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**Eastern Partnership-Council of Europe Facility Project on
“Good Governance and Fight against Corruption”**

Activity 1.4: “Risk Assessment: Typologies of underlying causes of corruption”

Technical Paper

Country risk assessment – Belarus

“Ethics in Public Service”

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1 SUMMARY

This study is the result of a desk review of legislation and a three-day field mission to Minsk (10-12 September 2013) interviewing different stakeholders. Within the narrow scope of this exercise (see below Chapter 2), based on the limited number of interviews organisationally possible in a field mission and on the data accessible and made available, the following observations can be made:

The legislative framework is quite comprehensive and exhaustive, in particular after recent amendments including further regulation of conflicts of interests and gift acceptance. Codes of conduct exist yet only in a few state entities; rolling out such codes to the whole state sector is under consideration.

In general, public servants seem to be very oriented and keen towards following what is ordered to them by the letter of the law, including ethical regulations. Such an approach will clearly lead to substantial impact of such rules. There seems to be potential for further understanding of ethics not only as a question of simply following the rules, but also as a form of understanding one's own role and public image irrespective of the fact that it is ordered by law. In other words, ethics consists not only of "must not's" but also opens positive options and possibilities. In addition, aspiration to a high ethical performance would probably not come only from simply keeping within ethical prohibitions.

Trainings at the Academy of Public Administration seem to make use of many modern and advanced interactive training techniques. On the face of it, such trainings seem to support the development of public servants as understanding ethics not only as rules, but also personal values. Trainings implemented in some sector specific institutions seem to be more rule and deterrence-based.

Questions of public servants about ethics in daily life as well as violations are dealt with in the hierarchical line of reporting. There exist no special bodies (such as ethics commissioners or a commission) providing uniform advice on such questions; the anti-corruption commissions existing in many state bodies focus on structural preventive measures, but do not review individual cases. Non-criminal violations are subject to disciplinary and administrative proceedings, and are reportedly followed-up in general.

The interviews and provided documents did not reveal any substantial systematic weaknesses in the ethical performance in public administration. The potential for further enhancement could be unfolded by considering the following measures:

- providing guidance for public servants through codes of conduct in all sectors of public administration, including regional and local level, and continuing to include representatives of civil society and expert groups in the drafting and enhancement of such rules;
- reviewing the feasibility and added value of one or several intra-institutional or external bodies entrusted with overseeing and advising on the implementation of ethical codes and on ethical challenges in the daily practices of public servants; this function may also be carried out by existing entities;
- keeping in mind for all trainings carried out that ethical awareness consists not only of following rules but also of the ability to reflect and question a good interpretation of these rules in unforeseen dilemmas;

- involving the public in the further evolvement of ethical rules and values not only through publicising criminal cases of corruption violations, but also discussing cases and questions of ethical challenges;
- collecting data centrally or regionally on disciplinary proceedings and on complaints management in order to ensure the identification of entities with possible weak practices.

2 SCOPE OF THE ASSIGNMENT AND OF “ETHICS”

This Paper is part of the Project’s regional Activity 1.4 “Risk Assessment: Typologies of underlying causes of corruption”. The aim of this activity is to analyse causes and risks of corruption, and identify weaknesses in countermeasures and need for action in integrity systems of the Eastern Partnership countries, by addressing a specific sector in each country. For Belarus, “Ethics in public service” has been chosen as a topic by the General Prosecutor’s Office.

The purpose of this study is twofold: it serves as a risk assessment for addressing risks of ethical violations in public service, and at the same time, it contributes to trainings on anti-corruption concepts and ethics for public servants conducted on 30 September – 3 October 2013 in Minsk in the framework of this Project. This study is thus focusing on patterns of ethical conduct, possible explanations, and recommendations for action. It does not, and cannot – given the resources and time allocated for this exercise within the Project – give an exhaustive picture of the state of public service in Belarus.

The topic of ethics relates to this anti-corruption Project, as corruption is always embedded in a general culture of lack of service mentality, disrespect or disdain for citizens, and absence of caring about the public good. At the same time, the level of respect for and implementation of laws is always low in an environment with a low level of ethical culture. In addition, a low level of ethics almost always creates the perception of corruption, even if there is in reality no correspondingly high level of bribery.

The risk assessment is focusing on the executive sector, leaving out the judiciary and legislative. Interview partners were all from central authorities; thus, the assessment does not include the regional and local perspective of ethics.

Ethics could be understood broadly, it is influenced by, and relates to a broad range of governance issues, such as separation of powers, immunities, freedom of information, political diversity, freedom of opinion, empowerment of citizens etc. In addition, ethics is connected in the end to the whole integrity framework of a country. Such issues are subject of the joint 1st and 2nd Round GRECO-evaluation of Belarus. In order to avoid any duplication with the GRECO evaluations, this risk assessment is trying to isolate the topic of “ethics” from broader political, governance and corruption prevention issues. This rather narrow and somewhat isolated view on ethics would be artificial if it were not complemented by additional information; however, as long as this report is read together with the evaluation reports by GRECO, it is hoped that the reader will gain a complete and differentiated picture.

3 KEY FIGURES

3.1 Statistics

About **55,300** public servants are employed in the public administration system of Belarus (as of end of 2012, not including law enforcement staff).¹ This is about 1.2 % of all working people. Under a reform that has started in 2013, the number of public servants is planned to be cut by about 13,000 down to 43,000.²

There are numerous central state units, which include 24 line ministries and 7 Committees. In addition, there are regional and local state units,³ and various other public institutions and organisations, including state-run enterprises.

3.2 Salary and social security

The average national monthly salary for public servants is the equivalent of about €401 (as of November 2012 all figures before taxes). The average nominal monthly salary in the first six months of 2013 was BYR 4,770,900 (about €418) in the economy as a whole and BYR 4,942,000 (about €433) in the state administration.⁴ Several laws and bylaws are aimed at guaranteeing social security of public servants, and include the right to a pension, benefits to bereaved, and health care for some higher public servants (cf. Article 46 Public Service Law).

¹ <http://news.belta.by/en/news/president?id=703933>.

² <http://news.belta.by/en/news/president?id=703933>.

