



Anti-Corruption Network for Transition Economies
OECD Directorate for Financial and Enterprise Affairs
2, rue André Pascal
F-75775 Paris Cedex 16 (France)
phone: (+33-1) 45249106, fax: (+33-1) 44306307
e-mail: Anti-Corruption.Network@oecd.org
URL: <http://www.anticorruptionnet.org>

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

UKRAINE

MONITORING REPORT
OCTOBER 2005

This report includes two main parts: the update presented by the government of Ukraine about national actions to implement the recommendations, which were carried out since previous update in December 2004; the summary of the expert opinion by Dennis Hawkins, ABA CEELI, and Elnur Mussaev, Azerbaijan, and of the discussion, which took place at the Istanbul Action Plan meeting on 20-21 October 2005, Paris, France.

For more information, please contact Mrs. Olga Savran at the ACN Secretariat, tel.: 33 1 45 24 13 81, fax: 33 1 44 30 63 07, e-mail: olga.savran@oecd.org



I) 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:

The Ministry of Justice has developed the Anti-Corruption Concept. The Concept was agreed with all interested public authorities of Ukraine, worked over in the Secretariat of the Cabinet of Ministers, and after approval of the new Government members it will be introduced again to the Cabinet of Ministers of Ukraine.

The Concept was developed on the basis of situation analysis in the anti-corruption area in Ukraine performed by the Ukrainian Ministry of Justice together with the Institute of applied humanitarian research (headed by Mr. M. Buromenskiy - Professor, Doctor of Law).

The purpose of the document is to determine corruption risks in all government institutions and priority measures of the State in cooperation with non-government sector aimed at substantial reduction of corruption over a period of a year and a half - two years. Approval of the Concept involves development of an Action Plan with identification of specific measures, time schedule and implementing agencies.

After implementation of the Concept and Action Plan, development of further anti-corruption Strategy for the longer period is planned based on the Anti-Corruption Concept for 1998-2005. It is expected that the Ukrainian National Security and Defence Council will monitor implementation of the Concept and Action Plan.

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 basic idea of the new Concept and the new draft of the fundamental law of Ukraine "On prevention of and counteraction to corruption in Ukraine" is a transition from the ideology of fighting against corruption to the ideas of preventing corruption - strengthening of the anti-corruption preventive mechanisms.

The Concept pays a special attention to the issues of public service reform, resolution of conflict of interests, accountability of public servants, transparency of administrative decisions, elimination of corruption risks in making management decisions, issues of administrative procedures.

A separate section of the draft Concept is devoted to enhancing the role of civil society and Mass Media in preventing corruption.

The draft Code of Conduct for Public Officials was prepared by the Ministry of Justice and is going to be introduced to the Cabinet of Ministers. The Code will provide ethical standards for public servants and other persons entrusted with public functions, as well as propose solutions for issues of conflict of interests. The draft Code was discussed in general public including on a regional level, and it is planned to introduce it to the Government soon.

Implementation of the model of "open government". On his first press-conference the Prime-Minister of Ukraine Mr. Y. Ekhanurov announced about his intention to improve the system of informing the public on activity of the Cabinet of Ministers of Ukraine, to give concrete substance to the principle of transparency of the government work. The Prime-Minister is going to ensure the presence of public representatives on the meetings of government committees, mandatory comment on decisions made on their meetings. However, meetings of the Cabinet of Ministers will be private in order to avoid political speculations. A special schedule should be prepared to provide news agencies of all Mass Media with information on a daily basis and to disclose in media a weekly plan for meetings of the Government and its committees.

Drafting of the law of Ukraine "On criminological expertise of draft laws and regulations" is an attempt to create an instrument for elimination of systemic regulative or organizational gaps promoting corruption-prone environment. This draft was prepared by the Ministry of Justice together with the Academy of legal sciences of Ukraine. The main objective is to create legal and organizational framework for the activities connected with conducting a criminological expertise of draft laws and regulations in Ukraine, aimed at detecting and preventing legalization of provisions that could have a negative impact on the crime rate including corruption. Since July 4 2005 the draft (#7755) has been under consideration of the Supreme Rada of 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:

