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## ISTANBUL ANTI-CORRUPTION ACTION PLAN

### THIRD ROUND OF MONITORING

#### UKRAINE

#### PROGRESS UPDATES

The third round monitoring report on Ukraine was adopted by the Istanbul Action Plan monitoring meeting in March 2015. This document contains progress update on the implementation of the third round recommendations by Ukraine and the assessment of progress made. The document includes the progress updates made at the following ACN Istanbul Action Plan Plenary Meeting: **7-9 October 2015**.

## SUMMARY

### 16<sup>th</sup> ACN Istanbul Action Plan Meeting on 7-9 October 2015:

Progress update was presented by Andrii Yaychuk, Deputy Head of the Anti-corruption Department of the Ministry of Justice, which acts as the National Coordinator. The assessment was prepared by Milica Bozanic, Serbian Anti-Corruption Agency; Peter Koski, US Department of Justice; Evgeny Smirnov, EBRD; Wojtek Zielinski and Daniel Ivarsson from the OECD-EU SIGMA. Olga Savran and Dmytro Kotliar from the ACN Secretariat coordinated the compiled the assessment. The plenary meeting noted that only 6 months have passed since the adoption of the last monitoring report on Ukraine, but despite this short period of time, Ukraine has showed progress in addressing 13 recommendations, only 5 recommendations show the lack of progress. In addition to the issues covered by the recommendations, the meeting welcomed the important progress in reforming the traffic police that was presented by Eka Zguladze, Deputy Minister of Interior of Ukraine, and Chris Smith, US Embassy in Ukraine, on 7 October 2015 at the joint session of the ACN and OECD/DAC Anti-Corruption Task Team. The meeting also took note of information about the forthcoming Anti-Corruption Conference that will take place in Kyiv on 16 November 2015.

Recommendation	Progress in implementation
	<i>16<sup>th</sup> Plenary Meeting October 2015</i>
Recommendation 1.1.-1.2. Political will and anti-corruption policy	Progress
Recommendation 1.3. Corruption surveys	No progress
Recommendation 1.4.-1.5. Public participation, awareness raising	Progress
Recommendation 1.6. Anti-corruption co-ordination institutions	No progress
Recommendation 2.1.-2.2. Offences and elements of offences	No progress
Recommendation 2.5. Confiscation	Progress
Recommendation 2.6. Immunities	Progress
Recommendation 2.7. MLA	Progress
Recommendation 2.8. Effectiveness of law enforcement	Progress
Recommendation 2.9. Specialised law enforcement bodies	Progress
Recommendation 3.2.integrity in civil service	No progress
Recommendation 3.3. Transparency and reducing	No progress
Recommendation 3.4.Public financial control and audit	Progress
Recommendation 3.5.Public procurement	Progress
Recommendation 3.6.Access to information	Progress
Recommendation 3.7.Party financing	Progress
Recommendation 3.8.Integrity in the judiciary	Progress
Recommendation 3.9. Business integrity	Progress

## PILLAR 1. ANTI-CORRUPTION POLICY

### Recommendation 1.1.-1.2

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

#### 16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015

##### ***Measures taken to implement the recommendation***

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

The Law of Ukraine *On the Fundamentals of the State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014 – 2017* came into force on October 26, 2014.

With the purpose of executing the measures provided for by the Anti-Corruption Strategy, Resolution No. 265 of the Cabinet of Ministers of Ukraine, dated April 29, 2015, approved the State Programme for its implementation during 2015 – 2017 (hereinafter, the Programme).

The draft of this resolution was prepared by the Ministry of Justice in cooperation with representatives of expert and donor organizations, including the Organization for Economic Cooperation and Development, UN Development Programme in Ukraine, independent international experts, as well as members of the public, namely representatives of the Rehabilitative Package of Reforms Initiative.

The draft received a positive assessment from the World Bank and the UN Office on Drugs and Crime.

The government's Programme is a plan for actions to reduce corruption in Ukraine, improve the population's confidence in the authorities and increase foreign investment into the country's economy.

In terms of its structure, the Programme is consistent with the Anti-Corruption Strategy for 2014 – 2017.

Section I of the Programme consists of measures aiming to ensure effective development and implementation of the anti-corruption policy, including establishment of a preventive anti-corruption body – the National Agency for Preventing Corruption, and to ensure that its functions are effectively executed, as well as active involvement of the public community in the development, monitoring and implementation of the anti-corruption policy.

Section II of the Programme provides for measures to establish effective institutions for preventing corruption, and aims to ensure integrity of the legislative, executive and judicial branches by introducing efficient anti-corruption standards (ethical standards, pre-empting conflicts of interest, declaration of property, income, expenses and liabilities of financial nature, anti-corruption programmes, exposure of corruption, access to information, etc.) and to create institutional framework for compliance.

Section III of the Programme covers measures aiming to effectively detect and investigate corruption crimes, confiscation of property that is subject of criminal activities or that was acquired as a result of such activities, as well as to ensure inevitability of punishment for corruption crimes.

Not of the lesser importance is Section IV of the Programme, as it states the importance of establishing a special state communication system with the purpose of changing the citizens' attitude to corruption, and their realization of consequences of corruption actions, not just in terms of personal liability, but also in terms of them jeopardizing the existence of the state.

The expected results of its implementation, approved by Resolution No. 265 of the Cabinet of Ministers of Ukraine of April 29, 2015, are an integral part of the Programme. Programme implementation indicators are clear, measurable and easy to understand. In some cases, in order to assess the results, several indicators or a combination of qualitative (surveys, opinion polls) and

quantitative indicators are being used.

According to the provisions of the Programme, its funding is provided from the state and local budgets against expenses earmarked for the agency, responsible for the implementation of the measures and tasks, as well as from other sources, not prohibited by the law, namely from international financial aid funds.

The Programme's funding is revised on an annual basis, while drafting of the State Budget of Ukraine and local budgets for the year.

### ***Assessment of Progress - 16th Plenary***

Adoption of the action plan is the important progress. No progress is reported regarding the budget support for the strategy and action plan. Implementing agencies will have their own budgets for the implementation. Ukraine is invited to provide a copy of the action plan for detailed analysis. The ACN recommends that the overview of total budget for the strategy be prepared as a part of its future monitoring.

### **Recommendation 1.3.**

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

### **16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015**

#### ***Measures taken to implement the recommendation***

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

The Programme provides for the mandatory opinion polls among population during 2016 and 2017 with the purpose of detecting dynamics in the perception of corruption and preparing analytical reports based on their results. During these years, it is planned to organize annual surveys of the state of corruption, using the national methodology for assessing the level of corruption, approved by the Cabinet of Ministers of Ukraine, as well as ensuring surveys on problems related to corrupt practices in spheres that are most susceptible to corruption. These tasks are to be executed by the National Agency for Preventing Corruption.

Resolution No. 10 of the Cabinet of Ministers of Ukraine, dated January 6, 2010, approved the procedure for involving citizens in setting and implementing state policies.

According to its provisions, in order to organize surveys of public opinion with the purpose of collecting objective and accurate information, the executive authorities may, according to the legislation, enter into contracts with research organisations, individual specialists, experts, associations of citizens, based on an open competition for conducting professional, scientifically proven social research, observations, and express-analyses of stances of various social groups.

In addition to this, the Programme provides for the establishment of new forms of collaboration with the public community in terms of forming and monitoring of the implementation of the state anti-corruption policy, by approving, together with the general public, a memorandum on the principles of partnership in the anti-corruption policy.

To-date, agreement has been reached with the OSCE Project Coordinator in Ukraine on the execution of *Support, Detection and Fight Against Corruption in Ukraine* Project during 2015 – 2016. Among other things, the project provides for the practical implementation of the methodology of standard surveys of the population on the level of corruption, developed by the Institute of Applied and Humanitarian Studies (Kharkov), its improvement, holding discussions with potential users of

survey results, preparation of methodological recommendations and training materials for the surveyors, and conducting trainings and educational seminars for the latter.

Presently, the project is being prepared for registration with the Ministry of Economic Development and Trade, pursuant to the Procedures for Attracting, Using and Monitoring International Technical Assistance, approved by Resolution No. 153 of the Cabinet of Ministers of Ukraine on February 15, 2002.

#### ***Assessment of Progress - 16th Plenary***

The intention to conduct surveys is a positive development; however, no such surveys have been confirmed yet. Competitive selection of implementing agency remains a possibility, but not an obligation. The OSCE project is a good development as well, it is not clear though how the implementing institution was selected. It is not clear what mechanism will ensure inclusion of NGOs' studies to the official monitoring. The ACN is not sure that the methodology for corruption surveys adopted by the Cabinet in 2010 is still valid, and recommends reviewing and updating it. No progress.

#### **Recommendation 1.4.-1.5.**

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

#### **16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015**

##### ***Measures taken to implement the recommendation***

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

The National Council on Anti-Corruption Policy (hereinafter – the National Council) was created last year as a consulting and advisory body under the President of Ukraine (Decree No. 808).

On September 26 this year, Decree No. 563 of the President of Ukraine approved the composition of the National Council on Anti-Corruption Policy.

It includes members of public associations and/or experts with experience in drafting proposals for setting and implementing anti-corruption policies, a representative of all-Ukrainian associations of local government, as well as two representatives of all-Ukrainian entrepreneur associations (business associations).

Having said that, one of the objectives of the National Council is to prepare and present to the President of Ukraine harmonized proposals to improve coordination and interaction between subjects implementing measures in the area of preventing and countering corruption.

Representatives of the public, along with representatives of authorities and international organizations, made up the Inter-Institutional Working Group on the issues of ensuring operation of the National Agency for Preventing Corruption (consulting and advisory body of the Cabinet of Ministers of Ukraine), which was established by the Government late in May this year.

On September 17, 2015, a session of this working group approved its personal membership (Order No. 266/7 of the Ministry of Justice dated September 17, 2015), as well as the plan for launching the operation of the National Agency for Preventing Corruption, covering the period of appointment of the Agency members.

Public representatives are also part of the Targeted Reforms Team in the area of renewing

the power and anti-corruption reform. This Targeted Team is an advisory body established under the Ministry of Justice of Ukraine with the purpose of strategic planning, coordinating positions, effective ways and mechanisms for implementing tasks in the area of renewing the power and anti-corruption reform (Order No. 716/5 of the Ministry of Justice dated May 18, 2015).

A Public Control Council has been established under the National Anti-Corruption Bureau of Ukraine. Participants of this Council, which is exclusively made up of representatives of public organizations specializing in countering corruption, were elected by open vote on the Internet.

Members of the Council take a direct part in the work of competition committees, in charge of competitions for vacant positions at the National Anti-Corruption Bureau. In addition to this, the Council has the authority to take reports on the operation, execution of plans and tasks by the National Anti-Corruption Bureau.

Establishment of a Public Council of 15 individuals, elected through a competition, is also provided for the National Agency for Preventing Corruption. Its main objective is to control the operations of the Agency, including through approval of annual operation plans.

It should also be noted that the development of the majority of regulatory acts approved by the Government, which were required to launch the National Agency for Preventing Corruption, was done in cooperation with public representatives, namely experts from the Rehabilitative Package of Reforms Initiative.

The Programme also provides for the adoption of a range of measures to form the ideas of intolerance to corruption in the society and to transform citizens into the key vehicle of the political will in overcoming corruption.

In particular, this is relevant to the adoption, in collaboration with public institutions, of a plan of measures for comprehensive resolution of the problem of tolerance of corruption by the population, conducting activities to increase legal awareness of the population, including with respect to the awareness amongst citizens of their rights and freedoms, mechanisms for their realization and legal ways of protection.

#### ***Assessment of Progress - 16th Plenary***

Participation of NGOs in the creation of NABU and Prevention agency, as well as in the MOJ commission is good, but not sufficient to meet the requirement of this recommendation, i.e. institutional mechanism for public participation. National council may be considered such a mechanism, however it does not have a role in monitoring the anti-corruption strategy, which should be ensured by the Prevention Agency, that is not yet established. No information was provided about awareness raising. Progress.

#### **Recommendation 1.6.**

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

**16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015**

**Measures taken to implement the recommendation**

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

1. On September 18, 2015, the National Council for Reforms, which is a special consulting and advisory body under the President of Ukraine on strategic planning, coordinating positions on the introduction of a common state policy of reforms in Ukraine, and its implementation, held its session. A key item on the agenda was the condition of the anti-corruption reform.

On September 26 this year, Decree No. 563 of the President of Ukraine approved the composition of the National Council for Anti-Corruption Policy.

According to the Statute on the National Council for Anti-Corruption Policy (approved by Decree No. 808 of the President of Ukraine on October 14, 2014), the organizational and analytical provision of the operation of the National Council is done by the Administration of the President of Ukraine, in interaction and collaboration with the Ministry of Justice of Ukraine, while organizational, technical and other provision is done by the Administration of the President of Ukraine and the State Office.

Scientific support for the activities of the National Council is done by the National Institute for Strategic Research.

It should be noted that the National Agency for Preventing Corruption is a central body of the executive branch with a special status, and therefore, charging it with the functions to provide for the operation of the National Council for Anti-Corruption Policy is not justified, as the National Council is a consulting and advisory body under the President of Ukraine.

Once the National Agency for Preventing Corruption begins its work, it may be charged, as a body that is setting and implementing the state anti-corruption policy, with a function of interacting and collaborating with the Administration of the President of Ukraine in terms of the activities of the National Council, instead of the Ministry of Justice.

