



**Anti-Corruption Network
for Eastern Europe and Central Asia**

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**Istanbul Anti-Corruption Action Plan for
Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic,
the Russian Federation, Tajikistan and Ukraine**

Ukraine

UPDATE ON ACTIONS TO IMPLEMENT RECOMMENDATIONS

June 2006

This update is prepared by the Government of Ukraine for the 5th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan, 12-13 June 2006.

Action Required: delegates are invited to discuss this update

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D) NATIONAL ANTI-CORRUPTION POLICY AND INSTITUTIONS

1. On the basis of the analysis of the implementation of “the Anti-corruption Concept for 1998-2005” update the national anti-corruption strategy, which will take into account the extent of corruption in the society and its patterns in specific institutions, such as the police, judiciary, public procurement, tax and custom services, the education and health systems. The strategy should focus at the implementation of priority pilot projects with preventive and repressive aspects in selected public institutions with a high risk of corruption, including the elaboration of anti-corruption action plans. The strategy should envisage effective monitoring and reporting mechanisms.

National implementation actions:

A Draft Concept for overcoming corruption in Ukraine “On the Way to Integrity” has been prepared for purposes of implementing the Action Programme of the Ukrainian Cabinet of Ministers “Towards People.”

The purpose of this strategic document is the identification of the main lines of activity of the public authorities and the civil society with the goal of reducing the negative impact of corruption.

The Draft Concept envisages measures aimed at preventing and countering corruption in the public and private sectors, which should be implemented in the nearest future.

Following the implementation of the said measures, the development of another long-term anti-corruption strategy is planned, which will determine the ways of implementing the state anti-corruption policy in the subsequent period.

The Interdepartmental Commission of the Ukrainian Council for National Security and Defence at its session on 27 February 2006 devoted to matters of comprehensive solution of problems in the anti-corruption sphere has considered three draft strategies (of the Justice Ministry, the Supreme Rada Committee and the Security Service of Ukraine). The Commission took a decision to complete the Draft Concept prepared by the Justice Ministry and submit it to the Cabinet of Ministers before 15 March 2006. A proposal was made to the President of Ukraine to submit the Draft Concept for consideration of the Council for National Security and Defence.

At present the Cabinet of Ministers is carrying out procedures for submission of the Draft to the President of Ukraine; specifically, the Draft has undergone hearings and was approved by the committee of the Ukrainian Cabinet of Ministers on 18 May 2006.

Therefore, the adoption of the Draft Concept will create conditions for lowering corruption in the state and preparing a new anti-corruption strategy.

2. On a conceptual level, more attention should be devoted to the prevention of corruption and to identifying and eliminating systemic regulative or organisational gaps that create corruption-prone environments. Preventive actions should not only focus on codes of ethics and similar preventive devices, but also reforming regulatory frameworks to reduce discretionary powers of civil servants, ‘open government’ measures such as increased transparency of decision-making procedures, access to information and public participation.

National implementation actions:

The Justice Ministry has prepared a Draft Law of Ukraine on Criminological Expertise of Draft

Laws and Regulations. This Law identifies the legal and organisational frameworks of activity connected with the conducting of criminological expertise of draft laws and regulations, preparation and use of its conclusions in the legislative process.

Specifically, article 10 of the Draft Law stipulates that criminological expertise can be initial, repeated, additional and supervisory, and is to be conducted by a group of experts formed by an expert criminological institution. At present, the Draft Law is being considered by the Ukrainian Supreme Council, and on resolution of the Ukrainian Supreme Council of 13 March 2006, it was accepted as the basis.

For purposes of exercising citizens' constitutional right to information, promoting democracy and public trust towards the state authorities, enhancing the validity of their decisions, ensuring better accounting during public decision-making, the Justice Ministry has developed a draft law of Ukraine on the openness and transparency of the activity of the executive authorities and bodies of local self-government.

The draft law envisages obliging the state authorities and bodies of local self-government to make public the information on their activity, methods and timeframes of such disclosure, as well as the procedures for these bodies' actions aimed at creating conditions for providing access to information on these bodies and their activity. The scope of information subject to obligatory disclosure by executive authorities and bodies of local self-government has also been identified.

The creation of a public information-consultative centre envisaged by the draft law is a novelty in the Ukrainian legislation. The main objectives of this centre will be the gathering, systemisation, storage, and provision of information, as well as granting assistance, consultations, and explanations to the public.

Presently, the draft law on the openness and transparency of the activity of the executive authorities and bodies of local self-government is being revised by the Justice Ministry for the purpose of eliminating the last drawbacks. After its completion, the draft law will be put up for public discussion and only after that be submitted for consideration of the Cabinet of Ministers of Ukraine.

In addition the Justice Ministry has set up a working group for the development of a draft concept of interaction between the state and the civil society. This working group includes both representatives of the Ministry and of public organisations.

The draft concept was developed in pursuance of item 10 of the Ukraine-EC Action Plan, approved by instruction of the Cabinet of Ministers of Ukraine No.117 of 22 April 2005 on Approval of Measures for the Implementation of the Ukraine-EC Action Plan in 2005. The adoption of this draft is connected with the need to establish relationships between bodies of state authority and the civil society, eliminate barriers to development of the civil society in Ukraine, create conditions for the development of this institution of a democratic state, strengthen guarantees of discharging citizens' constitutional right to participate in the administration of public affairs, and the institution of democracy in Ukraine.

3. Strengthen the Anti-corruption Coordination Committee by ensuring high moral and ethical standards of its members, who should include representatives of relevant executive bodies (administrative, financial, law enforcement, prosecution), as well as from the Parliament and Civil Society (e.g. NGOs, academia, respected professionals etc.). Strengthen the independent status of the Committee, ensure a more appropriate frequency of the Committee's meetings (currently it meets twice a year), strengthen its staff to carry out analytical tasks, and ensure sufficient resources. Upgrade statistical monitoring and reporting of corruption and corruption-related offences in all spheres of the Civil Service, the Police,

the Public Prosecutor's Offices, and the Courts, which would enable comparisons among institutions – by introducing strict reporting mechanisms on the basis of a harmonised methodology to the Committee. Encourage stronger links, cooperation and exchange of information between the Committee and the Parliamentary Committee.