According to the Decree of the President of Ukraine of 08/02/2005 #208 functions of the Anti-corruption Coordination Committee were delegated to the Ukrainian National Security and Defence Council. It indicates that the extent of corruption in Ukraine constitutes a threat to the national security of the country, puts the brakes on the economy and social development. The National Security Council headed by the President of Ukraine contains the leaders of legislative and judicial authorities, the Prosecutor-General, heads of law enforcement agencies. It also has its Staff responsible for managerial and organizational work. Research institutes and consultative bodies - interdepartmental commissions on various topics - are attached to the Council. On September 23, 2005 for the purpose of making appropriate decisions and improving coordination of activities of law enforcement agencies the President of Ukraine gave

a task to create a working group to develop a concept for formation and operation of Interdepartmental commission on coordination of anti-corruption activities of law enforcement agencies. At the present moment members of this working group are appointed. It is expected that this Interdepartmental commission will be a decision-making body for the periods between meetings of the Security Council.

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:

Reform of law enforcement agencies goes on in Ukraine. In this connection the Interdepartmental working group of the National Security Council of Ukraine was created, which drafted the Concept for reforming law enforcement agencies approved on the Council's meeting on September 6 2005. According to the decision an appropriate Concept shall be developed based on this document, special documents shall be prepared for creation of a National Investigative Service of Ukraine. The National Investigative Service is created as a central executive body with a special status. It will have functions of prejudicial inquiry on grave and especially grave crimes, investigation of cases of corruption offences committed by public servants of categories 1-2, judges and law officers, analytical work on prevention of corruption. Taking into account that this service will be created on the basis of staff of prejudicial inquiry units of Public Prosecutor's Office it will have a branched regional structure. Issues of creation of a National Investigative Service were worked out within the working group established by the Order of the President of Ukraine of March 15 2005. This working group has developed a basic draft law. On September 23 2005, with due account of the decisions of the National Security Council of 06/09/2005, the President of Ukraine gave a task to the interested departments to develop concrete proposals. At the same time the Staff of the National Security and Defence Council together with the ANC of OECD and American Association of Lawyers within their joint project study experience of several countries in creation and operation of anti-corruption groups to use it in the work on creation of a National Investigative Service.

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:

Draft laws "On Prevention of and Counteraction to Corruption in Ukraine", "On Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Responsibility for Corruption Offences", "On Responsibility of Legal Entities for Corruption Offences" prepared by the Ministry of Justice of Ukraine are on approval in the Secretariat of the President of Ukraine.

Amendments to the Criminal Code and the Code of Administrative Offences are determined by the new provisions of the draft law "On the Fight against Corruption", i.e. issues of responsibility are brought into accord.

Besides, the draft law on responsibility of legal entities in the anti-corruption area is prepared on the basis of the new draft law on the fight against corruption.

The above drafts will be introduced by the President of Ukraine to the Supreme Rada as matters of priority.

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:

The draft law of Ukraine "On Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Responsibility for Corruption Offences" addresses some issues of responsibility for active and passive bribery in accordance with international standards. In particular, issues are specified on responsibility for corruption in a private sector and international organizations; responsibility is established for illegal enrichment, the composition of subjects of crimes is extended and harmonized with the basic draft law "On Prevention of and Counteraction to Corruption in Ukraine".

As regards bribery through a third person, these issues are addressed through application of institution of complicity of the General Part of the Criminal Code of Ukraine.

As regards delineation of offences between an offer/solicitation and extortion these violations are criminalized by different articles of the Criminal Code, i.e. are delineated.

As regards increasing the punishments for active and passive bribery - the Criminal Code provides penalty as imprisonment up to eight years for active bribery and up to twelve years for passive bribery. That's why there is no need to increase punishment.

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:

These issues are addressed in the draft laws "On Prevention of and Counteraction to Corruption in Ukraine", "On Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Responsibility for Corruption Offences".

Subjects in these drafts are harmonized, their composition is extended to representatives of all branches of state power, local government, and private sector.

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:

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:

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:

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:

A special procedure related to criminal prosecution in cases connected with immunities is provided in the draft of a new Code of Criminal Procedure of Ukraine. But this procedure is strictly regulated by the Constitution of Ukraine which specifies scope of immunities, including those of judges, deputies, President of Ukraine.

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 draft law of Ukraine "On Responsibility of Legal Entities for Corruption Offences" is prepared. It is on approval in the Secretariat of the President of Ukraine.

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

National implementation actions:

The draft laws are prepared on ratification of the Criminal Anti-Corruption Convention of the Council of Europe, Anti-Corruption Convention of UNO; their adoption will allow to extend capabilities of international cooperation in the anti-corruption area.

