



ACN

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## ISTANBUL ANTI-CORRUPTION ACTION PLAN

### FOURTH ROUND OF MONITORING

#### UKRAINE

#### PROGRESS UPDATE

This document contains the progress update and assessment of implementation of recommendations from the Third Round of Monitoring of the Istanbul Anti-Corruption Action Plan for Ukraine. This Progress Update was adopted at the ACN Plenary meeting **on 14-16 September, 2016.**

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## **BACKGROUND**

### **About the OECD**

The OECD is a forum in which governments compare and exchange policy experiences, identify good practices in light of emerging challenges, and promote decisions and recommendations to produce better policies for better lives. The OECD's mission is to promote policies that improve economic and social well-being of people around the world. Find out more at [www.oecd.org](http://www.oecd.org).

### **About the Anti-Corruption Network for Eastern Europe and Central Asia**

Established in 1998, the main objective of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is to support its member countries in their efforts to prevent and fight corruption. It provides a regional forum for the promotion of anti-corruption activities, the exchange of information, elaboration of best practices and donor co-ordination via regional meetings and seminars, peer-learning programmes and thematic projects. ACN also serves as the home for the Istanbul Anti-Corruption Action Plan. Find out more at [www.oecd.org/corruption/acn/](http://www.oecd.org/corruption/acn/).

### **About the Istanbul Anti-Corruption Action Plan**

The Istanbul Anti-Corruption Action Plan is a sub-regional peer-review programme launched in 2003 in the framework of the ACN. It supports anti-corruption reforms in Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan through country reviews and continuous monitoring of participating countries' implementation of recommendations to assist in the implementation of the UN Convention against Corruption (UNCAC) and other international standards and best practice. Find out more at [www.oecd.org/corruption/acn/istanbulactionplan/](http://www.oecd.org/corruption/acn/istanbulactionplan/).

## **PROGRESS UPDATE METHODOLOGY SUMMARY**

After the adoption of the Monitoring Report, the evaluated country presents a Progress Update at each subsequent ACN Plenary meeting.

The **Progress Update** begins with a description of the methodology, followed by the summary of the assessment of implementation of recommendations, as agreed during the Plenary Meeting of September 2016. It then goes into each recommendation separately, providing the country report, as well as the ACN and expert evaluation. Each recommendation section includes all progress updates since the last monitoring report.

**The Progress Update follows the following steps:**

### **1. Progress Update reports are prepared by country representatives**

These documents include information on implementation measures taken for each recommendation, and may also cover additional anti-corruption developments. Country representatives submit a written Progress Update report to the ACN Secretariat through appointed National Co-ordinators, together with supporting documents, such as laws and statistical data. Civil society also submits alternative reports on progress.

### **2. Preparation of preliminary assessment by ACN Secretariat and experts**

The Secretariat and the experts who contributed to the Monitoring Reports (or delegates replacing the experts) study the Progress Update reports and prepare a draft progress assessment for the Plenary Meeting. Civil society is also invited to contribute to the evaluation.

### **3. Discussion at ACN Plenary meeting**

ACN Secretariat and experts discuss the Progress Update during a bilateral preparatory meeting with country representatives. The Plenary then discusses and endorses the assessment.

### **4. Finalisation of Progress Update**

Following the Plenary Meeting, the Secretariat adds the final assessment to the Progress Update reports, finalises and publishes them on the ACN website.

## PROGRESS UPDATE SUMMARY

**16th ACN Istanbul Action Plan Meeting on 7-9 October 2015 (the Progress Update can be found [here](#)):** Progress update was presented by Andrii Yaychuk, Deputy Head of the Anti-corruption Department of the Ministry of Justice, which acts as the National Coordinator. The assessment was prepared by Milica Bozanic, Serbian Anti-Corruption Agency; Peter Koski, US Department of Justice; Evgeny Smirnov, EBRD; Wojtek Zielinski and Daniel Ivarsson from the OECD-EU SIGMA. Olga Savran and Dmytro Kotliar from the ACN Secretariat coordinated the compiled the assessment. The plenary meeting noted that only 6 months have passed since the adoption of the last monitoring report on Ukraine, but despite this short period of time, Ukraine has showed progress in addressing 13 recommendations, only 5 recommendations show the lack of progress. In addition to the issues covered by the recommendations, the meeting welcomed the important progress in reforming the traffic police that was presented by Eka Zguladze, Deputy Minister of Interior of Ukraine, and Chris Smith, US Embassy in Ukraine, on 7 October 2015 at the joint session of the ACN and OECD/DAC Anti-Corruption Task Team. The meeting also took note of information about the forthcoming AntiCorruption Conference that will take place in Kyiv on 16 November 2015.

**17th ACN Plenary on 14-16 September, 2016:** Progress update presented by Mr Bogdan Shapka, the National Agency for Corruption Prevention, Ukraine. The assessment was prepared and presented by Ms Maja Barišević, Head of Sector for Anti-Corruption, Ministry of Justice, Croatia; Ms Mariam Tutberidze, Senior Legal Advisor of the Strategic Development Unit, Ministry of Justice, Georgia; Ms Aziza Umarova, Advisor on Public Sector Innovation, Global Centre for Public Service Excellence, UNDP; and Ms Liubov Samokhina from the ACN Secretariat. The Plenary concluded that, out of a total of 18 recommendations, Ukraine has showed significant progress in addressing two recommendations, progress – in implementing eleven recommendations and lack of progress – in complying with five recommendations.

Recommendation	Progress in implementation	
	<i>16<sup>th</sup> Plenary Meeting</i> October 2015	<i>17<sup>th</sup> Plenary Meeting</i> September 2016
<b>Recommendation 1.1-1.2:</b> Political will and anti-corruption policy	Progress	Lack of Progress <sup>1</sup>
<b>Recommendation 1.3:</b> Corruption surveys	No progress	Lack of progress
<b>Recommendation 1.4-1.5:</b> Public participation, awareness raising	Progress	Progress
<b>Recommendation 1.6:</b> Anti-corruption co-ordination institutions	No progress	Progress
<b>Recommendation 2.1-2.2:</b>	No progress	Lack of progress

<sup>1</sup> A new methodology with new ratings has been adopted for the Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan. The full methodology is available online here (document to be uploaded and linked).

Offences and elements of offences		
<b>Recommendation 2.5:</b> Confiscation	Progress	Progress
<b>Recommendation 2.6:</b> Immunities	Progress	Progress
<b>Recommendation 2.7:</b> MLA	Progress	Progress
<b>Recommendation 2.8:</b> Effectiveness of law enforcement	Progress	Progress
<b>Recommendation 2.9:</b> Specialised law enforcement bodies	Progress	Progress
<b>Recommendation 3.2:</b> Integrity in civil service	No progress	Progress
<b>Recommendation 3.3:</b> Transparency and reducing	No progress	Lack of progress
<b>Recommendation 3.4:</b> Public financial control and audit	Progress	Lack of progress
<b>Recommendation 3.5:</b> Public procurement	Progress	Significant progress
<b>Recommendation 3.6:</b> Access to information	Progress	Progress
<b>Recommendation 3.7:</b> Party financing	Progress	Progress
<b>Recommendation 3.8:</b> Integrity in the judiciary	Progress	Significant progress
<b>Recommendation 3.9:</b> Business integrity	Progress	Progress

**Note:**

**Significant progress** - important practical measures were taken by the country to adequately address many elements of the recommendation (more than a half). This can involve the adoption and/or enforcement of an important law.

**Progress** - some practical measures were taken towards the implementation of the recommendation. For example, drafts of laws that have been at least approved by the government and submitted to the parliament would constitute "progress" for the assessment of Progress Updates.

**Lack of progress** - no such actions were taken.

Recommendations, that appear to be fully addressed can be closed for the progress update procedure and further evaluated only as a part of the monitoring procedure.

## PROGRESS UPDATES BY RECOMMENDATION

### Recommendation 1.1 – 1.2: Political will and anti-corruption policy

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

***Allocate proper budget for the Anti-Corruption Strategy and its action plan implementation.***

#### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

##### ***Government report***

According to the provisions of the Law of Ukraine On Prevention of Corruption The National Agency on Corruption Prevention (hereinafter NACP) started to analyse the results of execution of the State Programme for implementation of the principles of State Anti-Corruption Policy in Ukraine (Anti-Corruption Policy) for 2015-2017 (Resolution № 265 of the Cabinet of Ministers of Ukraine, dated April 29, 2015) and to draft the amendments to the Anti-Corruption Policy with the purpose to renew the measures, activities, terms of their implementation and the list of coordinators set out in it.

In the light of difficult economic and financial situation in the country the vast majority of tasks and measures set out in the State Programme are designed in such a manner that implementation could be conducted by the coordinators within the budgetary allocations for the relevant year, without additional expenditures from the State budget.

Moreover, the State Programme envisage the possibility of funding of implementation of particular measures from international financial aids funds.

##### ***Assessment of Progress - 17<sup>th</sup> Plenary: LACK OF PROGRESS***

The previous Progress Update had underscored progress under part one of the recommendation. However, with respect to the recommendation's part two, i.e. budget support for the implementation of the Anti-Corruption Strategy and the corresponding State Programme (action plan), no advancements had been registered at the time and the situation has not improved since. The same information has been reported, namely that the implementing agencies are to operate within their own budgets. As before, the ACN encourages the authorities to prepare an overview of the total budget required for the Strategy's implementation. Moreover, being concerned by the allegations of the insufficiency of the existing budget, it calls upon the authorities to allocate requisite funding for the Strategy's implementation both as a matter of urgency and necessity (bearing in mind Section IV of the State Programme, which warns that corruption is capable of "jeopardising the existence of the State").

The ACN also notes criticisms expressed by the civil society, e.g. as regards the ineffectiveness of the National Agency for Corruption Prevention and its slow work, the alleged absence of timelines prescribed for the implementation of certain Programme's components and the overconcentration of anti-corruption initiatives listed therein in the Agency's hands. The authorities are therefore invited to redress those concerns.

### Recommendation 1.3: Corruption surveys

***Conduct regular corruption surveys to provide analytical basis for the monitoring of implementation of the Anti-Corruption Strategy and its future updates.***

***Such surveys should be commissioned by the government, through an open and competitive tender.***

***Use surveys conducted by non-governmental organisations for the monitoring of the Anti-Corruption Strategy implementation and adjustment of the anti-corruption policy.***

#### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

##### **Government report**

The State Programme for implementation of the principles of Anti-Corruption Policy in Ukraine for 2015-2017 (Anti-Corruption Policy) envisage the development and approval of the National methodology of evaluation of the level of corruption pursuant to which the annual surveys on the level of corruption in Ukraine shall be conducted.

As of today, NACP in cooperation with the OSCE undertake measures on re-registration of the project of international technical assistance «*Support, Detection and Fight against Corruption in Ukraine*» under which the principles of methodology of evaluation of the level of corruption were developed.

Terms of Reference of the mentioned Project also envisages the development of methodology of quantitative and qualitative characteristics of experience with corruption on the part of population and conduction of the relevant sociological surveys under the guidance of the OSCE to the end of 2016.

NACP is responsible for coordination of development of the Anti-Corruption Strategy, implementation of anti-corruption programmes by state authorities, ensuring the compliance of civil servants with the legislation on prevention and settlement of conflict of interests, code of conduct, carry out financial monitoring activities etc.

In accordance with the paragraph 3 of the article 18 of the Law of Ukraine On Prevention of Corruption NACP develop Anti-Corruption Strategy on the basis of analysis of corruption-related situation and results of execution of the previous Anti-Corruption Strategy.

The annual analysis shall be conducted in accordance with methodology of evaluation of the level of corruption and quantitative and qualitative characteristics of experience with corruption on the part of population which are being developed under the projects of international technical assistance.

Moreover, as of today NACP completes gathering and collating surveys materials prepared by non-governmental organizations on monitoring the states of corruption in Ukraine, which will be published on the official web-site of NACP and will be used in further development of strategic documents in sphere of anti-corruption.

