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

Ukraine

MONITORING REPORT

This report includes an update presented by the government of Ukraine about national actions to implement the recommendations, which were endorsed in January 2004. It also contains the summary of the expert opinion by Mr. Elnur Mussaev, Azerbaijan, and Mr. Dennis Hawkins, ABA CEELI/USA, and of the discussion, which took place at the Istanbul Action Plan meeting in December 2004, Paris, France.

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UKRAINE'S REPORT ON UPDATE OF NATIONAL IMPLEMENTATION ACTIONS

Pillar 1. NATIONAL ANTI-CORRUPTION POLICY AND INSTITUTIONS

General anti-corruption action plans and creating effective monitoring mechanisms (item 1 of the Recommendations)

Instruction of the Cabinet of Ministers of Ukraine No.383 of 17 June 2004 has approved the Anti-Corruption Action Plan for 2004. Within the frames of measures stipulated by this Action Plan, the Cabinet of Ministers, the Justice Ministry with the participation of the Interior Ministry, the Security Service, the State Customs Administration, the Ministry of Economy and European Integration, the Ministry of Foreign Affairs, the Main Civil Service Administration and scientific workers have reviewed the anti-corruption laws and regulations in order to reveal inconsistencies between them as well as gaps and legal provisions allowing ambiguous interpretation, and other shortcomings used to commit corruptive abuses and other official offences; the pace of implementation of governmental anti-corruption measures stipulated by numerous legal and policy documents has also been analysed, including the implementation of the Concept of Fighting Corruption for the Period of 1998-2005.

Within the frames of the Anti-Corruption Action Plan, the Interior Ministry jointly with other central executive authorities has considered the issue of creating an effective mechanism for monitoring the implementation of governmental anti-corruption measures to identify priority areas requiring the concentration of efforts of anti-corruption agencies.

The study of this issue has enabled the formulation of a general concept of such monitoring. Anti-corruption monitoring can be regarded as a system of surveys, reviews, and forecasts of the spread of corruption, its causes and circumstances encouraging its development, timely detection of all negative tendencies, and adoption of well-founded administrative decisions concerning ways of overcoming it.

Preventing corruption, detection and liquidation of systematic regulatory and organisational gaps, reforming the regulatory system in an attempt to reduce the possibilities of arbitrary decision-making by public officials (item 2 of the Recommendations)

During the implementation of recommendations of the Istanbul Action Plan, measures have been taken to eliminate systematic regulatory and organisational gaps creating a corruption-friendly environment.

Ukrainian Presidential Decree No.175 of 9 February 2004 "On a System of Measures for Eliminating the Causes and Circumstances for Criminal Manifestations and Corruption" has identified priority areas both in the activity of public authorities, specifically, law enforcement agencies, and guaranteed protection of citizens' rights and freedoms against criminal encroachments, primarily in the spheres of exercising the rights of property, business, finance, social and labour relations, consumptions, and the elimination of socio-economic causes and circumstances generating corruption and crime.

In connection with the signing of the UN Convention on Corruption by Ukraine on 12 December 2003 in Merida (Mexico) and the issuance of the aforementioned Presidential Decree, the Justice Ministry has prepared a Draft Law "On the Basis of Corruption Prevention and Resistance."

The Draft Law has been elaborated with account taken of the state of affairs in the sphere of fighting organised crime and corruption in order to ensure more effective protection of citizens against criminal encroachments, preventing losses of the state and society inflicted by offenders,

resolute eradication of disgraceful phenomena hindering economic development, formation of market relations and a civil society, promoting a negative image of Ukraine outside its national borders, and for the purposes of further improvement of the activity of law enforcement agencies. A conceptually new project envisaged comprehensive solution of corruption-related issues.

Considering the complexity and diversity of the corruption phenomenon, the draft law outlines the frames of the problem. Identifying legal and organisational frameworks for preventing, detecting, and resisting corruption in the public and private spheres, compensating for the damage inflicted by corruptive offences, restoring the rights and lawful interests of individuals and legal entities, and the state, regulating international cooperation in the fight against corruption cannot be solved finally and exhaustively within the frames of one law. Therefore the main objectives of the said draft law consist, on the one hand, in identifying a single approach to understanding the essence of corruption, its forms of manifestation, and on the other hand – in criminalising corruptive offences.

It should be emphasised that seeking to harmonise the Ukrainian legislation with the international legal standards envisaging all aspects of preventing and fighting corruption, it is necessary to elaborate a whole set of new draft laws and amend effective laws and regulations along the lines of activity planned out by the Action Plan.

The draft law has for the first time legislatively stipulated the role of the public in preventing and fighting corruption, as required by the United Nations Convention on Corruption. Specifically, article 3 of the draft law stipulates that bodies of local self-government and private enterprises, institutions and organisations shall participate in preventing, detecting, and in cases envisaged by the law – in implementing measures to terminate corruptive offences, restoring the infringed rights of individuals and legal entities and the state, and in information and scientific support of measures aimed at preventing and fighting corruption, and international cooperation in this sphere. The competence of these agencies shall be determined by the laws of Ukraine and their statutory documents.

The adoption of the Ukrainian Law "On the Basis of Corruption Prevention and Resistance," the draft of which is currently being considered by the Ukrainian State Rada, will contribute to improvement of citizens' protection against criminal actions, strengthening resistance to organised crime, corruption, creating an adequate legal framework for preventing and combating corruption in Ukraine, agreeing with international legal standards, specifically, the UN Convention on Corruption, the Council of Europe's Criminal and Civil Law Convention on Corruption, requirements of the UN, the Council of Europe, and other international organizations.

The Ukrainian Draft Law "On the Basis of Corruption Prevention and Resistance" contains provisions envisaging the responsibility of legal persons involved in corruptive activities. The requirements of legal regulation of this issue are contained in international legal acts and recommendations to Ukraine.

In order to reduce the opportunities for arbitrary decision-making by public officials, enhancing transparency of administrative decision-making procedures, the Ukrainian Cabinet of Ministers issued Decree No.746 of 2 June 2004 "On Approval of the Programme of Public Service Development for 2005-2010" envisaging the following measures:

- elaboration, introduction and regular review of the rules and procedures for providing service; introduction of legal frameworks and creating technologies for the delegation of functions of providing certain managerial services to budget institutions and organisations; elaboration, introduction, and improvement of professional ethics standards of public servants in the sphere of service providing;
- conducting sociological surveys of the efficiency of service providing by public agencies and their officials;

- ensuring labour remuneration and pension support of public servants on the basis of their social protection, considering the experience of the European Union member countries;
- formation and implementation of the mechanism of ensuring transparency of public servants' activities, tightening public control and supervision over compliance of the law on civil service (considering legal updates) and anti-corruption activities;
- elaboration and introduction of a Public Servants' Code of Ethics, legalisation of the procedures of public servants' official duties (administrative actions);
- advanced training of the staff of public agencies and bodies of local self-government in matters related to the fight against corruption;

Reinforcement of the Anti-Corruption Coordinating Committee, including in it representatives of relevant executive authorities (administrative, financial, law enforcement, and prosecution), as well as representatives of the parliament and the civil society, enhancing the independent status of the Committee, ensure greater frequency of the Committee meetings, upgrading the system of monitoring and strengthening connections, cooperation, and information exchange between this Committee and a relevant parliamentary committee (item 3 of the recommendations)

On 24 March 2004, the President of Ukraine issued a Decree "On Measures of Further Improvement of the Activity of the Coordinating Committee for the Fight against Corruption and Organised Crime under the President of Ukraine," approving a new Statute of the Coordinating Committee for the Fight against Corruption and Organised Crime under the President of Ukraine. The Committee membership has been renewed.

