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

**Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews  
of Legal and Institutional Frameworks for the Fight against Corruption**

**UKRAINE**

**Update about actions to implement the recommendations taken during  
December 2006-September 2007**

Presented by Ukraine at the 7th Monitoring Meeting on 26-28 September 2007

## **I) National Anti-Corruption Policy, Institutions and Enforcement**

### *Recommendation 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.***

On September 11, 2006 the President of Ukraine approved by decree “On the Way to Integrity” - The Concept of Overcoming Corruption in Ukraine. This concept paper contains some features of a strategy and addresses at a programmatic level the main issues pertaining to corruption in the country. As it stands now, the concept paper does not spell out what are the expected deadlines for the implementation of the measures envisaged, nor the institutional responsibilities attached to each of them. These are all expected to be included in a detailed action plan – the responsibility for which lies with the Cabinet of Ministers - not yet adopted at the time of the evaluation visit.

The Ministry of Justice has started to draft the Action Plan that will allocate responsibilities for the implementation of the Concept, and will establish deadlines and monitoring and reporting mechanisms. The Ministry makes efforts to involve NGOs in this process through facilitating comments and suggestion from NGOs. Once the draft is finished, it will be submitted to the Cabinet of Ministers for approval.

The concept paper identifies the main areas where actions need to be taken: civil service reform, improvement of administrative procedures, making more transparent the public procurement process, ensuring clear rules for the formation and operation of elected bodies, increasing integrity in the judiciary and enhancing the media, NGOs involvement in the promotion of anti-corruption policies and effective law-enforcement and prosecution of corruption-related crimes. When asked about patterns of corruption in various sectors, the Ukrainian institutions stated that these are to be identified after the adoption of the action plan by the Cabinet of Ministers. Also after that moment pilot projects might be developed in certain institutions with high corruption risks.

Moreover, since there is no reference to a monitoring mechanism in the concept paper, the establishment of such a mechanism is expected to be included in the action plan. The mechanism should encompass main institutions with competences in implementing the anti-corruption measures, in order to build a sense of ownership over the process.

In terms of political will, the adoption of the concept paper seems to show the will of a part of the political class to tackle the issue of corruption. However, a completely different signal was sent by the Parliament which watered-down significantly an anti-corruption legislative package prepared and submitted by the President. The lack of political consensus on the importance to fight corruption and on the ways to do that is an important drawback which, if not properly addressed, may endanger substantially the good intentions put forth in the concept paper.

In conclusion, Ukraine has developed a concept with features of a strategy, but has not yet adopted an action plan to address corruption risks in vulnerable sectors. Therefore, no specific implementation measures were identified and no monitoring mechanism has been established yet.

**Ukraine is partially compliant with this recommendation.**

New actions since December 2006

On September 11, 2006, with his Decree President of Ukraine approved the Concept for eliminating corruption in Ukraine. The document was entitled “On the Way to Integrity”. As noted in the December 2006 Ukraine Monitoring Report, this conceptual document bears some features of strategy and considers, on the pragmatic level, solutions to challenges in the area of anti-corruption fight. The main groups of challenges outlined in the Concept are: reforming the civil service, improving administrative procedures, enhancing transparency of the process of public procurements, ensuring strict regulations of formation and operations of elected bodies, increasing incorruptibility of the judicial system, augmentation of mass-media and non-governmental organizations’ contribution to promotion of anti-corruption policy, and efficient investigation into and judicial punishment of crimes associated with corruption.

**In its Resolution of August 15, 2007, # 657, the Ukrainian Cabinet of Ministers approved the Action Plan on implementation of the Concept “On the Way to Integrity” for the period until 2010** (hereinafter referred to as the Action Plan). The document contains specific measures on the Concept implementation and provides for government institutions responsible for that and the respective timelines. Meanwhile, the Action Plan suffers from some drawbacks. According to national experts, it has failed to specify concrete timelines and monitoring and control mechanisms it sets are vague.

On August 31, 2007, the President of Ukraine assigned ministries and departments to design, within a month, departmental plans as well as a shorter-term plan, that is, for the 4<sup>th</sup> quarter 2007 and through 2008. As well, the governmental plan should be improved and refined as required for the implementation of the President’s anti-corruption initiatives.

President laid out **the anti-corruption initiatives** at the coordination meeting of heads of law enforcement agencies, which was held at the national General Attorney’s office on September 31, 2007. The initiatives in questions include ten provisions: lifting of MPs and judges’ immunity; the annual filing of incomes and expenses by individuals that implement government authority; separation of business from government; establishment of a single anti-corruption agency; improvement of the institution of civil service by means of adoption of a civil servants’ code of conduct and strict specification of conditions for provision of administrative services and procedures; regulation, by legal means, of the procedure of publicizing in mass media of information on individuals involved in corruption; creation of a single government register of individuals made accountable for corruption; bringing the national anti-corruption law in line with international standards; granting the public at large extensive powers to contribute to anti-corruption activities; fostering a negative attitude towards corruption among the population.

In addition to the government plan, the measures against corruption, organized crime and money laundering also provide for annual targeted plans in the framework of the Ukraine-NATO cooperation. The imperativeness of combating corruption, particularly in the judicial agencies, is also accentuated in the National Security Strategy, which was approved by presidential Decree of February 12, 2007, # 105.

## *Recommendation 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.***

The concept paper “On the Way to Integrity” provides analysis of certain systemic and organisations gaps, which present opportunities for corruption behaviour: “Lack of transparency and shortcomings of the procedures of taking managerial decisions (possibility to create and use alternative (“shadow”) administrative procedures, lack of proper regulation for application of discretionary authorities), contradictions in authorities of the state bodies, including conflicts between the control and permissible functions; control and permissible functions and economic function”. This shows that to a certain extent a diagnosis was made and that some vulnerabilities to corruption were identified.

Specific measures are yet to be developed to reform administrative legal framework, since clear and proper regulations are crucial in preventing corruption and in improving integrity in public life. There are different pieces of the administrative legal framework that are missing or that need to be reviewed in order to align them with the Constitution and good governance principles. In this regard special consideration should be given to the adoption of a general law on administrative procedures and the subsequent review of the different special remaining administrative procedures. Predictability and transparency of administrative decisions will be highly improved and the rule of law will be more effective.

In order to improve the overall quality of regulation, drafting capacity needs to be improved, namely through specific training, wide consultation should be developed and be more effective and implementation should be closely monitored.

Concerning the access to information and public participation to the decision-making process, Ukraine has basic legislation which constitutes important elements of an ‘open government’. According to the Ombudsman Office there might be questions as to the constitutionality of the current law on access to information and citizen often complain about the lack of response from the public institutions to the requests filed. Under such circumstances, citizens could resort to the law on complaints, the down-side being that this law does not include dissuasive sanctions. As far as participation to decision-making is concerned, this instrument is less used in practice, and therefore the Ombudsman received less complaints. The effectiveness of the right of access to information should be largely improved and assessed, possibly through an independent body able to help citizens and companies when this right is directly or indirectly denied.

These evaluations were confirmed by NGOs who stated that while central authorities tend to apply these instruments more often, at the local level they are very rarely used. NGOs also indicated that certain types of more sensitive information (such as financial information regarding political parties) are not available to the public and, while there is an obligation to reason the refusal to give out information, this obligation is not complied with in practice.

According to reports from the NGOs, there are acts on the level of secondary or tertiary regulation, that might have a very serious impact in the day-to-day life of citizens, and which are not registered with the Ministry of Justice, and therefore not published. The authorities argue that this concerns only internal regulations, that do not need to be registered.

## **Ukraine is partially compliant with this recommendation.**

### New actions since December 2006

The Ukrainian Parliament has adopted in the first reading the bill entitled “On Fundamentals of Preventing and Countering Corruption”. The bill establishes legal and organizational fundamentals of preventing and counteracting corruption in the public and private spheres of social relations. More specifically, Art. 3 of the Bill establishes that fundamental principles for preventing and countering corruption are a comprehensive implementation of legal, political, socio-economic, informational and other measures, with priority granted to preventive measures, contribution of public at large to the respective measures, and government protection of individuals that help implement the measures in question. The bill is presently being prepared for the second reading.

In addition, **the Action Plan** provides for preparation and submission for consideration by the Cabinet of Ministers of draft legal acts on procedures that concern contribution of public associations and other civil society institutions to measures for the prevention and counteracting corruption through late-2008. The Plan provides as well for:

- identification of a new structure of the central and local agencies of executive power upon conducting a fundamental inspection of them following recommendations and standards of the EU member nations for the sake of avoiding duplication of the agencies’ functions and reducing the number of controlling and supervisory agencies;
- regulation of functional conflicts generated by operations of the executive power agencies, primarily those that exercise both control and licensing and economic functions and identification of means to preclude the rise of such conflicts;
- undertaking necessary measures on reducing the number of immediate contacts between citizens and representatives of legal entities with civil servants, for example, by means of introduction of an electronic document flow and electronic digital signature systems;
- introduction of amendments to the law for the sake of lifting obstacles to conduct of journalist investigations as one of efficient methods of exposing corruption and introduction of a mechanism of protection of sources of the journalist information;
- identification of a mechanism to assess the contribution of mass media to implementation of anti-corruption measures;
- provision of support to public associations in their holding monitoring of the political parties’ fulfillment of their election programs, among other measures.

With his Decree # 816 of September 3, 2007, President endorsed **the Concept for Improvement of Regulation of Economic Activities**. The document focuses on scaling down the number of procedures, licenses and technical barriers, so far as entrepreneurship is concerned; simplification of reporting procedures and improvement of the tax law. The Cabinet of Ministers should design priority measures on the Concept implementation before the end of this year.