##### **Assessment of Progress - 17th Plenary: LACK OF PROGRESS**

The ACN regrets the lack of progress under all elements of the recommendation. As before, it observes that corruption-related research has not been commissioned/conducted by the government, as is required, even if the National Agency for Corruption Prevention has been gathering and collating some materials emanating from NGOs, which it has the intention to publish on its web site and use as the background for the development of own strategy papers. The authorities are called upon to conduct annual surveys in accordance with the State Programme and the Law on Corruption Prevention, in full respect of the requirements of the recommendation.

#### Recommendation 1.4 - 1.5: Public participation, awareness raising

***Ensure that there is a functioning institutional mechanism for civil society participation in the designing and monitoring of the Anti-Corruption Strategy and Action Plan implementation.***

***Include systemic awareness-raising and anti-corruption public education in the Government anti-corruption measures.***

***Engage civil society in the development and delivery of education and awareness raising activities.***

#### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

##### **Government report**

According to the State Programme for implementation of Anti-Corruption Strategy approved by the Government in April last year, working group composed of the NACP staff, interested authorities, public and business representatives shall be constituted under the NACP with the purpose of monitoring of effectiveness of implementation of anti-corruption legislation.

Establishment of inter-institutional working group composed of representatives of state authorities, public, business and international organizations for coordination of implementation of the mentioned Programme specified by the Decree of the NACP № 4, dated August 11, 2016.

According to the provisions of the Law of Ukraine On Prevention of Corruption the responsibilities of the NACP, specifically, are training, re-training and skills development of employees of state authorities, authorities of Autonomous Republic of Crimea and local government officials (except for skills development of public servants and local government officials) on corruption prevention issues.

Pursuant to the Decree adopted by the NACP on the beginning of June this year, 27 trainings are planned to be conducted before the end of this year to enhance the skills of the NACP's staff.

Moreover the NACP under the guidance of experts of United Nations Development Programme's (hereinafter UNDP) Project *Transparency and Integrity in Public Sector* conduct awareness-raising campaign *Online Against Corruption* in 23 region centers.

As of today, trainings on novets of financial control and operation of the system of electronic declaration have been conducted for officials who hold key positions in Chernihiv, Vinnytsia, Khmelnytskyi, Ternopil, Lviv, Dnipro and Sumy.

This autumn the NACP, under the guidance of the UNDP in Ukraine, plan to conduct regional awareness raising campaigns on compliance with integrity and other restrictions set out in anti-corruption legislation and legislation on prevention and settlement of conflict of interests.

Pursuant to the provisions of the Article 21 of the Law of Ukraine On Prevention of Corruption members or representatives of public associations, as well as individuals during corruption prevention activity have the right, in particular, to carry out awareness raising campaigns on corruption prevention issues; to carry out public control over implementation of laws in sphere of corruption prevention using the forms of control compatible with legislation.

Public associations, nature and legal persons can not be denied in access to information on competence and activities of subjects preventing corruption.

Moreover, the NACP develop Communication Strategy which shall become an effective tool for communication of the NACP with civil society in part of involvement of its representatives in relevant anti-corruption initiatives, as well as coverage and reporting of results of such activity.

##### **Assessment of Progress - 17th Plenary: PROGRESS**

The adoption on 11 August 2016 of a Decree establishing an inter-institutional working group under

the National Council for Corruption Prevention, composed of representatives of state bodies, public, business and international organisations, to co-ordinate the implementation of the State Programme (anti-corruption action plan) is a welcome development, which meets the demands underlying the recommendation's part one. The ACN understands that this institutional mechanism is yet to become operational and to prove its effectiveness in practice. It would also be valuable to clarify whether this body is conceived as a permanent or temporary structure and what the envisaged mode of appointment/election of its members is.

With regard to the other parts of the recommendation, the authorities report on the planned training for the NACP staff, the carrying out of an awareness raising campaign in 23 regional centres, the organisation of training on financial control and asset disclosure for high-level public officials in selected regions and the planned launch of an awareness raising campaign *inter alia* on integrity and prevention of conflicts of interests at the regional level. It would appear that the majority of those activities are yet to be *systematically* implemented in practice. Moreover, although the authorities report on the right of public associations and individuals to conduct education and awareness-raising activities, there is no evidence of them being proactively solicited by the responsible state bodies, as is required by the recommendation's third part. It is envisaged that the Communication Strategy, currently drafted by the NACP, would provide for an adequate framework enabling a proper engagement of the civil society in the development and delivery of anti-corruption education and awareness raising initiatives.

## Recommendation 1.6: Anti-corruption co-ordination institutions

***Ensure effective operation of the new National Council on Anti-Corruption Policy; consider assigning the function of its secretariat to the National Agency for Corruption Prevention.***

***Establish without delay and ensure effective and independent functioning of the National Agency for Corruption Prevention.***

***Ensure that the budget of the National Agency for Corruption Prevention provides for the necessary resources and operational autonomy.***

***Subordinate anti-corruption units/officers in executive bodies to the National Agency for Corruption Prevention.***

***Provide necessary training and other capacity building support to the staff of the National Agency for Corruption Prevention.***

***Develop effective mechanism of coordination between the National Agency for Corruption Prevention, National Anti-Corruption Bureau, and other executive, legislative and judiciary authorities.***

***Ensure in practice functioning of an effective mechanism for NGO participation in the work of the National Agency for Corruption Prevention.***

### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

#### **Government report**

On September 26, 2015, Decree № 563 of the President of Ukraine approved the composition of the National Council for Anti-Corruption Policy, which is a special consulting and advisory body under the President of Ukraine (Decree № 808 of the President of Ukraine) tasked to prepare and present to the President agreed proposals on improvement of coordination and interaction between subjects preventing and combating corruption, as well as assessment of status and assistance in implementation of recommendations of Group of States Against Corruption (GRECO), Organization for Economic Cooperation and Development (OECD) and other leading international organizations on issues of prevention and combating corruption, enhancing international cooperation of Ukraine in this sphere.

Beside the representatives of authorities the National Council consists of representatives of public association, experts with experience in drafting of proposals on development and implementation of anti-corruption policies, representatives of national local government associations and national entrepreneurs associations (business associations).

As of today, the Commissioner of the NACP R. Riaboshapka is a member of the National Council.

NACP was established by the Government on March 18, 2015 (Resolution of the Cabinet of Ministers № 118).

Four of five Commissioners of the NACP were appointed as a result of competition procedure. Competition for filling vacant position is pending.

On March, 2016, during session of the NACP urgent issues on primary organizational activities for full-fledged operation of the authority were considered, as well as the Head and the Deputy Head were elected.

At the end of the March this year, the Government adopted the staff size in the number of 311 employees (Resolution of the Cabinet of Ministers № 244, dated March, 30, 2016).

As of today, the Chief of Staff and his Deputy are appointed, the staff of the NACP is partly formed of 186 persons.

Likewise, a number of organizational activities for ensuring operation of the authority preventing corruption have been made, in particular the NACP is registered as a legal entity, administrator and recipient of funds, the premise for staff accommodation has been allocated.

During the sessions of the NACP the Procedure of the NACP, regulations on structural divisions and other organizational documents were adopted, as well as responsibilities of the Commissioners pursuant to the areas of work were defined.

Measures on development of Communication Strategy, strategic and annual action plans of the NACP, operation of the official web-site are being taken in the pursuance of the NACP's mandate in sphere of development and implementation of anti-corruption policy.

Furthermore, a number of important documents on implementation of key areas of anti-corruption activities have been adopted, including reporting form of assets, income, expenditures and liabilities of political parties, Rules on drawing up administrative offence protocols and submission of directives, Rules on making anti-corruption expertise and Guidelines on prevention and settlement of conflict of interests.

The NACP in cooperation with representatives of public and expert community work on establishing of statutory basis, specifically in part of protection measures for persons who report about violations of anti-corruption legislation, receiving and processing of corruption reports and cooperation with structural divisions authorized to monitor the compliance with the requirements and restrictions of anti-corruption legislation.

In order to ensure operation of the NACP, the State Budget of Ukraine for 2016 provides for expenses in the amount of 486,4 million of hryvna (app. 18 million Euros) of which 391 million hryvna (app. 14,5 million Euros) provided for public funding of political parties.

In order to ensure fulfillment of direct functions and tasks defined in legislation, the NACP have taken a number of measures on financial and logistic support of its activity. In particular, on the initiative of the NACP the Decree of the Cabinet of Ministers *On Redistribution of the State Budget Expenditures Foreseen for the National Agency on Corruption Prevention for 2016* was adopted and according to which the general fund of the state budget expenditures foreseen for the NACP for 2016 were redistributed, as a result partly provision of IT-equipment became possible.

Before establishment of the NACP, measures on coordination of activity of the authorized unit (person) on the issues of preventing and detecting corruption have been taken by the Government Agent on Anti-Corruption Policy.

In order to bring the provisions of the Decree of the Cabinet of Ministers of Ukraine № 706, which stipulates that such units (persons) shall be established in ministries, other central executive authorities (regional offices), local government administrations, in the line with the Law of Ukraine On Prevention of Corruption and ensuring fulfillment of the NACP's mandate enshrined in legislation on coordination within its mandate, methodological provision and analysis of efficiency of operation of authorized units (persons), a draft Resolution of the Government was prepared.

The referred draft was approved during the session of the NACP (the Decree № 6, dated August 11, 2016) and submitted for approval to the interested authorities. After the approval procedures and execution of legal expertise by the Ministry of Justice the draft resolution will be submitted to the Cabinet of Ministers for consideration.

Pursuant to the provisions of the Decree of the NACP adopted on the beginning of June this year, 27 trainings are planned to be conducted in order to improve professional development of the NACP's staff as well as awareness of practical implementation of anti-corruption legislation of new employees.

As of today, 13 trainings have been conducted for the NACP's staff, in particular on issues of access to public information, settlement of conflict of interests, administration of electronic

registers and operational aspect of informational systems, organization of operation of the institute of authorized persons on the issues of preventing and detecting corruption, application of the new Law of Ukraine *On Civil Service*, personal data protection, making of anti-corruption expertise.

Thus far, the work on preparation and conclusion of bilateral inter-agency treaties is in progress.

In order to ensure a proper fulfilment of NACP's mandate enshrined in Law of Ukraine *On Prevention of Corruption*, in particular in sphere of financial control over public servants, the NACP signed Memorandums of Cooperation with Ministry of Justice, State Fiscal Service and State Service for Financial Monitoring.

Moreover, in the nearest future the relevant Memorandum will be signed with Business Ombudsman.

According to the Law of Ukraine *On Prevention of Corruption* public supervision over the NACP is performed via the Public Council of 15 individuals, elected through a competition, under the NACP, which shall be established and formed by the Cabinet of Ministers.

The Public Council has the authority to take reports on the operation, execution of plans and tasks by the NACP, to approve annual activity reports of the NACP, to provide conclusions on results of expert examination of draft acts, to delegate its representative with an advisory vote to attend sessions of the NACP.

The procedure for organizing and conducting competitions for forming the Public Council under the NACP is determined by the Resolution of the Cabinet of Ministers of Ukraine on March 25, 2015.

As of today, the authorized person responsible for conduction of competition for forming the Public Council under the NACP is determined (Decree of the Cabinet of Ministers № 555, dated July 22, 2016).