2. The government approved all regulatory acts developed by the Ministry of Justice to launch the National Agency for Preventing Corruption.

Resolution No. 118 of the Cabinet of Ministers of Ukraine, *On Establishing the National Agency for Preventing Corruption*, was adopted on March 18, 2015.

In addition to this, the Government's session on March 25, 2015, approved a series of regulatory acts, namely resolutions of the Cabinet of Ministers of Ukraine:

– No. 170, *Certain Issues of Selecting Candidates for Membership in the National Agency for Preventing Corruption*. This act determines the procedure for holding a competition as a special procedure ensuring impartial and transparent composition of the National Agency with the most qualified specialists, capable of performing respective duties while utilizing their business and moral qualities, educational and professional backgrounds;

– No. 140, *On Approving the Procedure for Organizing and Conducting Competition to Form the Public Council under the National Agency for Preventing Corruption*. The act establishes the procedure for competitive composition of the Public Council under the National Agency.

On April 22, 2015 the Government adopted Decree No. 387 of the Cabinet of Ministers of Ukraine, *On Competition to Select Candidates for Membership in the National Agency for Preventing Corruption*. Deputy Minister of the Cabinet of Ministers of Ukraine Greba R.V. was appointed as the authorized person in charge of the competition. The same decree set a list of tasks for the authorized person, related to the establishment of the competition committee, and determined requirements for the candidates to membership in the National Agency, according to the legislation.

On May 17 this year, during the initiative gathering, representatives of public organizations were elected to participate in the competition committee for selecting candidates for the membership in the National Agency.

Decree No. 314 of the President of Ukraine dated June 5, 2015 appointed Danilyuk A.A., Representative of the President of Ukraine in the Cabinet of Ministers of Ukraine.

On June 05 this year, Decree No. 581 of the Cabinet of Ministers of Ukraine approved the composition of the competition committee to select candidates for membership in the National Agency. The Chairman of the National Agency for State Service Matters is also part of the committee due to the post.

On June 11, the competition committee for selecting candidates for membership in the National Agency for Preventing Corruption held its first session.

Due to the refusal of representatives of public organizations included in the competition committee, to further participate in its work, the Cabinet of Ministers of Ukraine adopted Resolution No. 578 on August 12, *On Changes to the Statute on Holding Competitions for Selecting Candidates for Membership in the National Agency for Preventing Corruption*. This resolution regulates holding of initiative gatherings for the selection of representatives from public organizations to the competition committee, following the procedure listed in the Statute on Holding Competitions for Selecting Candidates for Membership in the National Agency.

The same day, Cabinet of Ministers of Ukraine, with its Decree No. 813, appointed First Deputy Minister of Justice Sevastyanova N.I. as the authorized official responsible for conducting the competition for selecting candidates for membership in National Agency.

On August 28, 2015, initiative gathering of public organizations took place, during which representatives of public organizations were elected to the competition committee (Marusov A.Yu., Taran V.V. from the Centre of Political Studios and Analytics Association, Shevchenko L.T. from Open Society Foundation, and repeatedly Shlinchak V.P. from Institute of World Politics).

The same day, Cabinet of Ministers of Ukraine, with its Decree No. 862, included these representatives of public organizations to the competition committee to substitute for those who dropped out.

On September 7 and 10, the competition committee held its sessions, where it determined its plan of work, approved the methodology and criteria for selecting future members of the National Agency for Preventing Corruption.

On September 17 this year, the Supreme Council of Ukraine determined a candidate for the competition committee (Suschenko V.N. – associate professor at legal sciences department, Kyiv-Mohyla Academy, National University).

On September 21, with Decree No. 951 of the Cabinet of Ministers of Ukraine, he was included in the competition committee.

The competition committee's session on September 21, 2015 shortlisted 20 applicants out of 53, to be interviewed.

It should be noted that on May 27, 2015 the Government established an inter-institutional working group on the issues of ensuring operation of the National Agency for Preventing Corruption, as a consulting and advisory body of the Cabinet of Ministers of Ukraine (Resolution No. 376).

On July 27, 2015 this working group held its first session under the direction of Deputy Minister of the Cabinet of Ministers of Ukraine Greba R.V.

Subsequently, First Deputy Minister of Justice Sevastyanova N.I. was appointed as the head of the inter-institutional working group (Resolution No. 626 of the Cabinet of Ministers of Ukraine dated August 28, 2015).

The same regulatory act determined the directions for starting activities of the National Agency for Preventing Corruption, covering the period of appointing members of the National Agency. The inter-institutional working group was charged with facilitating the implementation of measures within these directions.

On September 16 this year, the inter-institutional working group held its session where it approved its personal composition and launching plan of the National Agency for Preventing Corruption pursuant to the list of directions, set by the Cabinet of Ministers of Ukraine.

The inter-institutional working group included both officials from authorities, and representatives of international organizations (the World Bank, UN Development Programme in Ukraine, in particular) and public organizations, dealing with corruption prevention issues.

It should also be stressed that the government presented the following draft laws to the Supreme Council of Ukraine, with the purpose of bringing legislative acts of Ukraine in accordance with the Law of Ukraine *On Preventing Corruption*:

*On introducing changes to certain legislative acts of Ukraine due to the adoption of the Law of Ukraine On Preventing Corruption* (registration No. 2494 dated August 11, 2015);

*On introducing changes to the Tax Code of Ukraine due to the adoption of the Law of Ukraine On Preventing Corruption* (registration No. 2495 dated August 11, 2015);

*On introducing changes to the Customs Code of Ukraine due to the adoption of the Law of Ukraine On Preventing Corruption* (registration No. 2496 dated August 11, 2015).

**3.** In order to ensure proper functioning of the National Agency for Preventing Corruption, the State Budget of Ukraine for 2015 provides for expenses in the amount of 109 million hryvna, which is about 4.5 million Euros.

The draft Law of Ukraine *On the State Budget of Ukraine for 2016* provides for 104 million hryvna, which is approximately 4.3 million Euros, for the National Agency's expenses.

It also should be noted that the task of creating proper conditions to provide for the operation of the National Agency is included in the Programme. In particular, State Property Fund, jointly with the Ministry of Economic Development and Trade, Kyiv city state administration, with the mandatory participation of the National Agency, are tasked with the development of draft act of the Cabinet of Ministers of Ukraine on the allocation of an adequate office for the National Agency. The Agency itself and the Ministry of Finance are set as responsible parties for the preparation of the draft act of the Cabinet of Ministers of Ukraine on providing the National Agency with transportation.

**4.** Resolution No. 706 of the Cabinet of Ministers of Ukraine dated September 04, 2013, approved Typical Statute on the authorized unit (person) on the issues of preventing and detecting corruption, in which clause 12 stipulates that coordination and methodological provision for the operation of the authorized units (persons) is done by the person authorized by the government on the issues of anti-corruption policy. Today, per Decree No. 252 of the Cabinet of Ministers of Ukraine, dated March 18, 2015, these functions lay with the head of office of the person authorized by the government on the issues of anti-corruption policy.

Upon establishment of the National Agency for Preventing Corruption the mentioned norms of the Typical Statute will be eliminated, as the very institute of the person authorized by the government on the issues of anti-corruption policy.

Pursuant to the provisions of Article 11 of the Law of Ukraine *On Preventing Corruption* coordination, methodological support and analyses of the efficiency of operation of authorized units (authorized persons) on the issues of preventing and detecting corruption, are included in the National Agency's scope.

At the same time it should be noted that the Programme provides for the task for the National Agency to increase efficiency of operations of the authorized units (authorized persons).

**5.** The Programme provides for mandatory trainings (duration of at least two-three days) for the National Agency's staff during the primary stage of selecting staff to the National Agency for Preventing Corruption.

In future, the Programme provides for mandatory training of individuals employed by the National Agency, as well as internships and participation in training visits of the National Agency's staff to anti-corruption bodies of foreign states, and visits of foreign specialists to the National Agency.

**6.** Pursuant to provisions of Article 12 of the Law of Ukraine *On Preventing Corruption*, the National Agency for Preventing Corruption has the right for direct access to information databases of state bodies, of the authorities of the Autonomous Republic of Crimea, and local government

authorities.

With the purpose of the practical implementation of the given right, the Programme stipulates tasks for executing agreements between the National Agency and the state bodies, the authorities of the Autonomous Republic of Crimea, and local government authorities, with the objective of providing access for the National Agency to information databases, as well as providing the National Agency with further direct access to these databases.

Provision of direct access to these databases is justified by the need for the introduction of an electronic system of declaring property by public servants, which would include verification of accuracy of declaration forms, as well as by the need of setting up and maintaining a single registry of persons who committed corruption or related offences.

It should be noted that presently the Ministry of Justice, jointly with the World Bank experts, has developed the technical assignment for the introduction of such system, open electronic registry of declarations of property, as well as introduction of mechanisms for verifying declarations. With the purpose of time introduction and functioning of the single state registry of property declarations of public servants, the Government of Ukraine charged the Ministry of Justice with ensuring the development of relevant software (Resolution No. 265 and Decree No. 863 dated August 28, 2015). In future, the software will be transferred to the National Agency, which will allow the National Agency to fulfil one of its main functions as early as from January 2016 – financial control of properties of public servants.

With this in mind, the UN Development Programme in Ukraine expressed its readiness to finance the tender on selecting an IT organization that will develop the software per technical assignment.

**7. Mechanisms for participation of public organizations in the National Agency for Preventing Corruption are set in the legislation.**

In particular, the Law of Ukraine *On Preventing Corruption* stipulates the participation of public organizations and their representatives as early as from the beginning of the process of selecting candidates to membership in the National Agency.

The law also provides for the public supervision of the National Agency's activities, which will be performed via the Public Council under the National Agency.

The procedure for organizing and conducting competitions for forming the Public Council is determined by the Cabinet of Ministers of Ukraine (Resolution No. 140 dated March 25, 2015).

The composition of the Public Council will be determined based on the results of the competition using rating voting. Having said that, the participation of the authorized person from the Cabinet of Ministers of Ukraine shall in no way give an opportunity to influence the order of the competition or its results.

This way, public organizations will elect their representatives to the Public Council in an independent fashion.

The Public Council holds an important place in the control over the National Agency. It has the right to receive reports on the activities, performance of plans and tasks by the National Agency, to approve annual plans on its operations, to give opinions upon reviewing draft acts of the National Agency, delegate its representative to its meetings with an advisory vote.

### ***Assessment of Progress - 16th Plenary***

ACN welcomes good plans for the creation of the prevention agency, but notes the very slow process, also some problems (falsification of nominations) reported by media. 1<sup>st</sup> round of shortlisting of candidates was completed. It is expected that the composition of the agency will be submitted for the approval of the PM in October. After that the secretariat of about 150 persons will be appointed, which will allow the agency to become operational. No progress.

## PILLAR 2. CRIMINALISATION OF CORRUPTION

### Recommendation 2.1.-2.2.

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

#### 16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015

##### **Measures taken to implement the recommendation**

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

Overall, adequate criminal terms are provided for corruption crimes (taking into account increased sanctions, namely by the Laws Nos. 1261-VII and 1698-VII, dated May 13 and October 14 last year, respectively, and No. 198-VIII dated February 12, 2015).

Provisions of Article 9 of the Criminal Code of Ukraine stipulate tolling of the statute of limitations in case if a person who has committed a crime, escaped from pre-trial investigation or trial. In these cases, statute of limitations resumes from the day such person comes out with an acknowledgement of guilt or is detained. A person is relieved from criminal liability if fifteen years have passed since the time such crime was committed.

The statute of limitation tolls if, before the term ends, such person has committed a new crime of medium, serious or extreme gravity. The term in such case begins from the day the new crime has been committed.

With the purpose of impacting the improvement of countering crime and corruption, and increasing the effectiveness of prevention, the prosecution bodies coordinate the activities of law enforcement agencies (article 25 of the Law of Ukraine On Prosecutor's Office, Order No. 1/1ГН of the General Prosecutor of Ukraine, dated January 16, 2013, *On Coordination of Activities of Law Enforcement Bodies in the Area of Countering Crime and Corruption*).

With this purpose, the prosecution ensures that coordination and inter-institutional meetings, other events on prevention and counteraction against corruption, training and methodological seminars are conducted; methodological recommendations are developed and introduced.

The General Prosecutor's Office of Ukraine has developed a compilation of methodological documents on the introduction of the Criminal Procedural Code, which, inter alia, included methodological recommendations on investigations of passive bribery in public sphere, methodological recommendations on the qualification of active and passive bribery, abuse of authority and influence, illicit enrichment.

This year, the National Academy of the Prosecution of Ukraine has published a compilation of materials from the Internet conference, *Anti-Corruption Policy of Ukraine: current problems in ensuring effectiveness*.

Cooperation with competent authorities of foreign states and international organizations on the organization of training and educational sessions for prosecutors and investigators takes place for the purpose of effective application of new provisions of the criminal legislation in the anti-corruption sphere.

For instance, with the support of the US Embassy in Ukraine, six prosecution and investigation staff members of the Ukrainian prosecution completed a week-long specialized course on the investigation of corruption crimes, which took place on May 4-8 this year at the International Law Enforcement Academy in Budapest (Hungary).

In addition to this, prosecution and investigation staff members took part in a training session on the investigation and criminal prosecution of corruption crimes, which took place on May 11-15, 2015 at the Central Europe and Eurasia Law Initiative Institute (CEELI) in Prague (Czech Republic).