Between late-2006 and up to now the Ukrainian Security and Defense Council considered at its meetings a number of issues that directly concerned corruption. The Council ruled on matters of enhancement of transparency of the VAT administration procedures (Presidential Decree of December 28, 2006, # 1154), on measures for prevention of unproductive capital flight (Decree of March 17, 2007, # 216), improvement of the investment climate (Decree of July 20, 2007, # 659), on measures on implementation of the Ukrainian Security and Defense Council’s decisions on the energy security measures (Decree of Aug 2, 2007, # 678).

All the aforementioned decisions are aimed at establishment of transparency of decision-making procedures, and liquidation of corruption schemes in individual spheres of the national economy.

### *Recommendation 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.***

Since the time of the adoption of the present recommendation, Ukraine has dismantled the Anti-corruption Coordination Committee. At present, the coordination role is undertaken by the National Security and Defence Council (NSDC). The NSDC brings together the President, the Prime Minister, the Chairman of the Parliament, the Prosecutor General and the Heads of several ministries and services, mostly from the law-enforcement areas.

The NSDC has established an Interdepartmental Commission for the comprehensive solution of the problems in the area of prevention of and fight against corruption. This Commission is headed by the Secretary of the NSDC, and includes the Minister of Interior, the Head of the Security Service, the Prosecutor General, Head of the Main Civil Service Department, Heads of the relevant commissions of the Parliament, Heads of the Tax, Customs, Border Service, Minister of Justice, Head of the National Juridical Academy in Kharkiv and the Institute of State and Law. This Commission was established by the Decree of the President in December 2005. Between January and March 2006 the Commission had 3 meetings, no other meetings were held in 2006. NGOs are not members of the Commission. The Commission is provided secretarial services by the NSDC, including 4 full time staff, that have multiple responsibilities. The output of the work of the Commission was the debate on the different draft strategies, and the development of recommendations in the area of smuggling.

However, it appears that anti-corruption coordination function does not have a high priority among many other strategic issues addressed by the NSDC at its ad-hoc meetings. There is a Unit for secretarial support of the above mentioned Commission, but this Unit has limited staff.

It remains to be seen what will be the coordination mechanism under the future anti-corruption strategy and action plan. The recommendation with regard to the membership in the coordination mechanism remains valid – it should include representatives of the most relevant institutions with responsibilities in the implementation of the strategy, as well as representatives from the Parliament and NGOs. Without such participation no sense of ownership can be built over the entire process. Being involved in the coordination mechanism will also contribute to increasing the trust among the respective institutions which will allow for a greater degree of transparency between them. The sharing of data stands at the basis of any serious analytical work to be carried out in the future.

At present, the lack of communication between public institutions is identified as a major risk in the concept paper: “insufficient cooperation between the law enforcement bodies and the public, including public awareness campaign, establishing informational relations with the public”. This was also confirmed during the meetings with various institutions.

Another problem that arose during the discussion was the impossibility to point towards one institution capable to drive the anti-corruption agenda forward and be recognized as the leader by the others. This is crucial as there will be a constant need to prioritize and decide on the allocation of resources to meet the standards set in the strategy. If this task is to be given in the future with the National Security and Defence Council, appropriate staffing requirements should be met and sufficient budgetary allocations should be ensured for this particular set of additional activities. Also, more should be done for civil society involvement in the anti-corruption work.

### **Ukraine is non compliant with this recommendation**

#### New actions since December 2006

**The Action Plan** provides for establishment a public coordinating body whose mission should become forging a uniform public policy in the area of preventing and counteracting corruption on the basis of analysis of corruption risks. The Agency is supposed to exercise no law enforcement functions.

In addition, with its commission of July 17, 2007, # 24848/9/1-07, the Cabinet of Ministers ordered the Main Civil Service Department to establish an interdepartmental taskforce to draft the respective bill, and the taskforce was consequently established according to the MCSD order of Aug 15, 2007, # 218. It is planned that the bill, which should set legal and organizational fundamentals of creation and operations of the agency in question, should be submitted for the Cabinet of Ministers's consideration in late October 2007 and it should further be submitted to the national Parliament.

Following the USDC Secretary's Resolution, in February 2007, the Anti-Corruption Department (currently comprising 7 staffers) was established under the Council Staff. The mission of the newly created Department is to ensure the organizational and analytical back-up to the Council's anti-corruption operations as well as to the Interdepartmental Commission on the comprehensive solution to challenges in the area of combating corruption. As of today, the composition of the Commission has undergone no changes.

As well, under the aegis of USDC there operates the Interdepartmental Research Center on Combating the Organized Crime. The Center's mission is to conduct research in the area of combating corruption. The Center's status was approved by presidential Decree of Feb 26, 2007, # 14.

#### **Recommendation 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.***

For a long time in Ukraine there have been talks about setting-up of a specialized agency in the area of anti-corruption. Various players have different views on what exactly should be the scope of such an agency: whether it should cover prevention, repression, or both. While a thorough analysis of the policy options is normal before taking such an important decision, the duration of the debate exceeded what could

be considered a normal term. Lack of a clear decision to this regard contributes to the decrease of public trust in the political will to tackle corruption. In the pursue for a “perfect” solution, Ukraine might miss the momentum for setting-up an agency that could indeed play a decisive role in the fight against corruption.

What can be noticed now in the area of law enforcement is the low cooperation between various agencies and the rather modest role played by traditional law enforcement institutions such as Police and Prosecution.

Internal anti-corruption units have been set up in many institutions (i.e. customs, police), but they tend to solve integrity issues through the application of disciplinary sanctions and not by resorting to criminal or administrative law sanctions. In at least one case, even after sentencing several employees of a public institution for corruption related offences, they remained on duty. This practice undermines letter and the spirit of the law.

Joint investigation teams composed of different law-enforcement agencies can be formed on a case by case basis. Within prosecution, a unit has been established to supervise compliance with the anti-corruption legislation. This unit has no investigative powers.

When asked about the possibility of setting-up a specialized unit that would bring together prosecutors and employees of other law enforcement institutions, the General Prosecutor Office argued that to establish this organ in the General Prosecutor Office would go against the constitutional provisions that reign their activity. It is hard to imagine how, without such an integrated approach, could such an institution prove itself effective. What is missing now is the coordination function which, in a rule of law state, is frequently placed with the prosecutors. Another thing that should be taken into consideration is the vulnerability of the General Prosecutor’s position to political pressure due to the given nomination and revocation procedure.

In conclusion, while the debate on unifying the competences and on a better coordination between the institutions active in this field is welcome, the risk remains that too much talk might do more harm than good. In the search of a perfect solution valuable time is being lost and the niche of opportunity for the necessary reform could disappear.

**Ukraine is non compliant with this recommendation.**

New actions since December 2006

**The Action Plan** provides for:

- pursuing more vigorous actions aimed at prevention, exposure and termination of corruption in the public and local self-governance agencies, primarily in those wherein corruption has been widespread at most;
- ensuring a constant exchange of experience with respect to exposing and verifying information on incidence of corruption in various spheres of social life;
- improving and updating methodological provisions for the activities of law enforcement agencies on exposing and investigating crimes associated with corruption;
- designing a mechanism for coordination of operations by the public agencies that combat corruption and investigating crimes associated with corruption.

Between March and April 2007 the taskforce created by presidential Order of March 15, 2005, # 782 designed a bill entitled “On the National Investigation Service of Ukraine”, which suggests that there be established a specialized agency with law enforcement functions. The bill should be submitted by the President to the next Supreme Rada.



## II) Legislation and Criminalisation of Corruption and the Related Money-Laundering Offence

### *Recommendation 5*

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

The Criminal Code of Ukraine criminalizes bribe-taking (article 368), bribe-giving (article 369), and bribe solicitation (article 370). The Code does not have a definition of corruption.

The definition of corruption is given in the Law of Ukraine on the Fights against Corruption. Namely, under Article 1 of the said law corruptive deeds include illegal acceptance by a person authorised to perform public functions, in connection with the performance of such functions, of material benefits, services, privileges or other advantages, including the acceptance or receipt of objects (services) by their purchase at prices (tariffs) which are considerably lower than their actual (genuine) value; as well as the acceptance by a person authorised to perform public functions of credits or loans, purchase of securities, immovable and other property using the privileges or advantages not stipulated by effective law.

The violation of the said law entails administrative liability. Thus, it is an independent statute, which has no role in the criminal proceedings. However, Article 1 of the said law is broad enough to encompass the bribe-taking, which is a criminal offence under Article 368 of the Criminal Code of Ukraine. This makes it difficult to draw the line between those two statutes. Therefore, there is a possibility this overlapping to be used in order to avoid criminal liability for bribe-taking and other criminal offences.

The draft Law of Ukraine on the Prevention and Fight against Corruption prepared by the Ministry of Justice and the relevant amendments to criminal and administrative codes attempts to tackle the problem of overlapping. Now other measure taken for that end has become known to the delegation.

**Ukraine is non compliant with this recommendation.**

New actions since December 2006

The national Parliament passed in the first reading bills “On Fundamentals of Preventing and Countering Corruption” and “On introducing amendments to some legal acts for the purpose of establishing responsibility for corruptive offenses”, which, in particular, harmonize interrelations noted in the recommendations. The bills are now prepared for second reading.

### *Recommendation 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.***

Current Criminal Code of Ukraine criminalizes active and passive bribery. Offer and promise of bribes are not criminalised as separate offences, and can only partially be addressed as preparation or

attempt of a crime. The Draft Law On Introduction of Amendments to Some Legal Acts Concerning the Responsibility for Corruptive Offences introduces criminal liability for offering bribe.