#### ***Assessment of Progress - 17th Plenary: PROGRESS***

Some important headway has been made on a number of elements of the recommendation. First of all, the composition of the National Council for Anti-Corruption Policy has been approved. In addition to representatives of various public authorities, it brings together anti-corruption experts, representatives of public associations, local government associations and business community. Moreover, one of the Commissioners of the National Agency for Corruption Prevention (NACP) acts as the Council's member and thus ensures a link between the two bodies. Second, there have been some positive developments regarding the establishment of the NACP itself (appointment of four out of five commissioners, recruitment of 186 out of 311 employees, drafting of internal regulations, methodologies and guidelines and the carrying out of more than a dozen of in-house trainings). Nevertheless, the NACP has not as yet become fully functioning: its staff has only been partly formed and it has not been provided with adequate resources (premises, transportation, equipment, etc.). Even more importantly, the NACP employees are said to be subject to undue interference from outside, which allegedly erodes public trust in this institution. The establishment of a Public Council under the NACP is said to have encountered some practical obstacles as well.

As for the fourth and sixth elements of the recommendation (subordination of anti-corruption units in executive bodies to the NACP and the effective co-ordination between the NACP, the National Anti-Corruption Bureau and other executive, legislative and judiciary authorities), certain steps have been made but no tangible results shown so far.

## Recommendation 2.1-2.2: Offences and elements of offences

***Expand the statute of limitations for all corruption offences to at least 5 years and provide for suspension of the statute of limitations during the period an official enjoyed immunity from criminal prosecution.***

***Provide adequate training and resources to prosecutors and investigators to ensure the effective enforcement of new criminal law provisions, in particular with regard to such offences as illicit enrichment, trafficking in influence, offer and promise of unlawful benefit, definition of unlawful benefit including intangible and non-pecuniary benefits, criminal measures to legal persons, new definition of money laundering.***

***Analyse practice of application of the new provisions on corporate liability for corruption and, based on results of such analysis, introduce amendments to address deficiencies detected. Ensure autonomous nature of the corporate liability.***

### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

#### **Government report**

Tolling of the statute of limitations applicable to criminal liability in the period of enjoyment of immunity from criminal prosecution is not presently provided in Ukrainian legislation.

Provisions of the paragraphs 2-5 of the Article 49 of the Criminal Code of Ukraine stipulate tolling of the statute of limitations in case if a person who has committed a crime, escaped from pre-trial investigation or trial. In these cases, statute of limitations resumes from the day such person comes out with an acknowledgement of guilt or is detained. A person is relieved from criminal liability if fifteen years have passed since the time such crime was committed.

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

The issue of application of the statute of limitations to a person who committed crime of extreme gravity and which impose life imprisonment should be ruled by the court.

The statute of limitations is not applicable in case of committing of crime against national security of Ukraine, provided for in articles 109-114<sup>1</sup> of the Criminal Code of Ukraine, and against peace and security of mankind provided for in articles 437-439 and p. 1 of the article 442 of the Criminal Code of Ukraine.

As of today, measures for improvement of professional skills of investigators and prosecutors in application of new provisions of criminal legislation of Ukraine are being taken.

For the time of operation of the Specialized Anti-Corruption Prosecutor's Office (hereinafter SAPO), its staff took part in number of trainings and workshops aimed at efficient application of provisions of criminal and criminal procedural legislation.

In particular, on April 6, 2016, under the guidance of European Union's project *Support of Reforms in the Sphere of Justice* the anti-corruption training *Three key factors inherent in criminal corruption case established in international practice* was held in the office of the SAPO. For the purpose of sharing of best foreign practices in the sphere of pre-trial investigation of corruption offences the SAPO's staff took part in study visits organized by such states as Hungary, the Republic of Italy etc.

Thus far, analysis of practice of application of provisions on corporate liability for corruption is impossible due to the lack of such practice.

**Assessment of Progress - 17th Plenary: LACK OF PROGRESS**

The information provided by the authorities does not suggest that any action has been taken to fulfil the recommendation as the situation remains largely the same as at the time of adoption of the previous Progress Update in October 2015. Thus, the provisions of the criminal law on the statute of limitations have not been revised, investigators and prosecutors have not benefited from systematic state-funded training and no advancements have been made in terms of analysis and rectification of legal deficiencies on corporate liability for corruption offences.

## Recommendation 2.5: Confiscation

***Ensure that confiscation of assets obtained as a result of crime, their proceeds, or their equivalent in value is applied to all corruption and related crimes in line with international standards; collect and analyse statistics on the application of special confiscation measures (both under criminal and criminal procedure codes).***

***Implement an efficient procedure for identification and seizure of proceeds from corruption; consider setting up a special unit responsible for tracing and seizing property that may be subject to confiscation.***

***Introduce extended (civil or criminal) confiscation of assets of perpetrators of corruption crimes in line with international standards and best practice.***

### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

#### **Government report**

Confiscation of property is set for commitment of acquisitive crimes of serious and extreme gravity and crimes against national security of Ukraine and public safety regardless of their degree and may be sentenced in cases covered by Special Section of the Criminal Code of Ukraine.

Pursuant to the Law of Ukraine № 1019-VIII, dated February 18, 2016, the amendments to the Criminal Code of Ukraine on application of special confiscation entered into force.

Thus, special confiscation consists of mandatory seizure without compensation and the transfer to the State of money, things of value and other property by the decision of the court in cases covered by the Criminal Code of Ukraine under the condition of commission of intention crime or socially dangerous act, charged under characteristics of crime provided for in the Special Section of the Criminal Code of Ukraine which prescribe sentence of deprivation of liberty or fine equal of more than 3.000 tax-exempt incomes, in other words those crimes preceded money-laundering of proceeds of crime (predicate crime).

Special confiscation is also provided for crimes which sanctions for the commission do not provide mentioned types of punishment or not equal to the mentioned fee of fine. They include, in particular: violation of rules of political parties funding, electoral campaigns, campaigns for national or local referendum (p. 2,3 of the article 159-1 of the Criminal Code of Ukraine), fraudulent (p.1 of the article 190 of the Criminal Code of Ukraine).

Special confiscation applies in case of money, things of value and other property:  
proceeds obtained in the result of commission of crime;  
are used for inducement of a person for commission of crime, financing and/or material support of crime commission or in order to receive remuneration;  
serve as subject of crime, except those returned to owner (rightful owner), but in case the owner is not identified - transfer to the State;  
are found, produced, adapted or used as means or instruments of crime, except those returned to owner (rightful owner) in case when owner didn't know or couldn't know about their illicit usage.

According to the provisions of the Law of Ukraine *On National Agency of Ukraine for detection, investigation and management of assets derived from corruption and other crimes* which entered into force on November 26, 2015, the mentioned Agency is planned to authorize in particular to detect, investigate and assessment of assets on the request of investigator, detective, prosecutor, court (investigating judge); plan the measures related to the assessment, book-keeping and management of the assets; keeping a Unified State Register of Assets arrested as a result of criminal proceedings; cooperation with the authorities of foreign states competent in detecting,

investigating and managing the assets, other competent authorities of foreign states and related international organizations; participation in representing the rights and interests of Ukraine in foreign authorities with jurisdiction for the matters related to the return of assets derived from corruption and other crimes back to Ukraine.

National Agency of Ukraine for detection, investigation and management of assets derived from corruption and other crimes was established by the Resolution of the Cabinet of Ministers № 104, dated February 24, 2016, which empowers the Agency to detect, investigate, assess, manage and seize proceeds of crime.

The Decree of the Cabinet of Ministers of Ukraine № 244, dated March 30, 2016, approved the composition of the Competition Committee for filling the position of Director of the National Agency of Ukraine for detection, investigation and management of assets derived from corruption and other crimes.

Pursuant to the provisions of the Decision of the Committee the competition will be conducted in two phases: test and interview. Director shall be elected on September 16, 2016.

As of today the mechanism of civil forfeiture function and provide seizure of unjustified assets of persons authorized to perform functions of state and local government which exceed their income and which legality can not be explained by official, on the basis of Court`s decision.

Thus, pursuant to the provisions of Chapter 9 «Peculiarities of litigation in cases for recognition of illegitimate assets and their redamation» of the Civil Code of Ukraine, prosecutor claim recognition of illegitimate assets and their redamation in terms of statute of limitation from the date when conviction take legal effect.

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

After bringing a claim, prosecutor take measures to detect relevant assets. In case of detection of such assets bringing a claim to legal entity appearing as property owner (user) is compulsory.

#### ***Assessment of Progress - 17th Plenary: PROGRESS***

The adoption and entry into force of the Law on the National Agency for detection, investigation and management of assets derived from corruption and other crimes and of amendments to the Criminal Code can be assessed, overall, as a very welcome development. Yet the information supplied has been contradictory. The authorities' written comments start with the statement that property confiscation may only be applied in respect of grave and especially grave (corruption) crimes. Later on, it is indicated that, pursuant to the Criminal Code as amended, special confiscation has been introduced also in respect of proceeds of crime (the ACN interprets this as encompassing all types of crime, including corruption offences) as well as assets, specifically "money, things of value and other property" derived from certain predicate offences that give rise to money-laundering. It is not totally clear whether all corruption and related crimes have been captured by the Criminal Code as amended (and as is required by the recommendation's first part) or only those which are liable to sanctions of certain gravity. Furthermore, it remains to be confirmed whether value confiscation and confiscation of transformed/merged assets have been envisaged.

As for those parts of the recommendation that request the carrying of an analysis of the statistics on the application of confiscation under both the Criminal and the Criminal Procedure Codes and the implementation of an efficient procedure for identification and seizure of corruption proceeds, the ACN understands that the National Agency for detection, investigation and management of assets is yet to be properly staffed and to become operational. Therefore further progress on both of those issues is currently pending.

## Recommendation 2.6: Immunities and statute of limitations

***Review legislation to ensure that the procedures for lifting immunities of MPs and judges are transparent, efficient, based on objective criteria and not subject to misuse.***

***Limit immunity of judges and parliamentarians to a certain extent, e.g. by introducing functional immunity and allowing arrest in cases of in flagrante delicto.***

***Revoke additional restrictions on the investigative measures with regard to MPs, which are not provided for in the Constitution of Ukraine.***

### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

#### **Government report**

The Constitutional Committee which is an advisory body under the President of Ukraine drafted the proposal of amendments to the Constitution of Ukraine on justice. The relevant draft law on amendments to the Constitution was registered in the Parliament under register number 3524 on November 25, 2015. The President of Ukraine submitted the referred draft as urgent for its extraordinary consideration by the Parliament and on June 02, 2016 the draft was adopted on first reading.

On June 02, 2016 the Parliament adopted the Law of Ukraine *On Amendments to the Constitution of Ukraine on justice* (hereinafter the Law) by constitutional majority.

The Law, in particular, eliminate the institute of «first appointment of judge to office»: judges hold office during good behavior; extent of immunities of judges is decreased from absolute to functional; the basis for renewal of judicial establishment is laid etc.

The Law will take legal effect 3 months after the date of its official publishing (on September 30, 2016), except provisions of possibility for acceptance of jurisdiction of the International Criminal Court, which take legal effect 3 years after the date of official publishing of the Law referred.

The provisions of the article 126 of the Constitution of Ukraine, amended by the Law, stipulate that the judge cannot be arrested without a decision of the Supreme Council of Justice, and that detention in custody cannot be applied towards the judge prior to delivering the judgment of conviction by the court. An exception from this rule includes cases when detention is made upon committing or as a result of committed grave or especially grave crimes.

The provisions of the Law also stipulate the authority of the Supreme Council of Justice to take decisions on arrest or detention in custody of judges. Thus, the judge cannot be arrested or detained in custody without a decision of the Supreme Council of Justice, except for cases when detention is made upon committing or as a result of committed grave or especially grave crimes.

At the same time the judge cannot be brought to responsibility for delivering a judgment, except for commission of crime or disciplinary offence.

Decision on the imposition of sanctions for disciplinary offence and decision on dismissal of judge shall take Supreme Council of Justice according to the Law *On Supreme Council of Justice*.