Besides, Civil Anti-Corruption Convention of the Council of Europe was ratified on March 16 2005.

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:

Members of the Central Staff are trained in the Main Civil Service Department of Ukraine. The list of civil service positions in areas involving a high risk of corruptive manifestations is drawn up.

In 2005 workshops on prevention of corruption were conducted in sectoral centers of professional development - Intersectoral Institute of Management of the Ministry of Health Protection, Institute of Management of the National Academy of Internal Affairs, Institute of Staff Retraining and Advanced Training. Experts from law enforcement agencies, tax service, judges, and prosecutors are involved in conducting workshops.

In 2005 the Main Civil Service Department as a state client planned out advanced training of 130 public servants of central and local executive bodies and local governments holding positions of categories 1-4 and 170 specialists of categories 5-7, who are responsible for organization of work on prevention of corruption. Issues of study and practical application of anti-corruption legislation are included into programs of advanced training of public servants. Conducting of "round tables" on issues of prevention of corruption with participation of representatives from the Ministry of Internal Affairs, Security Council, General Prosecutor's Office is provided in the National Academy of public administration of the President of Ukraine.

Inspection Office of the Main Civil Service Department performs monitoring of civil servants' compliance with the Ukrainian Law "On the Fight against Corruption" and other documents adopted in this area.

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:

Draft of the basic law of Ukraine "On Prevention and Counteraction to Corruption in Ukraine" contains a provision on mandatory declaration of income and expenditure of civil servants (article 7).

This draft contains provisions on gifts (article 6), as well as on conflict of interests (article 14).

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:

The draft Code of Conduct of persons authorized to perform state functions (public officials) is prepared.

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:

The Code of Criminal Procedure of Ukraine, as well as the Law of Ukraine "On Protection of Persons Participating in Criminal Proceedings" provide the right for protection by measures specified in articles 1 and 7 of this Law of the following persons:

- a) a person who reported criminal violation to a law enforcement agency or in a different way participated in or contributed to detection, prevention, or suppression of crimes;
- b) criminal offence victim or his representative;
- c) suspected person, accused person, defenders and legal representatives;
- d) civil plaintiff, civil defendant, and their representatives when a compensatory action is brought within a criminal case;
- e) witness;
- f) expert, specialist, interpreter and identifying witness;
- g) family members and close relatives of persons listed in items "a" - "f" of this article, if by threats or other unlawful acts towards them attempts are made to have influence on participants of criminal proceedings.

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:

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:

On June 16 2005 the Supreme Rada of Ukraine adopted the Law of Ukraine "On Introduction of Amendments to Some Legal Acts of Ukraine with Respect to Additional Guarantees of Protection of Financial Interests of the State". This Law amended the Law of Ukraine "On Procurement of Goods, Works and Services at Public Expense". The purpose of these amendments is, among the others, creation of competitive environment in the area of public procurement and ensuring transparency of procedures. In particular, there are provisions on additional procedures of publication of procurement plans in Internet, electronic tendering, guarantees for nondiscrimination of participants and equal access to procurement information. New wording of article 7 includes guarantees against unfair acts of tenderers. The customer shall refuse a tender offer if he has unquestionable evidence that a tenderer offers remuneration or any other preference to a customer's official in order to manipulate the decision-making process; an individual - participant of a tender - was convicted of a crime related to procurement, violation of procurement procedure or other crime committed from mercenary motives, and the record of conviction is not canceled or quashed in accordance with established procedure; an official appointed to be responsible for procurement procedures was convicted of a crime related to procurement, violation of procurement procedure or other crime committed from mercenary motives, and this record of conviction is not canceled or quashed in accordance with established procedure.

Article 12 contains requirements to tender committees and prohibits participation in these committees of close relatives of tenderers' representatives; officials of consolidated companies, their representatives and close relatives of these persons. Violation of these restrictions results in cancellation of tender or results of this tender.

The Law has the section "Social control in the area of public procurement" and establishes a new independent controlling body - Tender Chamber - non-profit union of NGOs. The Law provides for procedure and guarantees of activities of this body: administration of complaints, conducting inspections, conducting public discussions of bidding procedures, etc.

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:

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:

A separate section of the draft Anti-Corruption Concept is devoted to strengthening of the role of civil society and Mass Media in prevention of corruption.