Within the project *Strong Judicial System in Eastern European Countries*, representatives of the General Prosecution of Ukraine took part in an international conference entitled *Best Practices in Preventing and Countering Corruption* (May 10 - 16 , 2015, Bucharest (Romania)).

By the invitation of the Organization for Economic Cooperation and Development (OECD) employees of prosecution, courts, and justice departments took part in a seminar entitled *Liability of Legal Entities for Corruption Offences: Introduction, Application, Challenges and Solutions*, which took place on June 23 this year.

Within the framework of the European instrument for institutional development TAIEX representatives of the General Prosecution of Ukraine took part in an international seminar entitled *Legal and Institutional Mechanism of Detecting and Investigating Cases on Laundering Income from Corruption, Search for, Arrest and Confiscation of Criminal Income* (July 6-10 , 2015, Kyiv).

The results of application of new clauses of the criminal legislation in the fight against bribery are evident from the data provided by the Ministry of Internal Affairs.

As of the beginning of 2015, 881 facts of improper advantage have been detected, third of which (292) entailed significant amounts.

Most efforts are aimed towards documenting the facts of receiving illicit advantages in state power structures and controlling agencies.

Suspicious of receiving improper advantages were conveyed to 860 individuals, of which 530 are officials in authorities and administration, and 281 are employees of controlling bodies, including 28 servants of the State Fiscal Service, 11 military commissioners, 22 employees of the State Emergency Service and State Executive Service, and 2 judges.

The largest amount of improper advantage under criminal prosecution is 130 thousand US Dollars.

The analysis of exposed crimes shows that improper advantages are most often granted in land relations, services system (primarily in educational and healthcare institutions) and licensing system, in the sphere of privatization, property alienation and rental, as well as in financial services.

574 criminal cases were sent to trial with an accusation.

The official website of the Ministry of Internal Affairs publishes daily posts on the most high-profile materials on the detection, prevention and investigation of corruption offences and holding individuals to criminal or administrative liability. On an annual basis, the site publishes the electronic copy of Report No. 1-KOP *On the State of Counteraction Against Corruption*.

Analysis of the practical application of norms on the liability of legal entities for corruption actions is not possible due to the lack of such practice as such.

### ***Assessment of Progress - 16th Plenary***

Ukraine argues that statute of limitations are sufficient, therefore, no action was taken. The ACN does not accept this argument and insists on the need to act on this part of the recommendation. There were some trainings organised by international or donor organisations for investigators and prosecutors, but no training or resources were provided by the government in a systematic manner. Provided statistics does not show progress related to the complex crimes, as suggested in the recommendation. No information was provided about the implementation, analysis or review of corporate liability. No progress.

### **Recommendation 2.5.**

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

**16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015**

**Measures taken to implement the recommendation**

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

1. Currently, pursuant to the provisions of the Criminal Code of Ukraine, possibility of applying special confiscation is limited by active and passive bribery (Articles 354, 368, 368<sup>3</sup>, 368<sup>4</sup>, 369 of the Criminal Code of Ukraine), misuse of authority (Article 364, 364<sup>1</sup>, 365<sup>2</sup> of the Criminal Code of Ukraine), illicit enrichment (Article 368<sup>2</sup> of the Criminal Code of Ukraine), and improper influence (Article 3692 of the Criminal Code of Ukraine).

At the same time the Ministry of Justice in partnership with the General Prosecutor's Office of Ukraine within the frameworks of the activity of interdepartmental working group for coordination of the return of funds obtained as a results of corrupt practices of high-ranking public officials of Ukraine prepared a draft Law of Ukraine «On Amendment of the Criminal and Civil Code of Ukraine for improvement of the institute of special confiscation aimed at elimination of corrupt risks upon its application».

Draft law, which proposes a possibility of application of special confiscation caused by commission of any intentional crime, has been submitted by the Cabinet of Ministers of Ukraine to the Supreme Council of Ukraine for consideration (registration No. 2541a, dated August 28, 2015).

It should be noted that state statistics of the Ministry of Internal Affairs does not cover gathering of the information regarding application of special confiscation.

Statistical reporting of the prosecution agencies does not provide for keeping records on application of special confiscation as well.

However, to confirm the practice of applying special confiscation, we provide some links referring to several Ukrainian court verdicts, stipulating application of special confiscation. (<http://reyestr.court.gov.ua/Review/49228456>, <http://reyestr.court.gov.ua/Review/43681131>, <http://reyestr.court.gov.ua/Review/43619312>, <http://reyestr.court.gov.ua/Review/42895825>).

2. The Ministry of Justice in partnership with the General Prosecutor's Office of Ukraine within the frameworks of the activity of interdepartmental working group for coordination of the return of the funds obtained through crimes of high-ranking public officials of Ukraine, drafted a Law of Ukraine «On National Agency of Ukraine for detection, investigation and management of assets derived from corruption and other crimes», as well as the bill related thereto introducing amendments to the Budget Code of Ukraine to stipulate functioning of the National Agency.

The bills were approved by the Cabinet of Ministers of Ukraine and submitted to the Supreme Council of Ukraine for consideration (registration No. 3040, 3041, dated September 4, 2015).

The main purpose of the bills is to provide for inevitability of negative consequences deriving from criminal conducts, corruption primarily, through forfeiture of economic benefits against guilty persons deriving from their unlawful conduct.

In this relation, it is proposed to legally capture institutional mechanism of detecting the assets subject to arrest, their return and management of the arrested assets, as well as to determine legal framework of organization and activity of a separate independent body responsible

for performance of such activity – National Agency for detection, investigation and management of assets derived from corruption and other crimes.

One of the key principles of establishment and activity of such bodies is provision of due guarantees of its independency. Such guarantees include:

Appointment of the Chairman of the Agency selected from the best candidates as a result of transparent, adversary procedure, by specifically designated contest committee;

Limited and clearly stipulated by Law list of baselines for dismissal of the Chairman of the Agency;

Broad powers of the Agency to receive information on the assets, and to have an access to the information resource;

Independent professional and public control over the activity of the Agency, transparency and accountability of Agency's work.

It is intended that the Agency will not have a big number of personnel, and personnel ceiling shall not be more than 100 persons. At the same time some number of the personnel of the Agency will be detached from other state bodies (in particular, prosecution agencies, National Anti-Corruption Bureau, State Service for Financial Monitoring, Ministry of Internal Affairs, Ministry of Finance). This would provide for high level of interaction between all related parties involved in detection, arrest and management of criminal assets.

Primary tasks of the Agency are proposed to be stipulated as:

Implementation of measures on detection, investigation, assessment of the assets based on the inquiries from the investigator, prosecutor, and court (investigating judge);

Planning of measures related to the assessment, book-keeping and management of the assets;

Keeping a Unified State Register of Assets arrested as a result of criminal proceedings;

Cooperation with the authorities of foreign states competent in detecting, investigating and managing the assets, other competent bodies of foreign states and related international organizations;

Participation in representing the rights and interests of Ukraine in foreign authorities with jurisdiction for the matters related to the return of assets derived from corruption and other crimes back to Ukraine;

Provision of explanations, methodological and consulting assistance to the investigators, prosecutors and judges on the matters related to detection, investigation, assessment and management of the assets.

At the initial stage of the activity the Agency will be disposing assets in the amount of 200 minimum wages arrested as a result of criminal proceedings.

Administration of assets will be done through their sale, technical processing or management transfer based on the transparent tender procedures, and sale of the most valuable assets will be performed with an approval by interdepartmental committee for sale of the assets created under the Agency.

Arrested money means, as well those derived from sale or technical processing of the assets will be credited on deposit accounts of the Agency in state banks. Depending on the judicial decision, the arrested money means will be returned to the owner or transferred to a special fund of State Budget of Ukraine.

On September 16 of the current year, the bill was approved by a Committee of the Supreme Council of Ukraine for prevention and control of corruption, and was recommended to the Parliament to be approved as a baseline during the first reading.

3. Currently in effect Article 962 of the Criminal Code of Ukraine stipulates possibility of application of specific seizure in case of full or partial conversion of property subject to specific seizure. In such cases fully or partially transformed property is subject to specific seizure.

A possibility to confiscate an amount of money corresponding to the cost of property subject to specific seizure is also stipulated in the event when such property cannot be confiscated by a

reason of its use or impossibility of segregation from legitimately acquired property, alienation or other reasons.

Law of Ukraine «On Amendments to some legislative acts of Ukraine for ensuring the activity of the National Anti-Corruption Bureau of Ukraine and National Agency for Prevention of Corruption» dated February 12, 2015, No. 198-VIII, amended Civil Code of Ukraine with the provisions stipulating specifics of action proceedings for the cases on recognizing assets as illegitimate and their reclamation.

Action for recognition of illegitimate assets and their reclamation can be brought against a person authorized to perform functions of the state and local government body found guilty by a verdict coming into an effect for committing a corruption offence or money laundering. Also the action can be brought against a legal entity, appearing as property owner (user), in relation to which there is an evidence that it was obtained or used, or it belongs (belonged) to a person authorized to perform the functions of the state or local government body committed crime.

Persons authorized to perform functions of the state or local government body shall be understood to be a scope of persons listed in paragraph 1 of the first part of Article 3 of the Law of Ukraine «On Prevention of Corruption», i.e. high-ranking officials, judges, public officers, officials of local government bodies, officers of law enforcement agencies.

The court is to adjudge the assets to be illegitimate, if based on the evidence it would not be found that the assets or money means, required for the procurement of such assets, in respect of which an action for reclamation had been brought in, were acquired legitimately.

Assets found illegitimate are recovered as a revenue of the state, and if recovery is not possible, the defendant is made liable to pay the amount of such assets.

It is to be noted that through the Stolen Asset Recovery Initiative (STAR) the Ministry of Justice together with the General Prosecutor's Office, in October of this year in Kiev, plans to conduct an international seminar on the matters of confiscation of assets without extension of the judgment and civil remedies for recovery of stolen assets by state appearing as victim party.

#### **Assessment of Progress - 16th Plenary**

Draft law providing for broader confiscation and draft law on the agency for asset recovery were prepared by the government and is submitted to parliament – progress.

#### **Recommendation 2.6.**

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

#### **16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015**

##### ***Measures taken to implement the recommendation***

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

The Supreme Council of Ukraine is considering draft Law of Ukraine proposed by the President «On Amendments of the Constitution of Ukraine (concerning immunity of peoples' deputies of Ukraine and judges)» (registration No. 1776, dated January 16, 2015).

The bill proposes abolishment of guarantee of parliamentary immunity, as well as constraining of immunity of judges with functional immunity only. It is stipulated that the judge

cannot be arrested without a decision of the Supreme Council of Justice, and that detention in custody cannot be applied towards the judge prior to delivering the judgment of conviction by the court. An exception from this rule includes cases when detention is made upon committing or as a result of committed grave or especially grave crimes against human life and health.

On February 5, 2015, the Supreme Council of Ukraine submitted the bill to the Constitutional Court of Ukraine to receive the statement of compliance to the requirements of the Constitution of Ukraine.

Constitutional Court of Ukraine issued a statement on June 16, 2015, dated 1-b/2015 confirming conformity of the bill to the requirements of the Constitution of Ukraine.

The issue on abolition of additional restrictions of investigation into peoples' deputy (e.g. person's search, inspection of personal belongings) shall be considered after approval of the bill No. 1776 to become a law and after a date of its coming into effect. This relates to the findings issued by the Constitutional Court of Ukraine as part of the decision dated June 26, 2003, No. N 1-15/2003. This decision includes findings that the provisions of the first part of Article 80 of the Constitution of Ukraine, pursuant to which peoples' deputies of Ukraine are granted with parliamentary immunity, and corresponding provision of the first part of Article 27 of the Law of Ukraine «On Status of Peoples' Deputy of Ukraine» shall be understood that the parliamentary immunity as an element of status of peoples' deputy of Ukraine represents constitutional guarantee of unhindered and efficient exercise of powers by peoples' deputy of Ukraine, stipulates a special procedure of not only detention or arrest of peoples' deputy of Ukraine, but application of other measures related to the restrictions of deputy's rights and freedoms, to which search of peoples' deputy and inspection of his/her personal belongings refer to.

#### **Assessment of Progress - 16th Plenary**

Draft law on limitation of immunity was submitted by the President to Parliament, the Constitutional Court agreed that parts related to limiting immunity of judges by functions are constitutional, while limitation of immunity of MPs - not. Progress.

#### **Recommendation 2.7.**

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

#### **16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015**

##### ***Measures taken to implement the recommendation***

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

Central agencies of Ukraine responsible for the requests for mutual legal assistance are determined by the Article 545 of the Criminal Procedure Code of Ukraine.

General Prosecutor's Office of Ukraine addresses requests on international legal assistance in criminal proceedings during pre-trial investigation and considers corresponding requests of competent foreign bodies, except for the pre-trial investigation of criminal violations by the National Anti-Corruption Bureau of Ukraine exercising functions of a central agency of Ukraine in

such cases.

At that, General Prosecutor's Office of Ukraine is to send within three days the materials concerning financial and corruption criminal crimes to the National Anti-Corruption Bureau received (submitted) as a result of international legal assistance.

It is to be noted that over 8 months of 2015 there were 1,038 requests for international assistance considered, including 314 requests of Ukrainian bodies, and 724 requests of foreign competent institutions.

Among mentioned number of the requests, there are 1002 requests for actions in the criminal proceedings, and 36 requests for prosecution or transfer of criminal proceedings.