#### **Assessment of Progress - 17th Plenary: PROGRESS**

The ACN commends the authorities for carrying out the constitutional reform, which has had as one of its outcomes the substitution of an absolute immunity of judges with a functional one. Judges may now be remanded in custody in case of commission of grave and especially grave crimes and if apprehended in *flagrante delicto*. In all other cases an approval by the High Justice Council is to be sought. The ACN would also welcome further clarification as regards the authorities' statement that "At the same time a judge cannot be brought to responsibility for delivering judgment, except for

*commission of crime and disciplinary offence”.*

Regrettably, it would appear that the procedure for the lifting of parliamentary immunity has not been revised and no steps have been made to revoke additional restrictions on the investigative measures in respect of MPs.

## Recommendation 2.7: MLA

***Step up efforts in obtaining mutual legal assistance in corruption cases, in particular with a view to recover assets allegedly stolen by the officials of Yanukovich regime.***

***Review procedures on assets recovery to ensure that they are effective and allow swift repatriation of stolen assets.***

***Raise capacity of the Prosecutor's General Office and other agencies (notably, the newly established National Anti-Corruption Bureau) on mutual legal assistance and asset recovery issues.***

***Establish national mechanism for independent and transparent administration of stolen assets recovered from abroad.***

## 17<sup>TH</sup> ACN Plenary Meeting, September 2016

### **Government report**

General Prosecutor's Office (hereinafter GPO) as a central body for international cooperation in criminal proceedings during pre-trial investigation is responsible for implementation of applicable international treaties and rendering international legal assistance in criminal proceedings.

During 2014 - 2016 law-enforcement authorities of Ukraine sent 167 requests for international assistance in criminal proceedings against ukrainian former high-level officials to the competent authorities of foreign states, 64 had been executed.

As of the beginning of August, 2016, 40 requests for international legal assistance in 17 criminal proceedings against ukrainian former high-level officials were discussed with the representatives of the Basel Institute of Governance (Swiss Confederation).

Likewise, from January to July 2016 National Anti-Corruption Bureau (hereinafter NABU) sent 59 requests for international legal assistance in investigation of criminal proceedings to 32 foreign states.

As of August 01, 2016 6 requests had been fully executed, 2 -partly executed, the others are under execution.

Taking into account specific character of criminal proceedings which are under the competence of the NABU and in order to ensure autonomous execution of functions given to it by the law, the NABU is responsible for international cooperation within its competence and according to national legislation and international treaties (p. 9 article 16 of the Law of Ukraine *On National Anti-Corruption Bureau*).

Together with giving newly created anti-corruption body the mandate for international cooperation, the Law amended in particular p. 1 of article 545 of the Code of Criminal Procedure of Ukraine. According to the provisions of p. 1 of the article 545 of Code of criminal procedure of Ukraine GPO request for international legal assistance in criminal proceedings during pre-trial investigation and consider relevant requests of competent foreign authorities, except pre-trial investigation of corruption offences that are under the competence of the NABU which perform functions of central body in such cases.

National Agency of Ukraine for detection, investigation and management of assets derived from corruption and other crimes was established by the Resolution of the Cabinet of Ministers № 104, dated February 24, 2016 and is authorized to detect, investigate, assess, manage and seize proceeds of crime as well as to keep the Unified State Register of Assets arrested as a result of criminal proceedings; cooperation with the relevant authorities of foreign states (offices for investigation and managing the assets) other competent authorities of foreign states and related international

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

**Assessment of Progress - 17th Plenary: PROGRESS**

The ACN takes note of the statistical information on mutual legal assistance (number of requests received/sent/executed) presented by the authorities and falling within the remit, respectively, of the Prosecutor General's Office and of the National Anti-Corruption Bureau. Although those figures seem to be credible and are not put into doubt, they still fail to corroborate a conclusion that the authorities' efforts in this area have been *stepped up*, as is required by the recommendation. Above all, the ACN is concerned by the criticisms expressed by some civil society representatives regarding the lack of improvements in the international activity of the Prosecutor General's Office. At the same time, positive trends have been identified in the work of the Specialised Anti-Corruption Prosecutor's Office and of the National Anti-Corruption Bureau (whose commitment has been proven *inter alia* through the successful freezing of property abroad). The authorities are therefore urged to reinforce their action along the lines of the recommendation so that concrete and measurable results in terms of asset recovery could be shown. The ACN understands that any further progress in this area also depends on the effective functioning of the newly established National Agency for detection, investigation and management of assets, which is as yet to become operational.

## Recommendation 2.8: Effectiveness of law enforcement

***Consider establishing a centralised register of bank accounts, including information about beneficial ownership, that should be accessible for investigative agencies without court order in order to swiftly identify bank accounts in the course of financial investigations.***

***Ensure direct access of investigative agencies dealing with financial investigations to tax and customs databases with due protection of personal data.***

***Step up law enforcement efforts in prosecution of corruption offences with the focus on high-level public officials and corruption schemes affecting whole sectors of economy.***

***Ensure free access via Internet to regularly updated detailed statistic data on criminal and other corruption offences, in particular on the number of reports of such offences, number of registered cases, the outcomes of their investigation, criminal prosecution and court proceedings (with data on sanctions imposed and categories of the accused depending on their position and place of work). Statistical data should be accompanied with analysis of trends in corruption offences.***

### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

#### **Government report**

October 14, 2014 Law of Ukraine *On Amendments to Certain Legislative Acts of Ukraine regarding the definition of final beneficiaries of legal entities and public officials* (№ 1701-VII) amended in the Law of Ukraine *On prevention and counteraction to legalization (laundering) of proceeds from crime or terrorism financing and the financing of proliferation of weapons of mass destruction* which obliged entities to file to the state registrar information on its final beneficiaries including the final beneficiary of the founder if the founder is a legal entity.

The duty applies to newly created entities and those who were registered before the law entry into force. Newly created entities disclose information in the moment of registration, and the second group within six months from the entry into force of the law (25 November 2014).

In addition, the Law of Ukraine *On Amendments to Certain Legislative Acts of Ukraine regarding the activities of the National Anti-Corruption Bureau of Ukraine and the National Agency on Corruption Prevention* (February 12, 2016 № 198-VIII) amendments to the Law of Ukraine *On prevention and counteraction to legalization (laundering) of proceeds from crime, terrorist financing and the financing of proliferation of weapons of mass destruction*, in particular as regards expansion of the national public officials, which cover, among other things, public servants whose positions are classified as second category posts, heads of regional local offices of central executive authorities, prosecutors, mayors and appellate court judges and heads of administrative, management or supervisory authorities of commercial companies, the state share in the authorized capital of more than 50 percent.

At present there is no centralized register of bank accounts in Ukraine.

On August 28, 2015 between the NABU and State fiscal service of Ukraine (SFS) signed an agreement on information cooperation. The subject of the Agreement is the exchange of information between these authorities in compliance with the agreed procedures of information exchange.

According to the agreement NABU has access to SFS's information resources, including information regarding open / closed accounts of taxpayers at banks and other financial institutions (register of legal entities and individuals - entrepreneurs).

At the beginning of August 2016 detectives of NABU carried out 242 pre-trial criminal proceedings, 81 person informed about suspicion of committing criminal offenses, 23 criminal proceedings acts sent to the court.

Prosecutors SAPO made procedural management in 184 criminal proceedings. As a result of this management 20 criminal proceedings acts sent to the court.

In particular, on April 25, 2016 The Anti-corruption Prosecutor signed indictment in the criminal proceeding concerning Andriy Pasishnyk, the Acting Deputy of the Board Chairman of the Naftogaz National Joint Stock Company unlawfully influencing the actions of Aivaras Abromavičius, the former Minister of Economy and Trade, member of the Cabinet of Ministers of Ukraine with the purpose of preventing him from performing his duties and persuading him to make an unlawful decision (article 344, part 1 of the Criminal Code of Ukraine).

Thus, May 11, 2016 the indictment in the criminal proceedings against judges Economic Court of Odessa region on the fact of extortion and receiving improper benefits in the amount of 570 000 USD. was directed to the court (P. 4 of Art. 368 of the Criminal Code of Ukraine).

Also were found facts of corruption among prosecutors. Wide publicity has acquired arrest for a corruption crime employee of the GPU - for the proposal of illegal benefit (10 thousand USD) to members of the screening commission for selection of candidates in NABU for a positive decision by his employment for the post of head or deputy head of unit detectives of NABU. This indictment in the criminal proceedings in a month was directed to the court.

During the pretrial investigation of the criminal proceedings against the rector of Berdyansk University of Management and Business was established that the said person has given illegal benefit of 10 000 dollars to Deputy Minister of Education, for committing illegal acts in the interests of the Limited Liability Company «Berdyansk University of Management and Business». This indictment in the criminal proceedings in a month was directed to the court.

May 18, the detectives of the NABU in cooperation with prosecutors of SAPO have taken into custody the Deputy Prosecutor of Kyiv region.

He was detained on suspicion of the abuse of office for sugar embezzlement, kept at the warehouses of special state budgetary facility «Agrarniy Fund» located at Cherkasy region, in the amount of more than 300 million UAH (Part 2, Article 364 of the Criminal Code of Ukraine).

The pre-trial investigation has shown that from June 2015 till December 2015, resulting from unlawful procedural decisions and actions of the suspect, the sugar was reallocated from public to private property.

On Tuesday, June 28, 2016, at 10 P.M. the detectives of the National Anti-Corruption Bureau of Ukraine took into custody the head of the LLC «Nadra Heotsentr» involved in the gas embezzlement scheme (joint gas production with the PJSC «UkrGasvydobuvannia»).

The detained individual, being one of the 20 participants of the gas embezzlement scheme, was taken into custody under Article 208 of the Criminal Procedural Code of Ukraine. He was detained while trying to cross the Ukrainian-Russian border in Sumy region. The pre-trial investigation is in progress.

On July 26 the detectives of the NABU in cooperation with the prosecutors of the SAPO took into custody the former acting chairman of the board of PJSC State Food and Grain Corporation of Ukraine along with the chairman of the board of PJSC Rokytno grain enterprise.

The detainees are suspected of creating a corrupt scheme, which caused an embezzlement of about UAH 50 million state funds (Part 5 Article 191 of the Criminal Code of Ukraine «Misappropriation, embezzlement or conversion of property by abuse of office»).

According to investigation the detainees have signed a contract on the supply of 16,600 tons of third-grade maize to the corporation on the terms of full prepayment. Both parties knew that the mentioned commodity was de facto not available, therefore the grain enterprise was not going to fulfill the contract. But the State Food and Grain Corporation transferred about UAH 50 million in budget funds to the enterprise's account for the commodity, which has not been supplied.

The SAPO have sent to the court the indictment against the judge of the Malynovsky district court in Odesa Oleksii Buran. He is accused of receiving an improper advantage in the amount of 500 thousand UAH (Part 4 of Article 368 of the Criminal Code of Ukraine) along with the threat to kill one of the NABU staff being on duty (Part 1 Article 345 of the Criminal Code of Ukraine).

The judge's partner in crime is also charged under Part 1 of Article 345 of the Criminal Code of Ukraine.

If the accused are found guilty, they will face the imprisonment for a term from 8 to 12 years with disqualification to hold certain positions or to be engaged in certain activities for 3 years with forfeiture of property.

On June 27 the General Prosecutor of Ukraine signed the notice of suspicion against the Deputy of Ukraine Oleksandr Onishchenko who is considered to be the organizer of the corruption scheme of large scale state funds embezzlement while gas production and realization jointly with the PJSC «Ukrasvydobuvannia».

Under his immunity, Onishchenko has left Ukraine just before Verkhovna Rada restricted his immunity and allowed his arrest.

The signed notice of suspicion allows the NABU and the SAPO to put Onishchenko on the international wanted list and to file a petition for his assets' arrest.

If Onishchenko is to hide from investigation, the NABU and the SAPO will request from the court the special pre-trial investigation upon the absence of the charged (Article 297<sup>1</sup> of the Criminal Procedural Code of Ukraine).