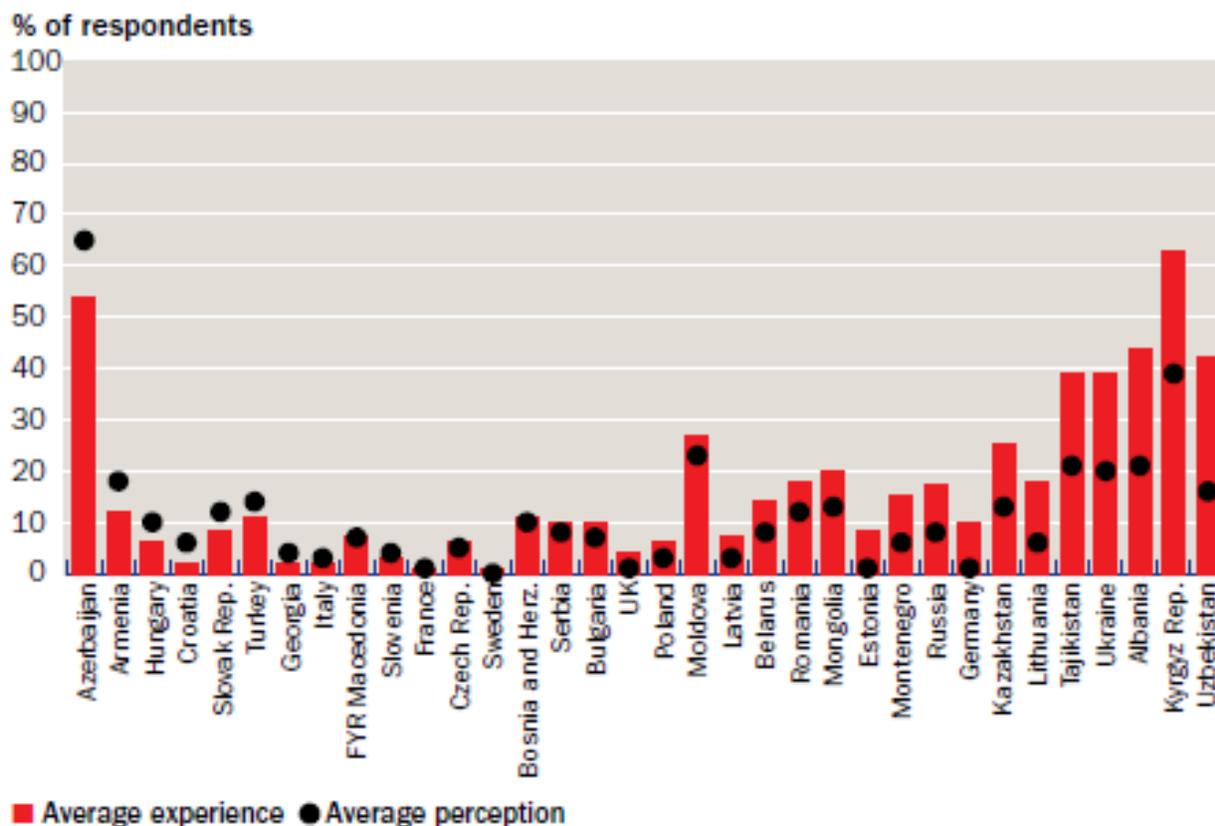
³ <http://www.e-belarus.org/links/egov.html>; see also <http://pravo.by/main.aspx?guid=3871&p0=p30600289&p2={NRPA}>

⁴ http://belstat.gov.by/homep/ru/indicators/doclad/2013_7/15.pdf. Conversion to € according to the currency rate on the website: <http://www.exchangerates247.com/> (as of September 2013).

4 THE STATE OF CORRUPTION IN CIVIL SERVICE

The level of bribery in Belarus is relatively low compared to the region, according to the experience and perception-based “Life in Transition Survey” (LiTS) by the European Bank for Reconstruction and Development:⁵

Perception versus experience of corruption



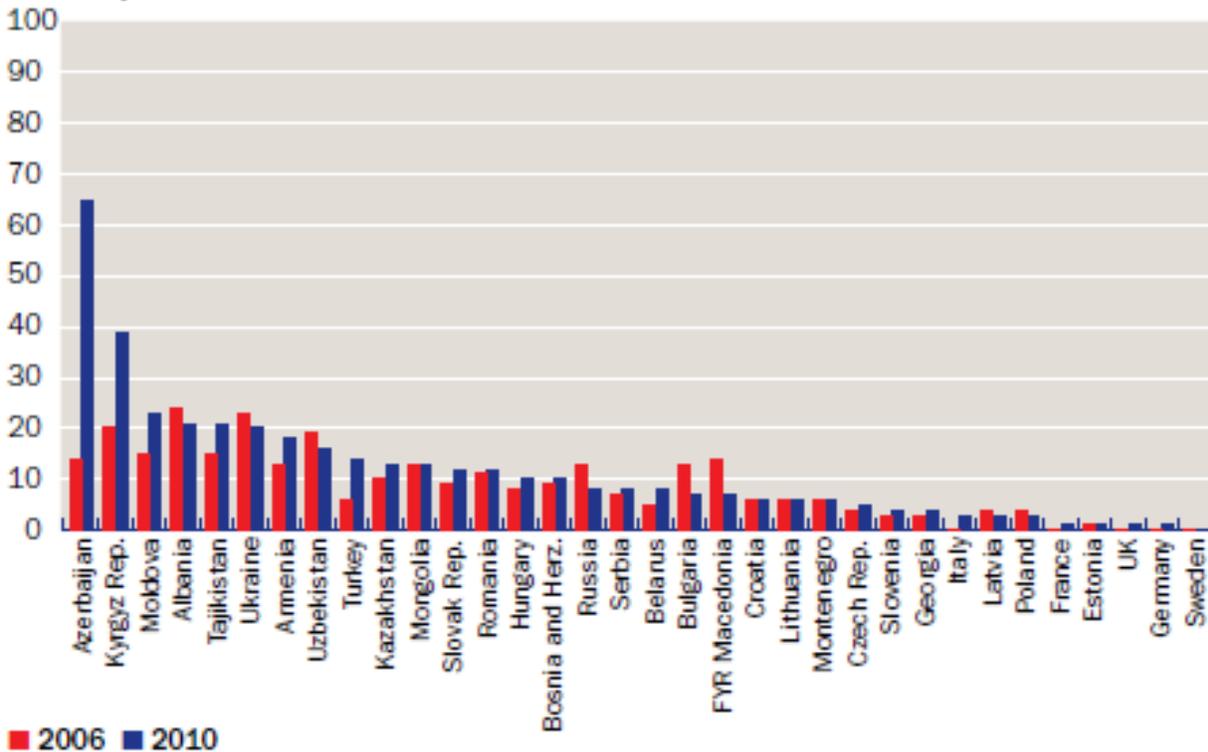
Source: LiTS II (2010).