Investigation bodies of Ukraine prepared 307 inquiries for the proceedings, and 7 inquiries for the transfer of criminal proceedings.

695 inquiries (for the performance of the proceedings) and 29 inquiries (for transfer of criminal proceedings) received from foreign law enforcement agencies were considered.

Against corruption offences during 2014-2015, the General Prosecutor's Office received 36 requests from the bodies of pre-trial investigation of Ukraine for international legal assistance in such proceedings.

Among mentioned number of the inquiries, 23 requests were sent to the competent agencies of twelve foreign states (4 requests each to the United Kingdom of Great Britain and Northern Ireland, and Austria, 3 requests each to the Swiss Confederation and the Principality of Liechtenstein, and one request each to the Kingdom of Spain, the Principality of Monaco, the Republic of Latvia, Bulgaria, Japan, British Virgin Islands, Isle of Man and Cayman Islands, Federal Republic of Germany and Russian Federation). 18 requests are under execution, and other five requests had been fully executed.

During this period the General Prosecutor's Office executed four requests of foreign competent agencies of Austria, Russian Federation, Lithuanian Republic, and the Swiss Confederation for rendering legal assistance under criminal proceedings of the said category. All requests are executed in full.

During the mentioned period there were no requests sent to the General Prosecutor's Office from the competent agencies of foreign states and pre-trial investigation agencies of Ukraine for transfer of criminal proceedings under the offences of the said category.

To promote interaction of law enforcement agencies, central agencies of the executive body for detection, arrest and return of the assets received by the former high-ranking public officials of Ukraine through crimes back to Ukraine in compliance with the mechanism stipulated by the international treaties of Ukraine, the Decree of the President of Ukraine dated March 26, 2015, No. 296, provides for creation of Interdepartmental Working Group for coordination of the return of assets received by former high-ranking public officials of Ukraine through crime back to Ukraine.

Chairmanship of this group is entrusted to the deputy General Prosecutor of Ukraine. The Interdepartmental Group consists of the executives and responsible persons of the Administration Office of the President of Ukraine, investigative forces against corruption and organized crime of the General Prosecutor's Office of Ukraine, Security Service of Ukraine, Ministry of Internal Affairs, State Service for Financial Monitoring of Ukraine, the Foreign Intelligence Service, National Bank of Ukraine, Ministry of Foreign Affairs and Ministry of Justice.

Main tasks of the said group are:

Analysis of the legislation of Ukraine for the matters of regulation of the markets of financial services, foreign economic activity, prevention of corruption and money laundering, finding norms hampering return of the assets received by former high-ranking public officials through crimes back to Ukraine, and elaboration of proposals for improvement of the corresponding statutory regulations of Ukraine;

Ensuring analysis and monitoring of the process of return of the assets received by former high-ranking public officials of Ukraine through crimes back to Ukraine, and efficient introduction of

the proposal on improvement of the interaction of corresponding bodies for the matters of recovery of such assets.

Interdepartmental working group developed mechanisms of efficient interaction of law enforcement agencies, central agencies of executive body for the matter of return of the assets received through crimes back to Ukraine, and respective proposals were submitted to the Administration Office of the President of Ukraine in May of the current year.

Particularly, best practices were proposed for:

- granting direct investigator's access to the data bases and state registers;
- improvement of interaction of investigators of State Service for Financial Monitoring;
- creation of interdepartmental investigation teams;
- use of the resources of the Foreign Intelligence Service of Ukraine by law enforcement agencies;
- use of the resources of international police for direct cooperation (officers of the Ministry of Internal Affairs of Ukraine at the Embassies, Carmden Asset Recovery Interagency Network (CARIN));
- conduction of agency checks by central agencies of executive body, internal inspections and audits of financial and economic activity, etc., as well as transfer of the materials, containing signs of criminal crimes, to the law enforcement agencies.

As it has been mentioned already in the comments to Recommendations 2.5., the Supreme Council of Ukraine is now considering the draft Law «On National Agency of Ukraine for crimes» as well as the bill concerning amendments to the Budget Code of Ukraine related thereto (registration No. 3040, 3041, dated September 4, 2015).

Provisions of these draft laws stipulate establishment of absolutely new mechanism of investigation of assets subject to arrest, asset return and management of the arrested assets.

#### ***Assessment of Progress - 16th Plenary***

The interdepartmental working group was established to analyse and improve MLA legal and operational issues; however it does not deal with specific cases. The draft law on the agency for asset recovery was submitted to parliament. Progress.

#### **Recommendation 2.8.**

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

**16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015**

#### ***Measures taken to implement the recommendation***

*(Brief summary of measures taken to implement recommendation provided by the National*

*Coordinator)*

In accordance with the provisions of draft Law «On National Agency of Ukraine for detection, investigation and management of assets received through corruption and other crimes» (registration No. 3040, dated September 4, 2015), the said National Agency will have an access to the computerized information and reference systems, registers and data bases, holder (administrator) of which are the state bodies or local government bodies. This shall provide the agencies of pre-trial investigation with the information from the data bases of fiscal and customs agencies while searching for criminal assets.

Under other cases, the agencies of pre-trial investigation shall address to the fiscal and customs agencies directly.

This Agency will also have an access to bank secrecy information with no requirement of court decision. Banks will be obliged to disclose to the Agency the information on legal and physical entities subject to bank secrecy based on Agency's written request in relation with Agency's activity for detection and investigation of assets that can be arrested as a result of criminal proceedings. Information can be concerning availability and state of accounts, account transactions of a concrete legal or physical entity, physical entity-performer of entrepreneurial activities.

Thus, this shall ensure more efficient performance of detection and investigating of criminal assets provided for higher level of banking secrecy, rather than it would be done through simplified procedure of direct receipt of such information by the investigative authorities from the banks.

Concerning practice of law enforcement agencies in investigating corruption offences it shall be noted that over a period of eight months of 2015, 1766 corruption crimes were revealed. Half of such crimes are grave and especially grave crimes (889).

During investigation of the criminal proceedings of this category, 474 persons were dismissed.

As a result of investigation, 1185 criminal proceedings on corruption offences concerning 1363 persons, including 169 people arrested, were addressed to the court with the indictment.

1374 persons were brought to trial for committing corruption violations.

Under the categories, the following persons were held criminally liable:

Persons performing executive and administrative duties in private legal entities (215, or 15.6%);

Officials of public legal entities (206, or 15%);

Officials of legal entities, and physical entities in case of receipt of improper advantage from them (193, or 14%);

Public officials (195, or 14.2%);

Officials of other agencies of state authorities (157, or 11.4%);

Officials and officers of internal affairs agencies (138, or 10%);

Officials of local government bodies (98, or 7.1%);

Persons providing public services (54, or 3.9%);

Officials and officers of Armed Forces of Ukraine (44, or 3.2%), customs office (33, or 2.4%), state fiscal (31, or 2.3%) and penal (27, or 2%) services;

Officials and officers of district (31, or 2.6%) and regional (13, or 0.9%) state administration offices.

Moreover, 16 officials and officers of state border guard service, 14 deputies of rural, settlement, city, regional councils and officials and officers of fiscal police, 9 officials and officers of prosecution agencies, 7 professional judges.

One official of local government body of the 1-2 category, two official of the 3 category of local governing body, and seven state officers of the 1-2 categories were held criminally liable.

A department for investigation of corruption crimes committed by the officials of special positions of responsibility was established in the General Prosecutor's Office. Currently, this department is investigating 26 criminal proceedings for corruption practices, including 6 cases

under a suspicion of involvement of the high-ranking officials. One indictment was delivered to the court against 3 officers of law enforcement agencies.

During the current year, a department for investigation of criminal proceedings in relation to the officers of the prosecution agencies and information security was established in the General Prosecutor's Office of Ukraine. The department is performing pre-trial investigation of 21 criminal proceedings for corruption offences. Two cases were delivered to the court with indictments. Findings of guilt were made under one of the proceedings.

Investigators of the Main Investigation Department of the General Prosecutor's Office of Ukraine also continue investigation under criminal proceedings against former officials reported to be under suspicion of committing corruption criminal offences.

During mentioned criminal proceedings requests for conduction of special pre-trial investigation (in absentia) were submitted to the court.

As a result of consideration, a motion of the General Prosecutor's Office of Ukraine for application of such procedure, in particular to the former President of Ukraine V.F.Yanukovich, former Minister of Health of Ukraine R.V.Bogatyрева and other persons (5 people in total) was upheld.

Consideration of a motion for application of special pre-trial investigation in criminal proceeding under a suspicion of former Minister of Revenue and Duties of Ukraine A.B.Klimenko and former Chairman of National Bank of Ukraine S.G.Arbutov is continued.

Main statistical data of the results of detection, investigation and court consideration of criminal proceedings of corruption offences is provided in public official reports (Form No. 1 – COR).

General Prosecutor's Office of Ukraine ensures keeping of Unified Register of Pre-Trial Investigations (hereinafter URPTI) by all agencies of preliminary investigation.

URPTI is a single interdepartmental information base on criminal activities records from all agencies of pre-trial investigation.

Access to the information of URPTI considering investigative jurisdiction of criminal proceedings is granted to the prosecutors, investigators and officials of prosecution agencies, internal affairs agencies, security agencies, and agencies performing control of fiscal legislation, as well as other authorized entities of law enforcement agencies exercising information and analytical functions and special reporting.

Pursuant to the joint Order of the General Prosecutor of Ukraine and Minister of Internal Affairs of Ukraine dated November 17, 2012, No. 115/1046, joint Order of the General Prosecutor of Ukraine and Chairman of State Court Administration of Ukraine dated August 14, 2014, No. 82/108, an integration of URPTI data to the information systems of internal affairs agencies and courts had been performed.

#### ***Assessment of Progress - 16th Plenary***

The Asset Recovery agency will have access to banking information, and to customs and tax information; the NABU will also have such access, no similar provisions were provided for other law-enforcement bodies. Two new departments were established in the GPO, one to lead prosecution of high level officials (currently 26 cases), and the other for the prosecutors (currently 21 cases). Several cases were opened against Yanoukovich officials in absentia (currently 5 cases). Progress.

#### **Recommendation 2.9.**

- ***Ensure swift establishment and genuine independence of the National Anti-Corruption Bureau, in particular by excluding political bodies from the process of the Bureau's head selection, ensuring his job security, providing it with necessary resources, including the salaries for the Bureau's staff as established by the law.***
- ***Consider introducing amendments in the Constitution of Ukraine to provide legal basis for***

***functioning of independent anti-corruption agencies (law enforcement and preventive).***

- ***Ensure operational and institutional autonomy of the specialized anti-corruption prosecutor's office dealing with cases in jurisdiction of the National Anti-Corruption Bureau.***
- ***Consider introducing specialized anti-corruption courts or judges.***

**16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015**

***Measures taken to implement the recommendation***

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

After appointment of the Director of the National Anti-Corruption Bureau of Ukraine by the President of Ukraine the procedure of formation and the adequate functioning of the National Bureau have been initialized.

At present there is an adopted structure and the manning table of the National Bureau, which, in particular, foresee the positions of the First Deputy Director and three Deputies, who are appointed to these positions without competitive selection (based on the orders No.1 and No.2 of the Director of the National Bureau dated April 23, 2015).

Three Deputy Directors of the National Bureau have been appointed according to the orders of the National Bureau's Director.

In conformity with the Law of Ukraine "On the National Anti-Corruption bureau of Ukraine", formation of the structure of the National Bureau shall be done on the basis of the open competition.

Direct selection of the staff was begun on June 09, 2015, after formation of the selection committee, which has been preceded by the selection of the Public Control Council of the National Bureau on June 8, which has delegated three of its representatives to the selection committee.

Competition envisages passing through the qualification exam (testing) and interview. Qualification exam includes 3 phases: testing for the knowledge of legislation, testing of the general skills (General Skills), psychological testing (identification of psychological profile according to MMRI-2 methodology). Testing for physical readiness is foreseen for the managers.

The National Bureau changes its approach to the work of the law enforcement bodies: for the first time the detectives and analysts using the modern techniques and investigation methods will be in operation.

Position of detective is a new one for Ukraine; it will be combining the operation search and investigative functions. On May 05 of this year, vacancies on first one hundred positions of detectives have been announced. More than 2700 candidates have decided to participate to this job competition, 2502 of them have been selected for testing. As of September of 2015, 25 persons have been appointed as detectives out of 70 shortlisted candidates.

As of September 17 of this year, according to the results of the open competition to the National Bureau, 52 have been recruited and are working at present.

Estimates of the National Bureau for 2015 is approved by the Director of the National Bureau to the amount of 241 903,6 thousand Hryvna, out of which:

Expenses for payroll make 156 150,0 thous. Hryvna;

Charges for wages - 52 205,8 thous. Hryvna;

Goods and services - 16 597,8 thous. Hryvna;

Capital expenses - 16 950,0 thous. Hryvna.

In compliance with the Law of Ukraine "On Public Procurement" and for the purpose of organization and conduction of procurement procedures, based on the order of the Director of the National Bureau No. 18-n of July 14, 2015, the Bidding Committee of the National Bureau of Ukraine has been formed and its composition has been approved.

Activities on identification of the primary expenses of the National Bureau for 2015 have been realized. In order to ensure its activities, it is planned to procure the database servers for

creation of the analytical basis, infrastructure servers, and network equipment for access to the Internet, licenses for software, computer and office equipment, implementation of the package of information security, and communications. The relevant procurement procedures have initiated.