Bribery through the third person is qualified as a complicity in crime rather than an independent crime. The Criminal Code of Ukraine defines the notion of complicity and types of accomplices, as well as the procedures for imposing criminal liability on them. The Resolution of the Supreme Court of Ukraine "On Legal Practice in Cases of Bribery" interprets the Criminal Code and states that the actions of the accomplice shall be qualified with taking his/her intent into account, depending on whose side, in whose interests, and on whose initiative – the bribe-taker or the bribe-giver – the accomplice was acting.

No action had been taken to increase the punishment for passive and active bribery. Neither had the statute of limitation been increased.

As regards the criminalization of trading in influence, the current legislation of Ukraine does not criminalize trading in influence. However, the Draft Law on Introduction of Amendments to Some Legal Acts Concerning the Responsibility for Corruptive Offences aims to introduce such an offence.

**Ukraine is non compliant with this recommendation.**

New actions since December 2006

The national Parliament passed in first reading the bill "On introducing amendments to some legal acts for the purpose of establishing responsibility for corruptive offenses", which, in particular, criminalizes passive bribery and "trading with influence". The bill is now prepared for second reading.

**Recommendation 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.***

Two main pieces of legislation, the Law of Ukraine on Fight Against Corruption and the Criminal Code of Ukraine deal with fight against corruption.

For the purposes of the law on the Fight Against Corruption, public officials, the Prime Minister of Ukraine, First Vice-Prime Minister, Vice-Prime Ministers, ministers, people's deputies of Ukraine, deputies of the Supreme Council of the Autonomous Republic of Crimea, deputies of rural, village, municipal, city precinct, and regional councils; local self-government officials; military officials of the Ukrainian Armed Forces and other military formations (except active military servicemen) can be held responsible for corruption (corrupt deals) through the administrative procedures. Accordingly, those officials are "officials" for the purposes of that law.

The Criminal Code of Ukraine has its own definition of "official", without making reference to the Law of Ukraine on the Fight Against Corruption. In accordance with articles 364 and 368 of the Criminal Code of Ukraine, officials are persons permanently or temporarily performing the functions of authority, as well as permanently or temporarily occupying positions at enterprises, institutions or organisations, irrespective of their forms of ownership, connected with performance of organisational or administrative functions, or specially authorised to perform such functions, whose positions are referred by article 25 of the Law of Ukraine on Public Service to the third, fourth, fifth, and sixth categories, as well as judges,

prosecutors and investigators, heads and deputy heads of bodies of public authority and administration, local self-government, their structural divisions and units.

Officials occupying particularly responsible positions are persons stipulated by article 9 § 1 of the Law of Ukraine on Public Service, and persons whose positions are referred by article 25 of this Law to the first and second categories.

The Draft Law of Ukraine on the Amendments to Some Legal Acts Concerning the Responsibility for Corruptive Offences try to harmonize the definitions of "official" provided by the Law on Fight Against Corruption and the Criminal Code. Namely, according to the Draft, an official is a person permanently or temporarily performing the functions of authority, as well as permanently or temporarily occupying positions at enterprises, institutions or organisations, irrespective of the forms of ownership, connected with performance of organisational or administrative functions, or specially authorised to perform such functions. Persons performing the functions stipulated by part three of this article in any other country or international organisation shall also be recognised as officials.

Article 2 of the Draft Law of Ukraine on the Fight Against Corruption envisages the imposition of responsibility for commission of corruptive deeds on the following persons:

- persons authorised to perform state or local self-government functions, specifically: the President of Ukraine, Head of the Supreme Council of Ukraine and his/her deputies, the Prime Minister of Ukraine, other members of the Ukrainian Cabinet of Ministers, Prosecutor General of Ukraine, Head of the Ukrainian National Bank, Head of the Chamber of Audit, the Authorised Human Rights Representative of the Ukrainian Supreme Council, Head of the Supreme Council of the Autonomous Republic of Crimea; Head of the Council of Ministers of the Autonomous Republic of Crimea, people's deputies of Ukraine, deputies of the Supreme Council of the Autonomous Republic of Crimea, deputies of rural, village, local, district, city precinct, regional councils; public servants; officials of local self-government; military officials of the Ukrainian Armed Forces and other military formations; judges of the Constitutional Court of Ukraine, professional judges, judges occupying administrative positions in courts, assessors and jurors; law-enforcement officers; officials of other public institutions;

- persons equalised for purposes of this Law to persons authorised to perform state or local self-government functions, specifically: officials of government corporations not indicated in item 1 of this article but receiving salary from the state or local budget; members of district and divisional election commissions; persons permanently or temporarily occupying positions connected with the performance of organisational or administrative functions, or specially authorised to perform such functions, in legal entities with 50 or more percent of state participation in the statutory fund; leaders of public organisations partially financed from the state or local budget; leaders of political parties, their regional, local, district organisations, and other structural divisions; consulting assistants to people's deputies of Ukraine and other elected persons who are not public servants, local self-government officials, but receive salaries from the state or municipal budget; persons who are not public officials, but perform legally prescribed functions of authority (e.g. private auditors, notaries, experts, evaluators, lawyers, arbitration managers, independent mediators or members of the conciliation council for the consideration of collective labour disputes, as well as other persons in cases prescribed by law); officials and employees of international organisations, foreign officials;

- persons permanently or temporarily occupying positions connected with the performance of organisational or administrative functions, or specially authorised to perform such functions, in legal entities (except legal entities indicated in paragraph 4 of item 2 of this Article), physical persons – entrepreneurs;

- officials of legal persons, legal and physical persons, including physical persons – entrepreneurs, in cases of illegal provision by them to persons indicated in items 1 and 2 of this article and/or with the participation of these persons to third parties of pecuniary and/or non-pecuniary benefits (privileges, advantages, services).

The Draft Law on the Amendments to Some Legal Acts Concerning the Responsibility for Corruptive Offences attempts to harmonize the definition of "official" with that of the Law of Ukraine on the Fight against Corruption.

At this stage, while the amendments remain as Draft, the need of clear definition of "official" that would be compliant with international standards is needed.

### **Ukraine is not compliant with this recommendation**

#### New actions since December 2006

The national Parliament passed in first reading bills “On Fundamentals of Preventing and Countering Corruption” and “On introducing amendments to some legal acts for the purpose of establishing responsibility for corruption offenses”, which, in particular, harmonize the concept of “civil servant” in the Criminal Code and the statute that establishes the concept in question. The bills should be considered in second reading by the newly elected Parliament.

#### ***Recommendation 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.***

The current Ukrainian legislation neither provides criminalization of corruption related crimes to the foreign and/or international public officials nor extend the definition of "official" to the said persons.

The wording of Article 364 §2 of the Ukrainian Criminal Code stipulates that officials are also foreigners or persons without citizenship permanently or temporarily performing the functions of authority, as well as permanently or temporarily occupying positions connected with the performance of organisational or administrative functions, or perform such functions on special authorisation, at enterprises, institutions and organisations, irrespective of their forms of ownership.

It should be noted, that the notion of criminal liability of foreign public officials encompasses the criminalization of officials of foreign public service or international organization regardless their citizenship. Article 364 §2 of the Ukrainian Criminal Code extend the criminal jurisdiction of Ukraine to the foreign nationals and/or stateless persons who are performing the public duties in Ukraine. Those categories of persons are not considered as foreign public officials for the purposes of the present recommendation.

The Draft Law of Ukraine on Introduction of Amendments to Some Legal Acts Concerning the Responsibility for Corruptive Offences extend the definition of official to the foreign and international public officials. Namely, the draft stipulate that an official, except in the cases envisaged by the Code, is a person permanently or temporarily performing the functions of authority, as well as permanently or temporarily occupying positions connected with the performance of organisational or administrative functions, or specially authorised to perform such functions, at enterprises, institutions and organisations,

irrespective of their forms of ownership. Persons performing the aforementioned functions in any other country or international organisation are also recognised as officials

**Ukraine is non compliant with this recommendation.**

New actions since December 2006

The national Parliament passed in the first reading bills “On Fundamentals of Preventing and Countering Corruption”, which broadens the concept of “civil servant” and the bill “On introducing amendments to some legal acts for the purpose of establishing responsibility for corruptive offenses”, which, in particular, harmonizes the concept of “civil servant” in the Criminal Code and the statute that establishes the concept in question. The bills are prepared for the second reading.

**Recommendation 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.***

Article 59 of the Criminal Code of Ukraine states that confiscation of property as a punishment shall be imposed for grave and outmost grave crimes and shall only be applied in cases specifically provided for in the Special Part of this Code.

Bribery committed in aggravating circumstances, criminalized under Article 368 §2 and 3 of the Criminal code of Ukraine is the only corruption related crime that specifically entails confiscation of property as a form of punishment. However, it is unclear that how broad the term "property" is interpreted. Unfortunately, no statistic of confiscation of property under the said Article exists.

At the same time, the current Ukrainian legislation provides the possibility to confiscate the objects used as crime instruments, retain the vestiges of a crime, or where an object of criminal actions, money, valuables and other items gained by criminal methods, as well as any other objects which may facilitate the solving of a crime and identifying the guilty persons or lifting an accusation of mitigating responsibility, constitute material evidence. As usual those objects are considered as evidence and are distributed in accordance with Article 81 of the Criminal Procedure Code of Ukraine. Namely, the question of material evidence shall be decided during the issuance of a sentence, determination or decision of the court or an inquiry body, investigator, prosecutor on the closure of a case, while money, valuables and other illegal proceeds shall be recovered in favour of the state; money, valuables and other items which were an object of criminal actions shall be returned to their legal owners, and if the latter are unidentified, this money, valuables and items shall be claimed by the state.

This regulation does not provide the possibility to confiscate proceeds of crimes as required by various international instruments.