Note: "Average perception" refers to the proportion of respondents who say people like themselves usually or always have to make unofficial payments or gifts averaged across all public services covered by the survey. "Average experience" refers to the proportion of respondents who say they or a member of their household have made an unofficial payments or a gift in the past 12 months averaged across all public services covered by the survey.

⁵ European Bank for Reconstruction and Development, "Life in Transition Survey" (2010), p. 39, www.ebrd.com/downloads/research/surveys/LiTS2e_web.pdf.

Average level of perceived necessity of unofficial payments or gifts for public services, by country

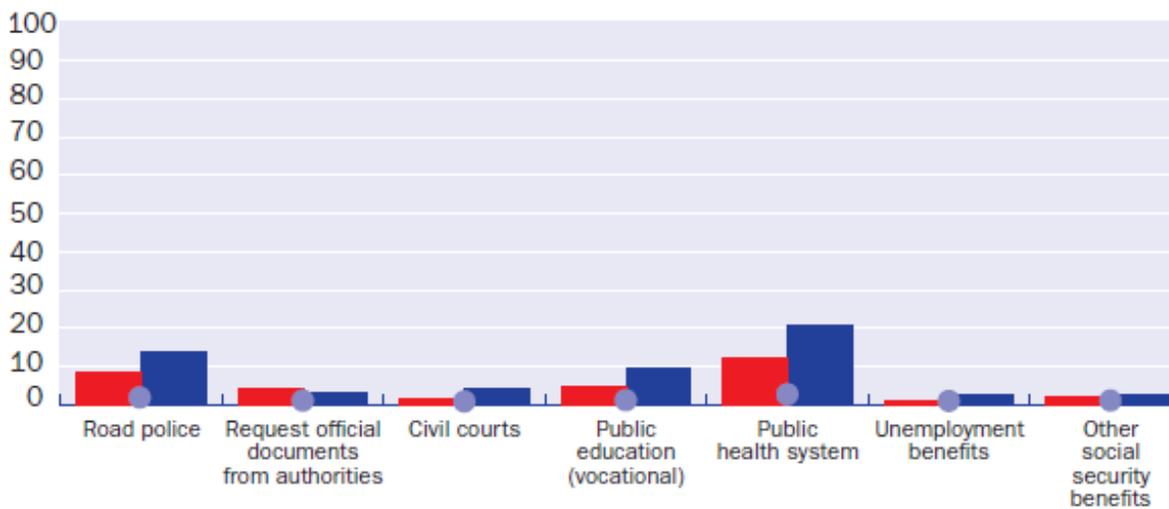
% of respondents



Source: LITS I (2006), LITS II (2010).

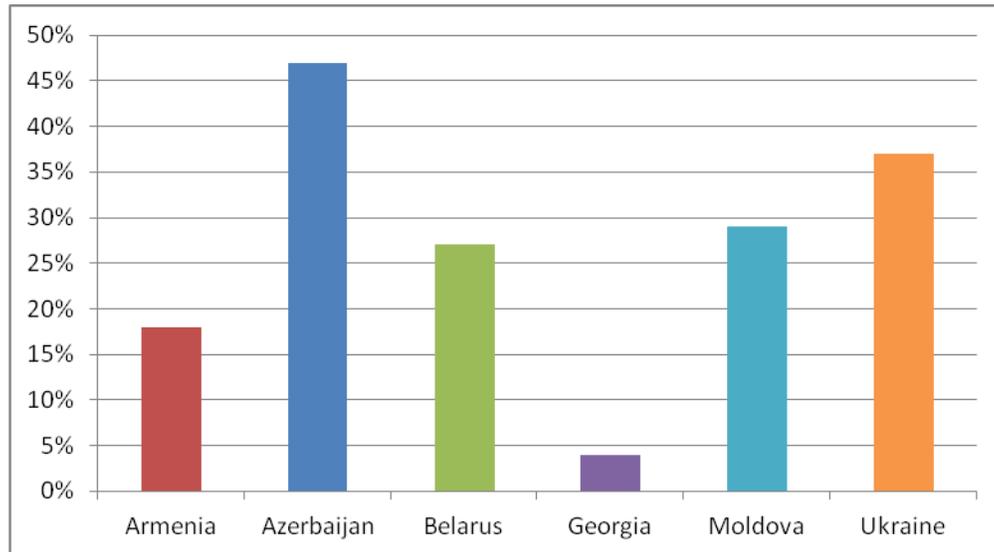
Note: "Perception of unofficial payments" refers to the proportion of respondents who say people like themselves usually or always have to make unofficial payments or gifts averaged across all public services covered by the survey.

The same survey looks into the bribes perceived to be necessary in the different sectors:



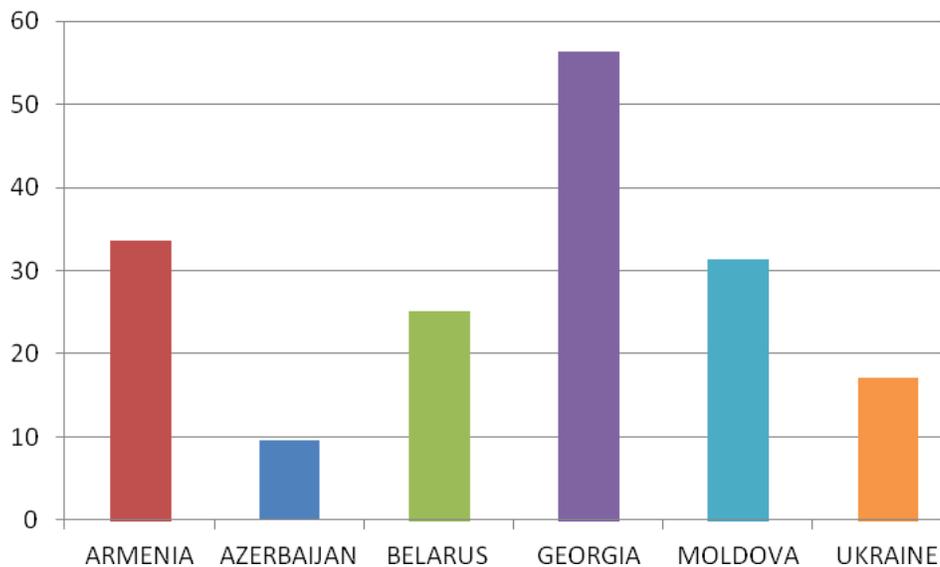
Other experience-based indicators **looking not only at bribes but at corruption in general** place Belarus closer to regional average of EaP countries as it scores generally better than