National implementation actions:

The decision of the Ukrainian Council for National Security and Defence of 25 November 2005, enforced by the Ukrainian Presidential Decree of 28 December 2005, has set up an Interdepartmental Commission at the Council for comprehensive solution of problems in the anti-corruption sphere.

The main tasks of the Commission include: analysis of activity of the public authorities in the sphere of fighting corruption; preparing proposals on priority areas of the state policy in the anti-corruption sphere, considering international standards; development of measures for the coordination of activity of the state authorities in the fight against corruption.

The Commission includes heads of law-enforcement agencies, line committees of the Supreme Council, the Prosecutor General, the Justice Minister, Chief of the Main Public Service Department, Ukrainian Presidential Advisor, and President of the Academy of Legal Sciences. The Commission Secretary is at the same time the national coordinator for connections with the Anti-Corruption Network.

The Commission Statute enables to involve in the work all central and local executive authorities.

The Commission meets not less frequently than once every quarter. Three sessions have been held in the 1st quarter, and three sessions are scheduled for the 2nd quarter.

The commission has a working body – an expert group, and it also sets up working groups for the study of concrete issues, including field visits.

During the reporting period, the following issues have been considered:

- development of the Anti-Corruption Strategy of Ukraine;
- overcoming corruptive conditions generating contraband. The status of implementation of the STOP-Contraband programme in light of the fight against corruption of law-enforcement and controlling officials. A plan of priority measures has been elaborated, including recommendations on amendment of the legal and regulatory framework, improvement of statistics, structural changes and organisational measures.

The following issues are currently being prepared:

- on the fight against corruption in the customs service. The working group made field visits to Odessa, Trans-Dniester, the Lvov Region, and Sumy;
- on corruption in the sphere of foreign economic activity, tax evasion with the use of offshore zones;
- on corruption in the criminal enforcement system.

4. Concentrate law enforcement capacities in the specific area in the fight against corruption, which are currently fragmented, and develop operational specialised anti-corruption prosecution units, consider establishing a national Specialised Anti-corruption Unit, specialised and empowered to detect, investigate and prosecute corruption offences. Such a Unit could be an integrated, but structurally independent, or separate unit of an existing law-enforcement agency and/or the Prosecution Service. Apart from working on actual important corruption cases, one of the main tasks of such a Unit would be to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in

corruption investigations (e.g. by adopting clear guidelines for reporting and exchange of information, introducing a team-work approach in complex investigations etc.). Ensure that sub-national (oblast and local) levels of law enforcement agencies are properly integrated.

National implementation actions:

During the reporting period, measures were taken to create a specialised Anti-Corruption Authority. In particular, this issue was considered by the Interdepartmental Commission of the Council for National Security and Defence for reforming the law-enforcement bodies. A Draft Conceptual Basis of reforming the law-enforcement bodies has been created and test-run, one of the provisions of which envisages the creation of a national Anti-Corruption Authority – the National Investigations Bureau. Experts held a number of seminars and roundtables to study foreign experience (Lithuania, Rumania, Italy, Poland). The Draft Conceptual Basis has also been reviewed by the Anti-Corruption Network. Experts, as well as the Justice Ministry have come to the opinion that the reform of the system of law-enforcement bodies and creation of an Anti-Corruption Authority in Ukraine is inseparably connected with the development of a relevant legal framework, including the adoption of a new edition of the Code of Criminal Procedure.

The proposals on creation of an Anti-Corruption Authority are currently being considered by the Secretariat of the Ukrainian President.

II) LEGISLATION AND CRIMINALISATION OF CORRUPTION

5. Harmonise and clarify the relationship between violations of the Criminal Code and the Law on the Fight against Corruption.

National implementation actions:

The Justice Ministry has elaborated the following draft laws: on Ratification of the Criminal Law Convention on Corruption, on Ratification of the Additional Protocol to the Criminal Law Convention on Corruption, on Ratification of the United Nations Convention on Corruption, and related draft laws on the Fundamentals of Preventing and Countering Corruption, on Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Responsibility for Corruptive Offences, and on Responsibility of Legal Persons for Corruptive Offences.

These draft laws are ready for urgent submission by the President of Ukraine to the Ukrainian Supreme Council.

6. Amend the incriminations of active and passive bribery in the Criminal Code to correspond to international standards. In particular, clarify elements of bribery through a third person; delineation of offences between an offer/solicitation and extortion, criminalise trading in influence. Consider increasing the punishments for active and passive bribery as well as the statute of limitations for corrupt offences.

National implementation actions:

At present, the responsibility for mediation in bribery is being fully enforced in accordance with the general rules of imposing responsibility on accomplices stipulated in Section VI of the General Part of the Criminal Code of Ukraine. It should be mentioned in this connection that in keeping with article 29 (part 2) of the Criminal Code of Ukraine, an organiser, instigator or accomplice shall bear criminal responsibility according to the relevant part of article 27 and the article (part of the article) of the Special Part of this Code envisaging the offence committed by

the offender.

7. Harmonise the concept of an “official” from the Criminal Code and the Law on the Fight against Corruption, ensuring that the definition encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials representing the state interests in commercial joint ventures or on board of companies.

National implementation actions:

It should be mentioned that the subjects of corruptive offences determined by the Draft Law of Ukraine on the Fundamentals of Preventing and Countering Corruption is fully consistent with the subjects of offences determined by the Ukrainian Criminal Code.

E.g. article 3 of the aforementioned Law largely extends the list of persons which bear responsibility for corruptive deeds and other corruption-related offences.

According to the Criminal Code of Ukraine (item 1 of the note to article 364 of the Code), subjects of corruptive offences are persons permanently or temporarily performing the functions of representatives of the authority, as well as persons temporarily or permanently occupying positions at enterprises, institutions or organisations, irrespective of their form of ownership, involving the performance of organisational or administrative functions, or performing such functions on the basis of special authorisations.