The management of the National Bureau on the ongoing basis is holding negotiations with the representatives of other public administration bodies regarding the operational exchange of information.

On June 30, 2015, the Director of the National Bureau and the Chairman of the State Financial Monitoring Service of Ukraine have concluded the Agreement on Inter-Agency Cooperation and Information Exchange. Objective of this Agreement is interaction and information exchange in the sphere of prevention and counteraction of legalization of revenues (money laundering) proceeding from illegal activities or financing of terrorism, as well as countering of corruption in Ukraine.

On July 27 of the same year, the Director of the National Bureau, the Minister of Justice of Ukraine and the Minister of Interior of Ukraine have signed the Memorandum of Understanding and Information Exchange for the purpose of prevention, identification, suppression, investigation and solution of corruption crimes. As a result of the Memorandum, among others, was granting the access to databases of the Ministry of Interior, as well as to the registers and data banks of the Ministry of Justice to the National Bureau.

On August 7, 2015, the joint orders of the National Bureau and the Security Service of Ukraine have been signed on interaction in the sphere of operational work and provision of access to information.

From the moment of creation of the National Bureau, it is given an unfailing support from the side of the international and foreign partners. This support is resulting into following:

- Assistance in elaboration of the road map of the National Bureau development;
- Assistance in work-out of the testing questions and organization of testing for the vacant positions within the structure of the National Bureau;
- Involvement of the trainers for training of the National Bureau staff;
- Organization of ongoing consultations and experience sharing;
- Experts' support on the broad range of issues;
- Technical assistance;
- Volunteer support.

Under the framework of the long-term support programs the consultants from Canada and the European Union work with the National Bureau. They will be train and assist the staff members of the National Bureau in fulfillment of their professional duties.

In terms of the amendments to the Constitution of Ukraine for the purpose of securing the legal basis of the functioning of the law enforcement and preventive anti-corruption bodies, it should be noted that on March 03 of 2015, based on the decree of the President of Ukraine, the Constitutional Committee has been established, which functions as the subsidiary body under the President of Ukraine.

One of the principal tasks of the Constitutional Committee are elaboration of the coordinated proposals on implementation of constitutional reform in Ukraine, as well as preparation of discussion of the draft law (laws) on amendments to Constitution based on the results of the wide public and professional consultations.

In terms of formation of the special anti-corruption prosecutor's office, it should be noted that on July 15 of 2015, the Law of Ukraine "On Prosecutor's Office" has come to force, which envisages the functioning of the Special Anti-Corruption Prosecutor's Office within the system of the Ukrainian Prosecutor's Office.

Establishment of the Special Anti-Corruption Prosecutor's Office, definition of its structure and staff is the task of the General Prosecutor of Ukraine in coordination with the Director of the National Bureau.

Special Anti-Corruption Prosecutor's Office shall be created under the General Prosecutor's Office of Ukraine as a self-sufficient structural division with a maximal level of independence.

The Prosecutors of the Special Anti-Corruption Prosecutor's Office shall be appointed based on the results of the open competition in accordance with the order of the Head of the Special Anti-Corruption Prosecutor's Office. Procedure of open competition for this position shall be defined by the Head of the Special Anti-Corruption Prosecutor's Office (first part of the Article 81 of the Law of Ukraine "On Prosecutor's Office").

At the end of August of this year, in order to ensure organization and conduction of competition for selection of the candidates for the administrative positions in the Special Anti-Corruption Prosecutor's Office, the General Prosecutor of Ukraine has identified four functionaries of the Prosecutor's Office as the members of the selection committee.

On September 17 of 2015, the Supreme Council of Ukraine has identified seven members of the Parliament as the members of the selection committee.

On September 22 of this year, the order of the General Prosecutor of Ukraine creates the Special Anti-Corruption Prosecutor's Office under the department of procedural management, support of public prosecution and legal representation in court, as well as under two sub-departments: analytical statistics and document support. The structure and the manning table is agreed with the Director of the National Anti-Corruption Bureau.

On September 24, there was a session of the Committee on organization and conduction of the open competition for the administrative positions in the Special Anti-Corruption Prosecutor's Office.

It should be also noted that the Constitutional Committee, created by the President, the draft Law of Ukraine "On amendments to the Constitution of Ukraine" has been developed, which has been submitted to the Venetian Commission for review.

The draft law, among other, enhances the guarantees of independence of the Prosecutor's Office (in particular, the authority of the Supreme Council of Ukraine to impeach credibility of the General Prosecutor is abolished).

Judicial proceeding of the criminal cases with regard to the corruption crimes does not have significant specifics that would make necessary to hear such cases in the special courts.

The courts of general jurisdiction, upon decision of the council of judges of the relevant court, could appoint the judges for proceeding of specific categories of cases (provisions of the part two of the Article 18 of the Law of Ukraine "On the Judicial System and the Status of Judges").

Therefore, the proposed specialization could be introduced in the general jurisdiction courts. At the same time, at present there are already high requirements to the composition of judges, who are authorized to review the corruption crimes depending to the status of the public officials charged with such crimes. Thus, in accordance with the provisions of the ninth part of the Article 31 of the Criminal Procedure Code of Ukraine, the criminal proceeding of the President of Ukraine, whose powers have been terminated, the Prime Minister of Ukraine, the members of the Cabinet of Ministers of Ukraine, first deputies of the ministers and deputy ministers, public deputies of Ukraine, other high-ranking politicians and officials, as well as with regards to the accusations in commitment of criminal crimes subordinate to the National Anti-Corruption Bureau, shall be done as follows:

In the court of first jurisdiction – on a collegiate basis of three professional judges having the experience of working as judges not less than five years, while in criminal proceeding of crimes for commitment of which the imprisonment for life is envisaged, and upon petition of the defendant – by the jury composing of two professional judges having experience of working as judges not less than five years, and three jury men;

According to procedure of appeal – on a collegiate basis consisting of five professional judges having not less than seven years of the professional experience as judges;

According to cassation procedure – on a collegiate basis consisting of seven professional judges having not less than ten years of the professional experience as judges.

Therefore, corruption crimes shall be examined in the courts of all instances by the judges meeting the special requirements to the professional experience in capacity of judges. Moreover, the Criminal Procedure Code stipulates the high requirements to the quantitative composition of the judicial panel authorized to examine the corruption crimes.

There are no objective prerequisites for introduction of the specialization of the judges on proceeding of the corruption crimes since the relevant proceedings are more complex than, for example, the crimes against the human life and health, against property, economic crimes, etc.

***Assessment of Progress - 16th Plenary***

Establishment of NABU has advanced: the head was selected by the international selection commission; deputies were appointed, the first groups of detectives was hired using tests and is undergoing training. NABU concluded agreements with other law-enforcement bodies to improve cooperation. The position of anti-corruption prosecutor was created in the law, the selection process is underway, and completion is expected in November. It is essential to allow the NABU to start operations. Reform of prosecution service was launched; hiring of regional prosecutors is conducted using competitive merit-based procedure (based on test). The constitutionality of NABU may be addressed in by the constitutional council that is reviewing the constitution overall. There is no specialisation of courts foreseen at present. 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.**
- **Once the new law is adopted and enacted: Implement the regulations on recruitment and selection of civil servants, including the senior civil servants, based on merit, equal opportunity and open competition to ensure professionalism and avoid direct or indirect political influence on civil service as foreseen in the Law on Civil Service.**
- **Implement and ensure effective functioning of the regulations on conflict of interest, asset declarations, code of ethics and whistle-blower protection as foreseen in the Law on Prevention of Corruption.**
- **Consider adopting a stand-alone whistle-blower protection law to cover both public and private sector.**

#### 16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015

##### **Measures taken to implement the recommendation**

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

The National Agency of Ukraine on Civil Service Issues has prepared and performs the follow-up of the draft new laws of Ukraine in the Supreme Council of Ukraine, approved by the Ukrainian Government, such as "On Civil Service" and "On Service in the Local Self-Governance Bodies" (registration No.2490 and No.2489 of March 30, 2015).

On April 23 of 2015, these draft laws have been adopted by the Supreme Council of Ukraine in the first reading.

Presently, the draft laws are being prepared for review in the second reading.

According to the plan, after review by the relevant committee of the Supreme Council of Ukraine, the draft law will be submitted for review to the Parliament and adopted in the second reading and in general.

In order to prepare the draft law "On Service in the Local Self-Governance Bodies" in the second reading, the appropriate Working Group, created by the relevant committee of the Supreme Council of Ukraine, is refining it.

At the same time, in collaboration with the concerned authorities, non-governmental organizations, and the EU experts the re-elaboration of the draft laws aimed at implementation of the provisions of the laws after their approval is going on. Thereby, a continuous work on efficient institutional implementation of the draft laws after their adoption is under way.

It should be also noted that in pursuance of the Final Provisional of the Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine”, the Ministry of Justice has developed the Law “On Integrity Check” that envisages the procedure of conduction of verification of the integrity of persons having powers governmental or local self-governance officials.

At the beginning of July of 2015, the draft law was submitted to the European Commission “To Democracy through Law” (Venetian Commission) and to the Council of Europe for expertise with respect to its conformity to the European standards and values.

The meeting between the representatives of the Ministry of Justice and the experts of Venetian Commission is planned to take place on October 01 of this year.

With respect to the declaration of property by the public servants we inform that the Ministry of Justice jointly with the World Bank experts, the terms of reference have been developed for introduction of the system of declaration, the open electronic register of the property status declaration, as well as introduction of the mechanisms of declaration checks. To the effect of timely introduction and functioning of the Single Public Register of declarations of the property status of the public servants, the Government of Ukraine has assigned the Ministry of Justice to develop relevant software (resolution No.265 and instruction No.863 of August 28, 2015). In future, the developed software will be handed over to the National Agency on Corruption Prevention, which will allow already starting from January of 2016 to implement one of its main functions – financial control over the declaration of the property status by public servants.

At the same time, the UNDP in Ukraine has expressed its readiness to finance the bidding on selection of IT-organization, which will prepare the software taking into account the terms of reference, and it has already announced the bidding.

With respect to the adoption of separate law on protection of denunciators, it should be noted that report issued on results of the 3<sup>rd</sup> round of the monitoring of anti-corruption reforms in Ukraine, approved on March 24, mentions introduction of the legislative basis for protection of denunciators based on the Law of Ukraine “On Corruption Prevention”.

Development of methodological recommendations on handling the information of denunciators and conduction of trainings on such work falls into the competence of the National Agency on Corruption Prevention Issues.

#### ***Assessment of Progress - 16th Plenary***

The draft law on civil service is still pending its second reading, which is a serious concern. The asset declarations system is under preparation; it will become operation only when the prevention agency is operational, which is delayed. Guidelines for working with whistle-blowers are under preparation. No progress.

#### **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.*

#### **16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015**

##### ***Measures taken to implement the recommendation***

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

In January of 2015, the Ministry of Justice has presented to the Cabinet of Ministers the draft Law of Ukraine "On Administrative Procedure".

In March of this year the draft law was sent back to the Ministry of Justice for discussion of its status with broad public and coordination with the central and local bodies of executive power, local self-governance bodies (their associations), collective and other bodies.

After agreement the draft law was submitted to the Government for review.

On August 14, 2015, the Governmental Committee on the issues of economic development and European integration made decision on necessary agreement of the draft law with all concerned central and local bodies of executive power, the State Regulative Service, all-Ukrainian associations of the local self-governance.

On September 02, the draft law was sent back to the Ministry of Justice for implementation of the above decision.

With respect to the conduction of the anti-corruption expertise, it should be noted that this matter is regulated by the Law of Ukraine "On Corruption Prevention".

The anti-corruption expertise of the drafts of the legal and regulatory documents, presented for review to the Supreme Council of Ukraine by the people's deputies of Ukraine, is done by the relevant committee of the Supreme Council of Ukraine.

In view of the ensuring the adequate implementation of this norm, the Committee of the Supreme Council of Ukraine on the issues of prevention and countering corruption has set up the Council of Public Expertise.

On September 10 of 2015, the candidates selected to this Council on the competitive basis have been recommended to the above mentioned Council.

##### ***Assessment of Progress - 16th Plenary***

It is not clear why the Admin code now requires such a lengthy review, since during the monitoring it appeared that the draft was fully ready for adoption. Resistance from line ministries may be among the reasons for the delays. It is important to ensure that the code is passed soon and that its implementation is ensured. It is not clear either which efforts were made to involve civil service in the anti-corruption screening of legislation. No progress.

#### **Recommendation 3.4.**

- ***Continue reforming the State Financial Inspection Service by improving the risk based approach, developing an intelligence function, training the staff in analysing expenditures for suspicions of fraud and corruption.***
- ***Revise the Law on the Accounting Chamber to strengthen independence and effectiveness of the Chamber in line with international standards. Increase transparency of the Accounting Chamber's operations by ensuring publication on Internet and free public access to information on audit activities, including to all audit reports and results of investigations by the prosecutor's office on corruption cases detected by the Accounting***

### **Chamber**

- **Consider revising the legal framework on Financial Management and Control by bringing together the current legal provisions in more than 70 by-laws in one Financial Management and Control law and implement this law in phases.**
- **Adopt an internal audit law in order to strengthen the independent position of the internal audit units and consequently improve the quality of internal audit results.**

### **16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015**

#### **Measures taken to implement the recommendation**

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

The State Financial Inspection (further on referred to as Financial Inspection) conducts the ongoing work on selection of objects of financial control considering the risks of financial violations.