Azerbaijan and Ukraine, somewhat similar to the Republic of Moldova and below Armenia and Georgia). **Transparency International's** Global Corruption Barometer 2010/2013 captures the “percentage of users paying a bribe to receive attention from at least one of eight/nine different service providers in the past 12 months”⁶:



(Above chart shows mainly results from the 2013 survey; for Azerbaijan and Belarus, results only from the 2010 survey are available and shown; the results for the other four EaP countries for 2010 are: AM 22%, GE 3%, MD 37%, UA 34%)

This experience-based ratings are mirrored by the **World Bank's** Control of Corruption Indicator 2011 (percentile rank 0-100), which “captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as ‘capture’ of the state by elites and private interests”⁷ – the higher the rank, the lesser corruption exists:



⁶ <http://www.transparency.org/research/gcb/overview>.

⁷ 2011 is the latest available edition, <http://info.worldbank.org/governance/wgi/resources.htm>.

5 ETHICAL FRAMEWORK

5.1 Laws

5.1.1 System of regulations

Four layers of regulation determine the ethical framework of the public service in Belarus:

- Law No. 204-3 of 14 June 2003 “On **Public Service** in the Republic of Belarus”⁸ – hereafter “Public Service Law”.
- **Sector specific** laws, such as Law No. 263-3 of 17 July 2007 “On Internal Affairs Bodies of the Republic of Belarus”⁹ and Law No. 220-3 of 8 May 2007 “On the Prosecutor’s Office of the Republic of Belarus”¹⁰.
- Law No. 165 of 20 July 2006 “On the **Fight against Corruption**” (in force since January 2007),¹¹ as amended by Law No. 332 of 22 December 2011 (in force since April 2012¹² and approved by decision of the Constitutional Court¹³) – hereafter “Anti-corruption Law”.
- Several **codes of ethics** that exist for some sectors, such as Code of Honour for Customs Officers,¹⁴ the Code of Professional Ethics for Employees of the National Bank¹⁵, the Code of Honour for Judges,¹⁶ the Rules of Professional Ethics of Employees of General Courts¹⁷, and the Code of Honour for Prosecutors.¹⁸

Violations of the codes of conduct could attract liability under Article 56 of the Public Service Law, which contains a general provision envisaging disciplinary, administrative, criminal and other liability for violations in the public service. Pursuant to Article 40, conduct which is inconsistent with the status of a civil servant justifies dismissal from state service.

In addition, the Criminal Code, the Code of Administrative violations, and the Labor Code, provide further aspects on sanctions including procedures.

5.1.2 Conflict of Interest

Regulation

Under the amended Article 1 par. 10 of the Anti-corruption Law, a conflict of interest is **defined** as follows:

“a situation in which the personal interests of the public official, his spouse (wife), a close relative or cousin-in-law affect or may affect the proper

⁸ <http://pravo.by/main.aspx?guid=3871&p0=H10300204&p2={NRPA}> (Russian).

⁹ <http://www.pravo.by/main.aspx?guid=3871&p0=h10700263&p2={NRPA}> (Russian)

¹⁰ <http://www.pravo.by/main.aspx?guid=3871&p0=H10700220&p2={NRPA}> (Russian)

¹¹ http://mogbiz.by/modules.php?name=Downloads&d_op=viewdownloaddetails&lid=64 (Russian).

¹² http://continent-online.com/Document/?doc_id=31108188.

¹³ Judgment of the Constitutional Court of 19 December 2011 No D-655/2011,

<http://www.kc.gov.by/en/main.aspx?guid=25943> (English).

¹⁴ Decision of the Board of the State Customs Committee of 25 July 2013, promulgated by Order № 302-OD of the Chairman of the State Customs Committee of 8 August 2013.

¹⁵ Approved by Regulation No.107 of the Board of Directors of the National Bank of 8 April 2003.

¹⁶ Adopted by the Decision of the Congress of Judges of Belarus on 5 December 1997.

¹⁷ Approved by Regulation No. 3 of the Ministry of Justice of Belarus of 27 January 2010.

¹⁸ Adopted on 22 December 2007 at a Joint Session of the Board of the Prosecutor General’s Office of Belarus and the Presidium of the Belarusian Association of prosecutors.

performance of the public official's duties when making a decision or participating in the decision making or other actions in the service (work)."

Article 22 of the Public Service Law provides a list of restrictions, which apply to public officials and can prevent *inter alia* the occurrence of conflict of interest situations. The prohibited types of conduct include:

- engaging in **entrepreneurial** activities directly or through third persons, assist close relatives in carrying out entrepreneurial activities in connection with his/her official duties,
- participating in the **management** of profit-making organisations,
- holding **other public offices** (unless permitted by law) or carry out other paid activities (subject to certain exceptions), accept rewards from natural and legal persons in connection with his/her duties,
- opening accounts in **foreign banks**.
- holding **shares** (for the period of performing their duties in the state service, civil servants shall transfer their shares, i.e. stocks, rights, in the statutory fund of a profit-making organisation to the state's trust on security).

Civil servants who violate the aforementioned requirements are to be dismissed from the state service.

Article 17 of the Anti-corruption Law contains similar restrictions as Article 22 Public Service Law. According to Article 16 all public officials and persons applying for such posts, as a preventive measure, must sign a personal **declaration** to comply with the restrictions included in Article 17. Failure to sign the undertaking will result in the refusal to register/appoint a candidate to the post or in an automatic dismissal in accordance with the law.

Article 18-1 of the Anti-corruption Law foresees the "procedure for the prevention and settlement of conflicts of interest in connection with the performance the duties of a public official". The official has to notify in writing his/her superior in the immediate chain of command as soon as he/she becomes aware that there is a conflict of interest or the possibility of its occurrence. He can then declare to abstain from the decision-making in question, causing or likely to cause a conflict interests (still the superior has the right to reject the abstention and demand that the official continues with the task). Moreover the immediate superior shall inform the head of the respective agency about the conflict of interest and the way it was resolved.