In addition, it should be noted that the amendments envisaged by the above draft laws also use a unified conceptual structure, specifically, with respect of the definition of a person – subject of a corruptive offence.

8. Ensure the criminalisation of bribery of foreign or international public officials, either through expanding the definition of an “official” or by introducing separate criminal offences in the Criminal Code.

National implementation actions:

In accordance with item 1 of the Note to article 364 of the Ukrainian Criminal Code, officials are persons permanently or temporarily discharging the functions of representatives of authority, and occupy, permanently or temporarily, positions at enterprises, institutions, and organizations, regardless of their form of ownership, involving the fulfillment of managerial or administrative functions, or discharge such functions by special authority.

Item 2 of the Note to article 364 of the Ukrainian Criminal Code also recognises as officials foreigners or persons without citizenship carrying out the functions stipulated by item 1 of the said Note.

Considering the above, it should also be mentioned that article 368 of the Ukrainian Criminal Code introduces responsibility for bribe-taking both by an official who is a Ukrainian citizen and by an official who is a foreigner or a person without citizenship. Therefore, the bribery of officials of foreign governments or international organisations committed on the territory of Ukraine is covered by article 369 of the Ukrainian Criminal Code and does not require additional criminalisation.

9. Introduce a proposal to amend the Criminal Code ensuring that the ‘confiscation of proceeds’ measure applies mandatory to all corruption and corruption-related offences. Ensure that confiscation regime allows for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of

comparable effect. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.

National implementation actions:

The majority of sanctions presently stipulated by articles of the Ukrainian Criminal Code for corruptive deeds envisage such form of punishment as property confiscation.

In addition, we would like to draw attention to the fact that regardless of whether a relevant article of the Ukrainian Criminal Code envisages the sanction of confiscation of property owned by the accused, provisions of item 4 of article 81 of the Ukrainian Code of Criminal Procedure stipulate that money, valuables, and other assets gained by criminal methods shall be obligatorily transferred to the state, which include, naturally, all funds, valuables and other assets or property rights transferred (accepted) as a bribe.

10. Introduce a proposal to criminalise non-reporting of instances of possible corruption of public officials, if as a result of the investigation it can be shown that corruption in fact existed, and that those who failed to report it can be shown to have been fully aware of it.

National implementation actions:

It should be mentioned that this recommendation has already been implemented in the effective Criminal Code of Ukraine. The point at issue is article 396 of the Code stipulating responsibility for concealing crimes. Thus, the concealment of a grave or a particularly grave crime, not promised in advance, shall be penalised with arrest for a term up to three months or restriction of freedom for a term up to three years, or imprisonment for the same term.

11. Ensure that the immunity granted by the Constitution to certain categories of public officials does not prevent the investigation and prosecution of acts of bribery. Specify procedures for the lifting of immunity for criminal proceedings and consider abolishing the requirement of authorisation on lifting the immunity in cases when a person is caught in *flagrante delicto*.

National implementation actions:

Ukrainian Law No, 3590-IV of 4 April 2006 on the Introduction of Amendments to the Law of Ukraine on the Status of Deputies of Local Councils has lifted immunities off deputies of local councils.

12. Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption Ukraine should with the assistance of organisations that have experience in implementing the concept of liability of legal persons (such as the OECD and the Council of Europe) consider how to introduce into its legal system efficient and effective liability of legal persons for corruption.

National implementation actions:

The Ukrainian Law on Responsibility of Legal Persons for Corruptive Offences developed by the Justice Ministry sets the following main tasks:

- harmonising the Ukrainian legislation with provisions of the UN Convention against Corruption of 31 October 2003, the Council of Europe Criminal Law Convention on Corruption of 27 January 1999, and the Draft Law of Ukraine on the Fundamentals of Preventing and Countering Corruption;
- establishing the responsibility of legal persons for corruptive offences, as well as

developing the procedure for imposing responsibility, in particular, by identifying the range of corruptive offences for the commission of which a legal person may be brought to responsibility, determining the grounds for this responsibility and procedures on cases of corruptive offences committed by legal persons.

The Draft Law stipulates that cases of corruptive offences committed by legal entities will be considered by local common law courts and the procedures will be regulated by this Law.

The Law may enter into force at the same time with the entry into force of the Laws of Ukraine on the Fundamentals of Preventing and Countering Corruption and on Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Responsibility for Corruptive Offences.

The amendments proposed by the law of Ukraine on Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Responsibility for Corruptive Offences are called for by the need to ensure the implementation of provisions of the Draft Law of Ukraine on the Fundamentals of Preventing and Countering Corruption by determining concrete elements, above all, of corruptive offences, as well as other corruptive deeds and crimes related to corruption, and regulating the procedures for imposing criminal and administrative responsibility.

The above draft law has been submitted to the Secretariat of the President of Ukraine in June 2005.

13. Contribute to ensuring effective international mutual legal assistance in investigation and prosecution of corruption cases.

National implementation actions:

Seeking international legal assistance in investigating offences, including corruptive ones, Ukraine has concluded over 50 effective treaties with different countries of the world on legal relations and legal assistance in criminal cases. However, to ensure more efficient international mutual assistance in investigation of corruptive cases, it is necessary to step up the ratification of the 2003 UN Convention against Corruption signed by Ukraine; the 1999 Criminal Law Convention on Corruption; the 2003 Additional Protocol to the Criminal Law Convention on Corruption.

III) TRANSPARENCY OF CIVIL SERVICE AND FINANCIAL CONTROL ISSUES

14. Support further actions by the Main Civil Service Department to conduct general training on anti-corruption for public officials; in particular, develop and implement specific anti-corruption and ethics trainings, in particular for those public officials who work in corruption-risk areas. The in-service training should focus on operational and procedural issues, rather than on academic degrees, i.e. everyday job-related duties, including ethical standards.

National implementation actions:

Advanced corruption-specific training of public servants and local self-government officials of the 1st-7th official categories continues at the Kiev National University of Internal Affairs of Ukraine.