The main objective of this reorganisation is to streamlining the legal status of the Committee in compliance with the Constitution of Ukraine and eliminating unlawful requirements to the order of formation, accountability, and other elements of the Committee's legal status emerging as a consequence of contradictions between the Law of Ukraine "On Organizational and Legal Frameworks for the Fight against Organised Crime" and the Ukrainian Constitution, which was adopted later; creating an independent centre responsible for strategic, analytical, preventive, and coordinative aspects of the fight against corruption and organised crime; strengthening inter-departmental and international cooperation in this sphere.

The reorganised Coordinating Committee is currently functioning as a consultative body under the President of Ukraine, assisting the President in discharging his constitutional powers aiming at ensuring national security through coordination of the activity of all public agencies authorised to fight against organised crime and corruption.

In this connection, the Coordinating Committee is assigned with the following functions:

- elaboration and submission of proposals to the President of Ukraine on priority areas of a single governmental policy in the sphere of fighting corruption and organised crime;
- monitoring the implementation of measures aimed at achieving this objective.

In connection with the aforementioned tasks, the Coordinating Committee shall:

- coordinate the activities of public agencies participating in the fight against organised crime and corruption;
- work out policy recommendations and strategy of fighting corruption and organised crime;
- organise cooperation in matters of fighting corruption and organised crime with relevant bodies of foreign countries and international organisations;
- prepare and submit for consideration of the President of Ukraine annual and special information outlets on the status, main areas, and results of the fight against corruption and organised crime in Ukraine;

- interact with the Ukrainian supreme Rada committees and Ombudsman, the Ukrainian National Security and Defence Councils, and the executive authorities in solving the task of strengthening law and order in the country;
- inform the population of the measures taken by the President of Ukraine in the sphere of fighting corruption and organised crime.

To fulfil its tasks the Coordinating Committee is provided with the following powers:

- to study, analyse and examine, on assignment of the President of Ukraine, the compliance and fulfilment of the Constitution and laws of Ukraine, and other legal and regulatory acts, and its own decisions by ministries and other central and local executive authorities, enterprises, institutions, and organisations of Ukraine;
- to set up working groups for holding inspections of the status of legal compliance in matters referred to its competence, and to instruct law enforcement and other authorised public agencies to hold such inspections;
- to hear at its sessions the information and reports by heads of ministries and other central and local executive authorities, law enforcement agencies on compliance and fulfilment of the legislation on the fight against corruption and organised crime;
- on assignment of the Ukrainian President, to issue recommendations, binding for consideration, to ministries, other central and local executive authorities, law enforcement agencies, heads and officials of enterprises and organisations (regardless of their form of ownership), to eliminate the causes and circumstances leading to crime and corruption;
- to submit recommendations to the Ukrainian President to impose responsibility on officials for inadequate implementation of their duties to prevent corruption and organised crime.

The Coordinating Committee for the Fight against Corruption and Organised Crime under the President of Ukraine presently includes 25 heads of law enforcement and regulatory public agencies, representatives of scientific and academic institutions, chairman of the Ukrainian Supreme Rada committee.

In addition, in order to improve the organisation of the Coordination Committee's activity, a professional staff has been created, headed by the Coordinating Committee Secretary.

The organisational support staff of the Coordinating Committee organises the activity of the Committee on the basis of proposals of its members, relevant ministries and agencies, prepares its working plans, informational, analytical and other necessary materials to hold sessions, draft decisions, recommendations and proposals; supports the preparation of draft documents on the organisation of inspections of compliance with the law on the fight against corruption and organised crime by the Committee and with participation of law enforcement and other public authorities, etc.

Despite its consultative status, the Coordinating Committee has real power to influence the state of affairs. Firstly, being a collegial body, working with the participation of the heads of regulatory and law enforcement authorities, it is empowered to adopt consensus decisions binding for relevant authorities.

Secondly, whenever the solution of problems requires the concentration of effort of many public authorities, the Coordinating Committee as a consultancy to the President of Ukraine is entitled to address the head of state with relevant proposals and in the event of their acknowledgement as expedient, they shall take the form of relevant instructions, assignments, or Presidential Decrees, binding for all executive authorities whose superiors are not on the Committee.

In order to regulate the process of obtaining information needed for the operation of the Coordinating Committee, on 16 July 2004 the Committee adopted a decision approving the procedure for providing information to the Coordinating Committee. This procedure envisages that statistic reports shall be presented to the Committee within the timeframes indicated by effective instructions for preparing statistic reports, analytical and other information materials, as they are being elaborated.

The sessions of the revamped Coordinating Committee shall be held once a month.

To ensure maximum transparency in the activity of the Coordinating Committee, many correspondents representing various newspapers and television channels are invited to attend each Coordinating Committee session to provide broad media coverage.

Additionally, the Committee issues its own newspaper, *Anticorruption*, which published its decisions, Presidential Decrees adopted upon the results of the Committee's activity, other materials concerning the organisation of work of the Coordinating Committee and the situation in regions. The same newspaper publishes analytical surveys conducted by the Committee staff and the Inter-Departmental Research Centre at the Coordinating Committee, reports on measures implemented for purposes of the fight against corruption by workers of law enforcement and other central and local public agencies. The newspaper is published once every two weeks; already nine issues have been published.

Creating a special anticorruption group (item 4 of the Recommendations)

Having considered, within the context of the Istanbul Action Plan recommendations, the possibility of creating specialised operative anticorruption agencies and a special anticorruption group vested with special powers for the purposes of coordinating the efforts of various participants in the fight against corruption (law enforcement, regulatory, representative, executive agencies, bodies of local self-government and the public), representatives of the public authorities, the Ukrainian Cabinet of Ministers has expressed the opinion that these tasks have been solved in the process of reorganisation of the Coordinating Committee for the Fight against Corruption and Organised Crime under the President of Ukraine.