If the head of the state body learns about an actual or possible conflict of interest, he/she may:

- give a public official a written recommendation on the measures to prevent or resolve conflicts of interest;
- remove a public official from acting in the service (operation), causing or likely to cause a conflict of interest;
- transfer the public official in accordance with the foreseen procedures to another equivalent position;
- entrust the public official with the execution of the previous duties in a new workplace or change, if only temporarily, the duties of the public official;
- in order to prevent conflicts of interest and the possibility of their occurrence, take other measures as foreseen by law.

It would appear necessary to apply the third to fifth of above mentioned measures only if no measure less intrusive to the public official would be an effective remedy.

Implementation

The process of submitting the declarations on ethical compliance is currently being concluded. Public servants seem to be aware of the rules and reportedly rather follow them than risk losing a secure job with the benefits of being a public servant. On the level of favouritism (“calling a friend in public administration”), the application of rules does not always seem to be so strict and making use of one’s influences in public administration still seems to be a rather commonly useable option. As is the case in probably many other countries, this pattern also benefits from inherent difficulties to detect violations. As for guidance on conflicts of interest cases, see below at 5.2.2.

5.1.3 Gifts

Regulation

The acceptance of gifts is regulated by the following two laws:

- Public Service Law (disciplinary aspect)
- Anti-corruption Law (family members, criminal aspect)

According to Article 22 par. 1.8 Public Service Law, public servants are prohibited

“to accept property (gifts) or receive other benefits in the form of services in connection with the performance of official duties, except for souvenirs, handed to them during protocol and other official events. Souvenirs, which are received by public servants during protocol and other official events, and the cost of which exceeds five basic units, are transferred to the state to the hands of the relevant commission created by the head of the public authority to which the public servant holds a public office.”

Thus, any gift is prohibited, except for official souvenirs up to five basic values (one basic unit = 130.000 BYR), equalling about €52.¹⁹ This exception seems to be in line with Article 18 par. 1 phrase 2 of the Council of Europe Model Code of Conduct (“This [prohibition of gifts] does not include conventional hospitality or minor gifts”).²⁰

The Anti-corruption Law in Article 24 extends the restriction on gift acceptance to family members and similar close persons. They are prohibited to accept property or services, including travel for holidays or other purposes, from persons who depend on the public official in relation to the service. Any illegally acquired gift by the official or the members of his/her family are to be handed over to the state.

On the level of corruption offences, the Anti-corruption Law in Article 21 defines the acceptance of gifts and services in exchange for an official act by the public servant. However, the Supreme Court has issued an opinion, according to which a gift is not a bribe if received during protocol and other official events, or for birthday and holidays, if there is no intent of influencing the official actions of the public servant.²¹

¹⁹ One basic unit is set at 130.000 BYR, about €10.40, by Decision of the Council of Ministers of 26 September 2013, No. 842.

²⁰ <https://wcd.coe.int/ViewDoc.jsp?id=353945&Site=CM>; see also the Explanatory note to the Model Code, para. 84: “It is for each country to establish the criteria to differentiate between what is acceptable and the gifts which fall within the general prohibition rule.”

²¹ Section 20, Resolution of the Plenum of the Supreme Court of the Republic of Belarus of 26 June 2003, No. 6, <http://www.pravo.by/main.aspx?guid=3871&p0=S20300006&p2={NRPA}>.

The Supreme Court Decision probably concerns only the criminal law question of whether it would not be a bribe to present a public servant for Christmas with a watch worth €100. It would also raise the question, from which value on a gift provided would presume the intent of influencing the official's actions. It seems, as if a clear value limit would make the handling of the bribery offence easier.

On the other hand, public servants are subject to disciplinary liability including dismissal from their job for any acceptance of gifts, unless it is a souvenir received during protocol events. So they should not consider the value of the gift when deciding on the possible acceptance; this would then rather be a question for the human resource department, as to whether to forward a case of gift acceptance to the prosecutor.

The distinction between a mere gift acceptance as a disciplinary violation, and as a gift being a bribe is known to many, if not most legal systems.

Implementation

None of the published data or interviews suggests that acceptance of gifts is any major problem in the general public administration, as public servants are aware of the rules and in general are afraid of losing their position in case of violation. There seem to be still some challenges with gift giving practice in some sectors, such as health and education. Small gifts on some occasions (such as teacher's day) are culturally still accepted in some parts. It raises the question as to whether they are "souvenirs within protocol and other official events" in the sense of Article 22 Public Service Law, which is probably not the case, and whether the acceptance violates criminal law provisions (such as Article 433, acceptance of illegal benefit by employees of state bodies who are not public officials). Doctors and teachers are not civil servants, but, to some extent, are equated with public officials since they have the authority to make certain decisions with legally relevant consequences (civil servants and public officials being different concepts in the Belarusian legislation). Still, they are public employees and their ethical and disciplinary obligations should be similar to those of (formal) public servants. Codes of conduct could provide the necessary guidance for both kinds of employees as well as citizens (see below 5.1.5).

5.1.4 Asset declarations

Regulation

Among countries in the Eastern Partnership region, Belarus has the oldest system of income and asset declarations.²² It was established in 1997 and is currently regulated by Law No. 174-W of 4 January 2003 on Declaration of Income and Assets by Physical Persons²³ as well as Article 23 of the Public Service Law.

Income and asset declarations are mainly a corruption prevention tool. Thus, declaring income and assets is essentially not a question of ethical conduct. However, income and asset declarations also play a role in detecting possible conflicts of interest, which can arise, for example, from certain property in business of the public official or a family member.

Implementation

²² OECD, Asset Declarations for Public Officials – A Tool To Prevent Corruption (2011), p. 23, table 1.1, www.oecd.org/dataoecd/40/6/47489446.pdf; for Moldova see Centre for the Analysis and Prevention of Corruption, "Declaration of assets and income of state dignitaries, judges, prosecutors, public servants and persons holding managerial positions: challenges and solutions for Moldova" (2009), www.capc.md/docs/Study_declaration_of_assets_and_income.pdf.

²³ <http://zakon.by/main.aspx?guid=3871&p0=H10300174&p2=%7BNRPA%7D> (Russian)

Checks are done by the human resource departments in the respective public institution. Additional checks on financial information are carried out by the tax authorities. The general impression obtained during the mission was that checks of the truthfulness of the provided information were the main focus of controlling bodies. However, according to information by the state authorities, verification of declarations includes also the identification of possible conflicts of interest arising out of income and asset positions.

