



EXECUTIVE SUMMARY OF THE SHADOW REPORT

ON EVALUATING THE EFFECTIVENESS OF STATE ANTI-CORRUPTION POLICY IMPLEMENTATION

Kyiv, 2017



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Authors:

M.I. Khavronyuk – doctor of law, professor (department of criminal law and criminology of Kyiv National Taras Shevchenko University), honored lawyer of Ukraine, director on the scientific development of the Centre of Policy and Legal Reform;

I.B. Koliushko – Head of the Board of the Centre of Policy and Legal Reform; member of the Commission on Senior Civil Service;

V.P. Tymoshchuk – PhD in law, deputy Head of the Board of the Centre of Policy and Legal Reform, senior researcher of Koretsky Institute of state and law of National Academy of Science of Ukraine;

B.V. Malyshev – doctor of law, expert of the Centre of Policy and Legal Reform;

D.O. Kalmykov – PhD in law, senior researcher, expert of the Centre of Policy and Legal Reform; researcher of Luhansk State University of Internal Affairs (laboratory of legal, organizational and tactical problems of investigative activities);

Y.R. Yurchyshyn – executive director of the Transparency International Ukraine;

O.V. Kalitenov – policy analysis expert of the Transparency International Ukraine;

O.V. Lemenov – manager of anti-corruption reform taskforce of the Reanimation Package of Reforms;

R.V. Sivers – independent expert.

Executive Summary of the Shadow report on evaluating the effectiveness of state anti-corruption policy implementation / [M. I. Khavronyuk, I.B. Koliushko, V.P. Tymoshchuk, and others] ; General editor: M.I. Khavronyuk. – Kyiv, 2017. – 56 pages.

The Summary presents main conclusions formulated based on the results of public evaluation of the efficiency of state anti-corruption policy implementation. The evaluation covers mainly 2016, but it extends in some aspects (in particular, in the context of historical comparison) back to 2013-2015 and earlier periods, as well as January - February 2017.

Shadow report on evaluating the effectiveness of state anti-corruption policy implementation (basic analytical document) prepared on the basis of specially developed methodology of comprehensive internal evaluation of country's progress in the anti-corruption area, which was first applied during the preparation of analytical report in 2015 and covers the following four areas: 1) anti-corruption policy; 2) prevention of corruption; 3) criminalization of corruption and law enforcement activity; 4) international cooperation.

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LIST OF ACRONYMS

MOJ	–	Ministry of Justice
NACS	–	National Agency on Civil Service
NAPC	–	National Agency for Prevention of Corruption
NACB	–	National Anti-Corruption Bureau
OECD	–	Organization for Economic Cooperation and Development
SACP	–	Specialized Anti-Corruption Prosecution Office
SBI	–	State Bureau of Investigations
UNCAC		United Nations Convention Against Corruption

EXECUTIVE SUMMARY

Shadow Report on Evaluating the Effectiveness of State Anti-corruption Policy Implementation is the result of an evaluation conducted by the Centre of Policy and Legal Reform in collaboration with experts from Transparency International Ukraine, Reanimation Package of Reforms civic initiative, and independent experts from October 2016 to March 2017.

The evaluation covers mainly 2016, but it extends in some aspects (in particular, in the context of historical comparison) back to 2013-2015 and earlier periods, as well as January - February 2017.

The goal of the Report is to conduct a comprehensive internal independent evaluation of the real state of affairs with corruption in Ukraine and the state's actions undertaken to combat corruption, and, based on the results of such evaluation, to draw conclusions on the effectiveness of these measures and to propose its own recommendations.

Conclusions and recommendations are presented following each subsection of the Report.

The evaluation was carried out based on the specially developed methodology by independent civic experts, who have for a long time specialized in the area of corruption prevention: D.O. Kalmykov, I.B. Koliushko, O.O. Soroka, Y.R. Yurchyshyn, O.V. Kalitenko, V.P. Tymoshchuk, R.V. Sivers, O. Lemenov, M.I. Khavronyuk, B.V. and Malyshev. Two of the experts, including team leader M.I. Khavronyuk, also participated in the preparation of the first report in these series in 2015.

On April 3, 2017, the Report was discussed at a roundtable "The state anti-corruption policy: is it effective?". Results of this discussion were taken into account during finalization of the Report in April 2017.

The target audience of the Report is the entire population of Ukraine, but its beneficiaries include primarily the Parliament, the President, and the Cabinet of Ministers, along with Parliament's Committee on Preventing and Combatting Corruption, the National Agency for Prevention of Corruption, the National Anti-Corruption Bureau, the Specialized Anti-corruption Prosecution Office, the State Bureau of Investigations, the National Agency for Detection, Search, and Management of Assets Derived from Corruption and other Crimes, the National Police, courts, and other state bodies.

SECTION 1.

ANTI-CORRUPTION POLICY

1.1. Political will to combat corruption

1.1.1. Priority for issues of combatting corruption in policy programs of the President and the Cabinet of Ministers

1. Political will in the anti-corruption area is the ability and willingness of the state (represented by the relevant institutions and individuals) to effectively prevent corruption. Externally, it is reflected in the processes and events that allow to draw conclusions on its authenticity or lack thereof, presence or absence, strength or weakness.

2. In 1997-2013, the President was formally the key carrier of political will in the area of preventing corruption, and he assumed the role of identifying the main priorities in the anti-corruption area. The government positioned itself (mainly through the MOJ) as the main implementer of the majority of measures aimed at carrying through of these priorities. Strategic documents in the anti-corruption area were of poor quality, did not meet the real needs of corruption prevention, and went largely unimplemented.

The President's and the Government's activities during 1997-2013 should be described as ongoing imitation of combatting corruption.

3. In 2014, the situation with political will in the anti-corruption area began to improve rapidly, with the adoption of a series of extremely important and high-quality basic and strategic documents in this area.

In 2014, a fundamental reassignment of "roles" of various government entities involved in making and implementation of anti-corruption policy also occurred. Parliament became the key carrier of political will in the area of preventing corruption. Not only did it adopt the Anti-Corruption Strategy for 2014-2017, but it will also continue to define the principles of anti-corruption policy (Anti-corruption strategy) (see Art. 18, para. 1 of the Law "On Preventing Corruption"). Since March 16, 2016, the NAPC is also responsible for the development and implementation of anti-corruption policy.

President Petro Poroshenko's real influence over anti-corruption policy in 2014-2016 has turned out to be minimal.

4. The current Government Action Program adopted on April 14, 2016, is a quality program document, which in general correctly identifies a significant portion of measures (directions) that would have to be implemented in the immediate term. However, the priorities that are declared in it do not fully comply with the commitments placed upon the Government by the Anti-corruption Strategy for 2014-2017 and State Program for Its Implementation.

5. The Plan of Government's Priority Actions for 2016 adopted on May 27, 2016 is low-quality strategic document that disregards the vast majority of the provisions of the Anti-Corruption Strategy for 2014-2017 and the State Program for Its Implementation; is out of line with anti-corruption provisions of the Government Action Program; incorrectly identifies the placement of description of anti-corruption measures in the overall structure of the Plan of Government's Priority Actions for 2016; and does not contain anything resulting from Government's own initiative.

6. In 2017, it will be necessary to ensure the highest degree of implementation of all anti-corruption measures arising from the Anti-corruption Strategy for 2014-2017 and specified in the State Program on Implementation of the Anti-corruption Strategy for 2015-2017, as well as to ensure the revision of current State Program on Implementation of the Anti-corruption Strategy for 2015-2017 to facilitate the best implementation of its provisions.

Based on the analysis of the corruption situation, as well as the results of implementation of Anti-corruption Strategy for 2014-2017, the NAPC should develop a new Anti-corruption Strategy.

7. The process of developing the anti-corruption provisions of the Government Action Program should be based both on current provisions of the Anti-corruption Strategy and State Program for Its Implementation and properly specified obligation of the government set forth in the Coalition Agreement.

In preparing the Government Action Plan, it is necessary to keep in mind that it should be aimed at the implementation of priorities (including those relating to anti-corruption) set forth in the Government Action Program.

1.1.2. Placement and significance of anti-corruption issues in program documents of political parties and in the Agreement Creating the Coalition of Deputy Factions in Parliament of Ukraine

1. The programs of parliamentary parties differ significantly in form and content with respect to the planned anti-corruption measures.

However, as of 2014, none of these programs of parliamentary parties (as far as he planned anti-corruption measures are concerned) can be considered as the result of thorough analysis of Ukraine's international obligations in the anti-corruption area or recommendations made by international institutions (including GRECO recommendations based on the results of three rounds of evaluation in Ukraine, or recommendations provided as part of the monitoring of implementation of the OECD Istanbul Anti-Corruption Action Plan), or of the current situation in the country (i.e., analysis of the development and implementation of anti-corruption policy, identifying of key problems in this area, etc.).

Anti-corruption provisions in the programs of the vast majority of parliamentary parties could be described as kind of balancing between the parties' own intuitive vision of corruption problems (and thus, of the ways to resolve them) and the fight for citizens' approval in the following elections. Therefore, some, or sometimes even all, of the measures are more populist than substantive in nature.

In the context of planned anti-corruption measures, only three of the political parties' programs can be viewed as more or less substantive (those of the People's Front, Petro Poroshenko's Bloc "Solidarity", and All-Ukrainian Union "Fatherland"). Anti-corruption provisions in the programs of Opposition Bloc and "Self-Reliance" Union political parties are too brief, and those in Oleh Lyashko's "Radical Party" too lacking in specificity.

Despite this, different parliamentary parties have some common ideas with respect to anti-corruption priorities. In particular, four of the six parliamentary parties (the People's Front, Petro Poroshenko's Bloc "Solidarity", "Self-Reliance" Union, and All-Ukrainian Union "Fatherland") discussed the need to establish an independent anti-corruption body in their programs; three political parties (the People's Front, Petro Poroshenko's Bloc "Solidarity", and All-Ukrainian Union "Fatherland") mentioned the introduction of transparent and effective declaration of income and expenses by officials; while three other parties (the People's Front, Opposition Bloc, and All-Ukrainian Union

“Fatherland”) speak of deregulation and optimization of the provision of administrative services.

2. In developing the party’s program and formulating the party’s anti-corruption priorities, its members should focus on the current corruption situation in the state, Ukraine’s international commitment in the anti-corruption area, and recommendations made by international institutions, and also take into account the content of the current Anti-Corruption Strategy and the State Program for Its Implementation.

3. In the context of anti-corruption initiatives, the Coalition Agreement of November 27, 2014 is a quality strategic document that, as of the end of 2014, envisaged the implementation of truly the most important measures that would open the door for comprehensive implementation of anti-corruption reform.