As of now, the pre-trial investigation of «Onishchenko gas scheme» is in progress. The NABU detectives also arrested 10 apartments, 9 houses, 10 land spots, 39 bank accounts, 11 cars owned by suspects of this criminal proceeding. In total the arrested property accounts for 315 million UAH.

It should be reminded that the NABU in cooperation with the SAPO have exposed the organizers of the public funds embezzlement scheme (gas production and realization jointly with the PJSC «Ukrasvydobuvannia»). As a result, the state has suffered losses of nearly 3 billion UAH. Ten previously detained individuals, suspected of involvement in this scheme, were chosen a preventive measure in a form of being taken into custody for 60 days. The total amount of the alternative bail is more than 1 billion UAH.

Requires part 2, Article 30 of the Law of Ukraine «On the National Anti-Corruption Bureau of Ukraine» relevant information on results NABU published on its official web page on the Internet and in national print media.

#### ***Assessment of Progress - 17th Plenary: PROGRESS***

The authorities report on a number of steps taken in the furtherance of the recommendation, for example, the introduction of a mandatory reporting of beneficial ownership to the state register by legal entities and the signature of an agreement between the National Anti-Corruption Bureau (NABU) and the State Fiscal Service allowing for an exchange of information, including on taxpayers' bank accounts. Rather detailed information has been also supplied in respect of certain on-going or closed criminal cases, including those involving high-level public officials. Regardless of the foregoing, the ACN notes that no centralised register of bank accounts has been established and that, apart from the NABU, no other law enforcement agency has been granted access to banking, tax and customs information. Also, while certain statistics have been made available on the respective investigative bodies' web sites, it is not possible to ascertain whether they comply with all the requirements of the last part of the recommendation, for example, whether they have been accompanied with an analysis of trends in corruption offences.

## Recommendation 2.9: Specialised law enforcement bodies

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

***Consider introducing amendments in the Constitution of Ukraine to provide legal basis for functioning of independent anti-corruption agencies (law enforcement and preventive).***

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

***Consider introducing specialized anti-corruption courts or judges***

### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

#### **Government report**

Specialized Anti-Corruption Prosecutor's Office was established under the GPO's structure as self-sufficient structural division pursuant to the provisions of the Decree of the Prosecutor General of Ukraine dated September 22, 2015. Over the December, 2015 the Head, the First Deputy Head, the Deputy Head, the head of Directorate and heads of divisions were appointed on the results of the open competition. On December 22, 2015 all the administrative positions in the SAPO were filled.

Committee for conduction of open competition for positions of prosecutors of the SAPO was established. The same day, pursuant to the provisions of item 2 paragraph 1 of the article 8-1 of the Law the Head of the SAPO defined the Procedure of open competition for positions of prosecutors of the SAP and composed the Competition Committee.

In January - February 2016 legislation (professional test) and general skills testing, as well as interviews were held. Generally 318 persons were invited to participate in the open competition. From 15 to 20 of February, 2016 12 persons were appointed on the positions of prosecutors in SAP.

On June 02, 2016 the Parliament adopted the Law of Ukraine № 1401-VIII *On Amendments to the Constitution of Ukraine on justice* which get into power on September 20, 2016. The Law amends the Constitution of Ukraine, in particular its provisions stipulate optimization of judicial system of Ukraine.

The Law *On judicial system and status of judges* was adopted by the Parliament on June 02, 2016, which take legal effect at the date of entering into force of the Law *On Amendments to the Constitution of Ukraine on justice*.

The said Law introduce new three sections of judicial system which shall consist of local courts, appeal courts and Supreme Court of Ukraine.

Moreover two high specialized courts shall operate in the judicial system as courts of first instance for specific types of proceedings that fall within their jurisdiction according to the procedural legislation.

According to the Law high specialized courts composed of High Court for Intellectual Property Issues and High Anti-Corruption Court.

Pursuant to the provisions of the paragraph 16 of the Final and Transitional clause of the Law, establishment of the High Anti-Corruption Court, as well as conduction of competition for the positions of judges in this court, shall be implemented within 12 months after the date the law, defining special requirements for judges of the said Court, take legal effect.

**Assessment of Progress - 17th Plenary: PROGRESS**

The ACN is satisfied that, according to the information from both government and non-governmental sources, the National Anti-Corruption Bureau (NABU) appears to have been almost fully formed (its staff has been appointed, provided with necessary equipment and its regional offices have been opened). The NABU is said to have been under constant pressure from politicians and the media due to the high-profile investigations it has initiated against MPs, judges and prosecutors. The Specialised Anti-Corruption Prosecutor's Office has been apparently also fully established (it occupies separate premises, its personnel has been selected via open competition, working conditions are believed to be adequate, etc.). The Office's policies so far have been assessed as "independent enough". Additionally, as part of the constitutional reform, the new law On the Judiciary and the Status of Judges has been adopted. It has established a (specialised) High Anti-Corruption Court, which is expected to be fully functioning by end of 2017. It is widely believed that, with the establishment of this Court, an independent mechanism to fight corruption in Ukraine would be finally constituted.

### Recommendation 3.2: Integrity in civil service

#### **Legal framework for integrity in civil service**

**-Reform the legislation on Civil Service in order to introduce clear delineation of political and professional civil servants, principles of legality and impartiality, of merit based competitive appointment and promotion and other framework requirements applicable to all civil servants, in line with good European and international practice.**

**-Review and reform rules for recruitment, promotion, discipline and dismissal of civil servants and develop clear guidelines and criteria for these processes, in order to limit discretion and arbitrary decisions of managers, to ensure professionalism of civil service and protect it from politisation.**

**- Review and reform remuneration schemes in order to ensure that flexible share of the salary does not represent a dominant part and is provided in transparent and objective manner based on clearly established criteria.**

**-Ensure decent salaries.**

**-Establish a clear and well balanced set of rights and duties for civil servants.**

**• Once the new law is adopted and enacted: Implement the regulations on recruitment and selection of civil servants, including the senior civil servants, based on merit, equal opportunity and open competition to ensure professionalism and avoid direct or indirect political influence on civil service as foreseen in the Law on Civil Service.**

**• Implement and ensure effective functioning of the regulations on conflict of interest, asset declarations, code of ethics and whistle-blower protection as foreseen in the Law on Prevention of Corruption.**

**• Consider adopting a stand-alone whistle-blower protection law to cover both public and private sector.**

#### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

##### **Government report**

The Verhovna Rada of Ukraine has adopted The Law of Ukraine dated on the 10 of January, 2015, № 889 *On public Service*, with its implementation and realization to have started from the 1 of May, 2016 (the date of coming into its force), inter alia, through the Law's adoption and its coming into force simultaneously with relevant legislation acts' prepared by the National Agency on Public Service of Ukraine coming into their force.

The reform of legislation on public service is believed to have been realized through newly legalized principles and concepts for public service being harmonized with relevant European ones, that, therefore, allows to: make a border between political positions and public service positions; manage tenders on all positions of public services; provide equal opportunities for gaining public service positions on merits, knowledge, and personal qualities; set and define the principle of political neutrality (quote, public officials of «A» category are stated not to be allowed to be a member of any political party and to hold a chair of party's ruling offices, to hold a public service position and, simultaneously, fulfill obligations of a deputy of a local authority or a deputy of the Verhovna Rada; public officials of «B» and «C» categories are stated to be not allowed to hold positions in ruling offices of political parties, unquote).

Adoption of the Law provides: strengthening public service institute; clear borders for the Law's implementation (specifically, state authorities and public officials under the Law are set to be listed); defined criteria for officials to refer to public service officials; and public officials being highly motivated (career laddering, new payment-scheme). All relevant legislative acts under necessity, being developed with participation of internationally recognized pundits representing, inter alia, SIGMA/OECD Programme have been duly adopted and have become a part of the national legislation.

The Law guarantees equality for all candidates to chair public service on merits, transparent procedure of candidates selection, clear requirements for their education, qualification, track record, skills and knowledge; tender selection open for publicity, with society representatives being engaged (civic control); elimination of overly loaded line of obligations of the Subject of appointment.

Staged public service professionalization is provided through: transparent procedure and clearly proscribed requirements for a candidate for a post, with the best world practices being their background; motivation of public officials to fulfill their obligations properly; public officials' acting in accordance with the Constitution of Ukraine and Legislation of Ukraine and preventing from legislation violation; and fostering violated human rights renewal.

Moreover, commissions for selection of vacant positions of public service and disciplinary commissions have been settled.

The Commission on highest corpus of public service conducts tenders for gaining positions of the highest corpus of public service (positions of public service of «A» category), guarantees and protects rights of public officials of this category. Other commissions, having been formed by the manager (chief executive) of public service in a state body, pursuant to the Article 27 and Article 69 of the Law, run tender for public service chairs of category «B» and category «C», and apply disciplinary measures to these two categories.

The Law stipulates innovative approach to public official payment-scheme, particularly, the sums of the minimum salary are set under the Law, with their obligatory correlation to minimum salary set under the Law of Ukraine *on State Budget* for corresponding year.

Under the new public official pay-scheme, public official's pay package constitutes as follows: salary, bonuses for track record, bonuses for public service rang, payment for extra work done instead of other temporary absent public official in a sum of equivalent to 50% of the salary of that temporary absent public official whose line of work is being done, payment for extra work done instead of the public official whose chair is vacant (due to the fund savings on relevant vacant chair), other bonuses, fees, or perks (in case of their being set), with overall annual sum of payments in form of bonuses, fees, or perks, pursuant to punkt 2, Part 3, Article 50 of the Law, that a public official is stated to be allowed to get, not to be more than 30% of his/her annual salary.

With the purpose to differentiate sums of salaries of public officials, all positions of public service are stated to be divided into 9 (nine) salary groups (ranking from specialist to the Head), with the level of state body jurisdiction taken into account, and the scheming model of competitive pay-package is stated to be implemented.

With the purpose to implement the new public official pay-scheme step by step, the minimum sum of salary for public officials of the group 9 (specialist) in state authorities, whose jurisdiction are on the territory of one, or more, rayon (territory unit), one, or more, city (that is the center of region), is stated under the Law to rise steadily, as follows: from the 1 of January, 2017 it is expected to be 1,25 of the minimum salary (app. € 70), from the 1 of January, 2018 - 1,5 of the minimum salary (app. € 80), and from the 1<sup>st</sup> of July 2018 – 1,75 of the minimum salary (app. € 95).

The Fund for public officials' pay-packages is sourced by the State Budget and other sources of funding provided within the framework of European Union support programmes, governments of foreign countries, international organisations, and donor authorities, with the procedure for such funds spending to be proved by the Cabinet of Ministers of Ukraine (Kabinet Ministriv Ukrainy).

The Law states comprehensive, balanced, unified for all public officials scope of their rights and obligations (Article 7, and Article 8). Moreover, it is additionally stated that a public official is to be entitled other rights and, correspondingly, is to be additionally obliged, for the purpose to fit definite public service position line of work proscribed by corresponding Statutes on structural divisions of state authorities and Instructions for Structural Positions Rights and Obligations approved by Chiefs of public service in relevant authorities, with the latter to take into account sphere of public officials work (legislative, economic, financial, analytical, etc.)

For the purpose to select individuals who are duly able to fulfill their obligations under

positions of public service professionally and with integrity, the procedure for holding competition for gaining vacant positions of public service has been adopted by the Resolution of the Cabinet of Ministers of Ukraine dated on 25<sup>th</sup> of March, 2016, № 246 entitled *On approval of Procedure for holding competition for gaining vacant positions of public service* in accordance with the Law. Newly adopted procedure for holding competition for gaining vacant positions of public service is stated to be run on the basis of estimation of personal achievements of candidates in their education, track record, and ability to apply obtained knowledge and skills, their moral and professional qualities for proper fulfillment of obligations, training, professional and individual growth under the position occupied.

