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Joint First and Second Evaluation Round

Third Addendum to the Compliance Report on Ukraine

Adopted by GRECO
at its 59th Plenary Meeting
(Strasbourg, 18-22 March 2013)

I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report on Ukraine at its 32nd Plenary Meeting (19-23 March 2007). This report (Greco Eval I/II Rep (2006) 2E) addressed 25 recommendations to Ukraine; it was made public on 29 October 2007.
2. Ukraine submitted the Situation Report required under the GRECO compliance procedure on 30 September 2008. On the basis of this report, and after a plenary debate, GRECO adopted the Joint First and Second Round Compliance Report (RC Report) on Ukraine at its 42nd Plenary Meeting (11-13 May 2009). The Compliance Report (Greco RC-I/II (2009) 1E), which was made public on 9 June 2009, concluded that recommendations viii, xvi and xvii had been implemented satisfactorily, recommendations iv, ix, x, xiii and xxiii had been dealt with in a satisfactory manner and that recommendations i-iii, v-vii, xi, xii, xiv, xv, xviii-xxii, xxiv and xxv had been partly implemented. GRECO requested additional information on their implementation, which was provided on 6 December 2010, 3 February 2011 and 12 May 2011. In its Addendum to the Compliance Report (Greco RC-I/II (2009) 2E), which was made public on 30 June 2011, GRECO concluded that recommendations i, ii, xi, xii, xiv and xviii-xxii remained partly implemented and recommendations iii, v and xxiv had not been implemented. In view of the lack of substantial progress, GRECO urged the Ukrainian authorities to take determined action to address the outstanding recommendations and requested the authorities to submit additional information on these recommendations. The additional information was provided on 4 January, 23 February, 13 and 20 March 2012 and served as a basis for the adoption by GRECO of the Second Addendum to the Joint First and Second Round Compliance Report, which was made public on 20 April 2012. In this Addendum, GRECO maintained its previous conclusions regarding all recommendations under review. Taking into account the fact that only just under half of the recommendations issued had been complied with and the need for further substantial progress on several fundamental issues, GRECO reiterated its call on the Ukrainian authorities for determined action and requested them to submit additional information on the outstanding recommendations. Additional information was submitted by the Ukrainian authorities on 31 December 2012, 24 January 2013 and 21 February 2013.
3. The purpose of this Third Addendum to the Joint First and Second Round Compliance Report is, in accordance with Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, to appraise the implementation of recommendations i-iii, v, xi, xii, xiv, xviii-xxii and xxiv in the light of the most recent information submitted by the authorities of Ukraine.

II. ANALYSIS

Recommendation i.

4. *GRECO recommended to establish a body, distinct from the law enforcement functions, with the responsibility of overseeing the implementation of the national anti-corruption strategies and related action plans as well as proposing new strategies and measures against corruption. Such a body should represent public institutions as well as civil society and be given the necessary level of independence to perform an effective monitoring function.*
5. GRECO recalls that in the Compliance Report, it welcomed the establishment of the Government Agent for Anti-corruption Policy. However, pending the implementation of the Resolution establishing this authority, notably as regards its co-operation with civil society and its level of independence in the exercise of its monitoring functions, GRECO assessed recommendation i as

partly implemented. Subsequently, in the Addendum to the Compliance Report, GRECO noted that a new National Anti-corruption Committee (hereafter NAC) had been created by a Presidential Decree (No. 275/2010) under the authority of the President of Ukraine – and with the Minister of Justice as its Executive Secretary – to analyse the corruption situation in Ukraine, to develop strategies against this phenomenon and to monitor their implementation. The Government Agent for Anti-corruption Policy had still not been appointed, awaiting the President's decision concerning which body was to be entrusted with the implementation of the National Strategy on Prevention and Counteraction to Corruption. GRECO concluded that the recommendation remained partly implemented as the institutional arrangements in this area were not finally decided; GRECO also questioned whether the NAC was sufficiently independent in its monitoring function. In the Second Addendum to the Compliance Report, GRECO noted that the NAC was comprised of public institutions, including governmental bodies, law enforcement agencies, the judiciary and Parliament. Civil society was also represented to some extent. GRECO therefore took the view that the NAC appeared to have been given functions and a composition in line with the requirements of the recommendation. However, following a transfer of the executive functions of the National Committee to the Secretary of the National Council of Security and Defence, some organisational measures were still needed before the NAC could operate as intended. GRECO therefore concluded that recommendation i remained partly implemented.

6. As a preliminary remark, the Ukrainian authorities recall that Presidential Decree No. 362 of 2012 has broadened the tasks of the NAC. One of its missions is to carry out a systematic analysis of the progress achieved in counteracting corruption in Ukraine and of the efficiency of the implementation of the anti-corruption strategy. It also has to make policy implementation proposals in order to improve legislation and eliminate inconsistencies, to improve co-ordination of actors involved in the prevention of and fight against corruption and to facilitate the implementation of recommendations provided by GRECO and other international actors. To fulfil this mandate, the authorities explain that the NAC has provided input on the development of relevant draft laws regarding the prevention of and fight against corruption, as well as on the National Anti-corruption Strategy 2011-2015. Assessment of the implementation of the strategy started in 2012. An annual report on the activity of the NAC and on the implementation of measures in the anti-corruption sphere is to be prepared and made public by 15 April 2013.
7. The authorities also submit that Presidential Decree No. 598 of 2012 amended the composition of the NAC. Representatives of civil society now have to constitute at least one fifth of the members of the Committee. A procedure for the selection of Committee members representing civil society was established by Presidential Decree No. 890 of 2011. According to this procedure, possible proposals for civil society members of the NAC are to be put forward and considered by the NAC's Public Council, a working group comprised of civil society representatives and created in order to take account of public opinion in the operation of the NAC. The proposals for candidates are forwarded to the Executive Secretary of the Committee – who is also the Secretary of the National Security and Defence Council of Ukraine, an advisory body to the President – for final approval by the President of Ukraine. The NAC currently comprises 33 members, of whom two represent civil society. With a view to increasing the transparency of the NAC's composition following recommendations by the European Commission, Presidential Decree No. 59 of 1 February 2013 amended again the procedure for the composition of the NAC. The new procedure foresees requests from the NAC's Executive Secretary to the heads of the state bodies and scientific institutions to propose candidates to the Committee. Consequently, the composition of the NAC is currently under renewal.