However, it would have been an even higher quality document had Section III of the Coalition Agreement been the result of quality study of provisions of the Anti-Corruption Strategy for 2014-2017 and evaluation of the existing corruption situation in the country.

4. In defining anti-corruption priorities in the Coalition Agreement, the representatives of political parties should preferably be guided by the requirements of the current Anti-Corruption Strategy and State Program for Its Implementation rather than by their intuition (the only exception could be decisions on any conceptual change of course in the state’s anti-corruption policy).

The Coalition Agreement, on one hand, should be a kind of a coordinated (joint) action plan of the new government (i.e., it should reflect the ideas contained in the programs of respective parties), and on the other hand, it should reflect a clear understanding of what should be done at this particular stage in each area (including anti-corruption).

1.1.3. Consistency between actions of key political will carriers and priorities declared in program documents

1. As of March 1, 2017, none of the problems mentioned in Anti-Corruption Strategy for 2014-2017 has been fully resolved, and none of the objectives have been achieved. Out of 44 anti-corruption measures partially identified in the Anti-Corruption Strategy for 2014-2017, only 9

have been completed in full (21%), 19 (43%) implemented partially, 16 (36%) remain unfulfilled.

2. The overall level of the implementation of the State Program on Anti-Corruption Strategy for 2015-2017 makes up 60% (124 of 207 planned activities), rather than 93% (192 of 207 measures) that were supposed to be implemented as of March 1, 2017.

3. The Coalition Agreement (subsections 1-5 of Section III) identified the five most important anti-corruption measures (as of the end of 2014). Among these, only one has been implemented in a quality fashion and on time: the law aimed at ensuring transparency in the financing of political parties and election campaigns, in line with to the GRECO recommendations, was adopted. The second measure (ensuring the functionality of the NACB) has been implemented with a slight delay, while the remaining three have remained unfulfilled (60%).

4. The Government Action Program of April 14, 2016 provides for the need to carry out 15 anti-corruption measures, of which only 8 (53%) have been implemented as of March 1, 2017.

5. The Government Plan of Priority Actions for 2016 of May 27, 2016 defined three anti-corruption objectives (creation and *ensuring* the full operation of the NAPC, the National Agency for the Identification, Investigation, and Management of Assets Derived from Corruption and other Crimes, and the SBI). None of these have been implemented in full.

6. In 2014-2016, the Parliament has distinguished itself as a highly productive body in the anti-corruption policy area, since all the basic anti-corruption laws and the absolute majority of those anti-corruption laws that were submitted for its consideration have been adopted. However, Parliament's anti-corruption policy was not based on the assessment of previous anti-corruption policy or a comprehensive analysis of the current situation in the area. Thus, in some cases, its effectiveness was low. At present, this "policy" is chaotic (especially when it comes to Parliament members' initiatives), situational (for example, as happened with implementation of the Visa Liberalization Action Plan), and occasionally even intuitive.

7. The Government generally managed quite well with its role in the development and implementation of anti-corruption policy, having

approved a high-quality State Program on the Implementation of Anti-Corruption Strategy for 2015-2017 and fulfilled almost all of its obligations under this Program. At the same time, the Government recused itself from responsibility for the performance of measures envisaged by the Program, nor did it provide for any mechanisms to control its implementation by other entities. Moreover, despite requirement of sec. 5 art. 18 of the Law “On prevention of corruption”, the State Program on the Implementation of Anti-Corruption Strategy for 2015-2017 has never been revised.

8. In 2014-2016, the President had insignificant influence over the making and implementation of anti-corruption policy in Ukraine. In those isolated cases when he intervened in this process as part of his authority, his position in the context of anti-corruption reforms was ambiguous (in some cases, he facilitated the anti-corruption reform implementation, while in others, he sabotaged it).

9. The Parliament, the Government, and the President should ensure gradual transition from Parliament’s situational decisions to decisions resulting from the implementation of high-quality anti-corruption policy. In other words, the principal drafter of the respective draft laws (and the generator of ideas) should be the NAPC, rather than Parliament members, the Government, or the President.

Furthermore, the Government should ensure control over the implementation of measures envisaged by the subsequent programs on implementation of the Anti-Corruption Strategy (at least with respect to those entities whose activities are directed and coordinated by the Government directly or through relevant ministers), while the President should ensure more intensive operation the National Council on Anti-Corruption Policy, organize effective cooperation between this Council and the NAPC, and use the results of its activities to introduce in Parliament legislative initiatives aimed at improving of anti-corruption legislation.

10. The activity of the NAPC in 2016 - early 2017 should be considered satisfactory, especially given the fact

For now, the NAPC should undertake a comprehensive assessment of the state of implementation of the Anti-Corruption Strategy for 2014-2017 and the State Program on the Implementation of Anti-Corruption Strategy for 2015-2017. Based on this analysis, it should develop

both recommendations to responsible entities in connection with rapid implementation of all outstanding anti-corruption measures and effective mechanisms for encouraging the authorities to fulfill their obligations.

In the nearest future, it is necessary to:

1) complete all processes associated with ensuring the NAPC's operation (election of the fifth member, full staffing of all vacancies, development and approval of all necessary procedural and other regulatory legal acts);

2) ensure quality fulfillment of *all* obligations that the NAPC is charged with under the Law "On Prevention of Corruption";

3) ensure 100% implementation of all measures that the NAPC is charged with under the Anti-Corruption Strategy for 2014-2017 and the State Program for Its Implementation.

11. In 2015-2016, the MOJ's efficiency in the context of implementation of anti-corruption measures was low. The Ministry has not developed even half of the draft laws that it was supposed to work on. As a result: a) some of those laws had to be developed by other institutions or individual entities, who also had to independently carry out advocacy (for example, the law aimed at ensuring transparency and accountability of political parties); b) some of them had not been developed at all, or the process of their development or introduction in Parliament was blocked due to inactivity of the MOJ (this happened with the draft laws "On Public Consultations" and "On Administrative Procedure").

During 2017, the MOJ should develop and facilitate the adoption of all outstanding laws, the development of which is envisaged by the Anti-Corruption Strategy for 2014-2017 and the State Program for Its Implementation (see. Attachment 5).

1.2. Anti-corruption strategy and program/action plan

1. For the first time in the history of independent Ukraine, the Anti-Corruption Strategy for 2014-2017 and the State Program for Its Implementation are distinguished by outstanding textual quality and the capacity to create conditions for implementation of real anti-corruption policy.

These documents are characterized as compliant with international standards and, at the same time, taking into account the specific conditions

of the state development and the level and scale of corruption, containing clear guidelines for achieving the set goals, and providing for procedures and responsible entities, annual parliamentary hearings on the state of implementation of the Anti-Corruption Strategy, and the possibility for annual adjustment of anti-corruption policy.

However, the absence of previous quality research on anti-corruption policy did not allow to fully take into account the needs of the state. This resulted in the failure to fulfill (or partial/delayed fulfillment) of a substantial number of measures specified by the mentioned documents.

Miscalculations that were made in previous years should be taken into account by the NAPC during the preparation of the new Anti-Corruption Strategy and the Program of Its Implementation.

2. In 2017, it is necessary to ensure the implementation of all outstanding measures envisaged by the State Program on the Implementation of Fundamental Principles of State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2015-2017.

To accomplish this, it is necessary first of all to conduct research of quantitative and qualitative indicators of corruption in Ukraine, as well as of the state of implementation of the Law “On the Principles of State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014-2017” and the State Program of Its Implementation. Then, based on the analysis of corruption risks, the state of implementation of the current strategy, broad public discussion, and international expert evaluation, it will be necessary to develop a draft of the new Anti-Corruption Strategy and to ensure the adoption by Parliament of the new Anti-Corruption Strategy for 2018 and the subsequent years; as well as for the NAPC to develop and for the Cabinet of Ministers to approve the State Program Actions for the Implementation of Anti-Corruption Strategy.

1.3. Research on corruption state of affairs

1. A national system for evaluating the level of corruption is starting to be introduced in Ukraine. Its basic element involves special sociological tools, which will help to capture the dynamics on indicators relating to corruption prevalence and to citizens’ perception of the effectiveness of anti-corruption activity. To increase confidence in these tools, the capacity to verify primary data, their interpretation, and results of state measurement of corruption levels should be envisaged. In conducting

the research on corruption state of affairs and in decision-making by government authorities and local self-governments based on such research, any political and ideological speculations must be avoided.

2. The approved methodology of standard polling on corruption levels in Ukraine, which is offered as a standardized tool for systematic monitoring and evaluation of corruption level and effectiveness of anti-corruption activity in Ukraine, is a positive first step towards eliminating the government's inability to conduct anti-corruption studies and introducing a new model of public policy on corruption prevention.

It is recommended to develop an Anti-Corruption Strategy for 2018 and subsequent years and the State Programs for their implementation on the basis of quality interdisciplinary (sociological, legal, etc.) analysis of anti-corruption policy and research on corruption level in Ukraine, as well as of results of implementation of the previous strategy. It is necessary to carry out systematic monitoring of the implementation of the State Anti-Corruption Strategy and the State Program, and to provide tools for responding to their non-implementation or inadequate implementation.

3. Civil society organizations remain among the most active researchers on the state of corruption affairs, but they largely lack the opportunity to obtain state financing for this activity. To address this problem, it is necessary to provide for the state budget funds for commissioning and conducting of anti-corruption studies by non-governmental analytical centers (including under the expenditures for NAPC support line item).

1.4. Civil society and business participation in the development and monitoring of anti-corruption policy implementation

1. Active cooperation between the state and the civil society remains fragile.

Despite the progress with carrying out of civic control and civic assistance in monitoring of the implementation of anti-corruption policy and prevention of corruption, it turned out that the government mainly views the civil society as a dangerous opponent rather than a partner. Anti-corruption sector specifically, which carries the greatest risk of conflict with the state, is being put "on a leash", creating a possibility for its activists to find themselves "subject to a criminal article" in case of

potential disagreement with the government or exposing its corruption, thus returning Ukraine to the threat of authoritarianism.

It is necessary not only to repeal the recent regressive revision to anti-corruption legislation, but also to establish the complete legislative protection of whistleblowers – from the moment of selection of a secure channel for reporting on corruption up until obtaining the guarantees of confidentiality and financial and employment protection. The respective draft law No. 4038-a “On Protection of Whistleblowers and Disclosure of Information about Harm or Threat to Public Interests” has been pending at Parliament since July 2016.

2. The initiative “Together against Corruption” is a unique example of the public’s positive cooperation with the Government, but certain ministries, including the Ministry of Health, the Ministry of Environment and Natural Resources, and the State Agency for E-Governance, are yet to show better progress in the implementation of identified anti-corruption measures. Unfortunately, in other cases, there is still a gap between the public recommendations and the managerial decisions made by the government, due to the latter’s difficulties accepting anything generated from outside.