Main prerequisite for selection of the objects of financial control for their inclusion into the Plan of Control and Revision Work is the risk-oriented selection, which is done in accordance with the Concept of risk-oriented selection of the control objects in planning of inspections by the Financial Inspection and its territorial bodies (The Concept was approved by the Minutes of the Meeting No. 3 of the Methodological Council of the Financial Inspection on June 17, 2014).

Selection of the objects for revision on the initiative of the Financial Inspection up to now is done exclusively based on the above mentioned approach.

In order to optimize and reform the activities of the Financial Inspection bodies, proposals on optimization of the functions of the state financial control bodies have been developed, envisaging, among other, the following:

Optimization of the planning procedure of the control and revision work;

Renovation of the system of the risk-oriented selection of the objects for financial control (including automation of the relevant process) in order to orient control to the largest and risky economic subjects;

Reorientation of inspection to significant financial violations and conduction of revisions based exclusively on the facts of financial violation risks.

Such approach allows abandoning of the system of total control over all subjects of economic activities due to the introduction of the risk-oriented system of state control.

On July 02 of 2015, the Supreme Council of Ukraine has adopted the new edition of the Law of Ukraine "On the Chamber of Accounts" that secures the functional and organizational independence of the Chamber of Accounts.

The norms of the Law envisage publication of the decisions of the Chamber of Accounts and results of control on the official website. If the object of control has not informed the Chamber of Accounts about results of review of its decision or if the Chamber of Accounts has not acknowledged as appropriate the measures planned and implemented by the object of control with regards to its decision, the Chamber of Accounts informs about that the relevant authorities, as well as the public through the mass media.

Presently, there is already a practice of publication of the decisions taken upon results of the completed control measures on the official site of the Chamber of Accounts ([www.ac-rada.gov.ua](http://www.ac-rada.gov.ua)).

In terms of the internal audit procedure, it should be noted that the organizational and legal foundations of the internal audit are defined by the Article 26 of the Budget Code of Ukraine, namely the duty to perform internal control by all administrators of the budget resources, as well as the responsibility of the head of institution on arrangement of internal control in its institution and subordinate institutions.

Procedure of creation and functioning of the internal audit divisions, functions and powers of

the officers of the internal audit divisions, requirements to the reporting on results of the activities of the internal audit divisions and their external evaluation have been defined by the resolution of the Cabinet of Ministers of Ukraine No. 1001 of September 28, 2011.

The internal audit standards approved by the order of the Ministry of Finance of Ukraine No. 1247 of October 04, 2011, define the unified approach of planning, organization and internal audit, documentation of its results, as well as preparation of audit reports, conclusions and recommendations, and internal evaluation of the internal audit quality.

Moral and ethical principles of professional activity of the internal audit officers and the rules of internal audit conduction have been stipulated by the Ethical Code of the Internal Audit Officers approved by the order of the Ministry of Finance of Ukraine No.1217 of September 29, 2011.

Moreover, the Methodological Recommendations on arrangement of internal control by the administrators of the budget resources in their respective institutions and subordinate state-funded institutions (the order of the Ministry of Finance of Ukraine No.995 of September 14, 2012) define the organizational platform for building the internal control, the essence of managerial responsibilities and reporting, the principles of internal control, managerial accounting and responsibility, as well as detailed description of the essence of internal control in accordance to which the internal control of the administrators of the budget funds should be performed.

At the same time, the principles of independence of the internal audit divisions, as well as the requirements to the quality of results of internal audit are regulated by all of the above mentioned legal and regulatory documents.

#### **Assessment of Progress - 16th Plenary**

No new developments regarding financial inspection or internal audit. New law on Audit Chamber is improving the independent status, according to the government's report. Limited progress.

#### **Recommendation 3.5.**

- ***Continue reforming the public procurement system, based on regular assessment of application of the new Law on Public Procurement, in particular with a view to maximise the coverage of the Public Procurement Law, minimise application of non-competitive procedures. At the same time ensure that any changes to the Public Procurement Law are subject to public consultations.***
- ***Establish e-procurement system covering all procurement procedures envisaged by the Public Procurement Law.***
- ***Ensure that entities participating in the public procurement process are required to implement internal anti-corruption programmes. Introduce mandatory anti-corruption statements in tender submissions.***
- ***Ensure that the debarment system is fully operational, in particular that legal entities or their officials who have been held liable for corruption offences or bid rigging are barred from participation in the public procurement.***
- ***Arrange regular trainings for private sector participants and procuring entities on integrity in public procurement at central and local level, and for law enforcement and state control organisations – on public procurement procedures and prevention of corruption.***
- ***Increase transparency of public procurement by ensuring publication and free access to information on specific procurements on Internet, including procurement contracts and results of procurement by publicly owned companies.***

**16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015**

***Measures taken to implement the recommendation***

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

The reform of public procurement in Ukraine is one of major objectives being addressed by the Ministry of Economic Development and Trade in the capacity of an Authorized Body on Public Procurement. The reform strategy was supported by the National Council of Reforms.

Key dimensions of public procurement reform include a gradual process of bringing Ukraine's public procurement system in compliance with the standards of the European Union in line with timelines set forth in an Agreement of Association with the EU and establishing a uniform system of e-procurement.

The Ministry of Economic Development and Trade developed a draft Law of Ukraine "On Amendments to Certain Laws of Ukraine in the Sphere of Public Procurement to Bring them into Compliance with International Standards and to Overcome Corruption" with the view of creating additional conditions in order to overcome corruption. On 15 September 2015, this Law was adopted by the Supreme Council of Ukraine in the second reading and in general.

The law adopted by the Supreme Council of Ukraine was drafted based on findings of monitoring the use of the public procurement system by the subjects in the area of public procurement.

Thus, consultations were held to discuss the results of the monitoring conducted by the Ministry of Economic Development and Trade (MEDT) with public organizations and international experts followed by recommendations on amendments to be introduced into the Law in the part of reducing corruption risks during procurement procedures, aligning the Law with international standards, simplifying access of businesses to participation in procurement as well as enhancing the rules that regulate procurement procedures, and optimizing functions of the Authorized Body and a central body of the executive power, which is fulfilling the government policy of treasury-based budget execution.

The aforementioned Law proposes strengthening the transparency of performing procurement procedures through lifting the ban on disclosing the content of submitted bids; familiarization with the document containing information about the price, and publication of the minutes on bid evaluation.

Before adoption, the Law of Ukraine was discussed with broad public and international experts.

Key accomplishments in the area of public procurement reform process include:

The launch of a pilot project aimed at introducing e-procurement with the view of developing a mechanism of putting e-procurement to practice, identifying its weaknesses and bottlenecks in cooperation with the public. Under the project, the customers may test this mechanism for acquisition of goods, the value of which is below thresholds specified in the Law of Ukraine «On Peculiarities of Procurement in Certain Spheres of Economic Activity». In order to formalize this process, the Ministry developed and the Cabinet of Ministers of Ukraine passed an Instruction No. 501-r "On the Implementation of a Pilot Project in the Sphere of Public Procurement Aiming at Introduction of E-procurement" dated 20 May 2015;

Ukrainian Cabinet of Ministers approved the Instruction No. 416-r "On Conducting an Experiment on Using Electronic Means during Procurement Negotiations" dated 31 March 2015 aimed at ensuring greater transparency during public procurements for the Ministry of Defense. Provisions of the instruction set forth the use of electronic means during bidder selection in case the Ministry of Defense decides to hold procurement negotiations.

Presently, MED&T has been working with international experts, representatives of the public and stakeholder authorities to prepare a draft Law of Ukraine on e-procurement, which will be submitted to the Supreme Council of Ukraine after public discussion.

In line with the provisions of the Law of Ukraine “On Public Procurement”, a procuring entity shall make a decision to reject a bidder or a participant in the pre-qualification procedure to take part in the procurement procedure or in the pre-qualification procedure, and must reject any bid (a qualification proposal, a price-quotation) of the bidder (participant in the pre-qualification procedure) in case there is information about the legal entity, which is a bidder or a participant in the pre-qualification procedure, is in the Single State Register of Persons who have committed corruptive or corruption-related violations, or in case the specified legal entity does not have an anticorruption program or an authorized anticorruption program officer when this is required by law.

Moreover, requirements for the anticorruption program are set forth in the Law of Ukraine “On Corruption Prevention”.

As for organization of trainings on procurement integrity for bidders from the private sector, it should be noted that MEDT has been organizing roundtables and workshops on using norms established by the legislation in the sphere of public procurement, for which recommendations and explanations based on international experience are provided regarding procurement procedures and publication of information on procurement.

Besides, currently as per the Law “On Public Procurement”, all the information about public procurement procedures beginning with annual plan of public procurement down to the report on fulfilling a contract shall be subject to publication on the website on public procurement ([tender.me.gov.ua](http://tender.me.gov.ua)) (including information about an accepted bid, selected successful bidder, conditions of concluding a procurement contract, a subcontractor, and etc.).

To ensure transparency of procurement by state-owned economic agents without application of procedures set forth in the Law, such entities shall publish reports, on MEDT’s web portal, about conclusion of the contracts on procurement of goods, works and services for the funds of enterprises and information about substantial changes in the contract clauses (provisions in part one of Article 75, part two of Article 77, part nine of Article 78, and part five of Article 79 of the Economic Code of Ukraine).

At the same time, the above-mentioned Law of Ukraine adopted on 15 September 2015 provides for the requirement to publish minutes of bid evaluation. Therefore, after the introduction of the e-procurement system, it is expected that all information on public procurement, including bids, will be published for public access.

#### ***Assessment of Progress - 16th Plenary***

A debarment system has been established. Publication of procurement information has been improved. "ProZorro" e-procurement system has been established and has got broad application, despite being a pilot of the nation-wide system, to be launched in future. This is a good progress in a right direction, which should provide a solid basis for implementation of the ACN recommendations. It is expected that future development of the procurement system and the associated e-procurement would be carried out in line with the Association agreement. The sustainability of the e-procurement system needs to be ensured, as reportedly it is still had to be supported by NGOs. Training of procurement professionals shall be one of the key priorities in the near future. Internal anti-corruption programmes, especially in public entities, still need to be provided. Progress.

#### **Recommendation 3.6.**

- ***Set up or designate an independent authority to supervise enforcement of the access to public information regulations by receiving appeals, conducting administrative***

*investigations and issuing binding decisions, monitoring the enforcement and collecting relevant statistics and reports. Provide such authority with necessary powers and resources for effective functioning.*

- *Reach compliance with the EITI Standards and cover in the EITI reports all material oil, gas and mining industries. Adopt legislation on transparency of extractive industries.*
- *Implement the law on openness of public funds, including provisions on on-line access to information on Treasury transactions.*
- *Ensure in practice unhindered public access to urban planning documentation.*
- *Adopt the law on publication of information in machine-readable open formats (open data) and ensure publication in such format of information of public interest (in particular, on public procurement, budgetary expenditures, asset declarations of public officials, state company register, normative legal acts).*
- *Ensure effective implementation and continuation of the Open Government Partnership's Action Plan.*

#### **16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015**

##### ***Measures taken to implement the recommendation***

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

Currently, the surveillance over the access to public information is carried out by the Ukrainian Parliament Commissioner for Human Rights.

Implementation of a person's right to access the information of public importance as well as transparency of the activities of state authorities and local self-government bodies is provided through the introduction of mechanism of public information by publishing it in open data format.

On 09 April, 2015 the Supreme Council of Ukraine adopted the Law "On Amendments to Some Legislative Acts of Ukraine Related to the Access to Public Information in Open Data Format". The Public Experts took participation in the Law drafting.

Pursuant to this Law, the amendments had been made to the Law of Ukraine "On the Access to Public Information" and other Laws of Ukraine, in particular, the definition of "public information in open data format", the responsibilities of the holders of information for dissemination of such information, as well as the priority list of information (data) to be published in open data format were set.

In addition, the State Committee for Television and Radio Broadcasting of Ukraine proposed the draft Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine Related to the Implementation of the Government Control Over Ensuring the Access to Public Information by the Holders of Information". This draft Law was published on the official website of the above Committee for public debates.

In the meantime, the group of the members of Parliament of Ukraine proposed for consideration of the Supreme Council of Ukraine the draft Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine in the Sphere of Public Information on Improvement of Specific Provisions thereof" (registered No. 2913 dated 20 May, 2015). The Ukrainian Parliament Commissioner for Human Rights was proposed as the Surveillance body (Authorized body) in the sphere of the access to public information, through giving more relevant powers to him.

It should be noted that on 24 September, 2015 the State Agency for E-Government of Ukraine in cooperation with UNDP Office in Ukraine discussed the intermediary results of open data readiness assessment of Ukraine (Open Data Readiness Assessment, ODRA).

In terms of adherence of the national legislation of Ukraine to the standards of the Extractive

Industries Transparency Initiative (hereinafter referred to as EITI) we report that the Ministry of Energy and Coal Industry of Ukraine prepared the Terms of Reference for Independent Administrator, and the template for reporting and the guidance for filling in the reports had been approved.

On 08 April, 2015 the Cabinet of Ministers of Ukraine approved the following implementation plans:

The Directive 2013/34/EU of the European Parliament and the Council of the European Union on annual financial statements, consolidated financial statements and associated statements of specific types of enterprises;

The Directive 2006/43/EU of the European Parliament and the Council of the European Union on the statutory audit of annual and consolidated financial statements.