Pillar 2. THE LAW AND CRIMINALISATION OF CORRUPTION

In pursuance of section 1 (item 4 "f") of the Measures for eliminating the causes and circumstances promoting crime and corruption, approved by the Ukrainian Presidential Decree No.175 of 9 February 2004, and in connection with the signature of the United Nations Convention on Corruption, the Ukrainian Justice Ministry has elaborated the Draft Law of Ukraine "On Responsibility of Legal Entities for Corruptive Offences", envisaging the following main objectives:

- streamlining the Ukrainian legislation with the UN Convention on Corruption of 31 October 2003, and the Council of Europe's Criminal Law Convention on Corruption of 27 February 1999, as well as the Draft Law of Ukraine "On the Basis of Corruption Prevention and Resistance";
- introducing the responsibility of legal entities for corruptive offences, and stipulating the procedures for imposing responsibility, specifically, by defining the scope of corruptive offences for which a legal entity may face responsibility, determining the basis for such responsibility and the order of proceedings in cases of corruptive offences initiated against legal entities.

The draft law stipulates that cases of corruptive offences against legal entities shall be considered by local courts of common law, and proceedings on those cases shall be regulated by the said Law.

The Law shall enter into force simultaneously with the entry into force of the laws of Ukraine "On the Basis of Corruption Prevention and Resistance" and "On Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Responsibility for Corruptive Offences."

The introduction of amendments stipulated by the Ukrainian Draft Law "On Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Responsibility for Corruptive Offences," is connected above all with the need to comply with the United Nations Convention on Corruption, signed by Ukraine on 12 December 2003.

One of the main objectives expected to be reached by adopting the Draft Law "On Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Responsibility for Corruptive Offences" is the proposal of differentiating criminal responsibility of officials. With this end in view, the draft law suggests regulating criminal offences in the official sphere committed by individuals employed at legal entities, currently governed by private law, by a separate section of the Ukrainian Criminal Code. Specifically, to introduce responsibility for office abuse and exceeding official powers by a person exercising administrative functions at a legal entity governed by private law, regardless of its form of incorporation.

At the same time, despite certain similarity with the already existing incriminations envisaged by effective articles 364 and 365 of the Criminal Code, the new articles have characteristic distinctions connected with separate categorisation of the subjects of official crimes – persons carrying out organisations or administrative functions at legal entities governed by private law, regardless of their forms of incorporation.

In addition, the draft law envisages a considerable extension of the composition of subjects of crimes by criminalising offences involving office abuse by persons who have no status of a public official, but exercise public power functions delegated by the state. Specifically, the draft law categorises as such private auditors, private notaries, experts, arbitration managers, etc.

Another innovation is the institution of responsibility for commercial bribery, consisting in illegal transfer of money, securities, other property to a person exercising managerial functions at a legal entity governed by private law, as well as illegally providing to the said person of services, benefits or advantages of material or non-material nature in exchange for carrying out actions or inactions in the interests of the giver with the use of his (her) rights or powers. A logical supplement of this criminalisation is the provision criminalising the bribery of a person who does not have the status of a public official but exercises public power functions delegated by the state.

It also is necessary to mention the proposal concerning the criminalisation of illegal enrichment. According to the draft law, it shall consist in the acceptance by a public official or registration in property of his (her) close relatives of substantial amounts of money or property, the legal origin of which is not confirmed in the established manner.

The draft law does not overlook effective provisions of the Criminal Code of Ukraine either. It is necessary to mention among the proposed changes the criminalisation of bribe-giving by an official.

Considering the aforementioned amendments to the Criminal Code of Ukraine, the draft law also envisages the introduction of amendments to the Ukrainian Code of Administrative Offences, including administrative responsibility for illegal enrichment, failure to report the acceptance of a gift, violation of requirements concerning the declaration of private interests, etc.

It also should be mentioned that the main condition for the introduction of these amendments is explicit delineation of corruptive offences according to the criterion of their public threat level.

One of the measures envisaged by Presidential Decree No.175 is the preparation and submission for consideration of the Ukrainian Supreme Rada in the established manner of a draft law on criminal expertise of draft laws and regulation.

This draft law has been elaborated for the purpose of creating a legal framework for the activities connected with conducting a criminal expertise of draft laws and regulations in Ukraine, aimed at preventing the adoption of provisions that could have a negative impact on the crime rate. In particular, it suggests the regulation of a set of issues determining the rights and duties of subjects of criminal expertise, organisation of preparation, conducting and financing of the criminal expertise, as well as responsibility for violations of the law in the process of conducting legal expertise.

Delineation of corruptive offences stipulated by the Criminal Code of Ukraine and the Ukrainian Law on the Fight against Corruption (item 5 of the Recommendations)

Article 3 of the Ukrainian Law "On the Fight against Corruption" stipulates that subjects indicated in article 2 of that Law shall bear administrative and disciplinary responsibility for corruptive and other offences on the basis of this Law. Issues of criminal, civil, and material responsibility for corruptive and corruption-related offences shall be decided in accordance with effective law.

It should be mentioned in this connection that the main criterion for delineation of corruptive offences is the degree of public danger of the said offences, consisting in the difference in the amount of damage inflicted by such deeds. For example, a necessary condition for imposing criminal responsibility for corruptive offences envisaged, in particular, by articles 364 "Power or Office Abuse" and 365 "Exceeding Power or Office" of the Criminal Code of Ukraine, is the infliction of considerable damage to legally protected rights, freedoms and interests of individual citizens or public interests, the interests of society or legal entities. According to item 3 of the note to article 364 of the Code, the significance of the damage consists in infliction of material damage, one hundred times or more exceeding the tax-free minimal salary.

A similar principle of delineation of corruptive offences underlies the Draft Law of Ukraine "On the Basis of Corruption Prevention and Resistance" and the Draft Law "On Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Responsibility for Corruptive Offences." For example, the criterion used in the latter to distinguish between a corruptive offence and a crime involving bribe-giving is the size of the bribe.

Amending responsibility, specifically, for mediation in bribery (item 6 of the Recommendations)

The issue of responsibility for mediation in bribery presently does not fully comply with the general rules of imposing responsibility on accomplices, envisaged by 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, an organiser, solicitor, or intermediary are subject to criminal responsibility according to a relevant part of article 27 of the CC and the article (part of article) of the Special Part of the Code envisaging the crime committed by the executor.

Harmonisation of the notions "official" and "public officer" used in the Criminal Code of Ukraine and the Ukrainian Law "On the Fight against Corruption" (item 7 of the Recommendations)

It should be mentioned that the subjects of corruptive offences determined by provisions of the basis Law "On the Fight against Corruption" fully corresponds to the definition of subjects of corruptive offences envisaged by articles of the Criminal Code of Ukraine.