With the establishment of mechanisms of responsibility for the government’s refusal to cooperate with civil society or inadequate enforcement of approved decisions, such cooperation should reach a new level. The government should also create opportunities for more powerful engagement of the private sector in anti-corruption activity. Strengthening advocacy of the final product to ensure its proper perception, avoiding the practice of “knowing how to cook, but not knowing how to serve” will be similarly useful.

3. After the approval of model anti-corruption programs for government authorities and legal entities, the NAPC’s next step should be the monitoring of anti-corruption programs’ quality and implementation. To reduce the incidence of poor-quality programs, a general online training course on legal principles and practical aspects of preventing corruption should be developed for officials of government and local self-governance authorities.

To ensure equal distribution of functions among all members of the NAPC, it is necessary to select the NAPC’s fifth member and to establish

effective cooperation with the newly formed Public Council under the NAPC.

1.5. Building a corruption non-acceptance climate

1. The state's goal to instill a negative attitude towards corruption within the society has not been achieved. Many people do not understand the meaning of anti-corruption reforms, what is corruption, and above all – their rights and violations resulting from corruption.

The NAPC, as the main body responsible for developing such attitudes, should develop a communication strategy and implement measures provided under the State Anti-corruption Program regarding shifting the public opinions on corruption in order to implement the priorities identified in the Anti-corruption strategy, as well as designate appropriate funds in the state budget. Informational and awareness-raising efforts should also be carried out by leadership and authorized officials in state and local self-governance bodies and in legal entities, under the NAPC's coordination and methodological support.

2. Given the successful anti-corruption campaigns conducted by NGOs, it appears worthwhile for the government's anti-corruption policy to apply the civil society's experience, especially regarding the use of modern technologies, by expanding the area of their application to places where certain public services are being provided to citizens.

Anti-corruption campaigns should also focus on the violations of universal moral values rather than on the potential punishment, in order to instill the culture of reporting on corruption and rejection of corruption as a tool of resolving problems.

1.6. Specially authorized institutions on anti-corruption policy

1. Year 2016 became the year of transition. Its greatest achievement was the long-expected launch of the NAPC and of the electronic declaration system.

In the initial stages of its work, the NAPC was faced with significant obstacles: inadequate material and technical base, staff vacancies, lack of support from the Cabinet of Ministers, conflicts with the MOJ, intentional delays with the election of the NAPC's fifth member, etc.

In 2016, the anti-corruption policy was somewhat chaotic in nature,

due to the lack of the NAPC's full-fledged operation and the desire on the part of interested pro-government parties to transform it from an independent institution to a controlled one.

The Parliament, the Cabinet of Ministers, and the MOJ have retained significant influence over anti-corruption policy in Ukraine. Unfortunately, it was not possible to fully utilize the potential capacity of the National Council for Anti-Corruption Policy under the President of Ukraine.

2. In 2017-2018, the following priorities will be necessary to:

for the National Agency for Prevention of Corruption:

- take all necessary measures to conduct transparent competitive selection of the 5th NAPC member as soon as possible;
- provide the NAPC with appropriate logistical support and fill all vacant staff positions at the NAPC;
- ensure the NAPC has access to information databases of government and local self-governance bodies;
- ensure the organization of annual research studies on the state of corruption, in accordance with the Government-approved national methodology for assessing the level of corruption in line with the UN standards;
- ensure rapid provision of information to the public on the state of implementation of anti-corruption program documents;
- prepare and publish interim reports on the implementation of the State Program on the Implementation of Anti-Corruption Strategy for 2014-2017;
- formulate a strategic vision for the state financing of political parties;
- ensure a comprehensive process for verification of declarations;
- develop the Anti-Corruption Strategy for 2018 and for subsequent years, based on the analysis of corruption situation and the results of implementation of previous Anti-Corruption Strategy;
- create adequate conditions for full-fledged operation of the Public Council under the NAPC;
- fine-tune the mechanism for protection of individuals who provide assistance in preventing and combatting corruption (whistleblowers);
- conduct awareness events aimed at developing the culture of corruption intolerance within the society, involving the Ministry of Education and Science, the media, etc. in these events;

- ensure that anti-corruption expert evaluations are conducted for draft laws and regulations;

for the Parliament of Ukraine:

- ensure constructive cooperation between Parliament (its specialized committees) and the NAPC concerning the review of anti-corruption legislation and development of draft laws on issues requiring resolution;

for the Parliament's Committee on Corruption Prevention and Counteraction:

- create conditions for adequate expert support to the Committee's Secretariat, in view of its excessive overload with the draft laws subject to anti-corruption expert evaluation;

for the Ministry of Justice

- focus its efforts on: a) exercising the authority to conduct anti-corruption expert evaluations of legislative acts and draft legislative acts, as well as developing the recommendations for legislative improvements; b) drafting legislative acts arising from the provisions of the law "On Preventing Corruption";

- ensure constructive cooperation with the key institution for anti-corruption policy matters (i.e., the NAPC);

- provide the NAPC with access to the databases necessary for ensuring its full-fledged operation;

for the Government's Commissioner (Ombudsman) for Anti-Corruption Policy:

- the Cabinet of Ministers is to issue a decree on elimination of this position;

for the National Council on Anti-Corruption Policy:

- create conditions for its smooth operation and delivery of results (prepared draft laws), as well as improve cooperation with Parliament and the NAPC in order to effectively utilize its potential capacity.

Section 2.

PREVENTION OF CORRUPTION

2.1. Specialized agency for prevention of corruption

1. The history of activity (or inaction) of the competition committee for the election of NACP's members during 2015-2017 gives grounds to suggest that its main operational problems rest with the inability of professional and objective decision-making by its members and the lack of the political will of all entities responsible for the formation of the commission's composition and results of its activity – rather than with the legislative aspects.

In their turn, manipulations by the Commission's chair and certain members, in the absence of a principled position by other members, had undermined confidence not only in the commission's decisions, but also in the competitive procedure as an instrument for objective selection of the NACP members.

Completing the appointment (staffing) of the NACP's members remains the top priority for the Government. However, given the fact that substitutions in the Commission's membership are unlikely lead to major changes in its working approaches, control by representatives of the civil society, international organizations, and donor countries remains the main instrument of ensuring transparency in its activities.

2. Despite a number of negative aspects, the Government and the NACP's leadership generally managed to ensure filling the vacancies on the Agency's staff during 2016. The main positive results should be recognized as follows:

- allocation of office space;
- establishing comprehensive regulatory support for the NACP Secretariat operations;
- approving the NACP Secretariat structure based on the Agency's functions and authority set forth by laws;

- filling more than half of the NAPC staff vacancies;
- launching the process of establishing the network of regional branches.

3. To improve the NAPC's operations, it will be necessary to carry out the following in the nearest future:

- ensure the publication of all documents and information relating to competition for positions with the NAPC Secretariat (conducted in 2016) on the NAPC's official website, and organize subsequent open access to the relevant information.
- analyze the reasons that caused the inefficiencies in testing during competitions for vacant positions with the NAPC Secretariat in 2016;
- taking into account the results of NAPC Secretariat performance, develop a medium-term personnel policy strategy, which should include issues relating to criteria (conditions) for issuance of decisions by the NAPC leadership announcing competitions for vacant positions; criteria for the selection of applicants, drawing primarily on the evaluation of prior experience in the anti-corruption area;
- continue with the policy of retaining the NAPC's personnel capacity by raising the specialists' professional level and practical skills;
- intensify the process of establishment of the NAPC's regional branches and ensure their subsequent personnel, methodological, and logistical support.

4. During 2016, the NAPC's leadership generally succeeded in ensuring full-fledged and adequate implementation of the Law's requirements to provide for regular training and professional development of the Secretariat staff, and took additional measures to continue this work in the near-term.

Subsequently, it is necessary to:

- ensure implementation of the Planned Schedule of Trainings for the Agency's Secretariat Staff for the first half of 2017, as well as of the Concept Paper on Organizing and Conducting Anti-Corruption Education (Trainings) by the NAPC for Authorized Units (Officials) on Prevention and Detection of Corruption;
- introduce detailed record-keeping on all staff who attended trainings and their annual personal schedules of participation in relevant events;
- ensure providing timely and complete information on the training

events, as well as posting of educational, methodological, and other supporting materials on the relevant section of the NAPC's official website.

5. The Government has, for the most part, followed through with the provisions of the State Budget for 2016 in terms of financing the NAPC activity in the key areas of its work. In addition, the problem with reallocation of expenditures for the NAPC development has been resolved, albeit with some delay. The high level of financial security of the Secretariat's staff is worth noting, as it generally promoted the implementation of the NAPC's financial independence guarantees as stipulated in the Law "On Preventing Corruption".

Subsequently, the Government and Parliament will need to:

- ensure full and timely financing of the NAPC operations;
- promote the development of the NAPC's regional branches by providing appropriate financial and logistical support;
- respond promptly if needed to the NAPC's recommendations for reallocation of financial resources between different expenditure categories;
- ensure comprehensive and complete consideration of the NAPC's recommendations during the drafting of the State Budget for 2018.

6. It must be stated that, in 2016, the NAPC's work with regard to establishment of the Public Council as the main instrument of public control over activities of the Agency was generally unsatisfactory. As for ensuring transparency through public information, while this work is being conducted, it is not systematic in nature due to the lack of a clear information strategy (policy).

Subsequently, it is necessary to:

- adopt the NAPC's communication strategy;
- formulate the principles and uniform rules for posting information on the NAPC resources;
- keep the posted information up to date by filling the gaps that exist in the relevant sections of the NAPC's website;
- ensure ongoing control over the content of the NAPC's website, as well as over the relevance of posted information;
- eliminate technical deficiencies in the functioning of NAPC's

website and improve the search capacities in connection with posted information;

- ensure the NAPC staff's unconditional compliance with the requirements of the Law "On Access to Public Information".

2.2. Civil service integrity

2.2.1. Compliance of civil service legislation with international standards

Legislation on civil service that was in effect before April 31, 2016 did not meet international civil service standards.

The Law "On Civil Service" of December 10, 2015 is based on European civil service standards and takes into account the best international experience in this area. The principal innovations of this Law are as follows: ensuring depoliticization of civil service; establishing clear separation of civil service from other positions in state government bodies; regulating the status of civil servant; defining general conditions for entry into civil service; introducing exclusively competitive selection process for civil service; establishing additional guarantees for creation of professional and politically neutral senior civil service; reforming civil servants' remuneration system; upgrading the institution of their disciplinary responsibility; eliminated retirement preferences for former civil servants; enhancing the role of the NACS; etc.