In 2005, 305 public servants of the central and local executive authorities, territorial units of the Ukrainian Main Civil Service Department, bodies of local self-government have undergone advanced training, including 164 officials of the 1st-4th categories and 242 – public officials of

the 5th-7th categories, who are responsible for organising work to prevent corruptive phenomena in bodies of public authority and local self-government.

Advanced training has been launched for public servants and local self-government officials, authorised to organise work on preventing corruptive phenomena in 2006. During the current year it is planned to raise the qualifications of 630 public servants and local self-government officials.

The programmes of advanced training of public servants include issues of preventing corruptive phenomena.

Persons who have undergone the said advanced training ensure the training of employees of relevant bodies of executive authority and local self-government, and develop measures to prevent corruptive phenomena.

15. Improve the mandatory asset disclosure system for higher ranking public officials in all branches of government (executive, legislative and judicial), as well as the legislation on conflicts of interest which would include members of the Parliament and would be open for public. Ensure that enforcement of these rules is entrusted to an independent agency, possibly subordinated to the Anti-corruption Committee. In parallel, review and specify the provisions of the “Law on the Fight against Corruption” regarding the acceptance of gifts.

National implementation actions:

To ensure further improvement of procedures for recruitment and undergoing public service, preventing corruptive phenomena and other offences, Decree of the Ukrainian President No. 1098 of 19.11.01 has approved the Procedure for obligatory special verification of information presented by candidates to public service positions.

Obligatory special verification is applicable to the information filed by candidates for public service positions appointed by the President of Ukraine of the Cabinet of Ministers of Ukraine on instruction of the State Secretary of Ukraine and a minister of the Ukrainian Cabinet of Ministers.

The verification is conducted by the Main Civil Service Department, the State Tax Administration, the Interior Ministry, and the Ukrainian Security Council.

To step up work for prevention of corruptive phenomena, elimination of the detected inconsistencies in the effective regulatory and legal framework and its harmonise it with the European standards, the Ukrainian Main Civil Service Department has developed the draft Presidential Decree of Ukraine on the Introduction of Amendments to Ukrainian Presidential Decree No. 1098 of 19.11.01 on Obligatory Special Verification of Information Presented by Candidates to Public Service Positions envisaging the improvement of special verification procedures applicable to the information presented by candidates to public service positions and the need to verify the information during the period of public service.

Special examination of contenders for positions involving the exercising of functions of public authorities or bodies of local self-government is stipulated by article 5 of the Draft Law on the Fundamentals of Preventing and Countering Corruption developed by the Justice Ministry.

The Main Civil Service Department of Ukraine has developed the Draft Law on Public Service, which envisages procedures for the declaration of incomes and assets by public servants. In particular, the said Draft Law envisages the declaration of incomes and financial liabilities by public servants, including abroad. Public servants occupying positions subject to political appointments and positions of the “A” category must additionally declare information on

movable and immovable property, bank deposits and securities owned by them and their family members residing with them.

The said data shall be declared by a public service during enrolment to service, and subsequently – on an annual basis, and by public servants occupying positions subject to political appointments and positions of the “A” category – also three years after the termination of their public service.

Information on public servants occupying positions subject to political appointments and positions of the “A” category is subject to mandatory publication; such information was published in April 2006 in mass media and in the Internet.

To improve the information disclosure system on the assets and incomes of senior public officials and in pursuance of requirements of the Ukrainian Law on Physical Persons’ Income Tax, the State Tax Administration of Ukraine has developed a form of Assets and Incomes Declaration (tax declaration) which is uniform for all cases of its presentation envisaged by the legislation and containing the information on the property status, monetary assets, and financial liabilities of a taxpayer, as well as an instruction on the order of its filling.

The said draft laws were approved last November: by the Finance Ministry of Ukraine (letter No. 31-20030-26-18/25195 of 23.11.2005) and the State Committee for Entrepreneurship (letter No. 10231 of 22.11.2005). The Committee of the Ukrainian Supreme Rada on Finance and Banking has been informed of the approval results by letter of the Ukrainian State Tax Administration No. 509/2/17-3210 of 01,12,2005.

In addition, in pursuance of item “e” of Ukrainian Presidential Decree No. 1615 of 18.11.2005 on Priority Measures for ‘De-Shadowing’ the Economy and Resisting Corruption, the State Tax Administration of Ukraine participated in completion of the Draft Law of Ukraine on Introduction of Amendments to Some Legal Acts of Ukraine in Connection with the Adoption of the Ukrainian Law on Physical Persons’ Income Tax.

In particular, the Ukrainian State Tax Administration developed and submitted to the Ukrainian Finance Ministry proposals of 07.12.2005 No. 14539/5/17-3216 and of 25.04.2006 No.791/5/17-0116 on issues of improving the procedures for the declaration of incomes and assets of public officials and persons occupying political positions or contending for them, the introduction of obligatory declaration of expenses by persons occupying political positions, public servants, prosecution, security, customs officials, interior officers, employees of the state customs service, judges and members of their families, as well as authorising the state tax administration to control the reliability of data contained in the declarations of incomes and expenses, identifying an assessment mechanism of consistency of incomes and expenses.

16.Update and disseminate a Code of Conduct or other similar rules for public officials. Prepare and widely disseminate comprehensive practical guides for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption.

National implementation actions:

In pursuance of the Ukrainian Cabinet of Ministers instruction, the Justice Ministry jointly with the Main Civil Service Department has elaborated a Draft Good Practice Code for persons authorised to discharge functions of the state, bodies of power of the Autonomous Republic of Crimea and bodies of local self-government.

The said Draft has been coordinated with the Council of Europe.

The Code imposes restrictions on using official powers, determines the rules of conduct for

public servants in the event of receiving admittedly unlawful instructions or assignments to be fulfilled by them. It prohibits the acceptance of illegal remuneration or gifts and warns against actions inducing the receipt of non-pecuniary benefits (positions, honorary titles, scientific degrees, awards). It imposes restrictions on political and civil activities, identifies the procedures for public participation in detecting the violations of this Code by good practice subjects. The Code sets the requirements to conduct, which has an impact on persons' employment after the termination of their state functions.