5.1.5 Model code of conduct/sector specific codes

Several **codes of ethics** exist already for some sectors (see above 5.1.1). Most sectors do not fall under any code yet. There are basically three options on the table for closing this gap:

- The Institute of Public Administration has developed a Model Code of Conduct, containing general rules applicable to public servants in all sectors. This Code could be amended with the specifics necessary in each sector. It would have the status of a non-binding recommendation.
- The National Centre of Legislation and Legal Research drafted a new Public Service Law which would contain a provision calling upon sectors to draft code of conducts and laying out the basic principles and topics to be addressed by the code. The Law would create a legal obligation for sectors to establish codes of conduct.
- Sectors could also simply adopt codes of conduct no matter whether a Model Code of Conduct or a Public Service Law would call upon them to do so.

Some interviewees have expressed certain scepticism as to the added value of a code of conduct; they pointed to the comprehensive legislation in place already defining conflicts of interest and gift receiving. However, all interviewees have confirmed the usefulness of having such a code in place if it would serve one or more of the following purposes:

- showing in one document what is expected from public servants;
- avoiding unjustified disciplinary action as a way of improperly “disciplining” subordinated public servants;
- helping public servants avoid trouble by providing more clarity on what to do in critical situations (as for example in cases of gift offers);
- helping defend public servants against improper reproaches;
- improving the public image;
- avoiding losing time on correcting bad management decisions, and dealing with complaints;
- stressing the difference of the public service from other jobs;
- providing a solid basis for employee training;
- triggering a process of value reflection and formation among public servants and the public at large;
- supporting equal treatment of public servants by their employer in cases of (alleged) violations.

Which of the three above mentioned options or any other would be the most suitable and effective, will be a policy question of the Belarusian government. The added value and potential of rolling out codes of conduct in the whole administration seem to be apparent. Involving representatives of the society and expert groups on corruption prevention (such as e.g.

Transparency International), as has been done in the past, would seem to ensure public awareness and ownership of this issue.

There is ample literature available on this issue from international institutes and authors, for example:

- Council of Europe, Ethics for the Prevention of Corruption in Turkey, Academic researches on public ethics, Volume 1 and 2²⁴
- World Bank, Ethics codes and codes of conduct as tools for promoting an ethical and professional public service: Comparative Successes and Lessons, by Stuart C. Gilman, 2005²⁵
- OECD, Ethics Codes and Codes of Conduct in OECD Countries²⁶
- Quentin Reed, Regulating conflicts of interest in challenging environments: The case of Azerbaijan, U4 Issue 2010:2²⁷
- Jolanta Palidauskaite, Codes of Conduct for Public Servants in Eastern and Central European Countries: Comparative Perspective²⁸
- Beyond the Code of Conduct: Building ethical competence in public officials, U4 Brief 2009:19²⁹

5.2 Institutions

5.2.1 Human resource departments

Human resource departments play the following roles with regards to ethics implementation:

- Collection, handling and verification of income and asset declarations in coordination with other authorities; provision of counselling and oversight;
- Collection and oversight of submission of personal declarations of compliance (Article 16 of the Anti-corruption Law);
- Oversight of compliance with restrictions applicable to public servants;
- Record keeping.

5.2.2 Managers

Public servants with managerial functions have to respond to conflicts of interest declarations of their subordinates. None of the interviewees remembered a situation where a subordinate would ask for a clarification in an uncertain situation, for example, when the wording of the law would not cover a situation, but its spirit might do so. The reason provided in interviews was that all employees were thoroughly informed about all regulations at the time of recruitment, and all had

²⁴ <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/TYEC/1062-TYEC-Academic%20Researches%20on%20Public%20Ethics%20Volume%201.pdf>;
<http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/TYEC/1062-TYEC-Academic%20Researches%20on%20Public%20Ethics%20Volume%202.pdf>;
http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/TYEC/TYEC_en.asp.

²⁵ www.oecd.org/mena/governance/35521418.pdf.

²⁶ <http://www.oecd.org/gov/ethics/ethicscodesandcodesofconductinoecdcountries.htm>.

²⁷ <http://www.u4.no/publications/regulating-conflicts-of-interest-in-challenging-environments-the-case-of-azerbaijan/>.

²⁸ www.oecd.org/mena/governance/35521438.pdf.

²⁹ www.u4.no/publications/beyond-the-code-of-conduct-building-ethical-competence-in-public-officials/downloadasset/151.

signed declarations of compliance. In addition, it was pointed out that the law contained a clear definition in line with international standards.

This “law-abiding” approach seems in fact to have significant impact on the ethical conduct of public servants, and seems to fit to the apparent regulation-oriented practice of public servants. Internationally, there is growing consensus, though, that ethical confidence of public servants profits a great deal from a culture in administration, where questions are openly discussed and uncertainty about a regulation is not a sign of incompetence, but of ethical awareness:

“To resolve a specific conflict, it is necessary to establish relevant facts, apply the relevant law and policy, and distinguish between ‘actual’, ‘apparent’, ‘real’, and ‘potential’ conflict situations. This requires technical skill and an understanding of the many issues which are usually involved.”³⁰

“Ethics trainings are not only about delivering knowledge, but also about shaping attitudes and teaching skills for resolving ethical dilemmas.”³¹

In this context, one should probably also be aware of the taboo that is often observed in connection with conflicts of interest. This taboo stems from the misconception that a conflict of interest in itself is already corruption. However, this is not the case; it is only the wrong handling of the conflict, for example, in a non-transparent way that can amount to corruption:

“The emphasis in discourse on preventing conflicts of interest rather than managing them [...] sometimes appears to assume that conflict of interest itself constitutes corruption. [...] While many conflicts of interest may be prevented, any official with important powers or authority to make or participate in decisions is likely to encounter situations in which s/he is subject to a conflict of interest.”³²

Future training and awareness measures should ensure that this aspect is taken into account.

5.2.3 Intra-institutional units

Many state bodies have established Corruption Prevention Commissions. The function of such Commissions is focused on the analysis of corruption risks and possible counter-measures; it does not cover advice on a case by case basis for ethical dilemmas, though.

Some countries have nominated ethical commissioners in each administrative body, to ensure ethical awareness and uniform application of ethics principles. In addition, there are sometimes national ethical bodies, such as an ethics commission, which serve as a focal point for ethics commissioners, render advice and publish case “law” on ethics. It might be an option worth considering also for Belarus, but is obviously only one out of several options.

³⁰ OECD, Managing Conflict of Interest in the Public Sector, page 7, www.oecd.org/gov/ethics/49107986.pdf.

