29, 2001.
- A draft Law on “Strengthening of the Guarantees to Protect the Rights and Legal Interests of the Subjects of Economic Activity” is now under consideration of Verkhovna Rada of Ukraine, its aim being the provision of appropriate legal protection of rights and legal interests of the individuals and legal entities – subjects of economic activity – from illegal decisions or actions, or inactivity of the state and local authorities and their officials.
- A draft Law “On Changes and Amendments to the Legislative Acts of Ukraine as for Increased Responsibility of Governmental Officials in the Process of Inspections of the Subjects of Economic Activity” has been developed.
- A Concept of performance of business activity by executive bodies has been developed. The Concept determines the necessity for regulation, the principles of implementing and stages of reforming of business activity by executive bodies as for the provision of

- paid services to the subjects of business activities and to the population, and will facilitate to the creation of the efficient system of public administration and to the improvement of services provided by the executive bodies.
- Instruction of the Cabinet of Ministers of Ukraine as of 26.09.01 No. 463-p approved the “Measures to Implement the National Program to Support Development of Small Businesses in Ukraine for 2002”, that included the development of normative and regulatory acts on the increase of personal responsibility of the executive power and local self-government officials for the decisions that worsen conditions for business activities, or for a coerced attraction of finances of businesses to any undertakings, including to the funds, the establishment of which has not been envisaged by the Ukrainian legislation, or if the donation of funds into them is voluntary. The above activities envisage public discussion of the draft regulations, which may significantly influence the market environment, or affect the rights and legal interests of the businessmen.
 - According to the adopted Law “On Licensing of the Certain Kinds of Economic Activities,” license of the uniform standard is the only document allowing performance of certain kinds of activities. The Law determines the kinds of economic activities that are subject to licensing, regulates governmental control over the licensing process and responsibility of the subjects of economic activities and licensing bodies for the violations of the licensing legislation.
 - Privatization of the energy sector is under way.
 - On January 11, 2001 the Verkhovna Rada of Ukraine passes the Law “On Protection of Economic Competition,” which establishes the legal grounds for support and protection of the economic competition, the limitations of monopoly in business activities, and which is aimed at the provision of an efficient functioning of the Ukrainian economy on the basis of the competition relationships development. The Law will become effective on March 2, 2002.
 - In compliance with the provisions of article 44 of the Law On Protection of Economic Competition, currently a Draft Law “On Provision of Evidence in Cases Reviewed by the Bodies of Antimonopoly Committee of Ukraine” is being developed.
 - Draft Concept of the Competition Procedural Code of Ukraine has been developed and submitted to the Cabinet of Ministers of Ukraine for review. The Concept objective is to determine the basic principles for the procedural operations of the Committee to review the issues on coordinated actions, on concentration of business entities, and to disclose, terminate and prevent the violations of the legislation on competition, to call the violators to account, to make decisions on these issues, as well as to execute, appeal, check and review the decisions made by the Committee bodies.
 - The Antimonopoly Committee took part in the development of proposals on the need to set up the National Commissions in the transportation and communication industries, which would have a positive effect thanks to the renunciation of sectoral approaches to the formation of prices and tariffs for the services of business entities in the spheres of transport and communications.
 - In order to improve the tariff policy for natural monopolies, new normative documents were adopted that determine the procedures to form prices and tariffs of the natural monopoly entities, and to set up cost and revenue standards. Also, the new regulatory acts were passed on the paid services that can be provided by budget funded institutions and organizations administered by the State Water Industry Committee; as well as a number of changes and amendments to the methodology to calculate retail tariffs on electric energy, as well as on the transportation of passengers, luggage and commodities by the railroads.

- In order to improve the governmental regulation of prices on the monopolized markets of compulsory protection services, the Ministry of the Interior of Ukraine, in cooperation with the Ministry of Economy and European Integration of Ukraine, issued a joint instruction, coordinated by the Antimonopoly Committee, that approves the Methodology to Determine Prices on the Services for the Protection of Objects that Are Subject to Compulsory Protection by the divisions of State Protection Service at the Ministry of the Interior of Ukraine.
- Provisions of the Decrees by the President of Ukraine 'On Activities to Provide Support and Further Development of Business Activity' and 'On Activities to Develop Cooperative Movement and to Strengthen its Role in the Reforming of the Economy of Ukraine' are aimed at the realization of constitutional rights of the citizens to business activity and at the development of the cooperative sector of economy. The Law "On Credit Unions" was adopted and draft legislation "On Cooperatives" was submitted for consideration to Verkhovna Rada of Ukraine to implement provisions of the mentioned Decrees.
- The State Committee on Entrepreneurship has developed the Draft Law "On Basic Principles of Control over the Activities of Business Entities in Ukraine."
- The Law "On Financial Services and State Regulation of the Financial Services Market" was adopted to create the legal basis for the protection of interests of the financial services' consumers, for the legal support to the activities and for the development of the competitive financial services market in Ukraine.
- Introduction of the above mentioned measures and realization of activities of the National Program to Support the Development of Small Businesses for 2001, and of the regional programs on small businesses development for 2001-2002 facilitated to the removal of bureaucratic obstacles to the organization of businesses, made crediting conditions much easier and reduced taxes. According to the State Statistics Committee, there were 227,000 small businesses (excluding agricultural enterprises and banks) on October 1, 2001, employing some 1.7 million people. These figures represented an increase of 17,000 enterprises during the first 9 months of 2001, and of 84,300 employed persons.
- Central and local executive bodies created working groups to revise their own decisions and to bring them into correspondence with the market relations in order to decrease administrative interference into business activity and to comply with Instruction No. 1090/1 of the Cabinet of Ministers of 26.01.2000.