The Code identifies for the first time the notion of a conflict of interests, envisaging measures for preventing such conflict during the period in office of the public servants and other persons discharging public functions, and sets the norms of conduct in case of emergence of such a conflict.

The Main Civil Service Department of Ukraine jointly with the Ukrainian National Academy of Internal Affairs has developed Methodological Recommendations for the public authorities and bodies of local self-government on the fight against corruption and Methodological Recommendations for institutions and persons authorised to develop documents of a national level concerning the regulation of authoritative powers, taking into consideration the potential danger of abusing such powers.

The Methodological Recommendations have been distributed among all central and local bodies of executive authority and published in the Internet.

17. Adopt measures for the protection of employees in state institutions and other legal entities against disciplinary action and harassment when they report legitimate suspicious practices within the institutions to law enforcement authorities or prosecutors, by adopting legislation or regulations on the protection of "whistleblowers" and launch a public (or internal) campaign to raise the awareness of these measures among civil servants.

National implementation actions:

18. Improve the system of internal investigations in cases of suspected or reported corruption offences. A separate, independent investigatory and reporting entity should be established, possibly within the general civil service, to receive and investigate complaints on corruption. Disciplinary proceedings should be conducted in line with international standards and afford the accused the possibility to defend him/herself; sanctions coming from a process that is perceived as fair and not politically motivated will be more effective in deterring corruption.

National implementation actions:

In keeping with sub-item 11 of item 4 of the Statute of the Main Civil Service Department of Ukraine, approved by Presidential Decree No. 1272 of 02.10.1999, the Main Civil Service Department shall conduct official investigations in the prescribed manner of compliance with the laws on public service and the fight against corruption by the public servants, as well as facts of violation of the ethics code by public servants.

In accordance with item 7 of the Procedures for Conducting an Official Investigation of a Public Servant, approved by Resolution of the Ukrainian Cabinet of Ministers No. 950 of 13.06.2000, a person against which an official investigation may be conducted shall have the right to take part in it at any moment, explain facts, make statements, submit relevant documents and appeal for the examination of new documents, request additional examination of explanations provided by parties to the case.

During 2005, the Main Civil Service Department of Ukraine has conducted 3.7 times more

official investigations than in 2004. In the 1st quarter of the current year the number of official investigations has increased 5 times over the 1st quarter of 2005.

In addition the Ukrainian Main Civil Service Department has developed a draft new Law of Ukraine on Public Service.

Section V of this Draft Law regulates issues of disciplinary responsibility of public servants (articles 42-47 of the Draft Law).

The grounds for imposing disciplinary responsibility on a public servant are the commission of a disciplinary misdemeanour – intentional violation of requirements of this Law and other legal acts on public service, specifically, non-fulfillment or inadequate fulfillment of official functions, including intentional non-prevention of harmful impacts as a result of omission, power abuse, violation of restrictions connected with staying in a public service position, as well as deeds which can discredit him (her) as a public servant, compromise the public authority or the state.

The Draft Law stipulates that a public servant cannot be brought to disciplinary responsibility if three months has expired after the public service supervisor at the public authority has received information about the misdemeanour, or two years has expired after its commission.

One of the following types of disciplinary penalties may be applied to a public servant:

- (1) reproof;
- (2) reprimand;
- (3) postponement in conferring the next rank for a period up to one year;
- (4) warning on incomplete adequacy;
- (5) dismissal from public service.

Disciplinary penalties may be imposed:

- (1) on public servants occupying positions subject to political appointments and positions of the “A” category – bodies or officials carrying out appointments to these positions;
- (2) on public servants occupying positions of the categories “B,” “C,” and “D”: reproof – by the public service supervisor at the public authority; other disciplinary penalties – by the public service supervisor at the public authority on conclusion of a relevant disciplinary commission consisting of not less than five people. The personal composition of such commission shall be approved by the public service supervisor at the public authority.

A decision to issue reproof shall be made by bodies or officials carrying out appointments to these public service positions in the form of a relevant act, or personally by the public service supervisor at the public authority in the form of a relevant order (instruction).

Other forms of disciplinary penalties shall be applied to public servants after the consideration of a disciplinary case by a body or official imposing the penalty and preceding disciplinary procedures at the body of public authority or its authorised person.

The public service supervisor at the public authority shall demand the presentation of a written explanation by the public servant immediately after receiving information on the misdemeanour. If the public servant is absent, the explanation shall be demanded upon his (her) return to service.

Upon the results of a disciplinary investigation, the public service supervisor at the public authority shall pass a decision to refer the case for consideration by a relevant disciplinary commission or to close the case.

Disciplinary commissions whose statute is approved by the Cabinet of Ministers of Ukraine consider disciplinary cases within a period of two weeks after receiving materials and submit their conclusions to the public service supervisor at the public authority for the adoption of a decision.

Cases are considered openly, except cases where a decision is made on closed consideration for purposes of non-disclosure of state secret.

During the consideration of a case, information presented by the public servant who is brought to disciplinary responsibility shall be obligatorily heard, except cases of failure to show up to the session of the relevant disciplinary commission without a valid reason.

The decision shall be made by the public service supervisor at the public authority on conclusions approved by a majority of the members of a relevant disciplinary commission/ A copy of the decision shall be issued by the public servant on the same day.

A decision on the imposition of a disciplinary penalty may be appealed at disciplinary commissions of a specially authorised central body of executive authority for public service issues and in court.

The appeal shall be filed not later than within two weeks from the date of issuance of a decision on the imposition of a disciplinary penalty.

Other issues of public servants' disciplinary responsibility, including public servants' rights during disciplinary proceedings, are regulated by the legislation on public service.

19. Analyse and introduce improvements in the existing public procurement regulations to reasonably limit the discretion of procurement officials in the selection process. Ensure that the eligibility criteria for bidding in the public procurement and privatisation processes include the absence of a conviction for corruption. Under the condition of legal protection of fair competition, consider establishing and maintaining a database of companies that have been convicted for corrupt practices in Ukraine or abroad to support such limiting eligibility criteria.