³¹ OECD, Ethics Training for Public Officials, page 68, www.oecd.org/corruption/acn/library/EthicsTrainingforPublicOfficialsBrochureEN.pdf.

³² Quentin Reed, Regulating conflicts of interest in challenging environments: The case of Azerbaijan, U4 ISSUE 2010:2, page 14 (see above note 27).

5.3 Implementation

5.3.1 Training and awareness

The Academy of Public Administration under the President of the Republic of Belarus is a leading institution of higher education and the lead agency in the education system of supplementary training for adults. The Academy of Public Administration enrolls leading cadres, persons included in the reserve of leading cadres, public servants and other persons. Annually over 4,500 public servants take part in the Academy's education programmes. The Academy internationally cooperates in the field of training, retraining and advanced training in the field of management.

Vocational training

Trainings related to ethics are not based on theoretical lectures, but include modules among others on:

- Stress management
- Ethical dilemmas
- Management conflicts
- Professional communication

Methods include personal self-assessments and psycho-diagnostics, case scenarios, role play. Examples of ethical dilemmas are taken from real life. Ethics and etiquette are a compulsory component of the vocational training for higher public servants and includes lectures and analysis of concrete cases. The standard group size is 25 people, which regularly divides into 2 subgroups of 12-13 people with one teacher for each. Role play, value discussions, and case scenario are part of those trainings. Thus, the trainings delivered at the Academy apparently apply modern and advanced standards of ethics training which are not practiced yet in all countries.

Some state bodies have their own training institutions, such as for example the State Committee on Customs. In addition to trainings, other tools are used for individual educational and preventive work with groups of officers that require special attention (after disciplinary action or citizen complaints), for example, the presentation of a video-recorded interview with a regretful former customs official in prison serving time for a corruption offence. In general, it will probably be important in this context to continue to keep in mind that ethical dilemmas in practice cannot always be solved by a simple solution:

"The value-based approach does not assume that all participants reach consensus regarding the cases under discussion. Ethical dilemmas often have contextual nuances and one seemingly similar situation may have several possible solutions. Instead of finding 'one right' solution, the aim of the training [is] [...] to develop the competence to recognise ethically problematic situations and to systematically analyse them based on public service values."³³

Recruitment training and awareness

Public servants are made aware of ethics-related rules prior to recruitment. Knowledge of the rules is quizzed by standard questions used for recruitment examinations.³⁴ These include questions such as:

³³ OECD, Ethics Training for Public Officials, page 40,

www.oecd.org/corruption/acn/library/EthicsTrainingforPublicOfficialsBrochureEN.pdf.

³⁴ See: Академия управления при Президенте Республики Беларусь (2011), Пособие по подготовке к сдаче квалификационного экзамена для лиц, впервые поступающих на государственную службу [Academy of Public

- Rights and duties of a public servant; restrictions related to the public service;
- Procedure for the declaration of income and assets of a public servant.
- Liability of the public servant for violations of legislation on the public service;
- Grounds and procedure for the termination of the public service.

The questions mostly expect the potential public servants to memorise provisions of laws.

In addition, public servants have to sign a declaration upon entering the service on their compliance with ethical rules (see above 5.1.2).

5.3.2 Disciplinary proceedings

According to information by the interviewees on singular cases, disciplinary violations are followed-upon swiftly and without hesitation to use the full range of sanctions. Sanctions are apparently not only imposed upon lower level public servants, but also higher levels. However, statistics and compilations (case law) of the disciplinary practice are not published and therefore these observations remain anecdotal.

In addition, there is a range of administrative sanctions available, imposed following an administrative procedure. This option apparently is frequently used as well although the violations do not seem to be defined specifically with the public service in focus (rather they relate to issues such as failure to comply with accounting requirements or provide statistical information).³⁵

If statistical data on violations and disciplinary proceedings were available centrally or regionally, this would probably help policy makers to draw conclusions for possible legislative, organisational or training measures. For example, a state body with a function of revenue collection and cash transactions typically prone to corruption, with no disciplinary proceedings should raise a question mark. The General Prosecutor's Office might be a suitable body for collecting such data, as it is already regularly receiving reports from all anti-corruption commissions in state bodies. However, one also needs to make sure that the collection of data does not create adverse incentives: state bodies might perceive the data collection as an incentive to either not report such cases, or even suppress opening of cases in order to "look good" statistically; at the same time, the contrary effect might take place – state bodies might feel the need to show a "strong arm" and thus increase the number of disciplinary cases, which would only be good, as long as the disciplinary cases are merited. Periodical review and comprehensive analysis of such data should help identify any adverse patterns.

5.3.3 Internal and external complaints

According to a presidential decree, all government websites compulsorily have to provide information for citizens on where to complain in cases of legal violations or bad service. Authorities assert that complaints are followed up and all administrative decisions can be appealed against in the court. Anonymous complaints are inadmissible, but are looked into if repeated or substantiated information points towards a concrete incident, problematic unit or official. It should be mentioned in this context that many countries have benefited from the

Administration under the President, Handbook on the qualification exam for first-time entering government service, edition 2011].

³⁵ See for example: "Review Information on Typical Violations Found in Checks on Financial-Economical Activity of Organisations of the System of the Ministry of Agriculture and Food in 2012", <http://mshp.minsk.by/about/podrazd/vkontr/reviz/e126804f15ea2135.html>.

establishment of an independent ombudsman institution. Such an institution could inquire into complaints from clients of the administration and support also wider public awareness and ownership of ethics.

As with disciplinary proceedings, statistical data on complaints and their follow-up centrally or regionally collected, would allow for a more targeted review of weak spots in administration. For example, a state body with a high frequency of contacts, but almost no reported complaints, should raise a question mark. The General Prosecutor's Office might be a suitable body for collecting such data, as stated above. However, the same risks of adverse effects of such obligation to report data as with disciplinary proceedings apply also to data on complaints.

5.3.4 E-governance

The President's Decree "About measures on the improvement of the usage of the national network segment of the Internet"³⁶ aims among others to improve the quality and accessibility of information about public agencies' activities and their online services for both citizens and companies.³⁷ According to this decree, all public agencies and organisations shall present online-information about themselves. Every website has to include a minimum set of information about its owners and access to it should be free of charge. The "National automated information system" (NAIS) is a project for integrating the information resources of public agencies and delivering public online services.³⁸ On 1 January 2011, a national e-government services portal was launched which offers more than 60 online services.³⁹

5.3.5 Public awareness

Ethical regulations, as far as available, are put online on the state bodies' websites, and are posted in the entrance halls, according to information provided by the authorities. The media seem to focus rather on criminal corruption violations, than on cases of non-criminal ethical violations. One interviewee stressed the need for more active public discussion of ethical questions via the media, in order to raise the awareness of the topic among the public but also among public servants.