2. Other achievements of the civil service reform include the adoption of the new Law "On service in local self-governance bodies"; Government's approval of the Strategy of public administration reform in Ukraine for 2016-2020 and the Plan for its implementation, as well as of the Concept Paper on introduction of reform experts' positions.

Another positive aspect is the fact that, as of March 1, 2017, the Government and the NACS adopted (approved, confirmed etc.) almost all regulations necessary for the successful implementation of the new 2015 Law "On Civil Service".

3. Despite significant breakthrough in civil service reform, a number of new challenges will face the civil service reform in 2017-2020, primarily relating to the need for effective implementation of already adopted legislation and policy documents and the need to introduce certain targeted amendments to them in the near future.

4. At present, it is necessary to:

1) ensure effective implementation of changes in the operation of the ministries resulting from the appointment of state secretaries: to improve the knowledge of newly appointed state secretaries and other senior civil service representatives, to ensure their acquisition of necessary skills, to develop “good practice” of state secretaries, and to provide expert and advisory support to their activities (comprehensive assistance);

2) conduct reorganization of the ministries’ secretariats: to ensure enlargement of departments, transparent procedures for preparation and adoption of government decisions based on policy analysis, with adequate public consultations, deconcentration and rationalization of functions of officials within the ministries; to separate the departments that formulate and implement state policy and the departments that perform other functions defined by law (administrative services, inspection authority, etc.);

3) introduce the practice of policy analysis and strategic planning in the ministries;

4) provide for the operations of the Coordinating Council and working groups in the areas aligned with the implementation of the Strategy for Reform of Public Administration System for 2016-2020, as well as of the ministries and other entities charged for its implementation;

5) set forth political leadership and responsibility for civil service reform by one of the Government members;

6) urgently implement measures of civil service reform identified by the Strategy for reform of public administration system for 2016-2020, starting with the following:

- finalize and adopt the following regulations: “Certain matters of implementation of Ukraine’s international treaties, as related to the use of funds received by the State Budget as part of aid programs of the European Union, foreign governments, international organizations, and donor institutions”; “Procedure for Reimbursement of Civil Servant Expenses and Provision of Other Types of Compensation In Connection with Business Trips (drafted by Ministry of Finance); “Procedure for testing of candidates for entry into civil service on the fluency of command of state language”; “Model Procedure for conducting evaluations of official performance results of civil servants (drafted by NACS);

- develop a highly qualified and competent group of experts on civil service reform;

- determine the optimal number of civil servants, taking into account the functions and organizational structure of state bodies, and optimize the number of employees of state government and local self-governance bodies;

- reform the civil servants' remuneration system in order to increase the level of salaries, conditioned on ensuring stability of public finance;

- create a service for personnel management in ministries and other central executive bodies;

- create an integrated information system for management of human resources in civil service;

- reform the system of civil servants' professional education;

- increase the level of NACS's institutional capacity to ensure effective implementation of the Law "On civil service" and a full-fledged civil service reform;

7) draft a new Procedure for conducting competitions for civil service positions, taking into account the prior experience of competitions in 2016-2017;

8) adopt the Law "On amending some legislation of Ukraine due to adoption of the Law of Ukraine "On Civil Service" (draft law No. 4526-d of July 14, 2016), which sets forth conditions for further reform of organization and operation of the Cabinet of Ministers and other central executive bodies;

9) the adoption of the draft law "On amending the Law of Ukraine "On civil service" to address certain issues of civil service" of April 15, 2016 (No. 4370-1), which proposes to provide the President with unconstitutional authority and casts doubt on significant part of civil service reform.

2.2.2. Conflicts of interest, ethical standards, declaration of income and expenses of civil servants

1. Having ensured a comprehensive normative regulation of the institution of preventing the conflicts of interest in 2015, Ukraine not only provided for legal sustainability, but also moved ahead with practical application of these standards. Approval of the relevant Guidance became an important step towards the formation of a clear legal position and the relevant practice of application of the law by officials, law enforcement bodies and courts.

At present, the NAPC's active awareness-raising activity facilitates behavioral changes among civil servants, who are starting to pay greater attention to the evaluation of their own private interests in the light of conflict with official duties.

At the same time, serious problems have been observed with the NAPC's law enforcement activity, which need to be addressed immediately. In the future, it is necessary to:

- analyze the reasons behind unsatisfactory operation and the level of influence of each of them reason on the effectiveness of the NAPC's control function in the area of preventing and resolving conflict of interest;

- develop and approve inspection procedure, clearly defining the rights and obligations of the NAPC's officials during the inspection, the deadlines for inspection, grounds of responsibility and responsibility measures in the context of improper fulfillment of obligations etc.;

- with the Public Council's assistance, review the results of the NAPC activity for 2016 in the area of "Conflict of interest, ethical standards, the declaration of income and expenditure by civil servants";

- identify corruption risks that may cause poor efficiency of the NAPC's operation in this area, and include these risks, along with as measures to address them, into the NAPC's Anti-corruption program;

- continue internal and external educational and methodological work;

- ensure the development of sectoral codes of ethical conduct.

2. Despite a number of unresolved problems and obvious resistance on the part of certain entities, the NAPC and the civil society, supported by international organizations, managed to protect the launch of the electronic declaration system.

The introduction of this system not only forced the senior level civil servants to demonstrate their wealth to the society, but also, in the longer term, initiate the process of bringing the corruption proceeds out of the shadow. Information that was publicized has resulted in a lots of questions to law enforcement bodies concerning the legality of origins of movable and immovable property of many officials, which will require conducting the respective investigations.

The launch of the new financial declaration system has, in turn, become an important indicator of the genuineness of anti-corruption reform and a clear signal for the need of further political and financial support of Ukraine for international organizations.

In the future, it is necessary to:

- immediately remove the technical inconsistencies between the actual electronic template of declaration and the regulatory and other acts of the NAPC that approved the respective template and its technical requirements;
- undertake measures to provide the NAPC with access to all registries necessary for effective verification of electronic declarations;
- ensure flawless operation of the Unified State Registry of Declarations of Individuals Authorized to Perform State or Local Self-Governance Functions, as well as appropriate financing for rental equipment necessary for this purpose;
- conduct effective verification of annual declarations, primarily those filed in 2016 and those to be submitted in 2017;
- continue to provide methodological interpretations and assistance for submitting entities on technical issues relating to Registry's operation;
- ensure administration of the Registry and financing for the development of modules necessary for conducting automatic verification of declarations.

3. Notwithstanding the existence of progressive legislation in the area of protection of individuals reporting on corruption offenses (whistleblowers), the NAPC did not manage to demonstrate any achievements in 2016. The NAPC has not started to develop the practice of whistleblower protection measures, and has not approved any methodological guidelines for the organization of work with whistleblower reports of corruption.

Thus, it is necessary to:

- approve methodological guidelines on the organization of work with whistleblower reports of corruption;
- organize trainings for authorized corruption prevention divisions (authorized officials) related to the organization of work with whistleblower reports;
- explore international experience regarding the reward system for corruption whistleblowers, and introduce proposals based on the obtained result.

2.3. Introduction of good governance standards

2.3.1. Anti-corruption expert evaluation of draft legal acts

1. Anti-corruption expert evaluation is an effective instrument for identifying corruption factors in the draft and effective legislation, which allows to minimize the commission of corruption offenses justified by deficiencies of Ukrainian legislation.

2. Currently, anti-corruption expert evaluation should be conducted by the MOJ and the Parliament's Committee charged with combatting corruption issues (mandatory anti-corruption expertise), and may be also conducted by the NAPC and the public (optional expertise).

3. Legislation places the main burden (duty) of conducting anti-corruption expert evaluation of existing and draft legislation with the MOJ. However, in 2011-2014, the MOJ only simulated such evaluations, as it almost never found any corruption factors in the draft legislation. Thus, during 2012-2013, based on the analysis of 9,757 drafts, the MOJ's experts issued only 41 opinions that refer to the presence of corruption factors (0.4%). None of these opinions have been made available to the public.

Since 2014, the MOJ stopped even simulating this activity. The MOJ's reports on the results efforts taken for prevention and combatting corruption are not being published. The MOJ does not respond to public information requests on this matter.

In almost four years (June 9, 2013 - March 1, 2017), the MOJ has analyzed only a handful of effective legislative acts, in which corruption factors were found only in three. The MOJ has not undertaken any measures to eliminate these factors.

4. According to the logic of Article 55 of the Law "On prevention of corruption", the Parliament's Committee charged with the combatting corruption issues should to be ranked as the second (after the MOJ) most important authority in anti-corruption expert evaluations. However, in 2013-2016, this Committee used this instrument to prevent corruption much more actively and effectively as compared to the MOJ. In 6 years of having such authority, none of the Ministers of Justice has shown any interest in the use of this anti-corruption instrument, and has not realized its true value and possibilities. At the same time, V. Chumak, and even

more so Ye. Sobolev (both Parliament members) showed real will to prevent corruption both through anti-corruption expert evaluations and through cooperation with the public on this issue.

5. Overall, from June 9, 2013 to January 31, 2017, the Parliament's Committee charged with combatting corruption issues received 8,445 legislative drafts for review, of which the Committee was able to analyze 7,645 (90.5%). 454 (5.9%) drafts were deemed by the Committee to contain corruption factors and not meet the requirements of anti-corruption legislation. According to Ye. Sobolev, as of the end of 2016, none of these drafts have become a law.

6. The Parliament's Committee charged with the combatting corruption issues productively cooperates with public representatives on conducting expert evaluations, both through the Public expert council and the Council for public expert evaluations that were established by it, and through cooperation with certain CSOs focused on conducting civic anti-corruption expert evaluations (Centre for Policy and Legal Reforms, Ukrainian Institute for Public Policy, Center "Eidos", etc.).

7. The NAPC does not implement the provisions of article 55 of the Law "On prevention of corruption":

- it does not carry out anti-corruption expert evaluations of draft legislation introduced for Parliament's or the Government's consideration;
- it does not conduct periodic review (monitoring) of existing legislation for the presence of corruption factors provisions, and does not provide the MOJ with recommendations on including respective legislative acts in the MOJ's Plan for conducting of corruption expert evaluations of the existing legislation.

As for March 1, 2017, the NAPC has not approved:

- its own Methodology for conducting of anti-corruption expert evaluations;
- the Procedure for NAPC's monitoring of effective legislation to identify the presence of corruption factors and presentation of its results;
- an act that would set forth the rules or list of those legislative acts that will be subject to the NAPC's monitoring.