Moreover, the Cabinet of Ministers of Ukraine has proscribed typical requirements for individuals who apply for the positions of public service of the «A» category. According to the Resolution of the Cabinet of Ministers of Ukraine *On approval of Typical requirements for individuals who apply for the positions of public service of the «A» category* (July 22, 2016, № 448), it is required for such individual to be a Ukrainian native speaker, and speak fluently one of the official languages of the European Union (from the 1 of May, 2018), with not shorter than 7 years' overall track record. The candidate must demonstrate proven skills of a leader, to be able to make effective decisions, to have brilliant interpersonal skills to communicate at all levels and to be a good presenter to the public, to know legislation, to be able to work with huge amount of data, and to be able to simultaneously fulfill two tasks. The candidate who applies for a position of public official of the «A» category must be principled, decisive, determined to serve for society wellbeing and national interest protection, etc.

Additionally, the Order for defining specific requirements for candidates who apply for the positions of public officials of the «B» and «C» categories has been approved by the Order of the National Public Service dated on the 6 April, 2016, № 647/28777, with corresponding record having been entered by the Ministry of Justice. The Order proscribes the procedure of defining, developing and approval of specific requirements concerning candidates who apply for the positions of public officials of the «B» and «C» categories and states that specific requirements are to be defined and approved by the Subject of Appointment for each position of public service of the «B» and «C» categories in a state body.

With the purpose of establishing unified approach applied by the officials who are entitled to fulfill functions of the State or local authorities, or individuals deemed to be equal in their authority, to interpretation and following the rules for conflict of interest prevention and solving, having been proscribed by the Law, NACP made the Resolution № 2 dated on the 14 of July, 2016, on approval of the Methodology recommendations on conflict of interest prevention and solving in activity of public officials who are entitled to fulfill functions of the state or local authorities, or individuals deemed to be equal in their authority.

The Methodology recommendations generalize and implement positive practice gained in previous years of work, established by international organisations, national state authorities, scientific institutions, institutes of civic society, and, on the basis of applicable legislation with international experience applied, offer basic practical instruments for fostering effectiveness of conflict of interest detection, prevention and solving.

Moreover, the NACP has approved by their Resolution № 3 dated on the 11 of August, 2016, the Methodology recommendations on transfer of managerial rights on enterprises and/or corporate rights in order to prevent conflicts of interest that proscribe generalized requirements for the procedure of transfer of managerial rights to corresponding authorities that are entitled to fulfill obligations of the state or local authorities, and to public officials of legal entities under public law, of enterprises and/or corporate rights, with ways of such transfer to have been defined, the order of transfer terms calculation explained, and terms given for the NACP being priorly noticed about such transfer proscribed.

What is more, on the 11<sup>th</sup> of August, 2016, the NACP by their Resolution № 3 has approved explanations on application of a number of provisions of the Law of Ukraine *On prevention of*

*corruption* in the part related to financial control.

The draft of the Law of Ukraine *On protection of whistleblowers and disclosure of information on harm and threats for public interest* № 4038 a dated on the 20<sup>th</sup> of July, 2016, was duly registered by Verhovna Rada deputies. The draft stipulates conditions and procedure of disclosure of information on harm and threats for public interest, rights and guarantees for whistleblowers of such information. The Law drafted is focused on providing transparency, publicity and accountability of Subjects of public servicing, advanced detection and prevention of acts that pose any kind of threat or harm to public interest, including corruption acts and other crimes and wrongdoings, on providing whistleblowers with reasonable safety and their rights protection.

Currently, the drafted Law is being expertised by the Committees of the Verhovna Rada of Ukraine.

#### ***Assessment of Progress - 17th Plenary: PROGRESS***

Noticeable progress has been made in ensuring compliance with several parts of the recommendation. First of all, the Law on Public Service has been finally adopted by the parliament and entered into force in May 2016. It appears that the Law has been aligned with the relevant European standards and sets out rules and procedures for open, competitive, transparent and meritorious appointment and career progression within the civil service. The adoption of the Law has been followed by the development and approval by the Cabinet of Ministers of a series of regulations on various matters pertinent to recruitment. Secondly, in 2016 the National Agency for Corruption Prevention has developed methodologies/guidelines to facilitate proper interpretation and implementation of the rules on prevention of conflicts of interest and certain related areas, e.g. financial control. Thirdly, a bill on protection of whistle-blowers has been drafted and submitted to the parliament on 20 July 2016; it is currently being reviewed by one of its standing committees.

As for the decent pay, the Law on Public Service has introduced a new scheme, whereby a minimum salary within the civil service is to correlate with the minimum salary established by the Law on State Budget for the corresponding year. That gives the impression (which is also corroborated by the information received from the civil society) that salaries within the public service remain relatively low. Moreover, an alarming factor is the multiplicity of bonuses (which may attain as much as 30% of a civil servant's pay) in respect of which no information has been presented, i.e. as to whether they are to be allocated in a transparent and objective fashion and based on predetermined criteria. As for the asset disclosure, the e-declaration system was supposed to be launched on 1 September 2016; therefore, it would be premature to draw a conclusion on its effectiveness. Finally, it would be desirable to receive more information on the implementation and effective functioning of conflicts of interest rules and code of ethics.

### Recommendation 3.3: Transparency and reducing discretion in public administration

***Develop and adopt Code of Administrative Procedures without delay, based on best international practice.***

***Take further steps in ensuring transparency and discretion in public administration, for example, by encouraging participation of the public and implementing screening of legislation also in the course of drafting legislation in the parliament.***

***Step up efforts to improve transparency and discretion in risk areas, including tax and customs, and other sectors.***

#### 17<sup>th</sup> ACN Plenary Meeting, September 2016

##### **Government report**

With the purpose to develop the law on administrative procedure in the Ministry of Justice there has been started the work on submitting to referred authorities with request of their providing information on legislation background composing provisions regulating such administrative procedures, with its being systemized.

The Ministry of Justice and referred authorities have been carrying corresponding work on developing the Law of Ukraine *On Public Consulting*.

The Law is purposed to define the public consulting procedure while preparing drafts of legislative acts and documents of state or regional policy and local matter (concepts, strategies, programmes, event schedules, etc.) by the Subjects of state power for public opinion to be taken into account for balancing public and personal interests, and for implementation of modern standards of law drafting that are obligatory for state authorities and local authorities to follow, that is believed to facilitate civil engagement in effective mechanism of cooperation between society and institutes of state authorities as partners with mutual responsibility in Ukraine.

##### **Assessment of Progress - 17th Plenary: LACK OF PROGRESS**

With regard to the recommendation's first part, it would appear that no further advancements have been made as the draft law on administrative procedure is apparently still being refined by the Ministry of Justice. The authorities are urged to proceed with the adoption of this law as soon as possible.

As concerns the recommendation's second part, the ACN takes note and welcomes the development of the draft Law on Public Consultation by the same Ministry. At the same time, the ACN wishes to recall that, in their submission for the previous Progress Update, the authorities had referred to the Law on Corruption Prevention, which allegedly already regulated the carrying out of anti-corruption expertise in Ukraine. It would be important to clarify what efforts have been made in pursuit of that Law, in particular from the point of view of engaging civil society in the anti-corruption screening of legislation.

Last but not least, the authorities are yet to provide information on their efforts to improve transparency in risk areas, including tax, customs and other sectors, as is required by the recommendation's third part. For that purpose, it would be beneficial to unify/harmonise legislation on risk assessment and anti-corruption screening.

### Recommendation 3.4: Public financial control and audit

***Continue reforming the State Financial Inspection Service by improving the risk based approach, developing an intelligence function, training the staff in analysing expenditures for suspicions of fraud and corruption.***

***Revise the Law on the Accounting Chamber to strengthen independence and effectiveness of the Chamber in line with international standards. Increase transparency of the Accounting Chamber's operations by ensuring publication on Internet and free public access to information on audit activities, including to all audit reports and results of investigations by the prosecutor's office on corruption cases detected by the Accounting Chamber***

***Consider revising the legal framework on Financial Management and Control by bringing together the current legal provisions in more than 70 by-laws in one Financial Management and Control law and implement this law in phases.***

***Adopt an internal audit law in order to strengthen the independent position of the internal audit units and consequently improve the quality of internal audit results.***

#### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

##### **Government report**

In 2005, there started the work on reforming and optimization of state authorities on financial control, particularly, reorganization of the State financial inspection into the State Auditory Service of Ukraine.

For proper work of the State Auditory Service of Ukraine all necessary legislative acts have been adopted.

The reform is purposed to change approaches to state financial control organisation, that is stated to be focused not only on detection of financial wrongdoings, and facts of fraud, but also on:

Estimation of how effectively, reasonably, purposely state funds, fixed assets are used, with their

Estimation of state funds management, their saving, state of financial and economic activity of entities under its control;

Detection of reasons that could lead to misuses and violations, then recommendation how to foster effectiveness and, therefore, optimize their economic activity using state assets.

To reach before stated goals the change in approaches to control organisation is meant:

To decrease a number of inspections (being currently the main form of control) and to increase the number of state audits with the purpose of complex estimation of economic and financial activity carried by entities under control, with the State Financial Audit to mainly carry these functions (applying inspections as a form of control);

Application of inspection as a form of control for investigation of facts of fraud and transactions that expose high risks of fraud;

That inspections are stated to be carried concerning a definite number of financial and economic activity in case of clear evidence of reasons for that (particularly, when high risks of financial violations are exposed, or following the President of Ukraine, Government of Ukraine, enforcement authorities request).

The selection of objects under planned financial control according to Plan of control and inspection is mainly reasoned by risks predictably exposed in the objects, with the selection methodology being prescribed by the Concept of risk-oriented selection of objects under control when plans for inspections are being composed that has been approved by the Minutes №3 of the meeting of the State Financial Inspection Council on Methodology, dated on June 17, 2014.

At present, selection of objects under inspection on the State Audit Service of Ukraine initiative is carried exclusively according to the risk-oriented approach.

***Assessment of Progress - 17th Plenary: LACK OF PROGRESS***

Regrettably, the authorities' submission suggests that no concrete steps have been made to fulfil the various elements of the recommendation. Therefore, no progress has been made in this area since the adoption of the last Progress Update.

### Recommendation 3.5: Public procurement

*Continue reforming the public procurement system, based on regular assessment of application of the new Law on Public Procurement, in particular with a view to maximise the coverage of the Public Procurement Law, minimise application of non-competitive procedures. At the same time ensure that any changes to the Public Procurement Law are subject to public consultations.*

*Establish e-procurement system covering all procurement procedures envisaged by the Public Procurement Law.*

*Ensure that entities participating in the public procurement process are required to implement internal anti-corruption programmes. Introduce mandatory anti-corruption statements in tender submissions.*

*Ensure that the debarment system is fully operational, in particular that legal entities or their officials who have been held liable for corruption offences or bid rigging are barred from participation in the public procurement.*

*Arrange regular trainings for private sector participants and procuring entities on integrity in public procurement at central and local level, and for law enforcement and state control organisations – on public procurement procedures and prevention of corruption.*

*Increase transparency of public procurement by ensuring publication and free access to information on specific procurements on Internet, including procurement contracts and results of procurement by publicly owned companies.*

#### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

##### **Government report**

The Law *On Public Procurement* states that procurements are to be carried by the Procurer through public electronic procurement system that is information telecommunication system providing procurement, information and relevant e-documents publicizing and sharing, and that includes web-portal of the Authorised Body, authorized e-platforms, with exchange of data and documents between them to be provided automatically (under the Article 1, Article 2 of the Law).

At present, the unique «ProZorro» public electronic procurement system, consisting of data base, auction module and authorized e-platforms, has been developed and successfully being operating. The system was tested in a pilot regime.

Since the 1 of April, 2016, public electronic procurements via the ProZorro e-system are carried by central authorities of executive power and enterprises acting in separate spheres of economy (so called «natural monopolies»), thus, since the 1<sup>st</sup> of August, 2016, public electronic procurements are to be obligatory for all procurers.