On 16 June, 2015 the Supreme Council of Ukraine adopted the Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine Related to Ensuring the Transparency in the Extractive Industries". The members of multi-stakeholders group for the implementation of the Extractive Industries Transparency Initiative in Ukraine and the experts engaged in the establishment of EITI standards in Ukraine (Extractive Industries Transparency Initiative) took participation in the drafting of this Law.

Additionally, a number of advocacy activities has been carried out involving the public to discuss the above-mentioned issues, in particular:

On 24 February, 2015 the Public Debates about prospects of establishment of the international EITI standards took place in Poltava;

On 26 March, 2015 the Roundtable on "EITI: Public, Business and Government. Cooperation for the Purpose of Transparency and Investments" was held, and issues related to the statements of Ukrainian extractive companies in accordance with EITI standards were discussed;

On 27–29 April, 2015 the Seminar "Civil Society of Ukraine and Eurasia Region Implementing the EITI: General Issues and General Approaches" was held.

On 20 May, 2015 the Roundtable on "Regional Dimension of Transparent and Accountable Policy of the Government in Extractive Industry. What does the EITI mean for Ukraine and Ukrainian Regions?" was held in Lviv;

On 15–19 June, 2015 the Workshop on communications for regional representatives as part of implementation of communication strategy of the EITI for Ukraine was held.

Further, it is planned to continue implementation of activities aimed to achieving by Ukraine of the status of meeting the EITI standards, in particular, approval of the procedure of ensuring the transparency in extractive industries, by providing transition of subsoil users to accountability in line with the international standards for statements.

On 11 September, 2015 the Law of Ukraine dated 11 February, 2015, registered No. 183 "On Openness of Use of Public Funds" came into force. This Law provided terms and conditions of ensuring the access to information about use of public funds by the holders and recipients of state and local budget funds, and by business entities of state-owned and municipal property, including information about contracts concluded during the reporting period.

Information about the contracts should include: the subject of the contract, data about the contractor (name, identification code of the legal entity, and its location), total amount of the contract, price per unit (if available), the quantity of procured goods, works and/or services, the implemented procurement procedure or grounds for lack of this procedure with the reference to the relevant Law, amount of payments under the contract during the reporting period, and validity of the contract. The above-mentioned data is subject to publishing on the unified web portal for providing information on use of public funds, which is open for public and free to access.

On 26 June, 2015 the Decree of the Cabinet of Ministers of Ukraine, registered No. 655 "Some Issues Related to Administering of the Unified Web Portal for Providing Information on Use of Public Funds" was adopted; according to this Decree, the Ministry of Finance of Ukraine was

authorized to administer the above-mentioned web portal.

The Ministry of Finances and State Treasury take comprehensive measures to launch the unified web portal within the time frames set by the Law of Ukraine "On Openness of Use of Public Funds". Activities for ensuring the launch of web portal are on-going (publishing of payment transactions in the unified Treasury account).

The Ministry of Finance drafted the acts of the Cabinet of Ministers of Ukraine:

Draft of the Decree "On Approval of the Procedures for Administering the Unified Web Portal for Providing Information on Use of Public Funds" (submitted for re-concurrence due to the change of Head of the State Service of Special Communications and Information Protection);

Draft of the Decree "On Approval of the Procedures for Publishing of Information about Payment Transactions in the Unified Treasury Account on the Unified Web Portal for Providing Information on Use of Public Funds" (submitted for concurrence with the relevant executive authorities);

Draft of the Decree "Some Issues Related to Launch and Maintenance of the Unified Web Portal for Providing Information on Use of Public Funds" to identify the contractor for implementation of works related to launch and maintenance of the unified web portal for providing information on use of public funds (submitted for concurrence with the relevant executive authorities).

In addition, pursuant to the Decree of the Cabinet of Ministers of Ukraine dated 03 August, 2015, registered No. 543, the funds were allocated to the Ministry of Finance in the amount of UAH 25 million for the purpose of development including establishment of the unified web portal for providing information on use of public funds.

The website "The Price of the State" (<http://costua.com>) was launched, and it is operational now.

At the same time, the Ministry for Regional Development, Construction, and Housing Economy of Ukraine in cooperation with subordinate institutions established regional operations in terms of providing the access of public to town planning documentation (general plans of cities, detailed plans of the territories).

In particular, the temporary methodical recommendations on the composition and content of town planning documentation at local level were drafted in cooperation with the leading scientific-research institutes; the access to this documentation can be granted in full in accordance with the Laws of Ukraine "On Information" and "On the Access to Public Information" .

Besides, the Ministry for Regional Development, Construction, and Housing Economy of Ukraine is discussing the issue now on amendments to the Articles 17, 18, 19 of the Law of Ukraine "On Regulation of the Town Planning Activity", which will solve the issues of differentiation between materials, which are open for public access, and materials with limited access composing the general plans of settlements, zoning plans, and detailed plans of territories.

The continuous monitoring of achieving the goals to ensure the access to general plans in regions is being implemented. Thus, the regions reported that the access has been provided to 1,801 web resources of various town planning documentation. In total, through publishing in local periodical press in public places of the government administrative offices and on the websites of local self-government bodies, the access is provided to 3,682 separate town planning documents.

Activities on follow-up and monitoring of ensuring the access to the town planning documentation continue.

During the reporting period the activities were pursued to ensure effective implementation of the Action Plan within the framework of "Open Government Data" Initiative for 2014-2015.

Besides, on 25 September, 2015 the enlarged session of Coordinating Council for implementation of this Initiative in Ukraine was held; the Interim Report on the Action Plan implementation, which started with launching of "Open Government Data" Initiative, was approved

in this session. The draft of this Report was published on the Government web portal for public debates.

***Assessment of Progress - 16th Plenary***

***Law on open data was adopted in April 2015. The preparation of the secondary legislation for this law is underway. Significant progress in implementing access to data on public finances. A group of MPs has prepared amendments to the Law on Access to information. Progress.***

### Recommendation 3.7.

- ***Adopt, without further delay, comprehensive reform of the political party and election campaign financing in line with Council of Europe standards, in particular by establishing restrictions on contributions and membership fee, ensuring transparency of party finances and electoral expenses through regular reporting and disclosure of detailed information on party and electoral campaign accounts, providing effective sanctions and establishing supervision mechanism with adequate powers and resources.***
- ***To ensure balance between private and public funding, re-introduce direct state financing of political parties according to the results of the parliamentary elections in line with best European practice.***
- ***Reinforce rules on integrity and corruption prevention for officials holding political offices, in particular by establishing special regulations and enforcement mechanism for conflict of interests for the parliament and Government members.***

#### 16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015

##### ***Measures taken to implement the recommendation***

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

On 16 July 2015, the Supreme Council of Ukraine adopted a draft Law of Ukraine at the first reading “On Making Amendments to Certain Legal Acts of Ukraine Regarding Prevention and Counteraction against Political Corruption” (Reg. No. 2123-a on 19 June 2015).

The draft law was developed with the view of reducing political corruption during the process elections and a referendum through making comprehensive amendments to the legislation of Ukraine in the area of financing political parties and pre-election campaigns.

The draft law provides for amendments to the Laws of Ukraine “On the Accounting Chamber”, “On Election of the President of Ukraine”, “On Political Parties in Ukraine”, “On Election of People’s Deputies of Ukraine”, “On Corruption Prevention”, the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine.

The draft law provides for:

harmonization of provisions in the Laws on Ukraine “On Election of the President of Ukraine” and “On Election of People’s Deputies of Ukraine” in the part concerning funding for election campaigns;

introduction of direct state funding for political parties beginning on 1 January 2017;

formalizing a clear definition of a concept of a “contribution for the benefit of a party”;

setting limits in making contributions for the benefit of parties (a list of persons who may not make these contributions and maximum amounts of contributions from a legal and natural persons);

setting requirements to the content, procedure for submission and publishing reports of political parties on their assets, incomes, expenses and financial obligations.

A report of a party on assets, incomes, expenses and financial obligations shall contain information about:

a party’s assets;

a date of each contribution made for the benefit of the party and into the electoral fund;

amount of funds received from the State Budget (for funding statutory activities and on reimbursement of expenses related to funding a pre-election campaign);

a date of making each payment from accounts of a party, accounts of the electoral fund of a party, a candidate of a party for relevant nationwide or local elections, recipients of relevant payments, intended use and amount of each payment;

a date of creation and cancellation as well as the amount (value) of each financial obligation

of a party and a person, for the favor of whom this financial obligation is to be fulfilled.

The report shall be submitted to the controlling agencies in the sphere of funding political parties on a quarterly basis, in a paper-based format and electronically, and published in full on an official website of a party.

In addition, the draft law sets forth a liability for violation of the funding procedure for political parties.

Furthermore, the draft law defines controlling agencies in the sphere of funding political parties:

– the Accounting Chamber (to ensure lawful and intended use of funds allocated from the State Budget of Ukraine on funding parties' statutory activities)

– National Agency for Corruption Prevention (to ensure compliance with legally established limits for funding political parties, financial reporting procedures, and reliability of information provided therein).

On 16 July 2015, the Supreme Council of Ukraine also adopted, at the first reading, the draft Law of Ukraine "On Making Amendments to Article 87 of the Budget Code of Ukraine" (Reg. No. 2138a) with the view of creating prerequisites for the introduction of state funding for political parties.

It should be noted that with regard to the development of special rules and an enforcement mechanism for cases of conflicts of interest of members of parliament and government, an appropriate mechanism is provided in the Law of Ukraine "On Corruption Prevention". In particular, this Law amended the Law of Ukraine "On the Cabinet of Ministers of Ukraine" and the Regulations of the Supreme Council of Ukraine as well as the procedure for actions of relevant persons in the event when a conflict of interest emerges during the exercise of their powers as well as for resolution of such conflict.

#### ***Assessment of Progress - 16th Plenary***

***On 8 Oct 2015 (yesterday), the parliament has adopted law that will completely change the regulation for political party financing that addresses all elements of the recommendation. Progress.***

### Recommendation 3.8.

- ***Adopt, without further delay, a constitutional reform to bring provisions on the judiciary in line with European standards and recommendations of the Venice Commission, in particular with regard to appointment and dismissal of judges, their life tenure, composition of the High Council of Justice.***
- ***Introduce comprehensive changes in the legislation on the judiciary and status of judges, procedural legislation in particular to revise provisions on the system of judicial self-governance, disciplinary proceedings, dismissal and recusal of judges to guarantee their impartiality and protection of judicial independence.***
- ***Ensure sufficient and transparent funding of the judiciary and remuneration of judges that is commensurate to their role and reduces corruption risks.***
- ***Make public on Internet all court decisions, including interim ones.***
- ***Review system of automated distribution of cases among judges to remove loopholes that allow manipulating the system and ensure that results of automated distribution are public and included in the case-file. Introduce ICT tools in the judicial procedures and court functioning (e.g. electronic filing of lawsuits and other legal documents).***

### 16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015

#### ***Measures taken to implement the recommendation***

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

Pursuant to Presidential Edict of Ukraine No. 119 dated 3 March 2015, a Constitutional Commission was established with the view of developing coordinated proposals on amendments to the Constitution of Ukraine involving representatives of various political forces, the public, domestic and international experts.

The Commission developed a draft Law of Ukraine "On Making Amendments to the Constitution of Ukraine", which was submitted for the consideration of the Venetian Commission.

The draft law proposes to establish that the President of Ukraine shall appoint judges upon recommendation of the Supreme Council of Justice in line with the legally established procedure. Thus, a professional judge shall be appointed to a position for an indefinite term.

The intermediate opinion of the Venetian Commission dated 24 July 2015 found the proposed amendments as positive and deserving support in general. In particular, the Venetian Commission approved:

- a repeal of powers of the Supreme Council of Ukraine to appoint judges;
- a cancellation of a trial period for newly appointed judges;
- an exclusion of "a break of oath" from the grounds for dismissing judges from their position;
- a reform of public prosecution office, strengthening guarantees for its independence (particularly, a revocation of powers of the Supreme Council of Ukraine to express distrust towards the General Prosecutor) and exclusion of non-prosecutorial supervisory powers.

At the same time, the Venetian Commission has made two comments on the aforementioned draft Law regarding:

- a revocation of powers of the President of Ukraine to dismiss judges from their position; and
- granting the Supreme Council of Ukraine powers to elect members of the Supreme Council of Justice.

It should be pointed out that on 4 September 2015, the Constitutional Commission approved draft amendments to the Constitution regarding justice.

Moreover, the above-mentioned session of the Constitutional Commission considered an alternative draft of amendments to the Constitution regarding judicial reform, which was developed

by experts the civic initiative “Reanimation Package of Reforms”.

According to outcome of considering developed amendments to the Constitution, the Constitutional Commission made a decision to submit both draft laws to the Venetian Commission in order to receive opinions on them.

It is noteworthy that Presidential Edict No. 276 dated 20 May 2015 adopted a Strategy on the Reform of Judicial Organization, Court Proceedings, and Adjacent Legal Institutes for 2015-2020.

The purpose of the Strategy is to identify priorities in reforming judicial organization, court proceedings and adjacent legal institutes for practical implementation of the rule of law principle and ensure functioning of the judicial power in line with expectations of the public regarding independent and fair court trial as well as in line with European values and standards of respect for human rights.