8. In terms of conducting the anti-corruption expert evaluations, civil society institutions have turned out to be the most active. The results of such evaluations were used not for destructive criticism of the authorities,

but also to maximize the support for the latter in conducting mandatory anti-corruption expert evaluation of existing and draft legislation.

In particular, due to the productive cooperation between the Committee charged with combatting corruption issues and the experts on the Public Expert Council, the Council on Public Expert Evaluations, and certain CSOs, this Committee finally managed to ensure quality analysis of all draft laws submitted for its review.

9. Despite the requirement of sec. 8 of art. 55 of the Law “On prevention of corruption”, the results of public anti-corruption expert evaluations are either not taken into by the relevant adopting entities (exception is the Parliament’s Committee charged with combatting corruption issues) or are formally reviewed without any response (not to mention taking into account the provided recommendations).

10. In the nearest term (I-II quarters of 2017), it will be necessary to ensure 100% implementation of legislation on anti-corruption expert evaluations, including:

1) ensure the fulfillment of the MOJ’s obligation relating to development, approval, and implementation of the annual plan for conducting anti-corruption expert evaluations of effective laws, acts of the President, and the Government in areas identified in sec. 4 art. 55 of the Law “On prevention of corruption”;

2) ensure conducting of quality anti-corruption expert evaluations of draft legislation introduced in the Government’s, as well as of effective legislation;

3) develop its own methodology of conducting anti-corruption expert evaluations by the Parliament’s Committee charged with corruption prevention, ensuring the same approach in the process of examination by all experts on the Committee;

4) The NAPC should:

- develop and adopt its own methodology for conducting anti-corruption expert evaluations;

- develop and adopt the Procedure for NAPC’s periodic review (monitoring) of effective legislation for the presence of corruption factors and the Plan of implementation of such monitoring in 2017;

- begin conducting anti-corruption expert evaluation of draft legislation carrying potentially high levels of corruption risks, which is being introduced in Parliament or the Government;

- ensure periodic review (monitoring) of legislation for the presence of corruption factors, and provide the MOJ with proposals on including the respective legal acts into the Plan for conducting of anti-corruption expert evaluation of existing legislation.

11. In somewhat distant term (2017-2018), it is necessary to develop amendments to the legislation (or to adopt specific law), that will:

1) vest the NAPC with authority to conduct anti-corruption expert evaluations of all legislative drafts introduced in Parliament by the Government or the President; of all legislative drafts pending before the Cabinet of Ministers and the President, as well as acts of Ukrainian legislation related to the most dangerous areas (from the point of potential corruption factors)¹;

2) eliminate the MOJ's duty for conducting mandatory anti-corruption expert evaluation of legislative drafts that are being introduced in Parliament by the Government or the President, as well as of the effective legislation. This will allow to prevent a conflict of interests in matters of anti-corruption expertise of legislative drafts introduced in Parliament by the Government, as well as to efficiently use the NAPC's special status and independence in matters of anti-corruption expert evaluation of legislative drafts being introduced in Parliament by the President, and of the effective legislation.

3) define the general principles and special features of legal regulation of conducting of anti-corruption expert evaluations (clearly define the entities and objects of anti-corruption expert evaluation, as well as a unified list of corruption factors, etc.);

4) set forth the general requirements for the methodology of conducting anti-corruption expert evaluations (which will apply to all entities), presentation, publication, and, most importantly, review and taking into consideration of anti-corruption expert evaluation outcomes.

2.3.2. Anti-corruption programs

1. One of the reason for corruption in the state government and local self-governance bodies during 1991-2014 was the fact that their annual corruption prevention plans that existed were mostly pro forma and did

1 The special status of this body should ensure additional guarantees for an independent external expert evaluation of these acts.

not change from year to year, and therefore their implementation in principle could not ensure effective corruption counteraction.

The new anti-corruption legislation adopted in 2014 provides for the introduction of two types of anti-corruption programs: 1) for public law legal entities (state government bodies, local self-governance bodies, and state targeted funds); and 2) for private law legal entities.

2. In developing and implementing the anti-corruption programs by state government and local self-governance bodies and state targeted funds, a number of mandatory requirements must be complied with in order for such programs to be effective. These requirements can be fulfilled only with full-fledged functioning of the NAPC, including the development of all necessary regulatory and methodological materials, as well as carrying out the coordination, analysis, control, etc.

3. In 2016, the NAPC performed part its designated duties in this area, which enabled some of the public law legal entities to prepare better quality anti-corruption programs (as compared to previous documents in this area). However, these cannot be viewed as the result of “a systemic approach to the prevention of corruption in state government and local self-governance bodies on the basis of the results of analysis of corruption risks”.

4. As of the beginning of 2017, the NAPC carried out a significant part of its duties aimed at ensuring the development of quality anti-corruption programs by public law legal entities (e.g., the Methodology for evaluating corruption risks in the work of government authorities was approved, necessary trainings were conducted, etc.). This provided the state government and local self-governance bodies and the state targeted funds, working jointly with the NAPC, with an opportunity to develop and approve potentially effective anti-corruption programs.

However, not all of these bodies took advantage of this opportunity, because only 60 programs were approved by March 1, 2017, which is not more than 49% of the programs that should have been approved by that date. An additional 6 anti-corruption programs (5%) were approved with slight delay. According to information provided by the NAPC as of March 27, 2017, 57 anti-corruption programs have not yet been adopted (46%).

5. An anti-corruption program for a private law legal entity must be approved only by a legal entity’s head as designated by law.

As of March 1, 2017, several private law legal entities have adopted such anti-corruption programs. However, even the NAPC does not have any summarized or general information on these entities (as these programs are not subject to government approval).

6. Control over the state of implementation of mandatory anti-corruption programs, both for public law and private law legal entities, is delegated to the NAPC. However, this does not eliminate the ability of civil society institutions to exercise civic control over these processes, by using generally available instruments.

7. During the first half of 2017, the NAPC needs to develop, approve, and publish the following documents:

- Recommendations for the elimination of typical corruption risks for state government and local self-governance bodies and state targeted funds;
- Methodological recommendations for the preparation of anti-corruption programs and model anti-corruption programs of state government and local self-governance bodies;
- Methodological recommendations for the prevention of corruption in the private sector;
- Strategy for the implementation of anti-corruption standards in the private sector;
- Special information programs for entrepreneurs.

8. Throughout 2017 and in the future, the NAPC must engage in the following activities in the context of anti-corruption programs of public law legal entities:

- coordinate and provide methodological assistance to state government and local self-governance bodies on the most effective ways of identifying corruption risks in their activities and implementation of measures to remove them, including in the context of the preparation and implementation of anti-corruption programs;
- analyze anti-corruption programs of state government and local self-governance bodies and make binding recommendations for their consideration;
- verify the organization of work on the preparation of follow-up anti-corruption programs;

- coordinate the implementation of anti-corruption programs of state government and local self-governance bodies;

- conduct inspections of organization of activity on the implementation of anti-corruption programs, facilitate improvements in their implementation, and, if necessary, initiate disciplinary responsibility for failure to implement or improper implementation of these programs.

9. Throughout 2017 and in the future, the NAPC must engage in the following activities in the context of anti-corruption programs of private law legal entities:

- conduct campaigns aimed at informing business representatives on anti-corruption legislation and the practice of its application;

- conduct trainings for authorized individuals responsible for anti-corruption programs;

- make recommendations concerning the application of so-called “integrity pacts” (e.g., within infrastructure projects or other projects that anticipate significant costs for State Budget);

- ensure conducting periodic monitoring of the implementation of the Law “On amending some legislative acts regarding the determination of final beneficiaries of legal entities and public figures” and, if necessary, develop proposals to improve legislation in this area.

2.3.3. Legislation on administrative procedures

1. As of March 27, 2017, most of the procedural element of the relationships between government authorities and the citizens in Ukraine are either not governed by legislation at all or are governed only by regulations. Exceptions include only those segments of such relationships that are currently governed by the effective Laws “On Citizens Petitions” and “On Administrative Services”.

2. After almost 19 years since setting course towards the development and adoption of the law on general administrative procedures, as well as lengthy period of activity by the MOJ working group (resulting in the development of rather high quality draft Law “On Administrative Procedure”), government was not able to manage ensuring its adoption.

3. The main reasons behind non-adoption of a law on general administrative procedure in Ukraine include: 1) general problems in the

development of administrative law scholarship and education (especially in the context of teaching administrative law); and 2) lack of public and political demand for relevant legislation, due to the information vacuum in this area.

4. In the nearest future (II-III quarters of 2017), it is necessary to finalize the process of development of the draft law “On Administrative Procedures”. In order for this to happen, it is necessary to:

- create a renewed and efficient working group under the MOJ to expedite the finalization of the draft law “On Administrative Procedure”. As the basis of finalized version, preferably should take The text of the draft that existed as of the beginning of 2015 (which is the best text of the draft and, incidentally, has received a positive opinion from SIGMA experts) should preferably be taken as the foundation for the revised version (responsible party: MOJ);

- make recommendations to involve representatives of local self-governance bodies (or, at least, of the associations of local self-governance bodies) in the relevant working group, to ensure utmost possible consideration of the local self-governance bodies’ needs, capacity, and experiences (responsible party: local self-governance bodies);

- in an open and inclusive way, review all recommendations and feedback on the draft law that will be provided by the experts and the public (responsible party: MOJ working group);

5. Simultaneously with the processes aimed at finalizing the draft Law “On Administrative Procedure”, it is necessary to:

- assist the MOJ in improving its institutional capacity in terms of general administrative procedure, by conducting trainings(including study visits) for the ministry’s staff, members of the relevant working group, Cabinet of Ministers Secretariat staff, etc. (such assistance could be provided by international organizations);

- study and promote foreign experience (especially of certain socialist countries) in the area of adoption and implementation of legislation on general administrative procedure (responsible parties: scholars and CSOs);

- prepare training programs on general administrative procedure for all civil servants and local self-governance officials (responsible parties: MOJ, NACS);

- secure organizational and financial support from international organizations for the development, testing, and implementation of

training programs and activities on the theme of general administrative procedure for a wide range of future users (public officials, law professors, institutions that provide training and advanced training education for public officials, judges, etc.).

6. In July – August, 2017, the revised draft law “On Administrative procedure” should be submitted to the Government for its consideration, followed by introduction in Parliament in September 2017.

7. During Parliament’s consideration of this draft law, it is necessary to provide for an adequate information and advocacy campaigns aimed at creating a steady conviction among the public and Parliament representatives on the need for adoption of the Law “On Administrative Procedure” (responsible parties: MOJ, Government, scholars and CSOs).

2.3.4. State financial control and audit

1. External and internal state financial control and audit have been introduced in Ukraine. External financial control and audit are currently carried out primarily by Parliament and the Government, whereas internal control is done by administrators of budget funds.