Criminal Procedure Code does not provide value based confiscation and no review of the interim measures, i.e. identification and seizure of property has been conducted.

**Ukraine is not compliant with this recommendation.**

#### New actions since December 2006

The Action Plan provides for preparation and submission for consideration by the Cabinet of Ministers of proposals on ensuring the possibility for confiscation or impoundment of means of commitment of the crime and seizure of proceeds obtained as result of commitment of such crimes, or expropriation of property the value of which equals such incomes.

#### **Recommendation 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.***

Current Ukrainian legislation does not specifically criminalise non-reporting of corruption related crimes. However, 396 of the Ukrainian Criminal Code of 2001 criminalises actions involving concealment of a grave or especially grave crime. Thus, only concealment of those corruption related crimes that belong to the category of grave and especially grave crimes can be punished.

No statistics concerning the application of Article 396 of the Criminal Code became available for the delegation during the on-site mission.

**Ukraine is partially compliant with this recommendation.**

#### New actions since December 2006

The national Parliament passed in the first reading the bill “On introducing amendments to some legal acts for the purpose of establishing responsibility for corruptive offenses”, which, in particular, introduces criminal responsibility for corruptive offenses. The bill is prepared for second reading.

#### **Recommendation 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.***

The President, Members of the Parliament (People's Deputy of Ukraine) and judges enjoy immunity from criminal prosecution in Ukraine.

Immunity of the Ukrainian President is an organic component of his/her constitutional status, the purpose of which is to ensure effective and unimpeded execution of his/her official powers. The Presidential immunity is absolute and it cannot be cancelled, suspended or restricted. No criminal proceedings can be started against the President. Article 111 of the Constitution of Ukraine stipulates that the President of Ukraine may be removed from the office by the decision of the Supreme Council of Ukraine through impeachment procedures in the event of commission of state treason or another offence.

According Article 80 §3 of the Constitution of Ukraine, people's deputies of Ukraine cannot be brought to criminal responsibility, detained or arrested without the consent of the Supreme Council of Ukraine.

According to Article 126 of the Constitution, a judge can not be arrested or detained before the issuance of an accusatory court sentence without the consent of the Supreme Rada of Ukraine. At the same time, immunity of judges is not limited to provisions of article 126 of the Constitution of Ukraine, but additional guarantees can also be granted to judges by laws. A judge detained on suspicion of commission of a crime or an administrative offence, penalised through court procedures, shall be immediately released after his/her identity is established.

According to the Ukrainian legislation, investigation can be started and certain investigative actions, not restricting the immunity of the said persons, can be conducted regardless the immunity.

Although the legislation does not exclude to lift the immunity of a People's Deputy of Ukraine and/or a judge, the procedure is rather obscure and largely discretionary. There is no clear and precise procedure for lifting the immunity.

No measures have been taken to abolish the requirement of authorisation on lifting the immunity in cases when a person is caught in *flagrante delicto*.

Since the review in 2004, the immunity of local deputies was introduced in the Ukrainian legislation, thus further broadening the scope of application of immunities. However, this immunity has been removed from the legislation prior to the on-site visit.

There were no cases of lifting immunity of members of parliament for prosecution of corruption cases during the evaluation period.

#### **Ukraine is non compliant with this recommendation.**

##### New actions since December 2006

**The Action Plan** requires a study of the problem of simplifying the procedure for decision making by the Parliament on consent for bringing to justice, detaining or arresting of an MP, a judge of the Constitutional Court, a judge of the court of general jurisdiction in the event there is tangible evidence that the individual in question has committed an act, defined by the Criminal Code of Ukraine as injurious to the public.

**The Action Plan** also contains a commission to design respective legal acts, which should set procedures of preservation of material evidence in the state it was found as of the moment of its exposure in the event an individual that enjoys immunity was arrested at the place of commitment of a severe criminal action, including a corruptive offense.

In addition, on September 4, 2007, the national Parliament agreed on and submitted, in compliance with the standard procedure, for consideration by the Constitutional Court of Ukraine, a bill "On introducing amendments to the Constitution of Ukraine with respect to depriving some civil servants of guarantees of immunity". However, the legal force of these actions can be questioned, as President has dissolved the Supreme Rada and it has no powers.

*The Delegation of the Parliamentary Assembly of the European Council welcomed the Ukrainian policymakers' initiatives with regard to lifting the MPs' immunity. However, the respective amendments should be passed post-elections, as Ms Hanne Severinsen, the PACE co-rapporteur on Ukraine, reckoned in her interview to Deutsche Welle. Ms Severinsen labeled the consideration of the problem of MPs' immunity as untimely – "the immunity should be limited. But I am not confident it was appropriate to have*

*this problem considered by the Parliament which is non-legitimate per se, as there are no 300 legitimate deputies there”, Ms. Severinsen was quoted as saying.*

### **Recommendation 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.***

Ukrainian Criminal legislation does not provide liability for legal persons. The Draft Law prepared by the Ministry of Justice of Ukraine introduces the liability of legal persons. Legal person can be held responsible under administrative law, after a person having managerial position in the legal entity is convicted for corruption related offences under criminal law.

However, the draft was not reviewed during the monitoring. Therefore, it is impossible to assess if the draft meets international standards.

**Ukraine is largely compliant with this recommendation.**

#### New actions since December 2006

The national Parliament passed in first reading the bill “On responsibility of legal entities for committing corruptive offenses”. The bill is ready for second reading.

In addition, the Action Plan contains a commission to study the problem of creation of an integrated database on legal entities accessory to corruption offenses.

### **Recommendation 13**

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

Ukraine today participates in over 150 agreements and international treaties on the fight against organised crime and corruption. Ukraine is a state party to the European Convention on Mutual Assistance in Criminal Matters, Council of Europe Convention on Search, Seizure and Confiscation of the Proceeds from Crime, UN Convention on Transnational Organised Crime and the Convention on Mutual Legal Assistance and Cooperation in Civil, Family and Criminal Matters between the CIS states. At the same time, Ukraine has concluded a number of bilateral agreements in this field.

The Ukrainian legislation does not envisage confiscation as a form of punishment for every corruption related crime. It has very limited theoretical application under Article 368 §§ 2, 3 of the Criminal Code. Therefore, and as explained during the onsite visit, Ukraine cannot execute foreign request for legal assistance involving confiscation. As regards the seizure, Ukrainian legislation requires relevant foreign court order to be attached to the request for legal assistance, which shall be approved by authorised court in Ukraine.

The information concerning the bank transactions can be disclosed only after the foreign court order is approved at the domestic courts.



So far, no direct requests have been made within the frameworks of rendering mutual international legal assistance in cases of corruption (cooperation in this area is conducted through the Prosecutor General's Office of Ukraine).

According to the statistics provided by the General Prosecutor's Office of Ukraine, in the year 2006, 915 foreign requests have been received by the General Prosecutor's Office. 84 of them were corruption related. Out of them, 66 were rogatory letters, 14 were requests for transferring the criminal cases related to corruption offences to the requesting countries for further investigation and prosecution, and 4 were requests for extradition. According to the information received from the authorities, all the requests were executed within reasonable time.

As regards the trainings, Ukraine has been organizing various meetings, conferences and round tables on this issue. Furthermore, the Council of Europe is conducting special project, which, among others, provides various trainings for the officials working in the field of mutual legal assistance.

**Ukraine is largely compliant with this recommendation.**

New actions since December 2006

Under the aegis of **the Action Plan** it was commissioned:

- to form, for the purpose of planning and coordination of international cooperation in the area of combat against corruption, a register of international agreements concluded between the Ukrainian law enforcement agencies and their overseas counterparts and to identify the list of agencies cooperation with which in this particular area requires regulation; to study the need for conclusion of new agreements;
- to improve departmental legal acts that concern creation of a mechanism of interaction with law enforcement agencies of the states that cooperate with Ukraine in the area of combating corruption;
- to continue promoting cooperation with other nations with the aim of designing uniform terminology, standards and methodology for prevention of corruption, expanding the list of statistical data and the volume of expertise with regard to corruption, and organizing exchange of the respective information;
- to intensify cooperation with special services and law enforcement agencies of other states in combating corruption, particularly by means of establishment of anti-corruption joint investigative and operational and search actions, design of proposals on improvement of the legal regulation of joint operations on witness protection, provision of mutual assistance in the area of training of operatives, among others;
- to solidify and improve the mechanism of the international informational exchange, particularly on foreign trade agents accessory to corruption.

**III) Transparency of the Civil Service**

***Recommendation 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.***

Following a systematic regular approach that has begun in 2003, during 2006 the Main Civil Service Department (MCSD), in cooperation with the Kiev National University of the Ministry of the Interior (MoI), has organised some advanced training on anti-corruption issues for central and local executive authorities and for bodies of local self-government. The training program has been developed in order to cover all areas, in general, but looking to main risk areas, in special. Thus, 187 officials from all positions (1 to 7) have been trained in preventive approaches to corruption

The training programme was aimed to fulfil three objectives: (1) to teach the attendants on how to prevent corruption in their activity; (2) to prepare them to identify risk areas and situations within their bodies; (3) to allow them to set a training programme for their bodies and to deliver it (cascade effect).

The duration of the training courses was 1 to 2 weeks. Using the available information it is not possible to assess neither the nature of the providing training (more operational and procedural rather than an academic/legalistic approach) nor the profiles of the trainers.

In addition other specific training has been organised for customs officials. The National State Administration Academy (NSAA) includes anti-corruption issues in its regular training courses as well. In general, the training at the NSAA is being considered as having a more academic approach rather than professional needs oriented.

Some training on ethics and anti-corruption issues was held by the Ministry of Interior as well as by KRU to their staff members.