According to article 2 of the Ukrainian Law "On the Fight against Corruption," the following persons authorised to exercise governmental functions shall be responsible for corruptive offences and other crimes involving corruption on the basis of this Law: public officials; people's deputies of Ukraine, deputies of the Supreme Rada of the Autonomous Republic of Crimea, deputies of village, township, city, district, regional councils; officials of local self-government bodies.

According to provisions of the Criminal Code (item 1 of the note to article 364 of the Code), the subjects of corruptive offences are persons permanently or temporarily exercising the functions of representatives of the authorities or permanently or temporarily occupying positions at enterprises, institutions or organizations, regardless of their form of ownership, connected with organizational or administrative functions or carry out such duties by special authority.

Moreover, the changes suggested by the aforementioned draft laws also continue the use of a unified set of concepts, specifically with respect to the subject of corruptive offences.

Institution of criminal responsibility for actions involving the bribing of officials of the governments of foreign countries or international organizations (item 8 of the Recommendations)

In accordance with item 1 of the note to article 364 of the Code, officials are persons permanently or temporarily discharging the functions of representatives of the authority or permanently or temporarily occupying positions at enterprises, institutions or organizations, regardless of their form of ownership, connected with organizational or administrative functions or carry out such duties by special authority.

At the same time, in accordance with item 2 of the note to article 364 of the Criminal Code of Ukraine, foreigners or persons without citizenship discharging the functions stipulated in item 1 of this note shall also be recognised as officials.

Considering the aforementioned provisions, it is necessary to note that article 368 of the Criminal Code of Ukraine introduces responsibility for bribe-taking both by an official who is a Ukrainian citizen, and a foreign official or a person without citizenship. Therefore, the bribery of officials of foreign governments or international organisations on the territory of Ukraine is governed by article 369 of the Criminal Code of Ukraine and does not require additional criminalisation.

Ensuring obligatory confiscation for all corruption-related offences (item 9 of the Recommendations)

At present, most sanctions of the Criminal Code of Ukraine envisaging responsibility for corruptive offences contain such form of punishment as property confiscation.

In addition, Ukraine points to the fact that regardless of whether a relevant article of the Criminal Code of Ukraine envisages such sanction as confiscation of property of a convict, article 81 (item 4) of the Ukrainian Code of Criminal Procedure stipulates that money, valuables and other assets gained as a result of crime, including, naturally, all funds, other property, property rights given (taken) as a bribe, shall be collected in favour of the state.

Criminalisation of actions connected with non-reporting the facts of corruption of officials (item 10 of the Recommendations)

It should be mentioned that Ukraine believes that this proposal has already been implemented by the effective Criminal Code of Ukraine, namely, article 396 of the Code, envisaging responsibility for concealment of crimes. For example, the concealment of a grave or especially grave crime, not stipulated in advance, shall be punished 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.

Ensuring investigation of persons granted immunity under the Constitution (item 11 of the Recommendations)

In accordance with the Constitution of Ukraine, immunity in connection with discharging public functions is granted to three categories of persons. Article 80 of the Constitution of Ukraine stipulates that immunity shall be granted to Ukrainian people's deputies. Ukrainian people's deputies shall not be brought to criminal account, detained or arrested without the consent of the Supreme Rada of Ukraine. Article 105 of the Constitution of Ukraine stipulates that the Ukrainian President shall be granted immunity for his term in office. According to article 126, a judge shall not be detained or arrested without the consent of the Supreme Rada of Ukraine before the court issues an accusatory verdict.

It is also important that the procedure of lifting immunities off the said persons is regulated by the legislation quite clearly, and the immunity guarantees themselves are connected with specific procedures for detaining or arrest of the said persons and filing charges against them, but do not influence the possibility of conducting an investigation by competent authorities, including on cases of corruptive offences.

Responsibility of legal entities for corruptive offences (item 12 of the Recommendations)

The Draft Ukrainian Law "On Responsibility of Legal Entities for Corruptive Offences" elaborated by the Justice Ministry pursues the following main objectives:

- streamlining the Ukrainian legislation with the UN Convention on Corruption of 31 October 2003, and the Council of Europe's Criminal Law Convention on Corruption of 27 February 1999, as well as the Draft Law of Ukraine "On the Basis of Corruption Prevention and Resistance";
- introducing the responsibility of legal entities for corruptive offences, and stipulating the procedures for imposing responsibility, specifically, by defining the scope of corruptive offences for which a legal entity may face responsibility, determining the basis for such responsibility and the order of proceedings in cases of corruptive offences initiated against legal entities.

The draft law stipulates that cases of corruptive offences of against legal entities shall be considered by local courts of common law, and proceedings on those cases shall be regulated by the said Law.

The Law shall enter into force simultaneously with the entry into force of the laws of Ukraine "On the Basis of Corruption Prevention and Resistance" and "On Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Responsibility for Corruptive Offences."

- The introduction of amendments stipulated by the Ukrainian Draft Law "On Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Responsibility for Corruptive Offences," is connected with the necessity to ensure the implementation of the Draft Law of Ukraine "On the Basis of Corruption Prevention and Resistance" by identifying concrete incriminations, specifically, corruptive offences, as well as other corruptive deeds and corruption-related offences, and regulating procedures for imposing criminal and administrative responsibility.

Ensuring effective international mutual assistance in investigation and persecution of corruptive offences (item 13 of the Recommendations)

The Justice Ministry is working on a draft law on ratification of the Criminal Law Convention on Corruption, already ratified by 18 countries, in connection with which it entered into force on 1 July 2002, and signed by another 24 countries.

According to article 18 of the Convention, each Party shall take legislative and other measures to ensure the possibility for imposing criminal responsibility on legal entities for such criminal offences as bribe-giving, influence trading, and money laundering, committed in its favour by any

physical person acting individually or as part of a legal entity, and occupying a senior position within a legal entity, relying on:

- the authority to represent the legal entity;
- the authority of decision-making on behalf of the legal entity;
- the authority to control the legal entity;

as well as the participation of such physical person in the aforementioned crimes as an accomplice or instigator.

In addition, a draft law has been elaborated on the ratification of the Civil Law Convention on Corruption, ratified by 8 countries and signed by 24 countries.

Corruptive offences as a type of criminal offences are governed, besides the aforementioned, by a number of international treaties on cooperation in criminal cases.

To regulate international cooperation in criminal cases, Ukraine has concluded 26 bilateral international treaties on issues of mutual legal assistance in service documents, conducting proceedings, and obtaining evidence, as well as extradition.

In addition, Ukraine has become a party to 18 international treaties, including the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases concluded between the Commonwealth of Independent States member countries and its Protocol, as well as Conventions elaborated within the frames of the Council of Europe with additional protocols – on mutual assistance in criminal cases, on extradition, on transfer of criminal proceedings, on laundering, search, seizure and confiscation of crime proceeds, and some others.