2. External financial control and audit on behalf of Parliament is carried out by the Accounting Chamber, which, during the periods of October 22, 1996-December 31, 2005 and September 30, 2010-October 5, 2013 had control authority only in connection with the use of state budget funds. During January 1, 2006-September 29, 2010 and from October 6, 2013 onwards, the Accounting Chamber is endowed with control authority over both the use and the receipt of state budget funds.

The latter should be viewed positively, since the lack of financial control over state budget revenues significantly reduces the efficiency of its receipts. The need for such control is also supported by annual reports of the Accounting Chamber, which detects more violations in this area each year and is taking measures to eliminate them (in particular, violations totaling UAH 10 billion were detected in 2015 alone).

3. On July 2, 2015, Parliament adopted a new Law “On the Accounting Chamber”, which is based on the constitutional provisions and takes into account the universally recognized international standards of external audit of public finances, as well as the best practices of foreign countries. In the event of adequate implementation of the Law, the activity of the AC

should become more transparent and open to the public, and efficiency of its control measures should fundamentally improve.

4. Despite many years of complaints by international experts relating to the unacceptable situation in the area of monitoring of public finances of local government authorities, the situation in this area remains unchanged. Currently, such monitoring conducting by the State Audit Service, which is a central executive body whose activity is coordinated directly by the Government, and which therefore cannot be impartial on these issues.

Therefore, in the nearest future, it is desirable to develop a legislation package aimed at implementation of the GRECO recommendations in this area. The most effective way of implementing these recommendations involves systemic amendments to Article 98 of the Constitution, Law “On the Accounting Chamber”, Regulations on the State Audit Service of Ukraine, etc. An alternative way to address the problem involves creating a separate independent body charged with monitoring of public finances at the local level. For this purpose, a special law on central executive bodies with special status must be adopted, along with introducing appropriate amendments to the budget legislation. Furthermore, the Government Resolution No. 242 “On optimization of the system of central executive power bodies” of September 10, 2014, among other documents, should also set forth that none of the bodies (including the Cabinet of Ministers) has the right to guide and coordinate its activities.

5. Despite the fact that Parliament had until October 10, 2015 to appoint a new membership of the Accounting Chamber, it is yet to be formed.

To ensure effective functioning of the AC and independent external financial control of public finances, Parliament ought to appoint a new membership of the AC from among professional candidates of integrity as quickly as possible.

6. The analysis of the AC’s activity during 2012-2015 suggests that, despite the gradual reduction in the number of control, analytical, and expert measures, as well as in the number of entities subject to inspection, the total value of budget legislation violations and damages from inefficient use of state budget funds are increasing (from UAH 12.9 billion in 2012 to UAH 22.7 billion in 2015). This situation is a cause for concern, as it shows that the situation in this area is not significantly improved.

7. A systemic analysis of the AC's reports for 2012-2015 leads to a conclusion that the vast majority of violations of budget legislation, as well as incidents of poor management and use of state funds are systemic in nature and repeating from year to year. All of this indicates the low efficiency of measures undertaken by the AC.

One of the reasons behind poor efficiency of the AC's work may also involve the fact that, having uncovered thousands of different violations over four years (2012-2015), only 94 case files were transferred to law enforcement agencies (including the Prosecutor General's Office). However, since 2014, the situation began to gradually improve, with the number of transferred case files increasing by almost twice every year.

8. In the nearest future, it is desirable for the AC to:

- increase the annual number of control, analytical, and expert measures, as well as the number of entities subject of inspection;
- analyze the efficiency of measures undertaken in previous years, and provide for more effective measures in the future based on this analysis;
- establish more precisely all circumstances of the offense, identify guilty persons, and, should there be grounds for doing so, transfer relevant materials to law enforcement agencies in order to bring guilty persons to legal (including criminal) responsibility.

9. Starting from 2013, the number of control measures carried out by the SFI/SAS and the annual scope of inspection coverage of the controlled institutions has been constantly decreasing. As of the end of 2016, these numbers went down by almost 10 times. The volume of the use of funds covered by such inspections has similarly been rapidly decreasing.

The number of financial offenses detected by the SFI/SAS is decreasing each year, which causes a decrease in all other related indicators (e.g., the number of audit case files transferred to law enforcement bodies, the number of initiated pre-trial investigations, the number of court claims, the number of persons brought to administrative and disciplinary responsibility, etc.). However, some indicators of the SFI/SAS activity have been declining independently of the overall reduction in the scope of state financial control. For example, in 2016, the ratio of the number of initiated pre-trial investigations to the number of audit case files transferred to law enforcement agencies has decreased to a shamefully low level of 46.1%.

10. In the context of the SAS's activity, in the nearest future it is necessary to:

1) eliminate its authority to exercise state financial control over the receipt and use of funds of the state and local budgets;

2) significantly intensify its activity (in terms of the number of entities and control measures);

3) ensure high quality level and implementation of auditing and other financial control case files.

2.3.5. Government procurement

1. Even taking into account the fact that government procurement has undergone through significant changes over the past few years, this areas still remains a field for inefficient use of state and local budget funds. The biggest problem is the use of pre-threshold trading, where billions of UAH are being manually distributed outside of a competitive procedure. Excessive activization of customers is typically observed at the end of the year (November - December). This proves inefficiency of established limits (UAH 200 thousand for goods and services, UAH 1.5 million for works).

The MEDT is currently working to improve the legislation and is going to reduce these limits by introducing a relevant draft law in Parliament.

2. Another problem is posed by non-participation of a large number of suppliers in electronic trading. The number of offers, 2,45 participants per one trade, can hardly be called satisfactory.

Reduction of corruption component during bidding and improved efficiency in the use of public funds can only be achieved through optimization of procurement "thresholds" and activization of suppliers.

Introduction of changes provided for by the Law "On public procurement" will facilitate the harmonization of national and EU legislation in accordance with requirements of the Association Agreement between Ukraine and the EU¹, as well as with the Strategy for Reforming

1 Угода про Асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони. – Режим доступу: http://zakon3.rada.gov.ua/laws/show/984_011

the Public Procurement System (“roadmap”)¹ approved by the Cabinet of Ministers in February 2016. The Strategy also envisages further legislative improvements, and therefore there is a potential opportunity to amend the Law “On public procurement” in order to bring it in line with EU Directives in the area of public procurement.

3. In the future, it is necessary to:

1) continue reforming the public procurement system on the basis of regular assessment of the application of the new Law “On public procurement”, while minimizing the use of non-competitive procedures. At the same time, ensure that any amendments to this Law can only be considered by Parliament following consultations with the public and international experts;

2) cover all procurement procedures available under the Law “On public procurement” by the electronic public procurement system ProZorro;

3) enhance the anti-corruption effect by introducing the procedure of automatic electronic evaluation of tender bids and the electronic auction;

4) organize regular trainings for business representatives and officials of public authorities on conducting public procurements at the central and local levels;

5) approximate the national legislation on public procurement with the leading international practices recognized by the EU member states.

2.3.6. Access to information

1. Since 2011, the national legislation on access to public information has been moving toward the European practices, whereby every citizen has the utmost opportunity for the exercise of respective rights. A new stage in the implementation of the Western practices began in 2014 when, after the fleeing of former president Viktor Yanukovich, a number of legislative novelties were adopted that have significantly improved access to public information (e.g., regarding open data format).

As a result, this movement facilitates the exercise of respective rights and increases awareness of the public authorities’ activities, thus enabling increased control over them.

¹ Розпорядження Кабінету Міністрів України від 24.02.2016 №175-р «Про Стратегію реформування системи публічних закупівель (“дорожню карту”)». – Режим доступу: <http://zakon5.rada.gov.ua/laws/show/175-2016-%D1%80>

The issues of control over violations that occur in the relevant area, inadequate compliance with legislation on access by the authorities and their officials, as well as unjustified denials of access to public information or disregard of the obligation to disclose relevant information still remain not fully resolved.

2. In the future, it is necessary to:

1) clearly identify the independent public authority on monitoring the compliance with requirements of legislation on access to public information;

2) continue to fill new content into the Unified State Open Data Portal;

3) ensure verification of information regarding the final beneficiaries of legal entities contained specified in the state registry;

4) ensure adequate access to the State Registry of Real Property Rights, by filling it with data from the local bureaus of technical inventory control;

5) transfer the Unified State Registry of Persons Who Committed Corruption Offenses to the NAPC, which is charged with administering it.

2.3.7. Preventing corruption in the private sector

1. Prevention of corruption in the private sector is gradually becoming increasingly widespread not only among enterprises with the state share in statutory capital, but is also being popularized among the business community representatives. The Law “On Prevention of Corruption” has a dedicated section on prevention of corruption in the private sector, which clearly establishes the possibility of introducing an anti-corruption program, its structure, and the obligations of a person responsible for its implementation.

Ukraine has a functioning business ombudsman institution, which performs its designated functions and facilitates the implementation anti-corruption processes in the business environment.

Overall, however, the current efforts for prevention of corruption in the private sector are generally in an embryonic state. At present, it is not even possible to identify any representative results of the introduction of relevant principles and regulations.

2. In the future, it is necessary to:

1) adopt the Law “On Business Ombudsman” and ensure the

development of the business ombudsman institution by engaging this body in addressing the current problems faced by business representatives that are directly related to corruption;

2) formulate an anti-corruption compliance “agenda” for representatives of domestic businesses;

3) complete the implementation of the measures for preventing corruption in the private sector envisaged by the State Program on the Implementation of the State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2015-2017.

Section 3.

CRIMINALIZATION OF CORRUPTION AND LAW ENFORCEMENT ACTIVITY

3.1. Criminalization of corruption in line with international legal standards

1. Criminalization of corruption in line with international standards and creation of specialized law enforcement bodies accountable to the state and the society provide opportunities to ensure the principle of inevitability of punishment for corruption. As such, these should be a mandatory condition of successful corruption counteraction, including transnational corruption.

2. The state of implementation of provisions of anti-corruption conventions establishing criminal responsibility in the Criminal Code can be considered satisfactory. However, there are instances both of excessive criminalization (Articles 364-1, 365-2 of the Criminal Code), resulting in difficulties in criminal qualification, and of non-recognition as criminally punishable of the acts, the criminalization of which is directly provided for by relevant international conventions (specifically, certain financial crimes).

3. The list of corruption crimes as defined in Article 45 of the Criminal Code is still imperfect, because contradicts the elements of a corruption offense as defined in article 1 of the Law “On prevention of corruption”. In particular, the crime provided for by Article 320 of the Criminal Code should be removed, while Article 210 of the Criminal Code should be amended to define the intent to obtain an illicit benefit as a constructive or a qualifying element of the crime.