The general training programme will continue during 2006 and 2007 and the MCSD has a line budget to support it. The general training programme in 2006 aims to reach the targeted number of 400 officials.

For the time being, there is no feedback about the effectiveness of the training programme as relevant information regarding the results is not available. On the other hand, not having a national strategy and an action plan (which were supposed to be adopted earlier and its implementation started in a coordinate way) is an additional difficulty in assessing the programme and in which degree the aimed targets are being achieved both quantitative and qualitative aspects.

The MCSD must continue the implementation of the training programme and assess its effectiveness; specially, it must ensure the operational orientation of the training and evaluate how the cascade effect is being produced; a more pro-active follow-up is needed, in order to have at disposal enough and integrated information about the whole programme allowing to compare final results regarding the defined objectives and targets.

**Ukraine is partially compliant with this recommendation.**

#### New actions since December 2006

The Action Plan requires that special workshops and training sessions on matters of prevention of corruption are held regularly for the purpose of deepening the level of skills required for efficient accomplishment of tasks, as well as increasing the degree of legal culture and legal conscience of civil servants and other government staff.

*On the premises of the Kyiv National Interior University, the Main Civil Service Department holds training sessions for civil servants and local self-governance officials to whom the anti-corruption mandate was delegated. In the first half of 2007 alone, as many as 180 civil servants and local self-governance officials, of whom 99 individuals fell under 3rd -4th categories and 81 ones – under 5th -7th categories, completed their training therein.*

#### **Recommendation 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.***

At the present Ukraine has an assets declaration system that provides for annual submission of such statements. These statements are submitted by a civil servant to his/her employer, and stay in the personal file. As a rule these statements remain confidential for most public officials. However, for certain high level position, the occupants are requested to sign an agreement for the possible publication of their declarations. This approval does not mean that the statements become public immediately, nor that they will surely become public at a certain moment in the future. No clear rules for disclosure exist, therefore it seems that the system is very susceptible to subjective interpretations and, as a consequence, runs the risk of not being applied in a consistent and fair manner.

Declarations are checked before the public official takes the office as a part of the initial verification procedure. Afterwards no mechanism for constant verification exists. This means that a very sensitive area remains uncovered, as it is the essential function of declarations of assets to show fluctuations in the wealth of public officials while holding the office. Indeed the most relevant comparison that can be made is between the wealth when taking the office plus the legal incomes while performing the office and the wealth at the end of the mandate.

Because of the confidential nature of the statements, no external checks by the media and NGOs can be performed as these two groups cannot access this information. No statistics on sanctions applied for non-compliance with the relevant legal provisions were made available to the review team.

After the Presidential election of 2004 a number of declarations for high level political persons were published in internet and widely discussed.

The draft Law of Ukraine on the Prevention and Fight against Corruption, developed by the Ministry of Justice, foresees some changes in the system of verification of the declared information. The draft has been submitted to the Parliament, but has not been adopted so far.

#### **Ukraine is non compliant with this recommendation.**

##### New actions since December 2006

According to **the Action Plan**, it is suggested that the following bills should be completed and submitted for consideration to the Cabinet of Ministers by late -2007:

- the Code of Decent Conduct of individuals authorized to exercise government functions (the draft passed evaluation by the European Council);

- “On government financial control over filing incomes and expenses of individuals authorized to exercise government functions, members of their families and close relatives”;
- Development of the control mechanism over the civil servants’ compliance with the legal requirement to notify the tax agency when opening accounts in foreign currency with banks abroad.

### **Recommendation 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.***

Certain development is visible regarding updating and disseminating a Code of Conduct or in adopting practical guides for public officials’ guidance.

The MCSD has approved the “General Rules of Public Servants’ Conduct”. However, this is understood as an internal document and the dissemination through the public administration is poor. In many institutions it is unknown or ignored. Ukrainian administrative culture is strongly based on laws. So, a code of conduct or any guide adopted by entities without legislative power or using less formal instrument to adopt it (a charter, guidelines, recommendation, etc) will face additional acceptance and implementation difficulties.

Meanwhile, a draft “Good Practice Code” has been developed by the Ministry of Justice together with the MCSD. This draft code, which has been reported as having a positive opinion of the Council of Europe, was submitted to the President and is now being prepared in order to be submitted to a government committee.

Several bodies or professional groups have their own Code of Conduct as an internal guide. There is not enough information about the number of adopted special codes/charters and to which bodies are related. As an example it is possible to mention: the Judges’ Code of Ethics; the Prosecutors’ Code of professional Conduct; a set of special commitments for customs officials; the KRU auditors Code of Ethics.

Police has an ethics code that comes from the soviet times. Nowadays, the values and role of the Police have changed significantly; the use of the outdated code of conduct could damage the efforts in changing behaviours, improving ethics and fight against corruption. Instead of a useful tool it could have a negative impact.

Kiev’s City Administration is also developing a program aiming to increase ethical standards within its staff as a way to improve the relationship with the citizens.

The MCSD is playing an advisory function regarding ethics seeking to help other institutions and officials at central and local level in clarifying ethical behaviours and preventing situations of conflict of interests or corruption.

However, there is no national strategy aiming to adopt, implement, disseminate and monitor ethical standards in public life. Even without a more comprehensive assessment of the current situation - which is due to insufficient information - it is possible to recognize poor effectiveness in developing an ethical culture of public service and in improving professional ethics in Ukraine.

The draft Good Practice Code should be adopted and implemented as a part of the National Strategy and of the Action Plan. Having such an instrument and trying to implement it out of that context will

reduce its capacity to contribute for the change of the administrative culture and to improve ethical behaviours in public service.

**Ukraine is partially compliant with this recommendation.**

New actions since December 2006

As commissioned by the Cabinet of Ministers on April 23 (#1441/62/1-07), the taskforce under the MCSD designed a draft “Code of Decent Conduct of Individuals Authorized to Exercise Government Functions”. The draft has been posted on the Agency’s Homepage and presently is being refined with account of various proposals. The public hearings on the document are scheduled for September 2007. Once the Code is adopted, MCSD should design instructions and practical guidelines for civil servants regarding corruption, conflict of interests, ethical standards, sanctions and reporting on corruption.

**Recommendation 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.*

In regard to this recommendation no action has been reported. Even if some practices are being used in some bodies (in the Security Service, for instance) and in some circumstances, is not possible to say that this is the result of a systematic and comprehensive policy. The draft Law of Ukraine on the Prevention and Fight against Corruption is developed by the Ministry of Justice.

**Ukraine is non compliant with this recommendation.**

New actions since December 2006

The national act “On protection of individuals that take part in criminal proceedings” regulates witness protection in criminal cases.

In addition, **the Action Plan** implies that the respective agencies should be commissioned:

- to ensure an efficient protection and safety of individuals who become witnesses of corruption and take part in criminal proceedings associated with such cases;
- to study into the problem of introduction of the institute of legal compromise with subjects of corruption, who voluntarily have helped expose, investigate and prevent such offenses committed by themselves or other persons;
- to study the problem of the current state and improvement of rewarding of individuals that provided an objective information on facts of corruption.

**Recommendation 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.*

Ukraine has not established a separate, independent entity for investigating complaints of corruption. The Main Public Service Department of Ukraine is responsible for official investigations of compliance with anti-corruption legislation system and violations with the code of conduct. Several public bodies have established their own internal services for investigating violations of legislation and code of conduct, such as within the Ukrainian State Department for Penalty Enforcement, the Central Office of the Ukrainian Security Service, the State Tax Administration of Ukraine, the State Border Guard Service of Ukraine, the Main Control and Revision Service of Ukraine. The prevention of corruption among officials of the Ministry of the Interior is the responsibility of the Internal Security Department.

However, not all relevant bodies have established an own internal investigation service/system yet. Although a system of an official and internal quality control on correct behaviour of public officials seems to be in place, the system still needs to be improved. The Main Public Service Department of Ukraine does not co-ordinate and harmonise the investigations of (potential) corruption cases by the internal investigations services and the disciplinary proceedings are not yet in line with International Standards. The risk of unequal treatment of corruption within the public administration is still present.

**Ukraine is largely compliant with this recommendation.**

New actions since December 2006

**The Action Plan** contains commissions to solidify the supply of cadres to divisions of the internal control or their establishment (in the event of their absence) within the limits of the number of staffers of such agencies. This should be done for the sake of control over compliance with requirements of the anti-corruption law in such agencies, an efficient interaction with the respective divisions of the law enforcement agencies and relations with public at large; **the Action Plan** also commissions to approve the statute of such divisions.

In addition, under the auspices of **the Millennium Challenge Corporation's Threshold Program** there was established a taskforce on implementation of the third component of the Program in the framework of the Agreement on Strategic Cooperation between the Ukrainian Government and the US Administration, implying creation of inland investigation divisions, among others. The agency picked for the pilot project became the State Border Service. In the project framework, between September 3 and 17, the city of Cherkassy hosted a roundtable and training sessions on matters of creation and operations of internal anti-corruption subdivisions in agencies of the executive power and local self-governance bodies.

**Recommendation 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.***

A new law on Procurement has been adopted on 17 March 2006 without allowing for a transition period. The objective of the law is to create a competitive environment in the sphere of public procurement and in order to prevent corruption to ensure transparency procedures of procurement of goods, jobs and services. This law contains new articles related to procurement process and institutional set up.

Although the new law certainly has merits such as the guarantee of absence of conviction (art. 7), the changes in the public procurement system will hardly contribute to a strengthening of public procurement

in Ukraine. On the contrary, the newly introduced structure of the procurement system is not in line with good international practice and rather increases opportunities for corruption than decrease them.