Due to the existing legal framework of international treaties, Ukraine currently disposes of the opportunity to cooperate with competent bodies of some seventy countries in the sphere of criminal proceedings.

Pillar 3. CIVIL SERVICE TRANSPARENCY

General training of public servants employed in spheres with a high corruption risk in matters of fighting corruption and ethics (item 14 of the Recommendations)

The central executive authorities take regular measures (based on approved plans) for development of methodological recommendations for public servants concerning the settlement of conflicts of interests, compliance with ethical norms in their activity, imposing liability of persons guilty of corruption and other corruption-related offences, other issues aimed at the fight against corruption and drawing up a list of civil service positions in spheres involving a high risk of corruptive manifestations, procedural measures aimed at preventing corruptive offences in the process of discharging their official duties and training the aforementioned persons.

Decree of the Ukrainian Cabinet of Ministers No.1785 of September 1999 "On Providing Analytical Information on Fulfilment of the Law of Ukraine "On the Fight against Corruption" by the Executive Authorities" stipulates that ministries, other central executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, regional, Kiev and Sevastopol municipal public administrations shall submit analytical information once every half-year – before 15 August and before 15 February – to the Main Civil Service Department on implementation of the Ukrainian Law "On the Fight against Corruption" by relevant ministries and other central executive authorities, their territorial units, the Council of Ministers of the Autonomous Republic of Crimea, ministries and republican committees of the Autonomous Republic of Crimea, regional, Kiev and Sevastopol municipal, district, and city district administrations in the cities of Kiev and Sevastopol.

The Interior Ministry submits a monthly statistic report to the Main Civil Service Department "On Fulfilment of the Law of Ukraine "On the Fight against Corruption," containing information of the Prosecutor General's Office, the Interior Ministry, the Security Service, and the State Tax Administration.

The Main Civil Service Department submits summarised analytical information and relevant conclusions and recommendations on this problem to the Ukrainian Cabinet of Ministers once every half-year – before 30 August and before 28 February.

Updating and communicating codes of conduct (item 16 of the Recommendations)

A number of laws and regulations have been adopted or are being prepared for consideration by the Supreme Rada of Ukraine in the sphere of corruption prevention, conducting the training of public officials in issues of fighting corruption and professional ethics, updating and publishing codes of conduct and similar legal acts regulating the conduct of public servants. Specifically, discipline codes have been elaborated by the Ukrainian Interior Ministry and the Ministry for Emergency Situations. The key element of measures aimed at ensuring legal compliance by officials of the customs authorities may be the adoption of a discipline code by the Ukrainian Customs Service, currently considered by the Supreme Rada.

Targeted work is underway to establish open, transparent, and productive relations with entrepreneurial entities and public authorities.

With this end in view, for instance, Order of the State Customs Service No.692 of 23 September 2004 has approved a list of laws and regulations of the Ukrainian State Customs Service, determining the order of applying customs clearance procedures and a list of laws and regulations of the Ukrainian State Customs Service list of laws and regulations of the Ukrainian State Customs Service the provisions of which cannot be applied to the products of resident enterprises granted a right to simplified customs clearance procedures. This order has been covered in mass media.

Additionally, in order to ensure timely prevention of offences involving support of smuggling by employees of the customs bodies, the Ukrainian Customs Service Order No.599 of 19 August 2003 has approved the rules of mutual information of the units for the fight against contraband and customs rules violations, the customs guard, and internal security of the Ukrainian Customs Service of the facts and evidence of involvement of customs officers in illegal transfer over the Ukrainian customs border of goods and other objects.

The Ukrainian State Tax Administration issues Order No.471 of 6 October 2003 "On Anti-Corruption Measures at the State Tax Service of Ukraine," approving an Anti-Corruption Action Plan of the Ukrainian State Tax Service for the period until 2008. This Plan envisages the creation of a mechanism of explicit regulation of official actions by tax officials within the frames of their powers and development of relevant departmental regulations. In pursuance of the said Plan, the Ethics Code of Officials of the State Tax Service has been elaborated and adopted by order No.319 of 7 July 2004.

Improvement of the Public Procurement System (item 19 of the Recommendations)

In order to improve the system of public procurement (orders), privatisation, implementation of state projects or programmes involving budgetary financing at all levels, issuance of licenses and patents, other permissions, loans of the National Bank of Ukraine, Government-guaranteed loans; to restrict the possibilities of arbitrary solution of these issues by public officials, the Government of Ukraine has taken a set of measures to develop a single system of public procurement in Ukraine based on transparent procurement procedures, promoting the development of a competitive national economic environment, enabling to achieve an efficient utilisation of public funds and their saving, and to fulfil a number of conditions concerning the harmonisation of the

Ukrainian legislation in this sphere with international law, above all the EC rules and rules of the World Trade Organisation.

An important step in the sphere of legal support of the public procurement system is the Ukrainian Law "On Procurement of Goods, Jobs and Services at Public Expense" (hereinafter – the Law) developed in accordance with the UNCITRAL model law on public procurement, the Uruguay WTO agreement on public procurement and relevant EC Directives.

In pursuance of further harmonisation of the Ukrainian legislation with the legislation of the European Union and improvement of the existing practice of public procurement, the Ukrainian Law "On Introduction of Amendments to the Law of Ukraine "On Procurement of Goods, Jobs and Services at Public Expense" has been adopted on 16 January 2003.

The Law contains an accurate description of standard tender procedures and conditions for their application, and regulates the procurement of goods, jobs and services of all categories, except the following:

- water, thermal and power supply;
- water collection and servicing sewage systems;
- postal services;
- telecommunication services (except mobile communications);
- telecommunication services involving television and radio broadcasting;
- railway transportation services.

The Law has introduced a marginal value (the equivalent of 2,000 euros for goods and services, and 100,000 euros for jobs) starting which procurements shall be made through tender procedures in the manner prescribed by this Law.

In accordance with the Law, the national system of public procurement is based on principles of decentralisation, in accordance with which procurement is made directly by the administrator of public funds (public authorities, including bodies of local self-government and their subordinate institutions, social insurance funds, the Ukrainian Pension Fund, the National Bank of Ukraine, as well as enterprises and organisations receiving funding from the governmental and local budgets) concluding procurement contracts. The tender committee set up by the customer administering public funds shall be responsible for the organisation and holding of tender procedures. As these funds are public property (taxpayers' money), it is important to establish commonly accepted public procurement procedures (which is also reflected in international practice) through open tenders for the purposes of efficient use of those funds, development of a competitive environment and enhancing confidence in the state across the entire territory of Ukraine. This is exactly the procedure that is being introduced by this Law.