Both the crimes provided for by Articles 159-1 and 160 of the Criminal Code and any other crimes committed by a person authorized to perform state or local self-governance functions or by a person in an equivalent role with the intent to obtain an illicit benefit, as well as crimes committed by any person with the intent to bribe the mentioned persons should be recognized as corruption crimes.

All corruption crimes need to be brought under the special jurisdiction of anti-corruption investigations bodies.

4. Over the recent years, following numerous amendments to the Criminal Code, it was possible to succeed in *generally* bringing in line with international standards all elements of anti-corruption crimes, in particular those regarding actus reus (objective element), mens rea (mental element), and perpetrator of the crime.

However, in some cases, there certain inconsistency still remains. In particular, this includes certain provisions of Articles 14, 15, 354, 357, 368-2, 368-3, 368-4, 369, 370, 410, and, especially, Article 364 of the Criminal Code.

5. In 2013, as part of the implementation of relevant treaty provisions, a new Section XIV-1 “Measures of Criminal Law Nature for Legal Entities” (Article 96-3–96-11) was added to the Criminal Code. It established quasi-criminal responsibility of legal entities for certain corruption crimes, particularly those related to legalization of property, or with promising, offering, and providing an illicit benefit (Articles 209 and 306, section 1-2 of Articles 368-3 and 368-4, Article 369 and 369-2 of the Criminal Code). These provisions took effect on June 4, 2014.

It is clear that these provisions also need to be extend to Article 159-1 of the Criminal Code, as well as to all crimes committed with the intent to obtain an illicit benefit.

It is also necessary to consider the possibility of introducing debarment of certain participants from participating in procurement procedures (including participants in preliminary qualification rounds) or in preliminary qualification rounds as one of the criminal law measures that can be imposed on legal entities, if the information on a legal entity participating in procurement or in preliminary qualification rounds is listed in the Unified State Registry of Persons Who Committed Corruption or Corruption-Related Offenses.

The list of sanctions that can be imposed on legal entities as part of criminal law provisions should also be expanded, in particular by including the following measures:

- prohibition on engaging in certain activity; prohibition on advertising of legal entity’s activities, products, services, etc.;
- removal from office of the director and appointment of a trustee;
- withdrawal of license;

- prohibition on the use of grants, subsidies, and other forms of publically funded financial assistance;
- prohibition on the use of aid from international organizations;
- closing of certain business units of the enterprise;
- termination of the enterprise's activity;
- publication of a court decision.

6. Treaty requirements concerning the application of criminal sanctions that take into account the gravity of corruption crimes have been implemented in an inconsistent manner.

Thus, these sanctions do not always take into account the gravity of these crimes, while the amounts and durations of fines, community service, correctional labor, arrest, restriction of liberty, and deprivation of liberty, as set forth under these sanctions, are internally inconsistent among themselves.

To correct this defect in the Criminal Code, it is necessary to unify all sanctions in a manner, so that specific amounts and durations of each primary type of punishment correspond to specific amounts and durations of other primary types of punishment.

For example, if a certain crime is punishable by imprisonment for a term of two to five years, its alternative punishment could be a fine ranging from 1,000 to 2,000 non-taxable minimum incomes; if the punishment is imprisonment of up to two years, the alternative fine could range from 500 to 1,000 non-taxable minimum incomes; and if imprisonment is not provided for as a possible sanction, the imposed fine could be in the amount of up to 500 minimum incomes.

The same approach should also be used in setting the amount and duration of other types of punishment.

7. In contradiction to Article 30 of UNCAC, the Criminal Code in many cases does not take into account the gravity of respective crimes during reviewing the possibility of early release or conditional release (parole) for individuals convicted for such crimes.

The legislation still leaves open a lot of options for individuals who committed corruption crimes to avoid criminal responsibility or punishment, as well as opportunities for obtaining an unjustly mild sentences as compared to the gravity of their corruption crimes.

In such circumstances, there is the possibility for the courts

(sometimes in violation of the law, but often without a clear violation) to yield to pressure or bribery, and continue rendering mild sentences. According to court statistics, such court practice has become the rule rather than an exception.

To remedy this situation, it is necessary to:

- make disciplinary responsibility of judges for violation of the law more effective;
- narrow the limits of sentencing sanctions provided for by the relevant articles;
- eliminate all outstanding possibilities for unjustified mitigation of the sentence and for relief from punishment for corruption crimes, both those directly mentioned in the footnote to Art. 45 of the Criminal Code and all others.

8. In contradiction to Article 30 of UNCAC, the Criminal Code in many cases does not provide for the deprivation of the right to hold government office or occupy position in any enterprise wholly or partially owned by the state for a certain period as a mandatory punishment for individuals convicted of official crimes committed with the intent to obtain an illicit benefit (i.e., for corruption crimes).

9. Ukraine has fulfilled its international obligations regarding the implementation of common measures that may be necessary to ensure possible forfeiture of: a) income from corruption crimes, or property the value of which corresponds to the amount of such income; b) property, equipment, and other means used or intended for use in the commission of corruption crimes.

However, the practice suggests that the measures that have been implemented are insufficient in terms of ensuring the detection, tracing, freezing, or seizure of the mentioned income or property with the view of subsequent confiscation, as well as for management of frozen, seized, or confiscated property.

Moreover, generally with respect to those articles of the Criminal Code that establish responsibility for corruption crimes, some of them do not provide for the possibility of property seizure (due to the effect of the rules set forth by art. 59 of the Criminal Code). This applies to crimes provided for under secs. 1-3 of art. 159-1, sec. 2 of art. 191, arts. 354, 357, sec. 1 of art. 364, sec. 1 of art. 364-1, sec. 1 of art. 368, secs. 1-2 of art. 365-2, secs. 1-3 of arts. 368-3 and 368-4, sec. 1 of art. 369, secs. 1-2

of art. 369-2, and secs. 1-3 of art. 369-3. There are also no provisions for special property seizure (due to the effect of the rules set forth by art. 96-1 of the Criminal Code) for crimes provided for under sec. 1 of art. 159-1 and sec. 1 of art. 357.

At the same time, seizure of property is mentioned as a penalty for the crime provided for under sec. 1 of art. 368-2 of the Criminal Code, which is neither a grave crime nor a crime against the principles of national security or public safety – and which, therefore, directly contradicts the exhaustive rules set forth by art. 59 of the Criminal Code.

3.2. Application of criminal law, existence of effective procedures for investigation and trial of criminal cases on corruption crimes

1. The CPC provides for effective procedures for investigation and trial in criminal cases involving corruption crimes. At the same time, improvement of the Code's select provisions to make them the most suitable for investigation of corruption crimes in particular creates risks of violation of human rights in general; while some proposals that are introduced for Parliament's consideration are directed at making the investigation of corruption crimes more difficult.

2. Criminal proceedings into crimes under the NACB's investigative jurisdiction are frequently subject to irregularities, and these crimes are being investigated by other pretrial investigation bodies.

This creates risks of acquittals of defendants. Therefore, such practice must be strictly ceased.

3. Certain problems may result due to a conflict between provisions of the CPC and the Law "On Prevention of Corruption", since the latter envisages a special procedure for notification of law enforcement agencies, in the form of the NAPC opinion, and violations of this procedure can be deemed a violation of a legally established manner of proving a person's guilt in committing a crime (art. 62 of the Constitution of Ukraine).

4. It is necessary to gradually narrow the content and scope of Parliament members' immunity, at least to the extent not expressly provided for by the Constitution of Ukraine. First and foremost, this means authorizing the conduct of covert investigative (intelligence) activities into actions of a Parliament member without having to first obtain Parliament's consent.

5. It is necessary to immediately provide the NACB with the authority to independently intercept (wiretap) information from communication channels and to conduct investigation actions undercover.

3.3. Specially authorized institutions for detection and investigation of corruption crimes

1. Special Ministry of Internal Affairs units for fighting organized crime and State Security Service units for combatting corruption and organized crime have proven ineffective in countering corruption. Due to this, new specialized law enforcement agencies – the NACB, the SACP, and the SBI have been established (or are presently being creating).

At present, the independence in the activities of the NACB, the SACP, and the SBI is adequately guaranteed by the law. At the same time, ensuring such independence in practice is much more difficult due to the influence by individuals who abuse their immunity.

Independence of the NACB is partially ensured in practice through:

- special procedure for competitive selection of the NACB Director;
- competitive principles of selection of other NACB employees, their special legal and social protection, and adequate remuneration conditions;
- procedure for financing and logistical support of the NACB;
- means of personal security of the NACB employees, their close relatives, and property.

At the same time, there are persistent attempts to use the NACB in party, group, or personal interests, to put the NACB under illegal control of other state bodies and their officials, in particular through failure to provide the NACB detectives with appropriate capacity for conducting all possible undercover investigation actions, and the threat of removal the NACB Director from office through a mechanism of appointment of auditors controlled by certain political forces.

2. The procedure for selection of the NACB Director and the SBI Director are spelled out, respectively, by the Law “On the National Anti-Corruption Bureau of Ukraine” (articles 6 and 7) and the Law “On the State Bureau of Investigations” (article 11) and are consistent with democratic standards.

Nevertheless, there are problems with constitutionality of appointment of the NACB and the SBI leadership.

3. The Law sets forth the requirements for the structure of the NACB, the SACP, and SBI, as well as their staffing levels, educational and experience requirements, mandatory trainings for staff, overall budget and the procedure for its formation, accountability and transparency, including mandatory periodic reporting to the public, etc.

These requirements of the law are followed in practice. However, the NACB and the SACP remain only partially staffed, while the SBI is not yet in place at all.

The State Budget of Ukraine for 2015-2017 envisaged appropriate expenditures to ensure the operation of these bodies.

4. Accountability and transparency of the NACB, including mandatory periodic reporting to the public are provided for by law and actually exist in practice, although there are some deficiencies, including the fact that the audit of the NACB's effectiveness and its operational and institutional independence has not yet been conducted, even though it has now existed for nearly two years.

The law also provides for accountability and transparency of the SACP and the SBI, including mandatory periodic reporting to the public, but these actually do not exist in practice (due to the SBI's nonexistence, or apparently due to some subjective reasons for the SACP).

3.4. Statistical information on the application of anti-corruption criminal legislation

1. In 2015 there was an outburst in the number of registered criminal corruption offenses, and this number almost did not decrease in 2016. However, the following facts are concerning:

- in 2016, as compared to 2015, the number of criminal corruption offenses where formal suspicions were announced decreased by 5.6%, while the number of those where cases were forwarded to court with criminal indictment decreased by 8.4%;

- in 2015, as compared to 2014, the number of closed criminal proceedings on corruption offenses grew 76 times, while decreasing by only 22.6% in 2016 as compared to 2015;

- in 2016, as compared to 2015, the number of criminal offenses forwarded to court with criminal indictment decreased by 2.3% when

compared to the number of criminal offenses where formal suspicions were announced (from 79.1% to 76.8%).