Besides, the draft of the basic Law of Ukraine "On Prevention of and Counteraction to Corruption in Ukraine" has special provisions on the role of nongovernmental sector in counteraction to corruption.

On March 25 2005 the Cabinet of Ministers of Ukraine at the proposal of the Main Civil Service Department issued an instruction to public agencies and recommended them to introduce "hot telephone lines". Such lines operate in the Main Civil Service Department, Ministry of Internal Affairs, State Tax Administration, Ministry of education and science, local administrations.

Practice is implemented of organization of social councils to provide participation of general public in decision-making process. Such councils are organized of the National Security Council of Ukraine, the Cabinet of Ministers on various issues of government work.

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:

On 11.09.2003 the Law of Ukraine "On the Basic Principles of the State Regulatory Policy in Economic Activity" was adopted. Article 20 of this Law obliges a drafter of a regulatory act to release a draft in order to consult with the public.

The draft Law "On Prevention of and Counteraction to Corruption" prepared by the Ministry of Justice of Ukraine provides that local governments and NGOs take part in prevention, detection and, where the law permits, suppression of corruption offences, restoration of violated rights of individuals, legal entities, and the State, information and scientific support of measures for prevention of and counteraction to corruption, international cooperation in this area. Competence of these institutions will be specified by legislation of Ukraine and their statutory documents.

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

National implementation actions:

The Cabinet of Ministers of Ukraine submitted for consideration to the Supreme Soviet of Ukraine the draft Law of Ukraine "On Introduction of Amendments to the Ukrainian Law "On Prevention and Counteraction to Legalisation (Laundering) of Proceeds from Crime" (#8066 of 02/09/05) aimed at harmonization of the Law with a new version of 40 Recommendations of FATF.

The Ministry of Justice drafted amendments to the Criminal Code of Ukraine with respect to strengthening the anti-money-laundering activity, as well as confiscation issues. After approval by the new members of the Government the draft will be again submitted for consideration to the Cabinet of Ministers of Ukraine.

On August 3 2005 the Cabinet of Ministers of Ukraine issues the Order #315, by which it approved the Concept of development of the system for prevention of and counteraction to legalization (laundering) of proceeds from crime and financing of terrorism for 2005-2010.

The Resolution of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine # 736 dated August 10 2005 approved the action plan for prevention of and counteraction to legalization (laundering) of proceeds from crime and financing of terrorism for 2005.

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:

SUMMARY OF DISCUSSION

Since the anti-corruption review of Ukraine in January 2004 and the previous update in December 2004, many new developments have taken place in the country. Its new leadership, brought to power after the Presidential elections of November-December 2004, promised to clean up corruption in the government. However, recent allegations of corruption and political in-fighting by some government officials in the first post-elections government led to its dismissal. This reorganization of government has re-confirmed the urgent need to strengthen the fight against corruption, speed up democratisation and promote the transparency of the government.

The meeting noted that this second update presented by Ukraine is more responsive than the previous. This is a reflection of the general political will of the leadership of Ukraine to build a constructive dialogue on the issue of fighting corruption. However, the meeting further noted that reported progress in implementing the recommendations is limited. While a large number of investigations have been launched against corruption officials, there is no clear evidence of actual change of practice. Many new draft laws were developed, but no new legal acts were adopted. In addition, six of the twenty-four recommendations agreed to by Ukraine previously were not addressed in its report.

Under pillar one on anti-corruption policy and institutions, the meeting acknowledged, that work has been started on the new anti-corruption strategy of Ukraine. This includes two main initiatives: the work on the concept of anti-corruption strategy developed by the Anti-Corruption Commission of the Parliament and the anti-corruption strategy developed by the government under the leadership of the Ministry of Justice and with the inputs of academic institutions. In addition, the newly appointed Prime Minister has proposed a model of an open government, which foresees public participation in the meetings of committees of sector ministries. The Council of Europe will provide support to the elaboration of an anti-corruption strategy. It was further noted that the elaboration of the anti-corruption strategy would benefit from a study of risk of corruption, which may help to determine which areas of public service are most prone to corruption.

The discussion confirmed that there is no clear allocation of responsibility for the elaboration of the anti-corruption strategy. While many agencies are involved, there is no proper leadership and coordination, which leads to the multiplication of various draft strategies. Public

participation in the elaboration of an anti-corruption strategy has been very limited so far. It would be helpful to publish various draft strategies and action plans for public discussion.