5.4 Policy

The "Belarus Programme on Combating Crime and Corruption 2010-2012" contained the action of reviewing "the feasibility of an approved code of ethics for public servants" (action 1.6). Several proposals and viewpoints are on the table regarding this topic (see above 5.1.5).

The new draft "Belarus State Programme on Combating Crime and Corruption 2013-2015"⁴⁰ has been approved by the central coordination meeting, but is not yet formally enacted. It does not relate specifically to ethics, but contains related actions:

- *"Annual monitoring of public opinion on corruption in the law enforcement and regulatory agencies, and in the courts, in order to use the results to improve the efficiency of these agencies and the degree of trust among the population"* (Action 49.1),

³⁶ No. 60, 1 February 2010, <http://pravo.by/main.aspx?guid=3871&p0=P31000060&p2={NRPA}>.

³⁷ Dzmitry Marushka, Maria Ablameyko, E-Government Start-Up in Belarus - Case of Public Online Services Portal Implementation, International Journal of Public Information Systems, vol 2012:1, page 1 f., www.ijpis.net.

³⁸ <http://www.agat.by/en/products/integrated-information-systems/implemented-projects/nais-rb/>.

³⁹ <http://portal.gov.by/>.

⁴⁰ Yet unpublished.

- *“Coverage in the media of activities of the law enforcement and regulatory agencies to combat crime and corruption, the protection of life, health, honour, dignity, rights, freedoms and legitimate interests of citizens in order to create an atmosphere of public condemnation of corruption in all its forms and systematic awareness raising in the society of the state anti-crime (anti-corruption) policies, including facts about perpetrators made accountable for corruption offenses” (Action 49.4),*
- *“Organise the production and demonstration on central or regional TV channels of social advertising clips aimed at legal education and the formation of the active attitude of citizens in terms of intolerance of unlawful behaviour” (Action 51).*

From the point of view of further development of the institutional framework, the action 47 is important as it envisages analysis of the experience of anti-corruption commissions and possible measures to improve their effectiveness.

6 ETHICAL WEAKNESSES

6.1 Occurrence

There is no statistical data available on the number and categories of ethical violations. Information from all interviews points towards patterns typical for other European countries, with occasional flaws in the service culture, obtaining of advantages through favouritism (“calling a friend in public administration”), and bribe and gift taking. As far as bribery and gift giving is concerned, the level is comparatively low, and lower than for example Romania and Lithuania according to the experience-based “Life in Transition Survey” (LiTS) by the European Bank for Reconstruction and Development; the World Bank’s Control of Corruption Indicator 2011, however, still ranks Belarus lower than the Republic of Moldova and Armenia (see above 4).

Ethical performance with regards to service delivery to citizens on the local level would often be somewhat lower than in central authorities. This phenomenon is known in many other countries and is related to the qualification level of employees and to a lesser reach of training and other implementation measures from central institutions. In this context, it should be noted that a lack of “esprit de corps at the level of regions, cities and regions” of Belarus has recently been pointed out.⁴¹

6.2 Possible explanations

The following reasons are possible for occurrences of ethical violations in the public sector:

- Sometimes ethical attitudes will be probably a leftover of **soviet standards** of treating clients as subordinate subjects;
- The “law-abiding aspect” of ethics seems to be very strong, whereas the “**value and aspiration aspect**” of ethics might not have reached all public servants. In other words: there is a difference, whether public servants just obey the law or whether ethics is part of their self-image and self-understanding which they are willing to defend irrespective of whether it is ordered by the law and state;
- **Treatment of requests for advice** by lower-level public servants sometimes might prompt intolerance as against signs of incompetence. On some occasions, this may lead to committing wrong steps, which could have been easily prevented;

⁴¹ Press statement of 1 August 2013 on a presidential speech, <http://president.gov.by/press146294.html>.

- **Public confidence** in reporting violations of ethics would seem to have potential of further growth;
- There seems to be an inclination to perceive a **reporting** on ethical violations in public administration as “washing dirty linen in public.”

7 RECOMMENDATIONS

Based on the interviews and documents provided, it seems as if the ethical potential could be used more fully and further enhanced by considering the following measures:

- providing guidance for public servants through codes of conduct in all sectors of public administration, including regional and local level, and continuing to include representatives of civil society, expert groups and all concerned public officials in discussing, drafting and enhancement of such rules based on an assessment of the risks and needs specific to each sector;
- reviewing the feasibility and added value of one or several intra-institutional or extra-institutional bodies entrusted with overseeing and advising on the implementation of ethical codes and on ethical challenges in the daily practices of public servants; this function may also be carried out by existing entities;
- continued keeping in mind for all trainings carried out that ethical awareness not only consist of following rules but also of the ability to reflect and question these rules in unforeseen dilemmas;
- developing of online multi-media quizzes similar in their plots to the situational games used in trainings at the Academy of Public Administration, which could be made available to all public servants even when they are not enrolled in training;
- involving the public in the further evolvement of ethical rules and values through publicising not only criminal cases of corruption violations, but also presenting cases and questions of non-criminal ethical challenges;
- collecting and analysing data centrally or regionally on disciplinary proceedings and on complaints in order to ensure the identification of entities with possible weak practices.

8 ANNEX: INTERVIEWS

The institutions to be interviewed were chosen by the Council of Europe experts in coordination with the General Prosecutor's Office. All meetings with state institutions involved several representatives from different departments related to the issue and proceeded as semi-structured interviews.

Tuesday, 10 September 2013, Minsk
<ul style="list-style-type: none">- Council of Europe Information Point in Belarus- Delegation of the European Union to the Republic of Belarus- Transparency International – Belarus National Contact- Ministry of Justice- Ministry of Education
Wednesday, 11 September 2013, Minsk
<ul style="list-style-type: none">- Academy of Public Administration<ul style="list-style-type: none">o Research Institute of Theory and Practiceo Department of Psychology of the Institute of Public Service Management- State Committee on Customs- Ministry of Agriculture and Food
Thursday, 12 September 2013, Minsk
<ul style="list-style-type: none">- National Centre of Legislation and Legal Research- General Prosecutor's Office

Request made by the experts to UNDP and two organisations of civil society representation for interviews remained unanswered.