2. The data on the number of persons convicted of corruption crimes are disappointing. In particular:

- every year, the number of such persons is steadily and significantly decreasing and, over three years, has dropped by almost 60%. Thus, the measures that should have facilitated a more intensive detection of corruption crimes and ensuring the inevitability of punishment remain inefficient;

- in 2013-2016, almost no top-level state officials and civil servants of Category 1 ("A") were brought to criminal responsibility for criminal corruption offenses;

- the share of persons convicted of corruption crimes (as it relates to the total number of those who were subject to criminal proceedings tried by court) has also decreased from 82% to 80% since 2013;

- the share of persons brought to responsibility for these crimes and acquitted by court has increased from 2% in 2013 to 5.6% in 2016. While this is a positive thing overall (acquittal verdicts, provided they are lawful and fair, are an indicator of quality work of the courts), in the context of realities of combatting corruption, especially in comparison with much smaller number of acquittal verdicts in non-corruption crimes (0.3%), such trend is alarming;

- the share of persons criminal cases against which were closed is hardly decreased. When comparing the indicators from 2013 and 2014 (17% and 23%, respectively) with those for 2015 and 2016 (15% and 14.4%, respectively), a slight decrease in such informal practices is observed. However, amendment to the Criminal Code that almost prohibited the relief from criminal responsibility for corruption crimes (and, therefore, closing the proceedings) were adopted just at the end of 2014. Therefore, statistics should show not a minor, but a rapid decrease in these indicators;

- from 2013 to 2016, the number of persons deprived of the right to hold certain positions or engage in certain activities due to corruption offenses has been continuously decreasing, eventually dropping from 975 to 317 persons (i.e., more than three-fold). Thus, persons who committed the mentioned offenses are continuing, or have the opportunity to continue, their corrupt activities.

3. In the context of applying the anti-corruption provisions of the Code on Administrative Offences, the following problems are apparent:

- in 2013-2016, the number of persons administrative corruption offenses cases against which were closed varied between ¼ to almost 1/3 of the total number of persons whose cases were heard, and were increasing each year;

- at the same time, in 2013-2016, the total number of persons who were subjected to penalties decreased by almost 12%;

- during 2015-2016, there were no instances of courts imposing the deprivation of the right to hold certain offices as an auxiliary penalty for these offenses.

4. Available statistical data on the implementations of criminal anti-corruption legislation suggests the following:

- this information is clearly insufficient, incomplete, and does not allow adequately analyzing activity on countering corruption by its subject, actors, and other indicators.

For example, form No. 7 of the Report on the demographic make-up of the convicted persons compiled by the State Court Administration contains data on convictions for corruption crimes, where there are employees and students of universities, and even school and lyceum students – but no judges, prosecutors, heads of central executive bodies, and other specific categories of persons authorized to perform state and local self-governance functions – among those convicted;

- the stated information is not standardized, there are no legislative requirements regarding the procedure for collecting, recording, systematizing, or arranging it; every single government body (e.g., prosecution, Ministry of Internal Affairs, MOJ, State Court Administration, Supreme Court, High Specializes Courts, etc.) creates it based on their own preferences;

- there is no general information on the number of cases under operative investigation opened by specially authorized entities in the area of countering corruption, or the results of such investigations. Thus, the public is unable to even approximately assess the effectiveness of the work of operative and investigative units. Such data is only available in the NAB's Report and relates only to this agency's work;

- the exact statistics on relevant criminal proceedings, that were closed during pretrial investigation stage, as well as on administrative cases that

were closed at the stage of drawing up the minutes, including following corruption interventions, does not exist, while the tracking and recording system for such cases from discovery to completion of a sentence has not been created;

- the information on the volume of losses and damages caused by corruption and corruption-related offenses or on the status and amounts of their reimbursement are extremely controversial; there is no adequate general recordkeeping on such losses and damages, including those reimbursed, or information about the confiscation of objects and income received from criminal corruption offenses. Their recording, which is kept by the NAB, has shown that the majority of proceedings transferred by the NAB and SACP to the court were related to instances involving relatively minor corruption acts, and the damages are almost never compensated. To some extent, this serves as a kind of a proof of inadequate efficiency of the work of these bodies;

- reports on funds and other property obtained from corruption offenses that were repatriated to Ukraine from abroad or on management of such assets do not exist, and centralized records are not kept in this regard.

Thus, the issue of developing and adopting the Law “On Criminal Statistics”, as well as its subsequent implementation remain topical.

It is necessary to develop and adopt general requirements for criminal statistics, which should take into account not just the absolute level and the rate of corruption and other crimes, their structure, and dynamics, but also index criminal conviction, latency, social danger, victimization, etc. For each type of criminal offenses, including corruption offenses, a complete picture should exist:

- a) all circumstances of commission of offense, starting from characteristics of the perpetrator and his/her motive through detailed characteristics of the act;

- b) legal consequences of the crime, i.e. sentence and other criminal law measures, relief from punishment, as well as causes of dropping the prosecution and real consequences of this decision.

Section 4.

INTERNATIONAL COOPERATION

4.1. Ukraine's participation in international legal instruments against corruption

1. In general, the situation with the implementation of anti-corruption policy in Ukraine in 2014-2016, with respect to the state of implementation of recommendations of international organizations, can be characterized by two main trends:

1) legislative regulation is slowly but surely approaching the requirements of international standards;

2) practical implementation of many rather progressive provisions of the new anti-corruption legislation is largely stymied due to various factors, the main of which is the lack of political will on the part of executive authorities and the law enforcement bodies.

Some colorful illustration of this include, for example: extremely delayed procedures for appointment of the leadership to newly created anti-corruption bodies (NAPC, National Agency for Detection, Search, and Management of Assets Derived from Corruption and Other Crimes); attempts to sabotage the inaugural e-declaration process through artificially delaying the introduction of software for the Unified State Registry of Declarations; insufficient efficiency in the investigation of large corruption schemes by the NAB and the SACP, despite publication of information on these schemes through special investigative journalism reports; etc.

Parliament also frequently demonstrates insufficient political will. This is especially clearly seen from Parliament's unwillingness to implement international recommendations to amend the Constitution of Ukraine to provide for a narrower immunity for Parliament members, as well as from constant efforts aimed at adjusting the legislation adopted in 2014 in order to weaken the effective anti-corruption requirements (illustrative examples include numerous attempts to reduce the scope of information that must be filed in declarations, attempts to reduce the level of legal responsibility for failure to file declaration or filing of false

information, etc.), to reduce the level of civic control over the activities of anti-corruption bodies, etc.

As such, international partners should make constant and systemic effort to monitor and control the practical implementation of the provisions of international treaties and national anti-corruption legislation by Ukraine's government authorities.

2. Based on the foregoing, it is necessary to recommend the following:

1) based on the methodology adopted by the NAPC, conduct a research on the level of corruption following the implementation of measures provided for by the Law "On Principles of State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014-2017". The findings of this research should become a subject of further analysis by the NAPC and the National Council for Anti-Corruption Policy, in order to studying the identified tendencies, achievements, and problem issues and serve as the basis for the development of the Anti-Corruption Strategy;

2) ensure comprehensive implementation of the Law "On Civil Service" in practice, especially regarding the new model of competitive selection of candidates for civil service and the upgraded mechanism of imposing disciplinary sanctions;

3) ensure adequate staffing and material resources for the National Agency for Detection, Search, and Management of Assets Derived from Corruption and Other Crimes to begin full-fledged functioning as soon as possible;

4) finalize and adopt the Administrative Procedure Code in order to substantially decrease the discretion of state executive authorities in exercising their regulatory and supervisory functions and provision of administrative services. It is necessary to unify and specify the appropriate procedures by a law, in order to ensure their utmost transparency and non-ambiguity and eliminate corruption risk factors; to define mandatory characteristics, content requirements, and grounds for adoption of the acts on application of the law by executive authorities, and to provide that failure to comply with these requirements may be grounds for declaring such acts invalid;

5) develop and adopt a law "On Regulatory Legal Acts", which would address the following issues: a) establishing an exhaustive list of types of regulatory legal acts; b) hierarchy of regulatory legal acts by their legal force; c) mandatory requirements for the structure of regulatory legal acts;

d) mandatory requirements for the procedure of adopting the regulatory legal acts; d) methods of addressing all types of standard conflicts between legislative provisions and overcoming legislative gaps. This law should bring clarity and predictability to the actions of state government bodies relating to legislating and regulating, and reduce possibilities for manipulations due to ambiguities in legislative regulation;

6) increase transparency and integrity in the private sector through the development and adoption of a law “On Lobbying” (OECD Recommendation 3.9) in accordance with the best international models. This will significantly reduce the avenues for businesses to influence norm-making activity of the state authorities by corrupt means, establish equal and clear lobbying rules for all entrepreneurs, and identify the types of responsibility of politicians, civil servants, and lobbyists for violation of such rules;

7) adopt the necessary legislative framework for the politically unbiased and transparent competitive selection of judges to the Anti-Corruption Court and carry out such respective selection in the speediest manner possible, as well as provide the Court with adequate staffing and material resources.

4.2. International cooperation and mutual legal assistance

4.2.1 Analysis and comparison of statistical data on the number received / submitted and executed / rejected requests for international legal assistance

1. Generally, Ukraine is adequately fulfilling its international obligations relating to provision of mutual legal assistance and extradition of offenders to other States.

At the same time, there is certain passivity in the international legal field in terms of prosecuting and returning of assets obtained by corruption means that are due to domestic top officials and entrepreneurs.

It is worth noting that Ukrainian state government bodies almost completely lack meaningful and systematized data on submitting the requests for international legal assistance in corruption crimes, as well as on the results of review of such requests by foreign institutions. As such, objective evaluation of the efficiency and effectiveness of mutual legal

assistance procedures during pretrial investigation and judicial trial of corruption crimes appears impossible.

2. It is necessary to: intensify international cooperation by all of Ukraine's authorized bodies in the area of search and detection of assets derived from corruption crimes, as well as to ensure systemic cooperation for their recovery and repatriation; establish constructive cooperation between law enforcement bodies and the newly established National Agency for Detection, Search, and Management of Assets Derived from Corruption and Other Crimes; develop clear standards and action algorithms for law enforcement officials in the area of international legal assistance in the investigation of corruption crimes, as well as during the implementation of measures relating to search for and recovery/repatriation of assets obtained by corrupt means.