Moreover, the Cabinet of Ministers of Ukraine adopted their Decree *On the Strategy for public procurement system reforming («road map»)*, dated on the 24 of February, 2016, purposing on meeting international obligations taken by Ukraine in public procurement, harmonization of national legislation to European and International standards, and approval of the strategy for public procurement system reforming up to 2022.

The Strategy is oriented on five main directions for public procurement system reforming in Ukraine:

Harmonization of national legislation to the European Union rules by implementing provisions of the EU directives to national legislation;

institution structure development and controlling organ functions improvement and optimization;

international cooperation in public procurement;

public electronic system development;

training and proficiency in public procurement.

Therefore, the Strategy is an essential not only as domestic procurement system development plan, but as global Strategy for meeting international obligations taken by Ukraine in public procurement.

According to the Law of Ukraine *On Prevention of Corruption*, legal entities, that are participants of provisional qualification, participants of public procurement procedure, in case the total amount of the procurement of the Product (Products), Service (Services), Works in a monetary equivalent exceeds UAH 20 mln., are obliged to develop and approve the Anticorruption Program that must be a complex of rules, standards, and procedures on detection, prevention, and fight against corruption in the legal entity activity.

At present, the register listing data on legal entities having been under prosecution for corruption is currently not operating.

The Ministry for Economic Development and Trade in cooperation with the «Harmonisation of Public Procurement System in Ukraine with EU Standards» EU funded Project has developed and been running the «Public Procurement» state-funded public on-line course that is the first in Ukraine and started in May, 2016, for specialists in procurement and for all who are interested in correct public procurement and effective use of funds.

The Course is divided into two grades: 1) base course occupying basic knowledge about public procurements, and 2) advanced course dealing with more professional level of public procurement activity. The Course-takers of both the base and the advanced courses are granted by Certificates certifying their Course attendance.

Since the day the Course run, there have been recorded 6 162 Base Course-takers, with 1 260 Certificates granted.

Moreover, there has been started the Programme for training consultants of public procurement who are expected to run their training sessions over the regions of Ukraine.

According to the Law, all information on public procurements is freely available in the «Prozorro» public procurement electronic system. Moreover, provisions of the Law regulate procurements with the starting amount in monetary equivalent of UAH 50, 000 to the threshold of procurement procedure application that, therefore, is believed to facilitate budget transparency.

#### **Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS**

Significant progress has been attained by Ukraine in meeting almost all the requirements of the recommendation. The single “ProZorro” electronic public procurement system has been developed and become operational. The new Law on Public Procurement has been adopted. Amongst others, it has rendered the e-procurement mandatory (as from 1 August 2016) and, instead of allowing under threshold bids to be contracted directly, submitted them to competitive market. The number of non-competitive procedures has not been increased. The development of internal anti-corruption programmes has been introduced in respect of bidders participating in tenders above a certain value. According to representatives of the civil society, absolutely all changes proposed by the Ministry for Economic Development and Trade have been subject to public debate, and most proposals emanating from the public have been taken on board. To facilitate the debarment process (i.e. to ensure automatic identification of legal entities that committed corruption offences), the “ProZorro” database is currently being merged with those of the Ministry of Internal Affairs, the Ministry of Justice and the Anti-Monopoly Committee. A wide range of training courses have been organised and attended e.g. by representatives of public authorities, business and NGOs. The principle “Everyone sees everything” is said to be implemented in practice and to apply *inter alia* to commercial proposals, technical and qualification information, contracts and amendments

thereto. Finally, the Strategy for the public procurement system reform, adopted on 26 February 2016, is an ambitious document which paves the way for further developments in this area. The authorities are commended for the efforts undertaken so far and kindly invited to keep the ACN abreast of any future achievements (or setbacks) in this sector.

### Recommendation 3.6: Access to information

- ***Set up or designate an independent authority to supervise enforcement of the access to public information regulations by receiving appeals, conducting administrative investigations and issuing binding decisions, monitoring the enforcement and collecting relevant statistics and reports. Provide such authority with necessary powers and resources for effective functioning.***
- ***Reach compliance with the EITI Standards and cover in the EITI reports all material oil, gas and mining industries.***
- ***Adopt legislation on transparency of extractive industries. Implement the law on openness of public funds, including provisions on on-line access to information on Treasury transactions.***
- **Ensure in practice unhindered public access to urban planning documentation.**
- ***Adopt the law on publication of information in machine-readable open formats (open data) and ensure publication in such format of information of public interest (in particular, on public procurement, budgetary expenditures, asset declarations of public officials, state company register, normative legal acts).***
- ***Ensure effective implementation and continuation of the Open Government Partnership's Action Plan.***

### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

#### **Government report**

In accordance with the law of Ukraine “On amendments to legislative acts of Ukraine on transparency in extractive industries” on June 16, 2015 #521-VIII, the Order by the Cabinet of Ministers “On approval of the action plan of extractive industries transparency initiative implementation for 2015” dated on September 08, 2015 #910-p, and the Provision of the Cabinet of Ministers of Ukraine “On approval of the Order for assurance of extractive industries transparency” dated on December 02, 2015 #1039, there was published the first Ukrainian report on the Extractive Industries Transparency Initiative (EITI) up to 2013, with oil and gas industries covered.

The Report consists of two parts, concretely, contextual information and track of charges.

Contextual information includes general information on deposits of hydrocarbons in Ukraine, the major deposits of oil and gas in Ukraine, hydrocarbons extraction volumes, data for 2013, history, data on research works carried out in 2013, on transportation of oil and gas extracted on the territory of Ukraine, monitoring of subsoil layers with special consent given, role of oil industry in economy of Ukraine, legislative and fiscal regulation of oil and gas industry referring to the data for 2013, and functions and authorities of state power, etc.

Next report is to cover ore and coal extraction industries, with data for 2014 and 2015 referred.

Besides report preparation in the framework of the Project there carried out the following anticorruption activities:

Improvement of the EITI normative framework for extractive industries transparency;  
Automisation of collection of data on budget incomings;  
Creation of an open information portal for data on extractive industries in order to optimize reporting;

Carrying out seminars and training sessions for entities under reporting obligations aimed at acknowledging them about specific requirements for information reporting under the EITI

*To assure effective implementation and duration of the Action plan under the “Transparent Governance” Initiative.*

In January 2016 there took place the first round of public discussions on implementation of the “Transparent Governance” Partnership Initiative for 2016-2018. As a result of discussions there were made a number of suggestions on possible directions for Initiative realization, moreover, on events (obligations) that may be held under the Initiative.

In the framework of the first round there were being held open meetings by work groups of the Coordination Council on implementation of the international “Transparent Governance” Partnership Initiative in Ukraine, meetings by Ministries, Hoscomtelerradion (the State Committee on television and radio) and the State Agency on electronic governing. Moreover, there were being run discussions on the Project in regions of Ukraine.

On the basis of all collected suggestions made, the targeted work group of representatives of institutes of civic society, experts developed the draft of the Action Plan that came under public consideration in April 2016, and as a result there was proposed the draft of the Action Plan for 2016-2018.

#### ***Assessment of Progress - 17th Plenary: PROGRESS***

The information furnished concerns only parts two and six of the recommendation. In June 2015, the Law Amending Selected Legislative Acts of Ukraine pertaining to the Transparency of Extractive Industries was adopted and triggered the elaboration of several government regulations, including on the approval of an action plan for 2015. A first report on the oil and gas sectors up until 2013 has been published. The next report is expected to focus on the mining industry and to cover the period between 2014 and 2015. Other measures taken so far include *inter alia* the automation of data on payments to the state budget, the establishment of a web portal and the organisation of seminars and trainings.

As for the implementation of the Action Plan on Open Government Partnership, a Working Group has been formed consisting of representatives of the executive branch, non-governmental sector and experts. It has developed an action plan for 2016-2018 which is now subject to public debate.

### Recommendation 3.7: Party financing

***Adopt, without further delay, comprehensive reform of the political party and election campaign financing in line with Council of Europe standards, in particular by establishing restrictions on contributions and membership fee, ensuring transparency of party finances and electoral expenses through regular reporting and disclosure of detailed information on party and electoral campaign accounts, providing effective sanctions and establishing supervision mechanism with adequate powers and resources.***

***To ensure balance between private and public funding, re-introduce direct state financing of political parties according to the results of the parliamentary elections in line with best European practice.***

***Reinforce rules on integrity and corruption prevention for officials holding political offices, in particular by establishing special regulations and enforcement mechanism for conflict of interests for the parliament and Government members***

#### 17<sup>th</sup> ACN Plenary Meeting, September 2016

##### **Government report**

The Law of Ukraine *On Political Parties of Ukraine* limits contributions to political parties. Correspondingly, under the Law the overall value of the contributions to a political party made by a citizen of Ukraine over one year is not allowed to exceed 400 minimum salaries (app. €21,000), having been approved on the 1 of January of the year when the contribution is made.

The overall value of the contributions to a political party made by a legal entity over one year is not allowed to exceed 800 minimum salaries (app. €43,000), having been approved on the 1 of January of the year when the contribution is made.

According to the Law of Ukraine *On Amendments to Legislation Acts of Ukraine on Political Corruption Prevention and Fight against it* (October 8, 2015, № 731-VIII), from the 1 of July, 2016, there has been implemented annual state funding of political parties Statute activity that are proved to be entitled to obtain such funding.

According to the Article 17-5 of the Law of Ukraine *On Political Parties in Ukraine*, funds sourced from State budget for political parties Statute activity financing are distributed among political parties by the NACP. The political party is entitled to be funded from the State budget for its Statute activity in case if in result of last elections, being regular or irregular, for the Verhovna Rada of Ukraine in country-wide multiple-mandate elections okrug the party's list of its candidates gains not less than 2% of overall number of votes.

With the purpose of establishing unified approach applied by the officials who are entitled to fulfill functions of the State or local authorities, or individuals deemed to be equal in their authority, to interpretation and following the rules for conflict of interest prevention and solving, having been proscribed by the Law, NACP made the Resolution № 2 dated on the 14th of July, 2016, on approval of the Methodology recommendations on conflict of interest prevention and solving in activity of public officials who are entitled to fulfill functions of the state or local authorities, or individuals deemed to be equal in their authority.

The Methodology recommendations generalize and implement positive practice gained in previous years of work, established by international organisations, national state authorities, scientific institutions, institutes of civic society, and, on the basis of applicable legislation with international experience applied, offer basic practical instruments for fostering effectiveness of conflict of interest detection, prevention and solving.

**Assessment of Progress - 17th Plenary: PROGRESS**

With regard to parts one and two of the recommendation, the authorities have reported on the following achievements: the establishment of restrictions on contributions from natural and legal persons (pursuant to the Law on Political Parties), the re-introduction of direct state support to political parties in line with European practice (based on the Law on Amendments to Legislative Acts of Ukraine on Political Corruption). Furthermore, the information presented by both the government and the civil society suggests that some of the (349) political parties have been submitting financial statements to a responsible oversight body, i.e. the National Agency for Corruption Prevention (NACP). Nevertheless, based on the reported facts, it is difficult to ascertain whether a *comprehensive* reform of the political financing rules meeting the Council of Europe standards has been implemented in practice (this includes *inter alia* prohibition of anonymous donations and disclosure of donations above a certain value, the powers and resources of responsible oversight bodies and the adequacy of sanctions in respect of, primarily, political parties and their members).

As for the third part of the recommendation, the ACN welcomes the on-going work on the drafting of an Ethics Code for MPs. Also, it takes note of the Methodological recommendations on the prevention of conflicts of interest in the activity of public officials developed by the NACP, which apparently also apply to members of Government. The ACN would appreciate receiving more information/statistics on the enforcement of rules on integrity and corruption prevention amongst public officials holding political offices, as is required by the recommendation.