National implementation actions:

The situation in the public procurement sphere is complicated in Ukraine at the moment. This is connected with the entry into force as of 17 March 2006 of amendments to the Law of Ukraine on Introduction of Amendments to the Law of Ukraine on Procurement of Goods, Jobs, and Services at Public Expense and Other Legal Acts of Ukraine after overcoming presidential veto, which seriously disrupts the regular functioning of the national system of public procurement.

The said amendments introduced to the Law on Procurement of Goods, Jobs, and Services at Public Expense (hereinafter – the Law) contradict the Constitution and laws of Ukraine (according to conclusions of the Justice Ministry, the Main Legal Department and the Main Scientific Expert Department of the Staff of Supreme Rada of Ukraine, as regards the subjects of regulation of the public procurement sphere), and their implementation, according to the estimates of the Government, the Ukrainian Security Service, the World Bank, and EC experts *destabilises the activity of entities in the public economic sector, restricts competition, narrows the information environment of public procurements and, as a consequence, prevents effective and rational utilisation of public funds for making procurements on genuine competitive grounds.*

Amendments introduced to the Law identify as the body authorised in the sphere of public procurement the Antimonopoly Committee of Ukraine and envisage the institution of control

and supervision over the public procurement system by the Supreme Rada of Ukraine, the Antimonopoly Committee of Ukraine, the Ukrainian State Supervision and Auditing Service, the State Treasury, the Ministry of Agrarian Policy, the State Committee for Statistics, the Special Controlling Commission for Public Procurement Issues at the Audit Chamber, which contradicts the norms of the Constitution of Ukraine. At the same time, no strict distribution of functions and interaction procedures are envisaged between all subjects of regulation of the public procurement sphere. The reason is a lack of a transitional period necessary for developing laws and regulations, structural and personnel support.

The provisions of the Law concerning the creation and activity of a special entity – the Tender Chamber of Ukraine – within the public procurement system is objectionable. The status of the Tender Chamber of Ukraine is identified by the Law as “a non-profit association of public organisations.” At the same time, this association of public organisations is granted administrative powers characteristic of a state administration agency. This situation does not comply with the international practice and legislation on public procurement.

The Law envisages obligatory placement of information on procedures of public procurement at least in one information system within the Internet. Such systems should meet special requirements, which create the possibilities for restricting the range of such systems. The obligatory use of a restricted number of information systems within the Internet during the implementation of public procurement procedures in edition of the Law serve as the reason for the monopolisation of this sphere, raising expenses of the administrators of public funds and the auction participants in public procurements and considerably complicating its procedures.

The present edition of the Law also restricts competition in connection with obligatory provision of tender and contractual security by the procurement participants. To solve this situation on a legislative level and to ensure civilised development of the public procurement system in public interests, the Government has approached the President of Ukraine with a proposal on initiating urgent (at the nearest session of the newly elected parliament) consideration and adoption by the Supreme Rada of Ukraine of a draft new edition of the Law of Ukraine on Procurement of Goods, Jobs, and Services at Public Expense, submitted by the Cabinet of Ministers of Ukraine to parliament on 4 April 2005 (registration No. 3519-1 of 04.04.2005), which is based on the EC norms and principles in this sphere. The adoption of this draft law would enable to create a competitive environment in the public procurement sphere, ensure transparent procedures for the procurement of goods, jobs and services at public expense, and ensure the optimal and rational use of public funds.

In addition, the Government submitted materials for the consideration of this issue at a special session of the National Security and Defence Council.

At the same time, within the context of preventive norms in the current edition of the Law of Ukraine on Procurement of Goods, Jobs, and Services at Public Expense, the retaining of relevant provisions, namely, article 7 “Discommended Actions of Participants” obliges the customer to refuse from participation to economic entities committing corruptive acts, and also introduces the criterion of absence of previous convictions for a corruptive offence as a necessary precondition for participation in a tender (part three, article 7).

In addition, The Public Procurement System Development Strategy for 2005-2010, approved by Resolution of the Cabinet of Ministers of Ukraine No. 1257 of 21 December 2005, envisages the consideration during 2006-2008 of the issue of forming a “black list” of economic entities – potential auction participants, customers, experts and consultants as the basis for preventing abuse on their part in the public procurement sphere.

In keeping with Resolution No. 1466 (2005) and in pursuance of the Ukrainian Presidential Decree No. 39 of 20 January 2006 On the Pan of Measures for Implementing Ukraine’s

Obligations and Liabilities in Connection with its Membership in the Council of Europe, the Justice Ministry has elaborated the Draft Law of Ukraine on the introduction of amendments to the Law on Information (new edition). This Draft stipulates, in particular, that state control over the provision of access to information by bodies of state authority and local self-government, institutions and organisations, irrespective of their form of ownership, shall be exercised by an authorised body for ensuring access to information, which is being set up by the Cabinet of Ministers of Ukraine.

Article 4 of the Law of Ukraine on the Fundamentals of Regulatory Policy in Economic Activity stipulates that one of the principles of state regulatory policy shall be, in particular, transparency and consideration of the public opinion – openness for physical and legal persons, and their associations – in the activity of regulatory authorities at all stages of their regulatory activity, obligatory consideration of the regulatory authorities of initiatives, remarks and proposals presented in the prescribed manner by physical and legal persons and their associations, obligatory and timely bringing to the notice of physical and legal persons and their associations of the adopted regulatory acts, and informing the public of the conducted regulatory activity.

In keeping with article 5 (para 5) of the said Law, ensuring the implementation of the state regulatory policy includes, in particular, the coverage of draft regulatory acts for the purposes of obtaining remarks and proposals from physical and legal persons and their associations, as well as open discussion of issues connected with regulatory activity with the participation of representatives of the public.

20. Review the regulatory framework for taxation to reduce incentives for tax evasion and to limit the discretionary powers of tax officials. Ensure that the powers which are required for effective tax and customs administration are well balanced with respect for citizens' rights and are not abused.