The concept of tenders underlying the Law consist in fulfilment of a sequence of procurement actions, completing with conclusion of a procurement contract. The tender process usually contains such elements as invitations to participate in a tender, elaboration of detailed tender documentation with neutral and explicit specification, objective assessment in accordance with the set criteria, and non-admission of negotiations between the customer and suppliers on the future tender winner.

Article 7 of the Law stipulates that the procurement customer shall refuse an entity attempting to exert influence on the former by offering remuneration in some or other form from permission to participate in the tender.

The legalisation of the mechanism of pre-trial consideration of executors' complaints against possible violations of the public procurement procedures is another important feature of the Law. These issues are covered by section VII of the Law – Appeals against Procurement Procedures.

If the facts of the violations have been confirmed in the course of consideration of the appeals, a decision shall be issued to cancel the tender results, therefore the customers should be interested in observing the legislation on public procurement. If a complaint has not been satisfied because the customer has concluded a procurement contract before the filing of the complaint, but the violations have been confirmed, the materials may be referred to relevant controlling authorities, and in some cases to law enforcement agencies. Moreover, the filing of complaints constitutes one of the basis for inspection (control) both by an authorised agency, and by controlling agencies. If any of the sides disagrees with the decision of the authorised agency, they shall have the right to appeal against such decision in court.

Decisions concerning the consideration of appeals shall be presented to the participant (participants) and the customer within five working days from the date of their adoption, and published in *The Public Procurement Herald* and placed at the Website of the Ministry of Economy.

Additional information. Starting from the moment of adoption of the Ukrainian Law "On Procurement of Goods, Jobs and Services at Public Expense" the amount of complaints referred by participants to the Ministry of Economy is constantly growing. E.g. 55 complaints have been filed in 2001, 135 in 2002, over 200 in 2003, and during nine months of 2004, the Ministry of Economy has already received over 270 appeals from tender participants.

To ensure adequate implementation of the said Law, considering the updates, over 20 regulations of the Ukrainian Cabinet of Ministers and the Ministry of Economy have been adopted during 2000-2003.

The Ukrainian Cabinet of Ministers Decree No.1469 of 27 September 2000 "On Organisational Measures for the Functioning of the Public Procurement System" has assigned the functions of a specially authorised body for public procurement coordination (functions stipulated by article 3 of the Law) have been assigned to the Ministry of Economy and European Integration of Ukraine, within the structure of which these functions are directly implemented by the Public Procurement and Public Order Coordination Department.

Its main functions include:

- elaboration of laws and regulations concerning the functioning of the public procurement system and providing explanations of their application;
- coordinating the application of closed procurement procedures (limited tendering and single tendering);
- considering participants' complaints by the moment of conclusion of a procurement contract;
- control over the observance of the legislation on procurements and presenting materials to law enforcement agencies concerning the facts of violation of procurement rules, entailing administrative or criminal responsibility;
- issuing a specialised bulletin, *The Public Procurement Herald*;
- international cooperation in the sphere of procurement.

An important element of the process of introducing competitive public procurement procedures is the control system, specifically, the inclusion of the issue of legal compliance in the sphere of public procurement in the list subject to inspections by controlling authorities. Besides the Ministry of Economy, matters of control over public procurement are handled, within the frames of their competence by the State Control and Audit Service (appropriate use of public funds), the Ukrainian Auditors Chamber (effective use of public funds), the Ukrainian Antimonopoly Committee (compliance with legislation on competition during public procurement tender procedures).

An important institutional component of the public procurement system is information support of the public, above all, customers and potential bidders.

In accordance with the Law of Ukraine "On Procurement of Goods, Jobs and Services at Public Expense," procurement announcements shall be published above all by a special bulletin – *The Public Procurement Herald* issued by the authorised body – the Ministry of Economy and European Integration.

In addition, tender information concerning public procurements is placed on the website of the Ministry of Economy and the Governmental web-portal, as well as the customers' own websites.

Additional information. The informational-analytical *Public Procurement Herald* published 1,682 tender announcements in 2000; 5,205 in 2001; 7,161 in 2002; over 9,000 in 2003; and 11,600 during nine months of 2004, as compared to 6,700 over nine months of 2003 (a 1.7 times increase). These data show that the main tendering procedure is open tendering, ensuring maximum transparency of public procurement, and evidences a constant enhancement of competitiveness of the public procurement market.

Analysis of the dynamics and contents of tender announcements suggests a sufficient transparency of the system of public procurement.

Work on improvement of the public procurement system in 2004

During nine months of 2004, the main work in this area was focused on elaboration and improvement of the legislative framework of public procurement, organisation of training of specialists, creating mechanisms of information support of customers and suppliers participating in public procurement procedures, and control over the observance of laws and regulations on competitive-based public procurement procedures by administrators of public funds.

During this period, the Cabinet of Ministers has prepared and adopted two new decrees aimed at improvement of the inter-departmental coordination mechanism, which can be implemented on the basis of unification of procurement volumes.

In pursuance of the Ukrainian Presidential Decree No.175 of 9 February 2004 "On a System of Measures for Eliminating the Causes and Circumstances for Criminal Manifestations and Corruption" the Ministry of Economy jointly with the Main Control and Audit Department has elaborated the Draft Law "On Introduction of Amendments and Additions to Some Legal Acts" envisaging, in particular, the strengthening of organisational and legal measures of control and introducing administrative responsibility for violations in the sphere of public procurements. The draft law was coordinated with relevant law enforcement and controlling agencies, approved by the Ukrainian Cabinet of Ministers and referred to the Supreme Rada. It was adopted by the Supreme Rada in first reading in September this year.

Moreover, three orders of the Ministry of Economy have been adopted and registered with the Justice Ministry concerning the improvement of control procedures in the sphere of public procurement, upgrading the skills of tender committee secretaries, and the order of coordinating the application of certain public procurement procedures.

On 12 February 2004, the Government Committee of Economic Development and European Integration has approved the Strategy of public procurement and public order system development prepared by a relevant department of the Ministry of Economy. The Strategy identifies and provides a detailed description of 16 measures for 2004-2006 aimed at raising the efficiency of the national public procurement system. Specifically, in pursuance of measures mapped out by the Strategy, the website of the specialised bulletin of the Ministry of Economy, *The Public Procurement Herald*, was created in June 2004.

The Ministry of Economy took an active part in the preparation of materials for sessions discussing the Ukraine – EC Plan (the Public Procurement section). The Public Procurement section of the Ukraine – EC Plan has been developed upon the results of the conducted work and coordinated with the European Commission,

At the same time, in pursuance of the Action Programme of the Ukrainian Cabinet of Ministers, the Programme of Ukrainian Integration with EC and the Strategy of development of the public procurement and public order system, the Ministry of Economy and European Integration has elaborated a Draft Law "On Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Improvement of Public Procurement Procedures."