The main flaw in the structure is that the government as the executive has been discharged of all key responsibilities and functions in the area of public procurement, and those responsibilities and functions have been transferred to bodies that are outside any direct influence of the government and are instead under the control of parliament – such as the Antimonopoly Committee, the Special Control Commission under the Accounting Chamber, and a non-public body (the Tender Chamber).

With the new law there is a clear risk that public procurement will become politicised. Members of Parliament are members of the Special Control Commission under the Accounting Chamber and of the Supervisory Commission of the Tender Chamber, and are therefore directly involved in the execution and implementation of procurement policy. Furthermore, various questionable measures are introduced to protect domestic industry, in particular the agricultural sector. One of the main objectives of public procurement legislation is to prevent contracting authorities from political influences in the execution of public procurement.

The policy-making and regulatory functions together with the capacity development function are missing in the new structure, which is a good example of the confusion in the institutional set-up. It appears that these functions are in some sense assigned to a non-public organisation (the Tender Chamber). These functions should normally be exercised within the government administration. This means that the government lacks the power and instruments needed to initiate new legislation and to introduce secondary legislation in the area of public procurement.

With the introduction of new law the access to information about the announced bids became more difficult for potential bidders: there is no longer one centralised source of such information, information published by the Tender Chamber in its bulletin is not complete and not free.

The establishment of the Tender Chamber was a reaction to serious complaints about the lack of transparency in public procurement in the past. However, the role, mandate and functions of the Tender Chamber in the area of public procurement give rise to strong concerns. The non-public status of the organisation implies that it is not subject to public audit and financial control and is therefore not accountable to the public for its actions, performance, and use of funds.

A so-called ‘black list’ of companies, which have been convicted for corrupt practise in Ukraine, does not exist yet.

After the on-site mission a “Law on Amendments to some Legal Acts of Ukraine on issues of Public Procurement of Goods, Works and Services” was adopted by the Parliament on 1 December 2006. The new Law introduces a number of changes:

- cancellation of procurement in cases when violations of legislation have been detected;
- introduction of personal responsibility of the members of tender committee;
- the anti-monopoly committee has been appointed as the state competent body for public procurement;
- the role of the external audit of public procurement has been moved from the Accounting Chamber to the inter-departmental committee; the anti-monopoly committee will provide secretarial support to this committee;
- the anti-monopoly committee will be responsible for the management of the ‘black list’ of companies.

However, it was not possible to study the new law in detail at the time of the monitoring. It is therefore impossible to provide a judgement whether this law provides for improvements. Besides, this law is not yet promulgated by the President, and it is not known yet when it may come into effect.

**Ukraine is non compliant with this recommendation.**

New actions since December 2006

**Amendments to the law.** In 2007, the Act on Public Procurements has twice become subject to amendment.

On June 1, Act 1114-V read that procurement of goods, works and services for the preparation of and holding early elections is exercised according to procedures set by the Interdepartmental Commission on Matters of Public Procurements basing on the proposal of the Central Electoral Commission.

On June 19, the Communist Party successfully passed its initiative, which took the form of Act # 3554-d. With this Act the Parliament increased the procurement threshold for public corporations and those wherein the government-owned share in the authorized capital accounts for over 50%. In parallel with that, the Act castrated the powers of the Tender Chamber and simplified procedures of auctions with the limited participation. As well, the Supreme Rada withdrew from the sphere of effect of the Act public corporations' procurements, except for those made using budgetary funds. However, on July 6, 2007, with his Decree President of Ukraine suspended the official publication of the above Act, as well other acts, passed by the Rada until the first session of the newly elected Parliament.

On July 12, 2007, the Ukrainian Security and Defense Council held its meeting on matters of public procurements.

At the meeting, the Council stated the existence of serious defects in this sphere, which poses threat to the economic security of the state. The national Act "On procurement of goods, works and services for public funds" was recognized imperfect, while the public procurements mechanism – unreasonably complex, nontransparent and inefficient. The Cabinet of Ministers was commissioned to improve the Act on public procurements. Presidential Decree # 642 of July 12, 2007 is appended.

In September 2007, "Zerkalo nedeli", an authoritative national magazine, published the discussion of representatives of all the branches of power on corruption and public procurements. The magazine also published corruption schemes. According to experts, the main causes for corruption were the monopolist position of the Tender Chamber, government agencies' nontransparent decisions, and interference of the legislature (the Supreme Rada) in the executive power's area of jurisdiction.

*According to GlavKRU (the Head Control and Inspection Department) information, consequently confirmed by the Security Council, in the first half 2007, the amount of funds participants in public procurements transferred in favor of consulting companies accounted for some UAH. 9300m (a. USD 186m). Should tender procedures remain unchanged, the national budget may suffer a loss of between 2 and 6% of the total value of public procurements (UAH. 50bn/USD 10bn).*

*As of September 2007, according to some expert estimates, the public institutions' corresponding account balances accounted for some UAH. 8bn. These funds may not be spent due to imperfect tender procedures.*

On Sep. 6, 2007, President ordered to prepare his appeal to the Constitutional Court on recognition of the Act on Public Procurements be inconsistent with the Constitution.



**The Action Plan**, which the Cabinet of Ministers approved on Aug 15, 2007, commissions the Anti-Monopoly Committee, the ministers of economy and finance, and the Tender Chamber to improve the law on public procurements for the purpose of bringing the law in line with the European standards of the policy of accountability and transparency and to ensure the access of public at large to information of conditions of the respective tenders on procurements of goods, works and services for public funds.

### **Recommendation 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.***

Tax collection is seen as a major area of concern for corruptive practices. The current Tax Code contains extensive discretionary powers for tax officials.

Due to its access to business-related information, Tax Administration is an important factor in any comprehensive strategy against corruption. Tax inspectors' enquiries on expenses may produce leads for future corruption investigations. On the other hand Tax Administration like the Custom Administration is a sector traditionally vulnerable to internal corruption. Some taxes, like the VAT, are particularly vulnerable for abuses. Measures to reduce incentives for tax evasion could include the reduction of the types of taxes, the reduction of tax rates or the introduction of simplified tax administration to diminish motivation and probability for hiding taxes and corrupt deals.

The Tax code in Ukraine has not been changed since the review in 2004. A draft is pending in Parliament for over six years now. The State Tax Administration (STA) reports on some internal corruption related investigations, but none of them involved high-ranking officials.

#### **Ukraine is non compliant with this recommendation.**

##### New actions since December 2006

To improve tax administration procedures, the national Ministry of Finance, together with the State Tax Administration and other agencies works on the draft Tax Code of Ukraine. The draft Code suggests improvement of tax administration procedures, a strict regulation of inspections, and encouragement of investment. According to the Ministry of Finance, in April 2007 the draft Code has underwent the public discussion, with some 350 proposals received from businesses and MPs. The draft document presently is being modified, and the work is at its final stage. *The Draft Tax Code is posted on the official Homepage of the State Tax Administration.*

In December 2006, the National Security and Defense Council considered the problem of improvement of administering VAT for the sake of preclusion of various corruption schemes that enable one to embezzle substantial amounts of public funds (*enclosed*). However, the Cabinet of Ministers has failed to fully implement the Council's ruling and the respective Presidential orders.

*According to the Attorney General office, in the 7 months of 2007, its staff filed as many as 857 lawsuits on VAT administration and refund, of which 457 ones, worth a total of UAH 75.5m, were won.*

*According to the State Tax Administration, in the first half 2007, as many as 245 tax officers were brought to the administrative responsibility, and 20 of them were laid off.*

In a move to improve the accounting procedures and bring them in line with the international standards, with its Resolution of January 16, 2007, # 234 the Cabinet of Ministers approved the Accounting Modernization Strategy for 2007-2015.

With its Resolution of February 19, 2007, # 56-r, the Cabinet of Ministers approved the Tax System Reform Concept through 2015. Its ultimate goal is to lower the tax pressure on the economy, simplify taxation procedures and mechanisms and reduce tax administration costs.

### **Recommendation 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.***

Building on the existence of the public participation mechanism, NGOs have pushed their way into the decision-making process. Based on their evaluation, the central government has proved to be more transparent than the local administrations. Some central institutions were commended for their constant attempt to meet their requirement (i.e. the Ministry of Justice), while the interlocutors also pointed to problems that usually occur in the consultation process (i.e. very short deadlines – 24 hours - for analysis and submission of comments, lack of clear explanation on why a certain legislative solution was chosen).

A problem identified by the NGOs representatives was the absence of a strong anti-corruption NGO that would coagulate around it the energies and would serve as a powerful counterpart to the government. This is mirrored by the concept paper that notes the “lack of real influence of non-government organizations on the developments in the area of fighting corruption in the state”. So far the NGOs have been involved to a certain degree in training activities, but when asked whether they were consulted on the concept paper on combating corruption they answered negative. In conclusion, much remains to be done in order to ensure that NGOs become fully involved in the anti-corruption activities.

**Ukraine is partially compliant with this recommendation.**

#### New actions since December 2006

**The Action Plan** contains commissions to:

- ensure awareness of public at large of the designed draft anti-corruption acts and, in particular, of the invitation to citizens and representatives of legal entities to contribute to debates on the issue;
- identify a mechanism of consultations with representatives of public at large in the process of designing and adopting the legal acts by elected bodies;
- hold telephone hot lines on the problem “Society against Corruption” to ensure openness and transparency of the executive power’s operations;
- design and introduce a mechanism of the public’s influence on the formation of the judges corpse, starting with their appointment and through making a decision on termination of their powers;
- introduce in the secondary schools and high schools curricula programs on matters of prevention of corruption and to include in cultural and educational programs sections aimed at fostering negative attitude toward corruption.