The Coordination Anti-corruption Committee under the previous President was mainly involved in the control of specific cases (law-enforcement function), and did not deal with the anti-corruption policy development and coordination. This Committee was dissolved in the beginning of 2005. A new Department has been established at the National Council for Security and Defence of Ukraine (NCSDU) charged with the task of coordinating anti-corruption policy efforts. While the meeting welcomed a stronger role by the NCSDU in the coordination of anti-corruption policy development, concern about the lack of public participation in this process was expressed. In addition, the NCSDU cannot act as an Anti-Corruption council, because this body is not independent, and its activities are not open to public participation. The establishment of a public council at the NCSDU may address this weakness to some extent. Finally, because the NCSDU is a body that primarily involves law-enforcement agencies, it would be useful to involve the Ministry of Justice and other relevant bodies in its anti-corruption activities.

The meeting welcomed information that anti-corruption departments have been established in the Ministry of Interior, Security Service and the Office of the Prosecutor General. However, it remained unclear how coordination is ensured between these departments. It also was noted that no information was provided on the subject of financial expertise in the bodies responsible for investigation and prosecution of corruption. Further information on this element of recommendations would be useful.

The meeting recognised that the reform of the anti-corruption bodies in the broader framework of reform of law-enforcement system is a useful approach. In this respect learning about international experience in this area would be beneficial; the meeting therefore welcomed the joint ABA/ACN project, funding by the US government, which aims to provide assistance to Ukraine in this field. However, the meeting stressed that more active and coordinated efforts are urgently needed by the leadership of the country in reforming anti-corruption and law-enforcement bodies, in order to use the window of opportunity presented by the recent political renewal in Ukraine.

Under pillar two on anti-corruption legislation, the meeting recognised that a number of drafts of legal acts had been prepared, which may meet the requirements of the recommendations if adopted. However, while the meeting acknowledged that reviews of existing laws and elaboration of new legislation requires a lot of work and time, no tangible progress has been made as yet in this area.

It was noted that the current draft Law on responsibility of legal persons refers in its title only to corruption; it would be advisable to extend this law to cover responsibility for organised crime and other crimes.

During the discussion a number of questions were raised by the Ukrainian delegation concerning the substance of the recommendations under pillar two: what is the international practice in the area of sanctions for passive and active bribery; how to extend the notion of a civil servant to meet international standards; how to deal with the challenge of immunities (e.g. contrary to the recommendations, the President has signed a law which expands the immunities to the locally elected bodies). These questions confirm the need for further training and analytical support to the Istanbul Action Plan countries, including Ukraine.

Under pillar three on transparency of civil service and financial control issues, the meeting recognised several achievements and a number of challenges and agreed that preventive measures require more attention. Major increase of salaries to civil servants provided an important tool for attracting professional and integral persons. However, chaotic staff policy of

the past years has seriously undermined the stability and expertise in many state agencies. Further instability has to be prevented, proper state policy is needed to promote professional, ethical and effective civil service in Ukraine. In this respect, the initiative of the Ministry of Justice is developing a code of ethics for civil servants should be pursued with vigour.

Some progress was noted with the system of mandatory assets disclosure by civil servants; further information would be useful to assess the effectiveness of this system.

On a number of recommendations the responses are not sufficiently informative: while the update states that training on anti-corruption is provided to civil servants, it would be useful to know how many civil servants received such training and what the content of such training was.

A number of recommendations were not sufficiently addressed (i.e. recommendation 17 on whistle blowers protection) and some (i.e. recommendation 18 on international investigations) were not addressed at all.

The new Law on Procurement appears an important achievement. The update goes even beyond the recommendation; however it will be important to study the new Law and actual practice of its implementation to make sure that it provides an important tool for the reduction of opportunities for corruption.

It emerged during the discussion that a range of changes in tax regulations provided for important preventive actions against corruption. Unfortunately, these measures were not sufficiently covered by the update. Further actions in this area, as well as clear reporting should be encouraged.

Update on the implementation of recommendation 21 on public participation presents a number of mechanisms which were elaborated by various agencies. The meeting agreed that these mechanisms should be made operational as soon as possible, and public participation in the anti-corruption issues has to be promoted.

It was noted during the discussion, that the recommendations of 2004 were approved by the previous government, and that some of them may be outdated. Ukraine may consider updating its self-assessment report to provide a basis of the update of the recommendations, as was done in case of Georgia.