The public procurement system will be upgraded along the following lines:

- further improvement of the legislative and regulatory framework of public procurements, specifically, introduction of amendments to the Law "On Procurement of Goods, Jobs and Services at Public Expense," namely, strengthening the controlling function of the authorised body and introduction of an electronic tendering system;
- enhancing control over the observance of competitive principles of public procurement procedures in compliance with requirements of effective law (increasing the number of independent audits of public funds administrators by the authorised body and enhancing the level of interaction between the authorised body and controlling and law enforcement agencies);
- introducing audit in the public procurement sphere;
- upgrading the overall professional qualification of public officials whose work involves public procurements;
- development of information technologies in the public procurement sphere.

Cooperation with the civil society, ensuring public influence on Government decision-making (items 21-22 of the Recommendations)

Ukraine is introducing democratic standards of openness and transparency in the activity of executive authorities, the mechanisms ensuring the participation of the public in the process of formation and implementation of public policy contributing to corruption prevention within the system of executive authorities.

On 31 July 2004, the President of Ukraine signed Decree No.854 "On Ensuring Conditions for Broader Public Participation in Public Policy Formation and Implementation."

This Presidential Decree identifies as the priority tasks of the Ukrainian Cabinet of Ministers, central and local executive authorities the creation of effective organisational and legal conditions for comprehensive realisation of citizens' constitutional right to participation in the management of public affairs, ensuring openness in the activity of the executive authorities, taking public opinion into account in the process of working out decisions and organising their implementation, maintaining regular dialogue with all social groups of citizens, creating opportunities for free and objective media coverage of all processes in this sphere.

In pursuance of the Presidential Decree, the Ukrainian Cabinet of Ministers has adopted Decree No.1378 of 15 October 2004 "Some Problems of Ensuring Public Participation in Public Policy Formation and Implementation," which formed a Public Council at the Cabinet of Ministers, approving the procedures for holding consultations with the public on matters of public policy formation and implementation, the Statute of the Public Council at the Cabinet of Ministers of Ukraine, and a Model Provision on public council at the central and local executive authority.

The central and local executive authorities have implemented a number of measures to create public councils at the executive authorities with the participation of representatives of public organisations, political parties, mass media, and bodies of local self-government. The duty of

public councils at the executive authorities consist in promoting the realisation of citizens' constitutional right to participate in the management of public affairs, ensuring the participation of public opinion in the process of working out decisions of the executive authorities and organisation of their implementation.

In order to step up performance of the central and local executive authorities, specifically public relations departments, the Ukrainian Cabinet of Ministers adopted instruction No.759-r of 18 October 2004 "On the Work of Central and Local Executive Authorities to Ensure Openness in their Activity, Public Relations and Interaction with Mass Media."

Measures envisaged by this instruction of the Cabinet of Ministers will largely promote openness and transparency in the activity of the central and local executive authorities, democratic basis of their functioning, the most important among which are back connection, openness, and readiness to conduct an open dialogue and cooperation with the public.

In order to streamline work in the sphere of public relations and interaction with mass media, the Cabinet of Ministers prepared a methodological guide "Consultations with the Public. Directions, Technologies, Experience." The methodological guide summarises the experience of the Cabinet of Ministers, the central and local executive authorities in this sphere.

The fight against laundering crime proceeds (item 23 of the Recommendations)

The implementation of FATF and MONEYVAL recommendations in the sphere of struggling against the legalisation (laundering) of crime proceeds continues, constituting an important component of the fight against corruption. The Ukrainian Foreign Ministry has adopted measures for ensuring Ukraine's joining the Egmont Group of Financial Intelligence Units. The State Financial Monitoring Agency, with support of the Foreign Ministry, participated in the plenary session of this group, during which Ukraine was admitted to this organisation (June 2004). Memoranda of cooperation with financial intelligence service of Brazil and Cyprus have been concluded.

On 1 January 2005, the Ukrainian Law "On Introduction of Amendments to Article 4 of the Ukrainian Law on Prevention and Resistance to the Legalisation (Laundering) of Crime Proceeds" will enter into force, in accordance with which a specially authorised executive body responsible for financial monitoring will acquire the status of a "special status executive authority."

In keeping with article 1 of the Presidential Decree No.1144 of 28 September 2004 (On the Ukrainian State Financial Monitoring Committee," a State Financial Monitoring Committee shall be set up on the basis of the State Financial Monitoring Department – a governmental public administration body operating within the system of the Ukrainian Finance Ministry.

The adoption of relevant laws and regulations is aimed at the implementation of the 26th FATF recommendation, according to which countries should create financial intelligence units, which should become national centres for gathering, analysing, and reporting suspicious transactions and other information on potential money laundering and financing terrorism.

The plenary meeting of the Egmont Group held in Great Britain from June 21 to 25 2004 has admitted the State Financial Monitoring Department to the Egmont Group – the international organisation of financial intelligence units.

In order to improve legislation on preventing the legalisation (laundering) of crime proceeds and the financing of terrorism, and implementing forty recommendations of the Financial Action Task Force on Money Laundering (FATF), approved in the new edition at the Berlin meeting of the Group in June 2003, the State Financial Monitoring Agency has elaborated, coordinated with the interested public authorities and submitted to the Cabinet of Ministers on 26 August 2004 the

Draft Law of Ukraine "On Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Prevention of Legalisation (Laundering) of Crime Proceeds and the Financing of Terrorism."

To ensure the development of Ukraine's international cooperation in the Eurasia region in the sphere of prevention and resistance to the legalisation (laundering) of crime proceeds, the Ukrainian President issued Decree No.1156 of 30 September 2004 "On Ukraine's Participation in the Eurasian Group for Resisting the Legalisation of Crime Proceeds and the Financing of Terrorism."

On 6 October 2004, the Ukrainian delegation participated in a special session on creation of the Eurasian Group for Resisting the Legalisation of Crime Proceeds and the Financing of Terrorism. A Eurasian Group similar to FATF has been created envisaging Ukraine's participation as an observer.