## *Recommendation 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.***

A first positive step towards the implementation of this recommendation was the adoption of legal mechanisms for access to information and for participation to the decision-making process. Some downsides of these mechanisms were stated by the representatives of the Ombudsman: issues pertaining to the constitutionality of the law and the lack of efficient remedies for the citizens.

No independent commission was yet set-up to receive appeals from citizens. In cases of non-compliance with the law the claimant has to first complain to the public institution concerned and then, if the complaint has not been answered in a satisfactory manner, s/he may challenge the decision to court under the procedure prescribed by the law on complaints. The Ukrainian authorities have been unable to provide the evaluation team with statistics on complaints and on sanctions for non-delivery of information. Another issue that has been pointed towards is the denial of access to information on political parties financing, especially in relation to the financing of elections campaign to the Parliament; in contrast, information about financing of presidential elections is open to public.

Serious questions with regard to the consistency of the application of the law public participation are raised by the fact that central authorities tend to comply with the law more than the local institutions. At central level problems persist with regard to the application of the public consultation mechanisms to secondary and tertiary legislation. This is further worsening by the fact that some tertiary regulations remain confidential although they might affect substantive rights of the citizens.

As far as libel and defamation are concerned the existing laws in Ukraine seem to comply with the international standards. However, the evaluation team has been informed during the meeting with the representatives of the Parliamentary Commission on Combating Organized Crime and Corruption that certain initiatives exist that would reintroduce criminal liability for journalists for such offences. That would indeed harm significantly the freedom of expression and would hamper journalist reporting.

**Ukraine is partially compliant with this recommendation.**

### New actions since December 2006

**The Action Plan** contains a commission to determine, on the legislative level, the procedures for the participation of public and other civil society institutions in conduct of preventive and anti-corruption measures.

## *Recommendation 23*

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

Ukraine was released from the FATF list of non-cooperative countries and jurisdictions in February 2004. Two years later, the FATF formally terminated its monitoring. The legislation created an overall AML framework, including a comprehensive STR system, and improved measures for information sharing. Since the review in 2004, the State Committee for Financial Monitoring (SCFM) was

strengthened. This body acts as Ukraine's Financial Intelligence Unit. The SCFM officially became a member of the Egmont Group at its June 2004 Plenary. The SCFM is staffed with 338 employees, about half in the Headquarter in Kyiv and half in the regional subdivisions. Seven regional offices were operational at the time of the mission. Since its creation, the SCFM has received over 2 million reports on financial transactions from financial intermediaries. Currently, about 2000 reports are submitted to the FIU every day.

The SCFM submitted 330 total case referrals (including 148 in 2005) to the law enforcement agencies, which resulted in 104 criminal cases. Prosecution reports that 5 of these cases were corruption related. In the first half of 2005 there were 73 convictions for the money laundering offence. The SCFM had received and responded to 91 requests from foreign FIUs. On 1 December 2005, Ukraine adopted further amendments to its AML law, which expand AML requirements and expand the ability for Ukrainian supervisory authorities to exchange information with foreign counterparts.

Amendments to the Criminal Code of Ukraine clarified the money laundering offence. However, the criminal provision for money laundering, Art 209 of the Criminal Code, has not been changed since the review. It only covers predicate offences with an imprisonment of 3 years or more. This falls short of the international standard and it does not cover some corruption related offences, such as bribe giving without aggravated circumstances.

In 2005, the SCFM has tabled in Parliament a draft Law on amendments to the Anti-Money Laundering Act. This draft has been changed several times but it has still not been approved by Parliament. It seeks to strengthen the powers of the SCFM and to enlarge the range of predicate offences. It should also include enhanced Due Diligence obligations for financial institutions that have business relationships with Politically Exposed Persons.

**Ukraine is partially compliant with this recommendation.**

New actions since December 2006

In order to implement the new version of FATF's 40 Recommendations and Nine Special Recommendations concerning combating the financing of terrorism, the Cabinet of Ministers submitted to the Supreme Council of Ukraine the bill entitled "On introducing amendments to the Act of Ukraine "On preventing and countering legalization (laundering) of the proceeds from crime" (reg. # 2874).

The bill fully takes into account the respective provisions of the EC's Convention "On laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism" of May 16, 2005, and the European Parliament and the Supreme Rada's Directives 2005/60/EC of Oct 26, 2005 on prevention of the use of the financial system for the purpose of the money laundering and the financing of terrorism.

On June 19, 2007, the Supreme Council of Ukraine passed the bill in whole as an Act.

The Act also suggests extension of the list of the primary financial monitoring agents by including into it: notaries, lawyers, economic agents that render legal services and those that deliver services with respect to founding and registering corporations, corporate management and corporate property management, realtors, postal operators (in the part of money transfers), jewelry (precious metals and stones) brokers and vendors, auditors, auditor companies, legal entities involved in holding lotteries, economic agents that provide accounting services, to name a few.

The Act sets the primary financial monitoring agents' direct responsibility to exercise precautionary measures with regard to politicians that are viewed as posing a greater risk of undertaking money laundering operations.

The Act should become effective within three months from the date it is signed by President of Ukraine and its official publication.

As concerns the current criminal law, it is worthwhile noting that it was in 2003 that Art. 209 and 306 of the Criminal Code were amended for the last time.

Since then bills on amending the noted Articles were repetitiously submitted to the Parliament, but were declined.

*More specifically, on March 18, 2006, the Cabinet of Ministers submitted to the Parliament the bill entitled " On introducing amendments to some legal acts of Ukraine concerning prevention of legalization (laundering) of the proceeds from crime" (reg. # 9252), which particularly provided for an extension of the list of predicate crimes with regard to money laundering.*

The government pursues to exercise measures on fortifying the system of financial monitoring. *As of September 1, 2007, the number of staffers of the State Financial Monitoring Committee is 338, with 173 officers employed at its HQ.*

Presently, the Agency's regional offices have been established in 24 out of the country's 25 regions.

**Performance:** between the start of its operations and through September 1, 2007, the State Financial Monitoring Committee prepared and submitted to the law enforcement agencies 1,236 generalized materials and 909 additional materials to the earlier forwarded generalized materials. This figure includes 11 generalized materials associated with the suspicion of the financing of terrorism.

In 2007 alone the Committee forwarded to law enforcement agencies 287 generalized materials and 274 additional ones.

The total amount of financial transactions highlighted in the noted 1,236 generalized materials, which might be associated with legalization (laundering) of the proceeds from crime, accounted for UAH. 138, 950.24m (USD 27, 760m).

According to the law enforcement agencies, upon examination of 546 (44.1%) of the generalized materials, they instituted 153 criminal proceedings, while 393 materials were used in 345 criminal cases, and 37 criminal cases were completed and submitted to the court of law.

The latter considered and issued the "guilty" verdict or rendered other verdicts with no extenuating circumstances found in **19 criminal cases**.

#### ***Recommendation 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).***

The professional background character of the investigation services' staff is mostly multi-disciplinary and most authorities conducting investigation and prosecution of corruption offences have financial

expertise at their disposal. The financial expertise is recruited wide spread over the investigation services. Not all relevant authorities like the General Prosecutor's office have employed financial experts, although the Criminal Procedure Code gives the investigators the possibility to hire financial experts in cases this expertise is required.

The existing financial expertise is general and not specific oriented on fighting corruption. Audit expertise in fighting corruption (e.g. forensic auditors) is absent.

**Ukraine is partially compliant with this recommendation.**

New actions since December 2006

**The Action Plan** contains commissions to design and introduce methodologies of the professional selection of cadres for the special law enforcement agencies, whose mandate is to combat corruption, with account of peculiarities of functions and objectives assigned to such agencies.

**ADDITIONAL INFORMATION**

**The Action Plan** implies that government agencies shall be commissioned:

- to develop draft legal acts on introducing amendments to certain legal acts that define the status of civil servants, with respect to:
- creation of a transparent system of recruitment and promotion, which provides for strengthening of the cadres reserve, filling in vacant positions basing on an open competition and with account of attestation results;
- to design a mechanism of rotation of civil servants and set procedures of its conduct, primarily so far as civil servants on executive positions are concerned;
- to recognize the verdict of the court of law on committing by an individual of a corruptive offense as the grounds for breaking employment contracts;
- to reform the labor compensations system for civil servants for the sake of establishing additional material incentives and improving the institution of rewards;
- to study the problem of regulation of fundamentals of lobbyist activities, establishment of a transparent system of expression of groups' interests in public bodies;
- to evaluate the electoral law to diminish the impact of corruptive factors and to design respective bills basing on the evaluation of the respective outcomes;
- to ensure completion and accompaniment in the Parliament of the draft Administrative-Procedural Code of Ukraine and the Act "On legal acts";

Introduction of an anti-corruption evaluation of bills to preclude possible corruption risks;

- to draft a bill on introducing amendments to Art. 98 of the Constitution of Ukraine in the part of granting the Accounting Chamber control powers over execution of local budgets;
- to conduct a comprehensive examination of compliance by the executive authority agencies and local-self governance bodies with the national acts "On civil service", "On service in the local self-governance bodies" "On fighting corruption" and other legal acts for the purpose of prevention of corruption.

**International anti-corruption projects**

In December 2006, the Ukrainian Cabinet of Ministers and the US Administration signed the Agreement on the Strategic Mission on implementation of the program of reduction of the level of corruption in the public sector. The project, *aka* "The Threshold Program", is sponsored by the Millennium Challenge Corporation and comprises five components: 1. prosecuting corruption by the civil society; 2. reforming the judicial procedures; 3. employing ethical and administrative standards for the civil service; 4. improving and efficient applying standards and procedures; 5. reducing the level of corruption in the

system of high education. The project was launched in spring 2007, and presently the work on all its components is under way.