On 19 August 2015, the Cabinet of Ministers of Ukraine adopted Instruction No. 864 “On Identifying an Implementation Mechanism for the Action Plan to Fulfil Provisions of the Strategy on the Reform of Judicial Organization, Court Proceedings, and Adjacent Legal Institutes”. According to the provisions of this act, the Council on Judicial Reform is recommended to identify institutional coordinators to carry out specific activities within the relevant Action Plan for 2015-2020.

The institutional coordinators shall, within two months from the day of being identified as such coordinators, adopt new annual work plans for 2016 with relevant financial feasibility study, submit the work plans to the Council on Judicial Reforms, and begin their implementation.

It should also be pointed out that Presidential Edict of Ukraine No. 501 dated 25 August 2015 approved a National Human Rights Strategy (hereinafter referred to as Strategy) aiming at ensuring priority of human rights and freedoms and creating an effective mechanism for their enforcement and protection in Ukraine.

The Strategy, inter alia, provides for an important dimension such as ensuring a right to fair trial.

Expected outcomes in achieving this strategic goal in this direction include the following in particular:

- depoliticization of the processes of forming the judiciary and bringing judges to responsibility and bringing these processes into compliance with international standards;

- ensuring independence, impartiality, efficiency and institutional capacity of the judicial system;

- increasing the transparency of the work of judges and level of their responsibility;

- elimination of deficiencies in the procedural law and ensuring effective judicial proceedings within a reasonable time and consistent jurisprudence;

- improving the system of judicial self-government; and

- ensuring distribution of cases among judges only via an independent automated system.

It should be noted that under this Decree of the President of Ukraine the Cabinet of Ministers of Ukraine was assigned to develop and approve the Action Plan on Strategy 2020 Implementation.

In this regard, nowadays work is being carried out to develop the Action Plan on Strategy Implementation involving state authority bodies and representatives of social institutions.

The Law of Ukraine “On Ensuring the Right for Fair Trial” (hereinafter ‘the Law №192-VIII’) was adopted on February 12, 2015.

The redrafted the Law of Ukraine “On the Judiciary and the Status of Judges” and introduced comprehensive amendments to the Law of Ukraine “On the High Council for Justice”, the Code of Ukraine on Administrative Offenses, the Economic Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Criminal Procedure of Ukraine, and to the Code of Administrative Legal Proceedings of Ukraine. These changes are aimed at raising the judiciary and court proceedings standards as well as at ensuring the right for a fair trial.

Comprehensive reforming of the legislation on judiciary and status of judges has positive aspects. The positive thing about it is that all court decisions and dissenting opinions of the judges are to be uploaded to the Unified State Register not later than on the next day following their approval or execution of the complete text and extending grounds for disciplinary liability of judges of courts of general jurisdiction.

Besides that, the Law №192-VIII envisages additional guarantees for participants of court proceedings, namely: all information about a court hearing the case, stages of consideration, time and venue of court session becomes open; the right for any person to be present at and to do photo/video recording during a court session. The law also provides that the career of a judge depends exclusively on his/her personal professional and moral properties, i.e. it provides transparent and public appointing order of judges to any positions based exclusively on contest.

Mentioned law also specifies principles of transparency and openness of court proceedings. In particular, Information about a court hearing the case, the parties to the dispute and the essence of the claim, the date of receipt of the statement of claim, or a statement of appeal, cassation complaint, application for review of court decision, the current status of the proceedings, venue, date and time of the court session shall be open and subject to immediate publication at the official website of the judiciary in Ukraine (except in cases stipulated by law).

The Law №192-VIII provides new approaches to evaluation of judges as well. Several types of evaluations have been introduced:

- qualification evaluation – for confirmation of the judge’s ability to administer justice in relevant court;
- regulatory evaluation – for identification of the judge's individual needs in improvement and incentives for professional growth, performed by the National School of Judges during training of the judge to maintain his/her qualification;
- primary and repetitive qualification evaluation of judges – for making decision on capability of judges to administer justice in relevant court.

The following should be noted with respect to recommendations on ensuring an appropriate funding of judicial bodies and establishing a proper remuneration of judges that corresponds to duties they perform in order to reduce the risk of corruption.

In accordance with provisions of Article 22 of the Constitution of Ukraine and Article 48 of the Law of Ukraine “On the Judiciary and the Status of Judges”, the content and scope of existing rights and freedoms of independent judges shall not be diminished in the adoption of new laws or in the amendment of laws that are in force. Such guarantees as necessary conditions for administering justice by impartial and fair trial must be ensured in reality. For this reason, decrease of level of independence of judges in the adoption of new law or in the amendment of laws that are in force is not permitted (Decision of the Constitutional Court of Ukraine №19-pn/2004 dated 01.12.2004).

Considering mentioned requirements, in adopting the Law of Ukraine “On the Judiciary and the Status of Judges” in 2010, international standards on judges’ independence were taken account of and levels of judicial remuneration were specified in the law based on staged increase up to 15 minimal salaries. In addition, possibilities of readjustment of official salary of judge, paying him/her award fees, establishing bonuses for work intensity and performing tasks of especial importance as well as of making any other payments was recalled. That said, it was specified that judicial

remuneration should consist of the fixed official salary and bonus payments (for length of service record, holding an administrative position in a court, scientific degree, and for work involving access to state secrets) which could not be impacted by any subjective factors. Therefore, their independence and insuring them from illegal financial influence of any individuals, including functionaries and officials, were secured. Such legislative approach should be a guarantee for judge's remuneration stability and, hence, serve as a strong factor in minimizing corruption in bodies of judicial authority.

However, the latest trends in development of legislative regulations of public legal relationships in Ukraine during 2014-2015 show that mentioned provisions and guarantees not only failed to be followed, but were also cancelled.

For example, adoption of the Law of Ukraine "On Amending Several Legislative Acts of Ukraine on Pension Benefits" on 12.02.2015 led to amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" with regard to identifying conditions and ground for cancellation of special types of pensions, including that of retired judges.

Additionally, before the Law №192-VIII was adopted, Paragraph 3 of Article 129 of the Law of Ukraine "On the Judiciary and the Status of Judges" had provided that official salary of judge of a local court was fixed at 15 minimal salaries. Nonetheless, as of today, judicial remuneration (Paragraph 3 of Article 133 of the Law) provides that official salary of judge of a local court is fixed at 10 minimal salaries.

Today, the Constitutional Court of Ukraine is considering a constitutional representation submitted by the Supreme Court of Ukraine with respect to compliance (constitutionality) of some provisions of Article 141 of the Law of Ukraine "On the Judiciary and the Status of Judges" as amended by the Law №192-VIII with the norms of the Law of Ukraine "On Amending Several Legislative Acts of Ukraine on Pension Benefits" №213-VIII dated 02.03.2015.

With respect to ensuring that all court decisions, including interim decisions, are published in the Internet, it should be noted that issues on access to court decisions for ensuring openness of courts function, predictability of court decisions, and on assistance in identical application of legislation are determined in the Law of Ukraine "On access to court decisions". According to provisions of the Law, all court decisions are open and are subject to electronic publication not later than on the next day following completion and sign-off. Access to decisions of courts of general jurisdiction is secured through the Unified State Register, the computerized system on collection, storage, protection, records, search, and presentation of electronic copies of court decisions. Court decisions registered with the system are open for free round-the-clock access at the official website of the judiciary authority of Ukraine (<http://reyestr.court.gov.ua>).

The Law №192-VIII significantly changed legislative prescriptions on filling the Unified State Register of court decisions by setting requirements on inclusion of all decisions of courts of general jurisdictions into the Register as well as dissenting opinions of the judges executed in writing.

Court decisions may also be published in printing.

With respect to improving computerized system of tasks allocation between judges and to introduction of informational and communicational technologies into court proceedings and work of judges, it should be noted that 'electronic justice' has already been partially introduced as well as has been successfully operating in courts of Ukraine (paying court fees via payment terminals,

sharing final court decision via email, sending summons and messages using sms-messaging).

In the context of adopting of the Law of Ukraine №192-VIII, revised version of the Regulation on Computerized Judicial Documents Control System has been approved by the Decision of the Council of Judges of Ukraine №25 dated 02.04.2015. Subsequently, by the Decision of the Council №79 dated 22.07.2015, amendments, which were aimed at ensuring the transparency of computerized judicial documents control system of courts of general jurisdiction and the publicity of information on computerized allocation of court cases, have been introduced to the Regulation.

As per information from State Judicial Administration of Ukraine released on its website (<http://court.gov.ua>), daily automatic publication of reports on computerized allocation of court cases has been launched as of September 1, 2015 at 'Information on Consideration Stages of Court Cases' section of the website of State Judicial Administration of Ukraine.

Complete detailed information on results of computerized allocation of court cases is attached to court case file. After such information is recorded, making adjustments hereafter to the computerized system is impossible, since access for editing respective protocol and report gets blocked by the computerized system, and this makes it impossible to manipulate the system.

Introduced innovations allow making the information about results on computerized allocation of court cases and about consideration stages of court cases open and available for participants of court proceedings.

Through its Decision №10 dated 15.06.2015 the Council of Judges of the Supreme Court of Ukraine approved the Fundamentals of Performance of Computerized Documents Control System of the Supreme Court of Ukraine that outline legal grounds for computerized allocation of applications for review of court decisions between judges in the Supreme Court of Ukraine, motions and other procedural documents received by courts for consideration.

On September 22, 2015, within the framework of 'Fair, Independent, and Responsible Judicial Power of Ukraine' Project, such pilot projects as 'Electronic Court' and 'Informational and Payment Terminal', which are called to continue introduction of advanced comfort for citizens in using court services, unload court staff, and significantly save budget funds, will be presented.

#### ***Assessment of Progress - 16th Plenary***

***All elements of the recommendation – apart from remuneration of judges – were worked on. Constitutional commission has prepared amendments to the Constitution on judiciary reform. The process was not transparent though, needs to be improved. Progress.***

#### **Recommendation 3.9.**

- ***Rigorously implement provisions of section 6 of the 2014 Anti-Corruption Strategy on the prevention of corruption in the private sector.***
- ***Ensure business participation in the development of the Action Plan for the Anti-Corruption Strategy and its implementation and monitoring.***
- ***Pursue further simplification of business regulations to reduce opportunities for corruption and eliminate corruption schemes affecting business.***

- *Consider introducing regulations for lobbying, in particular clear regulations for business participation in the development and adoption of laws and regulatory acts.*
- *Ensure that the business has a possibility to report corruption cases without fear of prosecution or other unfavourable consequences.*

**16<sup>TH</sup> ACN Istanbul Action Plan Monitoring Meeting, 7-9 October, 2015**

***Measures taken to implement the recommendation***

*(Brief summary of measures taken to implement recommendation provided by the National Coordinator)*

The 'Preventing Corruption in Private Sector' subsection of the 'Preventing Corruption' section II of the Programme envisages execution of tasks aimed at implementation of provisions of the Anti-Corruption Strategy for 2014-2017 that apply, in particular, to decency in doing business. Among other things, the Programme envisages the need to approve a sample anti-corruption programme for legal body and methodical recommendations on preventing corruption in private sector as well as to create special programmes focused on securing entrepreneurs the access to necessary information. The National Agency for Prevention of Corruption is assigned as the main executor of mentioned objectives, though the Agency is yet to be established as of today, while overwhelming majority of execution deadlines have been set for 2016.

It is worth noting that establishment of joint working group, which is to be composed of representatives of Agency and business in order to cooperate, is prescribed to implement a portion of tasks.

The Programme assigns the Ministry for Justice of Ukraine and the National Agency for Prevention of Corruption to conduct, in December 2016, an analysis on lobbying practices in legislation of foreign states as well as to draft, prior to August 2017, a law on regulation of lobbying procedures and develop mechanisms for control and responsibility.

At the same time, on 03.06.2015, during its meeting the Committee of the Supreme Court of Ukraine for Preventing and Fight Against Corruption made a decision to form a working group to draft the Law of Ukraine "On Lobbying", which is being done nowadays.

One of the missions of the Business Ombudsman Council established in Ukraine to assist in preventing corruption and other offences committed by state authority bodies against legitimate interests of entrepreneurs is to collect and consider complaints brought by such entrepreneurs against actions or inactions of state authority bodies and local administrative bodies as well as officials working there.

As of today, filing complaints online via the Business Ombudsman Council website (<https://boi.org.ua>) is envisaged among other things.

On July 2, 2015, the State Regulatory Service of Ukraine and the Business Ombudsman Council signed a Partnership and Cooperation Memorandum to cooperate in providing state authority bodies and local administrative bodies with recommendations on implementation of state policies on deregulation of economic activity in order to simplify of regulatory basis, advance and improve conditions for conducting business activities.

***Assessment of Progress - 16th Plenary***

The implementation of the business integrity measures provided by the Strategy are delayed because the prevention body is not operational yet. There are some actions to develop regulation on lobbying, but they are at very early planning stages. The Business Ombudsman institution started

its operations, and has already reviewed an impressive number of business complaints, which indicates that they enjoy trust of the private sector. Progress.

## PART II: OTHER MAJOR ANTI-CORRUPTION DEVELOPMENTS

*(Brief summary of any other major developments provided by the National Coordinator)*

1. **Traffic police reform**, notes from the presentation by Mrs. Zguladze and Mr. Smith will be provided under the Summary Record of the ACN Steering Group meeting on 9 October 2015 (forthcoming);
2. **Anti-Corruption Conference, 16 November 2015**, more information is available <http://conference.reforms.in.ua/en/front>.