The State Financial Monitoring Department closely interacts with law enforcement bodies of Ukraine. A number of joint agreements, orders and protocols have been signed on the basis of article 14 of the basic Law, regulating the order of information exchange and transfer of summarised materials, and obtaining information in the process of their processing, namely:

- A joint order has been signed with the Ukrainian Interior Ministry has signed "On Approval of the Order of Providing the Interior Ministry of Ukraine by the State Financial Monitoring Department with Summary Materials on Financial Transactions which May Involve the Legalisation (Laundering) of Crime Proceeds or the Financing or Terrorism, and Obtaining Information on the Pace of their Verification" of 30.07.03, No.83~787, Agreement No.4 of 30.05.03, Agreement No.19 of 05.09.03, Protocol No.1 of 05.09.03, Protocol No.2 of 25.08. 04, and Protocol No.3 of 16.09.04.
- With the Ukrainian State tax Administration – a joint order has been signed "On Approval of the Order of Providing the State tax Administration of Ukraine by the State Financial Monitoring Department with Summary Materials on Financial Transactions which May Involve the Legalisation (Laundering) of Crime Proceeds, and Obtaining Information on the Pace of their Verification" of 12.08.03, No.94/387, Agreement No.5 of 09.06.03, Agreement No.16 of 12.08.03, and Protocol No.1 of 14.08.03, Protocol No.2 of 12.07.04, Protocol No.3 of 13.07.04, Protocol No.4 of 30.08.04.
- A joint order has been signed with the Ukrainian Security Service "On Approval of the Order of Providing the Security Service of Ukraine by the State Financial Monitoring Department with Summary Materials on Financial Transactions which May Involve the Legalisation (Laundering) of Crime Proceeds" of 22.12.03 No.163/577.
- A joint order has been signed with the Ukrainian Prosecutor General's Office "On Approval of the Order of Providing the Prosecutor General's Office of Ukraine by the State Financial Monitoring Department with Summary Materials on Financial Transactions which May Involve the Legalisation (Laundering) of Crime Proceeds or the Financing or Terrorism, and Obtaining Information on the Pace of their Verification" of 20.08.03, No.98/40.
- With the State Customs Service of Ukraine – order No.493/16vn/13 has been signed on 8 August 2003, Protocol No.1 of 13 August 2003, Protocol No.2 of 19 July 2004.

A joint order has been signed with the State Border Guard Service of Ukraine "On the Order of Providing Information by the Ukrainian State Border Guard Service Administration to the State Financial Monitoring Department on the Crossing of the Ukrainian State Border by Persons" of 9 September 2004, No.114 and Agreement No.1 of 22 May 2003.

By 27 October 2004, the State Financial Monitoring Department has provided law enforcement authorities with 147 summary materials, and criminal proceedings have been initiated on 54 of the said materials.

SUMMARY OF DISCUSSION

The update report provided by the Government of Ukraine did not follow the proposed format, which made it difficult to analyse progress achieved by the country in the implementation of the recommendations. While the update reflects the general pattern of the format, some of the answers were combined; in many instances the implementation measures were only named (e.g. names of various resolutions and acts), but substantive information was not provided about their contents or the state of implementation. In some cases the update repeated information provided during the original review, which may indicate either lack of national implementation actions in this area, misunderstanding of or disagreement with the recommendation. During the discussion the following achievements and challenges were noted.

Following the recommendations presented under Pillar 1, the Anti-Corruption Programme is currently being updated by the government on the basis of the assessment of the implementation of the previous programme. It remained unclear what were the outcomes of this assessment, which new priorities will be proposed for the updated Programme, and what is the status of its development. When designing an updated Programme, special attention should be paid to the developing of a clear plan of actions, identifying the government entities responsible for the actions and timeframe for monitoring.

It also appears that certain improvements were made concerning the Anti-Corruption Coordination Committee, as suggested in recommendation 3. However, more detailed information would be required to assess the effectiveness of the actions and their compliance with the recommendation. In particular, it would be useful to learn about the role the Committee play in the elaboration of the Programme.

No information was provided on the recommendation 4 concerning the establishment of a specialised anti-corruption unit, possibly at the Office of the Prosecutor General. During the discussion, a delegate from the group “Ukrainian Anti-Corruption Coalition” has informed the meeting about a draft legal act on an investigative bureau, which was developed by this group and presented to the parliament. Since the official update did not contain any information about this action, it was not possible to assess its compliance with the recommendation.

The update provided information about recent steps towards the implementation of the recommendations under Pillar 2 concerning the reform of criminalisation of corruption. In particular, it appears that the new draft Law on the Fight against Corruption, elaborated by the Ministry of Justice, will address many of the recommendations. For further analysis of the compliance of the draft Law with the recommendation, Ukraine will need to provide a copy of the Law for examination under further monitoring efforts of the Istanbul Action Plan.

It appears that the draft Law provides for implementation of recommendations 5, 6, 7, and 8 on the elements of offence and definition of an official. At the same time, the draft Law seems to address recommendation 6 only partially, covering the role of a mediator in corruption related crimes, but not addressing other elements of offence.

The draft Law does not appear to address fully recommendation 10 on criminalisation of non-reporting of possible corruption, providing only for responsibility for possibly for the concealment of crime, reflecting a misunderstanding or disagreement with the original recommendation.

On a number of the recommendations, e.g. concerning confiscation regime and non-material bribery, the update repeats the information provided during the original review, without adding any new information.

It appears that Ukraine faces difficulties in implementing the recommendation concerning the immunity of judges due to the relevant provisions in the Constitution.

Ukraine was praised for its recent efforts on mutual legal assistance in investigation of corruption, according to the recommendation 13.

When the draft Law on the Fight against Corruption is passed, secondary implementation legislation will need to be introduced, which may present a serious challenge. At the same time, no information was provided as to the relevant changes in the Criminal Code or to any other legislation required by the draft law.

Under Pillar 3 on civil service the update provided rich information, often focusing on various legal acts and regulations which have been introduced; information about the implementation of these provisions would be needed to further analyse the compliance with the recommendations.

In particular, under recommendation 14 the update focuses on the legal framework, while no information was provided on the anti-corruption and ethics training for public officials, especially those in high corruption-risk areas, which is the main idea of the recommendation.

The update provides comprehensive information about the measures taken to implement recommendation 16 on Codes of Conduct for public officials, including the elaboration of the Code of Ethics for the customs, as well as the clarification about the documents required for customs checks.

The update further provides very detailed information on the measures taken to implement recommendation 19 concerning public procurement regulations. However, the issue of discretion was not fully addressed, and will require further actions. The update does not address the issue of “blacklisting” of companies, probably due to unresolved recommendation concerning responsibility of legal person for corruption.

The update provides information about recent steps to implement the recommendation 21 on public participation, including various legal steps such as a decree by the president and a decision by the parliament. It would be useful for future monitoring to provide information on the status of implementation of the existing legal framework in the field. In particular, it would be useful to provide information about possible national actions to address the recommendation concerning the establishment of the office of a commissioner for information.

Dealing with the recommendation 25 on money laundering, the update provides detailed information on the recent achievements in this area. Besides, the update identified two main bodies involved in the relevant activities. Further information about their roles and relations between them will be useful for analysis.

Several recommendations were not covered by the update, including:

- asset disclosure (recommendation 15);
- whistleblowers’ protection (recommendation 17);
- inspector general programmes (recommendation 18);
- law on freedom of information and libel and defamation laws (recommendation 22).

Given the high importance of these recommendations, Ukraine is invited to provide information about the national actions in these areas in the future monitoring updates.