The nation also continues its work under projects of the US Bar Association known as “The legal initiative in the Central and Eastern Europe”.

*Meanwhile, the lack of due attention to the implementation of international programs resulted in putting on hold the cooperation with overseas partners on the European Commission and the Council of Europe’s projects “Ukraine- Project Against Corruption” (UPAC), and the USAID- sponsored “ Anti-Corruption Initiative at the interior Ministry of Ukraine”.*

In May 2007, the project entitled “Decent Ukraine”, with the contribution by USAID, presented results of a large-scale sociological research completed by the Kyiv International Sociology Institute. The report is called “The state of corruption in Ukraine”, and the research results are presented below.

Anti-corruption public associations (there are a. 200 of them in the country) have exhibited a more proactive stance on the issue. In August 2007, “the Anti-Corruption Committee”, a local NGO, designed proposals on improvement of the election law and enhancement of transparency of the financing procedures and combating the “black technologies” in particular. The NGO submitted their proposals to President and the Cabinet of Ministers. There also is an independent anti-corruption WEB-site geared by a public association “The Committee for countering corruption and the organized crime” that contains broad information on the issue.

**By the Transparency International indices**, in 2006 Ukraine scored 2.8 and held the 99<sup>th</sup> position worldwide. The nation’s 2004 index was 2.2. (according to TI, one out of four Ukrainians had to give bribes). The country slightly progressed in 2005 and scored 2.6, with the positive dynamic mirroring the society’s optimistic expectations fueled by the change of power.

According to the 2006 research by **the Gallup Organization**, Ukraine is among the 10 most corrupt nations. This rating reflects the population’s opinion of the levels of corruption of the government and evidences that the society is dissatisfied with the state of anti-corruption efforts and mistrusts the government.

**According to results of a sociological survey conducted by the Kyiv International Sociology Institute** published in May 2007, as many as 67% of the respondents that dealt with civil servants were directly involved into acts of corruption in this or that form. In 25% of cases civil servants extorted bribes from them, while 11% of the respondents confessed they had voluntarily given bribes. The list of the most corrupt public institutions is topped by medical ones (as cited by 69% of the respondents), followed by educational institutions (24%) and the State Automobile Inspection (20%).

The country’s corruption perception index averaged 33, which means that the respondents believe that corruption is inherent in 1/3 of all the public functions and sectors.

**The GRECO Group**. As Ukraine has joined GRECO, the Government agreed to undergo an evaluation with regard to the Criminal and Civil Conventions of the Council of Europe against corruption and the CE Anti-Corruption Guidelines. The GRECO mission visited Ukraine between 20 and 24 November. The GRECO report on results of the first and second rounds of evaluation was approved at the 32<sup>nd</sup> plenary session of GRECO in Strasburg, between March 19 and 21, 2007.

The approved Report comprises 26 general and particular recommendations. More specifically, the general recommendations concern reforming the Attorney General office and the civil service, and promoting the judicial and administrative reforms. Special recommendations provide for development of an Action Plan on implementation of the national anti-corruption strategy and establishment of an agency responsible for monitoring the Action Plan implementation, introduction of statistical reporting with regard to employment

of disciplinary measures and sanctions as regards civil servants. The GRECO recommendations were taken into account in the process of developing the Action Plan.

### **Law enforcement Agencies' performance**

In compliance with the national Act 'On fight against corruption', the exposure and investigation of corruption offenses are assigned to the respective divisions of the Interior Ministry, tax militia, Security Service, General Attorney office, the Military Law Enforcement Service under the national Armed Forces, and other agencies and divisions that were established for fighting corruption, as per the effective law.

*According to the Attorney General office, in 2006 alone as many as 1,495 criminal cases concerning crimes with signs of corruption activities were submitted to the court (+ 13.3% vis-à-vis 2005). The criminal proceedings were initiated basing on materials collected upon the law enforcement agencies' coordinated operations, including, in particular, 444 cases falling under Art. 368 of the Criminal Code (bribery). As many as 1,780 individuals were called to account for committing crimes with signs of corruption activities, including 545 civil servants and local self-governance representatives (up 30.6% vs. the prior year).*

*During the first half of 2007 the Attorney General's office submitted to the court of law another 924 criminal cases that bore signs of corruption, including 196 ones that involved bribery.*

The agencies note a loose efficiency of the fight against corruption in Kyiv, which is the locus of all the supreme agencies of power that make all the rulings on allocation of financial, material and other resources in such areas as the public administration and the economy.

*More specifically, according to the UCDS staff's evaluation, the specific weight of individuals brought to responsibility for corruptive activities on the basis of evidence provided by the central law enforcement agencies and their local branches forms the lowest rate nationwide (some 1.73%). Meanwhile, the respective index reported by Vinnitsa and Khmelniisky regions each account for 4% of the overall number of individuals brought to administrative responsibility nationwide.*

*Experts of the Kyiv International Sociology Institute reckon that their corruption apprehension index scale shows the greatest level of corruption characteristic of the city of Kyiv, as well as Nikolaev, Kirovograd and Dnepropetrovsk regions, while the lowest one – in Vinnitsa, Zakarpatye and Chernigov regions*

Another challenge is procrastinated consideration of cases on corruptive activities by the court of law, with a considerable fraction of such cases being ignored. The analysis of statistics and judicial practices of consideration of criminal cases involving corruption and bribery in particular evidence **a steady trend to softer punishments and failures by the court of law to punish a defendant by imprisonment.**

**The current state of the efforts against corruption in the highest echelons of power** raises particular concerns. According to the Interior Ministry, between January and July 2007, the Ministry staff exposed only two corrupt policymakers on this level, with one of them being brought to administrative responsibility for corruption activity twice, while other law enforcement agencies have failed to expose any civil servants of the 1<sup>st</sup> and 2<sup>nd</sup> category.

The year of 2007 saw no due attention to the problem of **indemnity associated with corruption activities**. According to the Attorney General office, while the respective losses amounted up to UAH. 1m, only about half of that was indemnified, within the framework of administrative cases, voluntarily and following the prosecutors' claims. The situation is equally gloomy as far as indemnity associated with



cases involving signs of corruption activities are concerned – of the damage worth a total of UAH. 20.4m, only slightly more than one-third of that (7.6m) was indemnified.

So, as evidenced by the above analysis, the law enforcement agencies' operations in the area of fighting corruption do not appear adequate to the state, trends of development, and the scale of widespread of corruption in the country.

The efficiency of the law enforcement agencies' anti-corruption activities is affected by a **considerable personnel turnover**, which results in an inadequate level of their expertise and the quality of preparation of materials concerning offenses exposed.

*According to the Interdepartmental Research Center into problems of fighting the organized crime under USDC, due to the above and other factors, the court of law closed administrative cases in nearly one-fifth (19.4%) of protocols of corruption activities, of which 55% are closed due to the absence of the fact and corpus delicti, as well as recognition of a given crime as a minor offence.*

In 2006, of the total number of materials of corruptive activities (on 1,011 individuals) submitted to the court of law as many as 20% were declined and the cases were closed on different grounds, of which the most typical ones were: the absence of the respective *corpus delicti*, recognition of an offense as a minor one, expiry of the limitation period (as a result of delays with collection of materials, untimely submission to the court of law, etc.).

*According to the Attorney General office, as the court of law conducted superficial examinations with regard to corruptive activities and ignored requirements of law concerning compilation of protocols, the courts closed every fourth corruption case initiated by the Interior Ministry, while the respective rate in the city of Kyiv, Zakarpatskya, Volynskaya, Rovenskaya, Khersonskaya and other regions accounted for over 50%.*

The high level of corruption in the law enforcement agencies considerably derails opportunities to counteract corruption and the population's confidence in the government's ability to protect the citizens' rights and freedoms.

*According to the Interior Ministry, in the first half 2007, the following number of the law enforcement agencies staff were brought to administrative responsibility: the Interior Ministry-188, the State Tax Administration – 245, the Armed Forces -191, the Customs Service – 29, the Border Guard – 43. According to the Attorney General office, in 2007 as many as 353 staffers of the law enforcement agencies were brought to criminal responsibility for crimes with signs of corruption activities, including 192 (a. 21%) – of the Interior Ministry, 63 – of the Tax Administration, and 14 – of the Customs service.*

The judicial system likewise has been greatly infected by corruption, and it often fell short of ensuring a due protection of the citizens' rights, an impartial consideration of cases and just verdicts.

*According to the data of research conducted by the Kyiv International Sociology Institute, 43.6% of individuals with any experience in trials noted that corruption flourished among judicial staff, while only 11% argued the opposite. Notably, at least 20% of citizens that have ever filed a lawsuit used to give bribes to the court of law.*

*Atop of the list of the most corrupt spheres of court practices became the economic one (38.7% of respondents qualified it as “more likely to be widespread” and “very widespread”).*

One of the factors that contribute greatly to the growing magnitude of corruption in the public sector is the rapid growth in the number of executive links and staff of the central agencies of executive authority. More specifically, according to the presidential Press-Office, over the first 11.5 months in the office the Cabinet of Ministers established six new central agencies with executive powers and another four committees, which resulted in a record-breaking number of the central bodies of executive authority, namely twenty ministries and 37 other central bodies of executive power. The group of newly establish positions comprised 36 deputy ministers and 22 deputy heads of other bodies of executive power. The cadres in ministries were renewed at 85%, while the executive cadres of other central bodies of executive power were renewed at more than 50%. The rise in the number of executives in the central agencies of executive power became particularly notable in the Interior Ministry (1,903 units), the Ministry of Emergency Situations (114), the Ministry of Finance (96), the Ministry of Transportation and Communication (71). **Overall the staff of the central agencies of executive power has grown by 2,667 units.**