### Recommendation 3.8: Integrity in the judiciary

***Adopt, without further delay, a constitutional reform to bring provisions on the judiciary in line with European standards and recommendations of the Venice Commission, in particular with regard to appointment and dismissal of judges, their life tenure, composition of the High Council of Justice.***

***Introduce comprehensive changes in the legislation on the judiciary and status of judges, procedural legislation in particular to revise provisions on the system of judicial self-governance, disciplinary proceedings, dismissal and recusal of judges to guarantee their impartiality and protection of judicial independence.***

***Ensure sufficient and transparent funding of the judiciary and remuneration of judges that is commensurate to their role and reduces corruption risks.***

***Make public on Internet all court decisions, including interim ones.***

***Review system of automated distribution of cases among judges to remove loopholes that allow manipulating the system and ensure that results of automated distribution are public and included in the case-file. Introduce ICT tools in the judicial procedures and court functioning (e.g. electronic filing of lawsuits and other legal documents).***

#### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

##### **Government report**

There have been made recommendations by the Constitutional Commission of Ukraine, as the special additional organ under the President of Ukraine, on amendments to the Constitution of Ukraine in its part related to the judiciary. The draft of the Law on amendments to the Constitution of Ukraine with registration number № 3524 was submitted with a notice of urgency on the 25 of November, 2015, to the Verhovna Rada of Ukraine and on the 2 of February, 2016, was adopted by the Verhovna Rada of Ukraine in the first reading.

On the 2 of June, 2016, the Verhovna Rada of Ukraine by their Constitutional majority adopted the Law of Ukraine *On Amendments to the Constitution of Ukraine (in part related to the judiciary)*.

Under the Law the institute of «first appointment to the position of a judge»: from now judges are entitled to hold their chairs termlessly; new order of formation of the Supreme Justice Council of Ukraine is established according to which the majority of the Council constitute judges elected by judges; there is the order stated according to which courts are to be established and liquidated by the Law; the scope of judge's immunity is limited from absolute to functional; the background for rotation of judges is set, etc.

The Law comes into its force in three months from the day next the day of its publication (September 30, 2016), except provisions on recognition by Ukraine of the jurisdiction of International Criminal Court that come into their force in three years from the day next the day of publication of the Law.

The Law was under examination by Venice Commission that gave positive judgement to recommended amendments (Opinion on the proposed amendments to the Constitution of Ukraine regarding the judiciary as approved by the Constitutional Commission on 4 September 2015 adopted by the Venice Commission).

02 June 2016 the Verhovna Rada of Ukraine adopted the Law of Ukraine in its new reduction *On Judiciary and Judges Status*, that comes into its force from the day of coming into force of the Law of Ukraine *On amendments to the Constitution of Ukraine (regarding the judiciary)*.

The Law stipulates new three-levelled system of judges constituting local courts, appeal courts and the Supreme Court.

It states the mechanism for substantial rotation of judges in accordance to changes in judiciary system through conduction of public competitions with right for candidates not to have judiciary track record to apply for the position of a judge in local courts, appeal courts and the Supreme Court.

Provisions of the Law implement new mechanisms of stimulation and strengthening judges' integrity and civil engagement into such procedurs. Thus, the Law obliges judges submit declaration on affiliated persons and dedaration on integrity in addition to the declaration of a public official who is entitled to fulfill obligations on behalf of the State.

Non-submission, or submission not within required terms of the declaration on affiliated persons or submission priorly not accurate information intentionally, and non-submission or submission not within required terms of the dedaration on integrity or submission by a judge priorly not accurate information intentionally (including not full information) shall result in disciplinary punishment under the Law.

In case if a judge denies to comfirm legal sources of his/her property origin there is a reason for his/her discharge form the position of a judge.

Provisions of the Law stipulate the role of the Supreme Council for Justice regarding appointment of judges, making decisions by the Supreme Council for Justice concerning judges' discharge and their transfer from one court to another. Moreover, the line of rights of the Supreme Council for Justice is outlined regarding giving their approval of restriction of liberty for a judge, taking him/her into custody, or his/her imprisonment. Thus, without permission given by the Supreme Council for Justice a judge is not to be restricted of his/her liberty, taken into custody, or arrested prior the court sentence, with the exception of a judge being arrested durin or immediately after commission of a grave offence.

A judge is not to bear responsibility for the sentences he/she states except commitment of grave offences or disciplinary misact.

Decisions on disciplinary responsibility and on discharge of a judge from his/her position are made by the Supreme Council for Justice according to the procedre under the Law of Ukraine *On the Supreme Council for Justice*.

According to the Article 146 of the Law the Satate provides funding and appropriate conditions for courts functioning and judges activity in accordance to the Constitution of Ukraine.

Provisions of the Law stipulate increase in salary for a judge. Therefore, under the Article 135 of the Law the base sum of a salary for a judge is calculated in 30 mininum salaries (app. €1,610) for a judge of a local court, 50 mininum salaries (app. €2,685) for a judge of an appeal court and a judge of High Specialised Court, and 75 mininum salaries (app. €4,000) for a judge of the Supreme Court.

Final provisions of the Law state increase in salaries for judges stage by stage. Thus, the base sum of a salary for a judge of a local court is stated from 01 January, 2017 to be of 15 mininum salaries (app. €800), from 01 January, 2018 – 20 mininum salaries (app. €1075), from 01 January, 2019 – 25 mininum salaries (app. €1345), from 01 January, 2020 poky – 30 mininum salaries (app. €1610); for judges of an appeal court, High Specialised Court from 01 January, 2017 poky – 25 mininum salaries (app. €1345), from 01 January, 2018 – 30 mininum salaries (app. € 1610), from 01 January, 2019 – 40 mininum salaries (app. €2150), from 01 January, 2020 – 50 mininum salaries (app. €2685); for judges of the Supreme Court from 01 January, 2017 poky – 75 mininum salaries (app. €4000).

#### **Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS**

Decisive progress has been shown on all the aspects of the recommendation. On 2 June 2016, the Law amending the Constitution of Ukraine was finally adopted by the parliament. Most amendments will enter into force on 30 September 2016 and trigger alterations in several laws and

regulations, notably, the Law on the Judiciary and the Status of Judges and on the High Justice Council. Judges will enjoy life tenure, be recruited, promoted and disciplined by or with the involvement of a body composed of the majority of judges elected by their peers and benefit from functional immunity only. Specific measures are envisaged to boost judges' integrity and to make them accountable for (any) violations. The ACN also takes note of the gradual increase in the judges' salaries which is a positive development. The authorities are invited to report on further progress in the justice sector and, specifically, on the implementation of goals fixed in the Strategy on the Reform of Judicial Organisation, Court Proceedings and Adjacent Legal Institutions for 2015-2020. As concerns the fourth and fifth elements of the recommendation, relevant progress had been underscored by the last Progress Update.

### Recommendation 3.9: Business integrity

***Rigorously implement provisions of section 6 of the 2014 Anti-Corruption Strategy on the prevention of corruption in the private sector.***

***Ensure business participation in the development of the Action Plan for the Anti-Corruption Strategy and its implementation and monitoring.***

***Pursue further simplification of business regulations to reduce opportunities for corruption and eliminate corruption schemes affecting business.***

***Consider introducing regulations for lobbying, in particular clear regulations for business participation in the development and adoption of laws and regulatory acts.***

***Ensure that the business has a possibility to report corruption cases without fear of prosecution or other unfavourable consequences.***

#### 17<sup>TH</sup> ACN Plenary Meeting, September 2016

##### **Government report**

Among other things, the Programme for implementation AntiCorruption Strategy of 2014-2017 envisages the need to approve a sample anti-corruption programme for legal body and methodical recommendations on preventing corruption in private sector as well as to create special programmes focused on securing entrepreneurs the access to necessary information. NACP is assigned as the main executor of mentioned objectives, though the Agency is yet to be established as of today, while overwhelming majority of execution deadlines have been set for 2016. It is worth noting that establishment of joint working group, which is to be composed of representatives of Agency and business in order to cooperate, is prescribed to implement a portion of tasks. The Programme assigns the Ministry for Justice of Ukraine and the NACP to conduct, in December 2016, an analysis on lobbying practices in legislation of foreign states as well as to draft, prior to August 2017, a law on regulation of lobbying procedures and develop mechanisms for control and responsibility. At the same time, on the 03 of June 2015, during its meeting the Committee of the Supreme Court of Ukraine for Preventing and Fight Against Corruption made a decision to form a working group to draft the Law of Ukraine *On Lobbying*, which is being done nowadays.

Reporting and protection of whistle blowers is regulated in the Law *on Prevention of Corruption*, adopted in October 2014, as follows: A person providing assistance in preventing and combating corruption (a whistle blower) – is a person who, having reasonable belief that the information is accurate, reports violations of the requirements of this Law by another person. 114 Persons providing assistance in preventing and combating corruption are under state protection. When there is a threat of life, dwelling, health and property of persons assisting in preventing and combating corruption, or of their close persons in connection with the made notification about violation of requirements of this Law, law enforcement agencies may apply to them legal, organizational and technical and other measures, aimed to protect against illegal attempts and envisaged by the Law of Ukraine *On Ensuring the Safety of Persons Involved in Criminal Proceedings*. A person or its family member shall not be discharged or forced to resign, brought to disciplinary liability or subjected to other negative measures of impact by a supervisor or employer (reassignment, certification, changing working conditions denial of appointment to a higher position, wage cutting, etc.) or to the threat of such measures of impact in connection with notification the person makes about violation of the requirements of this Law by other person. Information about the whistle blower may be disclosed only upon his/her consent except for cases

stipulated by law. NACP as well as other state authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities provide conditions for their employees to notify about violations of requirements of this Law by other persons, in particular through the phone lines, official websites, electronic means of communication. Reporting about violation of requirements of this Law may be done by an employee of a respective agency without attribution (anonymous). Anonymous report on violation of the requirements of this Law shall be considered if the information provided in the report is about a specific person, contains the actual data that can be verified. Anonymous reports about violations of requirements of this Law are subject for review within fifteen days from the date of their receipt. If it is impossible to verify the information contained in the report within the said term, head of the relevant agency or his deputy shall prolong term for report's review up to thirty days from the date of its receipt. If the information contained in the report on violation of the requirements of this Law is confirmed, the head of the relevant agency takes measures to terminate the revealed violation, eliminate its consequences and bring the offenders to disciplinary liability and, in case of detection of a criminal or administrative offense, the head shall also inform specially authorized subjects in the field of anti-corruption. NACP constantly monitors implementation of the law regarding protection of whistleblowers, conducts an annual review and revision of state policy in this area.

What is more, the institute of protection of whistleblowers who inform facts of corruption is strengthened by the NACP engagement as the third party in civil cases on appealing negative consequences for a whistleblower caused by the manager or employer.

The whistleblowers are under the Law of Ukraine *On safety of persons who are engaged into criminal court trials* that stipulates guarantees for such persons on their safety in criminal court trials.

At present, the Ministry of Justice of Ukraine and the Ministry of Interior are developing the Order (responsible – the Ministry of Interior).

#### **Assessment of Progress - 17th Plenary: PROGRESS**

Discernible progress has been achieved in fulfilling certain elements of the recommendation. It would appear that the business sector has been actively solicited in the development of anti-corruption initiatives by various public authorities. Even more so, the ACN was informed that business has confidence in the new anti-corruption bodies (i.e. the National Anti-Corruption Bureau and the Special Anti-Corruption Prosecution Office) and has been reporting to them instances of corruption. It is expected that once the National Agency for Corruption Prevention becomes fully operational, its interaction with the business sector would only grow stronger. The ACN is further informed of the deregulation efforts pursued by the Ministry of Agrarian Policy and certain other public agencies.

For the moment, lobbying remains unregulated although the authorities inform on their intention to legislate on this issue in the nearest future.

In conclusion, more needs to be done to ensure adequate execution of Section 6 of the Anti-Corruption Strategy (on the prevention of corruption in the private sector), simplify business regulations and facilitate the reporting of corruption by businesses without fear of prosecution or other unfavourable consequences.