National implementation actions:

The State Tax Administration of Ukraine takes part in the elaboration of the Draft Tax Code of Ukraine and the new edition of the Law of Ukraine on the State Tax Service of Ukraine (registration No. 9276 of 06.04.2006), which contains provisions aimed at regulating the powers and responsibilities of the tax bodies, the taxation procedures, interaction between tax officials and taxpayers, minimisation of possible arbitrary decisions by officials, as well as eliminating the causes and conditions for corruption.

The Statute of the State Tax Administration of Ukraine, currently being completed, serves the same purpose.

21. Enhance cooperation with civil society in addressing the corruption phenomena, including working more closely with university programs and a wide range of NGOs and the business community on anti-corruption and ethics, both to enhance monitoring in civil society, and to encourage training and research resources in the field.

National implementation actions:

The Main Public Service Department of Ukraine, keeping with its authorised functions, conducts measures aimed at preventing corruptive phenomena among public servant and local self-government officials.

For purposes of taking into account the public opinion, strengthening departmental control over the observance of principles of transparency and openness of the public executive authority, a permanent direct telephone line "Public Service" has been operating at the Main Public Service

Department of Ukraine since November 2004.

In February 2005, the Main Public Service Department of Ukraine addressed the Cabinet of Ministers and Presidential Secretariat of Ukraine with the initiative to establish permanent direct telephone lines in the other public authorities, which was met with approval (instruction of the Cabinet of Ministers of Ukraine No. 10618/1/1-05 of 25.03.2005).

In development of the Memorandum on Cooperation concluded between the Main Public Service Department and the Ukrainian Council of Entrepreneurs at the Cabinet of Ministers, an Internet line "Prevention of Corruptive Phenomena" has been operating since December 2004.

The Main Public Service Department of Ukraine was the first among the Ukrainian bodies of state authority to successfully implement the project of instituting a quality control system based on the ISO 9001:2000 standard, and as a result of certification audit of the quality control system, the Main Public Service Department in November 2005 received a Certificate for the quality control system, confirming the compliance of this system with the ISO 9001:2000 standards.

In order to improve and ensure the operation of the staff, enhance the authority of the executive authorities, the Main Public Service Department addressed the Prime Minister of Ukraine with a proposal to assign it, jointly with the Justice Ministry, the Ministry of Economy, the Finance Ministry, and the State Consumer Standards Committee of Ukraine, with the participation of the Ukrainian Quality Association, to develop within a two-monthly term a draft Government decision on creation of a quality control system at the executive authorities based on the ISO 9001:2000 standards, which was supported by the Cabinet of Ministers: a Resolution was adopted on 1 May 2006 on Approval of the Programme of Introduction of a Quality Control System at the Executive Authorities.

In order to implement a complex of measures aimed at ensuring efficient performance of bodies of state authority, other public authorities, and achievement of the European living standards of the citizens of Ukraine, focusing the efforts of the public authorities on development of professional, effective and transparent public service in Ukraine, the Main Public Service Department conducted scientific research jobs on preventing the manifestations of corruption within the budget-funded programme "Research and Development in the Sphere of Public Service and its Adapting to Standards of the European Union."

The following research and development jobs have been fulfilled in 2005:

Creating a classifier of possible areas of abuse in each departmental management system – performed by the Public Service Announcements Examination Centre of the Sociology Institute of the National Academy of Sciences of Ukraine, resulting in the compilation of a classifier of possible areas of abuse in departmental management systems, and an analytic report identifying proposals concerning concrete priority measures in the activity of bodies of state authority and bodies of local self-government for purposes of preventive corruptive phenomena.

The plan of scientific research in the sphere of public service for 2006 envisages the following scientific research, with account taken of the 15.12.2005 decision of the Scientific Council at the Ukrainian Main Public Service Department:

Development of a system of evaluations of the activity of a public authority to ensure compliance with the legislation on public service (including its updating) and the anti-corruption legislation.

The expected result will be a system of evaluations of the activity of a public authority to ensure compliance with the legislation on public service (including its updating) and the anti-corruption legislation.

In order to strengthen cooperation with the civil society, a Public Council has been set up at the State Financial Monitoring Committee of Ukraine.

The purpose of setting up the Public Council is to ensure the exercising of citizens' constitutional right to participate in the process of state administration and instituting a permanent dialogue with all social groups of the population and citizens' associations.

The Council has the status of a consultative authority. In its work, the Consultative Council coordinates measures connected with the holding of public consultations on issues of formation and implementation of state policy.

At the same time, the Council ensures feedback. In particular, it informs the public of its activity, decisions made and their implementation status.

On 28 February 2006 the Public Council held its first constitutive session, which approved its composition.

The Public Council includes:

- the All- Ukrainian association of women-bankers "For Harmonious Social Development";
- the Professional Association of Registrars and Depositaries;
- OJSC Finport Technologies Inc.;
- the Associations of Ukrainian Banks;
- the All-Ukrainian Association of Pawnshops;
- the National Association of Credit Unions of Ukraine.

22. In the area of access to information and open government, consider creating an independent office of an Information Commissioner to receive appeals under the "Law on Information", conduct investigations, and make reports and recommendations. Consider adopting a Public Participation Law that provides citizens with an opportunity to use information to affect government decisions. Consider revising libel and defamation laws to grant greater scope for journalistic reporting.

National implementation actions:

In pursuance of article 2 of the Ukrainian Presidential Decree on Ensuring Conditions for Broader Public Participation in Formation and Implementation of State Policy of 31 July 2004, the Cabinet of Ministers of Ukraine has implemented additional measures aimed at the introduction of more efficient forms of activity of bodies of executive authority with the public in the process of formation and implementation of state policy. In particular, the Procedure for Holding Public Consultations on Issues of Formation and Implementation of State Policy has been developed and approved by Resolution of the Cabinet of Ministers No. 1378 of 15 October 2004. In accordance with this Procedure, each executive authority shall create a consultative body – the public council rendering methodological support in matters connected with the organisation and holding of public consultations, development of coordinated proposals on their results concerning the formation and implementation of state policy and ensuring socioeconomic development.