As a result of revision of their own normative and legislative acts during 2000-2001, central and local executive bodies revealed 385 normative and legislative acts that did not correspond to the market relations demands. Out of that number, 325 acts, that is, 84.4 percent of the total, were cancelled or substantively changed, and only 60 of them remained unchanged.
- In order to reduce the number of government bodies that are entitled to inspect the activities of business entities, to set up the clear regulation of rights and competencies of the controlling bodies that are responsible for the execution of inspections, the State Committee on Entrepreneurship developed the Draft Law "On Basic Principles of Control over the Activities of Business Entities in Ukraine;" currently this Law is undergoing coordination in the interested bodies of central executive power.

XI. Deterrence of corruption

Recommendations

- Introduce administrative law reforms introducing clear, simple and publicly available rules governing public administration and reducing officials' discretionary powers to the extent possible. (The pending work on a law on administrative procedures plays a central role in this context.)
- Advance public sector reorganisation to increase transparency and accountability of officials. In this context, the powers of the State Auditing Chamber should be strengthened, and the office of an Ombudsman for Public Service Integrity could be established, possibly associated with the State Auditing Chamber.
- Introduce judicial reforms designed to enhance judicial review of misuses of power. In addition to the envisaged creation of an administrative court system, remedies for private parties could be strengthened to assert rules of fair play, including actions by non-governmental groups and associations.
- Promote civil service reform to afford public servants an adequate remuneration and a clear career track that motivates professional behaviour.
- Intensify privatisation to remove opportunities for misallocation of public resources. Extend privatisation to the provision of infrastructure and public services wherever feasible with a view to introducing competition between public and private providers.
- Introduce measures to encourage cash transactions instead of barter trade.
- Introduce a system of codes of ethics for certain professions (e.g. legal, accounting professions) and business sectors (e.g. financial intermediaries creating peer pressures against illicit conduct).
- Participate in efforts to combat bribery of foreign public officials in international business transactions in accordance with the 1997 OECD Convention.

Actions

- The main areas for the development and reforming of administrative legislation are envisaged in the Draft Reform Concept, which is now being discussed at the Verkhovna Rada of Ukraine.
- According to Section III of the Administrative Reform Concept, the main attention will be focused on the legislative solution of the issues in the system of mutual relationships and in the structure "government bodies system – government body – position". This envisages implementation of the Laws 'On the Cabinet of Ministers of Ukraine', 'On Ministries and Other Central Executive Bodies', 'On Local Public Administrations', as well as of the regulatory acts on the distribution of authorities of local public administrations and local self-governments based on the functional analysis of the competences and responsibilities of these bodies.
- The Law of Ukraine "On Local Public Administrations" has already been adopted.
- The foundation for the legislative regulation in the sphere of public administration will be laid by the Law "On the Cabinet of Ministers of Ukraine" passed by the Verkhovna Rada on January 17, 2002. This law has not been signed by the President of Ukraine.
- The Cabinet of Ministers is now reviewing the Draft Code of General Administrative Procedures in Ukraine.

This Code establishes the principles of legal regulation of the procedures to develop, adopt or appeal against the individual administrative acts of the central executive bodies, local self-governments and their officials with regard to the realization of rights,

freedoms and legal interests of physical and legal entities. The Code norms are aimed at the improvement of mutual relations of the authorized bodies and officials with the population, at the limitation of the manifestations of bureaucracy and self-will on the part of government officials.

- The creation of an efficient system of government control in the sphere of executive power activities is very important for the legal support to administrative reform. The Law of Ukraine On State Control over the Activities of Executive Bodies and Their Officials that is now being developed by a working group will facilitate to the achievement of the above objective.