23. In the sphere of money laundering, pursue the implementation of the FATF recommendations and MONEYVAL.

National implementation actions:

On 29 November 2005, Ukraine signed a new edition of the Council of Europe Convention on the Laundering, Search, Arrest, and Confiscation of Crime Proceeds and the Financing of Terrorism.

This Convention introduces a number of principally new mechanisms of preventing and countering these phenomena. They include measures for identifying bank accounts and monitoring banking transactions within the frameworks of international legal assistance in criminal cases, introduction of the principle of prudence and risk evaluation-based approach to client identification, etc.

Considering the international nature of such a dangerous phenomenon as the laundering of crime proceeds and the financing of terrorism, a number of joint measures is planned jointly with the Council of Europe and the European Commission aimed at preparing a package of proposals on the ratification and introduction of amendments necessary for the implementation of this Convention in Ukraine.

A meeting of the working group created by the Justice Ministry for the preparation of the relevant draft laws and other specialists in this sphere with foreign experts who participated in the development of the new Convention is scheduled to take place on 15 May 2006 to discuss all the problems related to the implementation of this Convention in Ukraine.

24. Ensure that competent authorities conducting investigation and prosecution of corruption offences have relevant financial expertise at their disposal (either by employing financial and auditing experts or by ensuring full cooperation of relevant experts in other state institutions).

National implementation actions:

State Tax Administration of Ukraine: the state tax administrations in regional, the Autonomous Republic of Crimea, the cities of Kiev and Sevastopol have adopted manning tables according which the positions of audit inspectors have been introduced at most regional anti-corruption departments. Specialists with higher economic education and experience in the sphere of tax and financial audit have been appointed to the said positions.

Ukrainian Security Service: at present, the Ukrainian Security Service uses the provision of article 273 of the Ukrainian Code of Administrative Offences, in accordance with which “an authority (official) considering an administrative offence shall appoint an expert in cases when there is a need for special knowledge. The expert shall appear on summons and make an objective judgment on the questions put to him (her).”

IV) ADDITIONAL INFORMATION

On 01 January 2006, Ukraine became a member of the GRECO anti-corruption group.

In April 2006, Ukraine applied to the OECD With a proposal to grant it an observer status in a number of committees, and to develop an individual programme of cooperation with Ukraine, in particular, the participation in the OECD Working Group on Corruption.

In 2006, the Government of Ukraine signed a contract with the European Commission on the establishment of the project Promoting Independent Governance: an Anti-Corruption Project in Ukraine within the TACIS frameworks. On 01 June 2006, the Justice Ministry jointly with the Council of Europe proceeds to the implementation of this project.

Agreements are being deliberated with the Millennium Challenge Corporation on the institution of a threshold programme for Ukraine in the sphere of fighting corruption.

The greatest level of corruption in Ukraine is registered at bodies of state administration and management, whose activity is connected with public target funding, distribution and utilisation of budget allocations, export and import, privatisation, licensing, customs and tax control. A considerable number of corruptive phenomena have been detected in the sphere of state regulation of land relations, law-enforcement agencies, and local self-government bodies.

The most widespread offences in the official sphere are power and office abuse, exceeding power or official authority, and other crimes committed for purposes of satisfying personal mercenary interests or the interests of other persons; embezzlement of public, collective or personal property by using official position; illegal receipt of pecuniary and non-pecuniary benefits, privileges and advantages; bribery, etc.

Most of the corruptive phenomena are registered in industrially developed regions of Ukraine, namely: *Dnepropetrovsk, Donetsk, Zaporozhie, Lugansk, Kiev, Kharkov, and Odessa regions.*

According to materials of the Security Service, the implementation of a complex of organisational and operative investigative measures for countering corruption in Ukraine has resulted in the initiation of 651 criminal cases based on the elements of offences in the sphere of *official activity* in the period from October 2005 to April 2006, 106 of them – based on the elements of bribery.

In pursuance of the Law of Ukraine on the Fight against Corruption, 962 corruptive phenomena have been detected, 16 of which in the actions of public servants of the 1st – 3rd categories. As a result of consideration of corruptive cases in courts, 630 officials have been brought to administrative responsibility in the form of fines, 4 received warnings, 26 officials received verbal reproof.

Statistics of the Interior Ministry on results of the fight against corruption in Ukraine

In pursuance of the Law of Ukraine on the Fight against Corruption, in 2005 units of the Interior Ministry have drawn up and referred to court 2519 administrative cases, on materials of 2058 of which the courts have issued decisions, imposing administrative penalty in the form of fines on 1350 offenders.

Persons brought to responsibility include 581 public servants of the 5th – 7th categories, one deputy of a regional council, 17 deputies of local councils, 378 officials of local self-government, 81 district public administration officials, 13 – regional public administration officials. 341 public officials among those brought to responsibility are public servants of the 1st – 4th categories.

A tendency towards an increase in the amount of detected bribes has been manifested in 2005 – from UAH 4.7 thousand (appr. US \$940) to UAH 8.7 thousand (\$1,730). A total of 3,700 facts of bribery have been detected in Ukraine last year, 138 facts of bribes are registered where the sum exceeds UAH 10,000 (\$1,990), and 54 cases with the sums exceeding UAH 30,000 (\$5,980).

State Statistics. Administrative cases on corruption, examined by the courts in 2005:

Total number of cases examined by courts 6018 (for comparison, in 2004 – 4556 cases)

Total number of people investigated under the charges – 6021 (4559);

Break down by subjects of corruption actions:

Civil Servants – 2178 (1686)

Parliament members - 10 (9)

Heads of city, district and regional town and village councils - 901 (678)

Employees of the Ministry of Interior of Ukraine - 250 (158)
Employees of the Prosecution - 0 (0)
Employees of the Security Service - 0 (1)
Military - 426 (374)
Employees of other law-enforcement bodies – 93 (90)