8. GRECO notes, as it already did in its previous reports, that the NAC's mandate appears to be in line with the requirements of the recommendation, that it represents both public bodies and civil society and that some efforts have been undertaken by the Ukrainian authorities to increase the proportion of civil society members of the Committee. As the composition of the NAC and the procedure for the selection of its members have been repeatedly amended, however, the concrete outcome of these efforts remains unclear at this point. GRECO also notes that the composition of the NAC, prior to the latest changes, reflected a very low representation in practice of civil society.
9. GRECO moreover reiterates the doubts it had previously expressed about the adequate level of independence of the Committee. Its institutional position under the President of Ukraine, who chairs its meetings and approves the nomination of all its members, the fact that its Executive Secretary is also the head of the National Security and Defence Council of Ukraine, another advisory body to the President, as well as the description of its tasks above clearly show that this body is intended to provide advice and policy proposals to the President of Ukraine in the anti-corruption sphere. It is questionable therefore, that this body will possess and exercise the independence necessary to be able to carry out effective monitoring. Recent developments, such as the resignation of one of the civil society members of the NAC who claimed that civil society did not have any real influence over the state of anti-corruption policy through the Committee, do not dispel but rather confirm the doubts GRECO had previously expressed.
10. Lastly, in the absence of public documents, such as an annual report on anti-corruption measures which has yet to be prepared, the concrete results of the NAC's activity remain unclear. GRECO cannot therefore regard this recommendation as fully implemented.
11. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

12. *GRECO recommended to urgently develop a detailed plan of action for the implementation of the national anti-corruption strategy (Concept Paper of the President). The plan of action should preferably be subject to international expertise and, to the extent possible, take into account potential cooperation with and assistance from the international community.*
13. GRECO recalls that at the time of the adoption of the Compliance Report, an Action Plan on the Implementation of the then Concept Paper of the President "*On the Road to Integrity*", was awaiting its final adoption. Subsequently, at the time of adoption of the Addendum to the Compliance Report, GRECO noted that a revised Action Plan had been adopted in 2009 (No. 1013-p); however, the details of it had not been presented and could not be assessed. GRECO also noted that the authorities were in the process of preparing a new National Anti-corruption Strategy, which at the time was not adopted. As a consequence, GRECO was not in a position to form an opinion about the concrete content of the measures taken and concluded that recommendation ii had only been partly implemented (in the Compliance Report as well as in the Addendum thereto). In the Second Addendum to the Compliance Report, GRECO took note of the "*National Anti-corruption Strategy for 2011-2015*" (approved by Presidential Decree No. 1001/2011) and of the "*State Programme on Prevention and Counteraction Corruption 2011-2015*" (approved by Resolution of the Cabinet of Ministers No. 1240/2011). It took the view that the latter document appeared to be adequate in order to implement various parts of the Strategy, but expressed concern regarding the lack of proper involvement of civil society in the development of these documents. GRECO also noted that further adjustments to the Action Plan

were being planned and for these reasons, it maintained its previous conclusion that recommendation ii was partly implemented.

14. The authorities of Ukraine report that the “*National Anti-corruption Strategy for 2011-2015*” foresees a monitoring of its implementation, involving NGOs and independent institutes. The evaluation of the implementation strategy provided the opportunity for a constant dialogue between the public authorities involved and civil society organisations. Two round tables were organised by the Ministry of Justice in 2012, in cooperation with the public association “Nationwide Special Board for the Fight against Corruption and Organised Crime”, on “Ways to implement the National Anti-corruption Strategy 2011-2015: the Role of Institutes of Civil Society” and “Efficiency of performance indicators in the State Programme on Prevention and Counteraction of Corruption 2011-2015”. As a result of the wide discussion held during these meetings on the implementation of the State Programme, proposals for improvement were prepared by the Ministry of Justice and are currently subject to consultation with relevant state bodies. These proposals include the addition to the State Programme of activities aiming at assessing the results and the progress achieved in the implementation of regional programmes on prevention and counteraction of corruption, as well as on the introduction of an electronic system for self-evaluation of civil servants on issues of anti-corruption legislation. These results assessment activities are to be carried out in co-operation with civil society. Other proposals to improve the State programme include the further definition of performance indicators, particularly on media coverage of the results of audits and inspections regarding the use of public funds, state and municipal property, on the implementation of the system of electronic procurement, on the improvement of the tax administration system and on the professional training of civil servants and local self-government officials.
15. GRECO welcomes the efforts made to involve civil society in the assessment of the implementation of the “*State Programme on Prevention and Counteraction Corruption 2011-2015*”, in response to concerns it had previously expressed on their proper involvement. While it is not in a position to assess the real input of civil society in the review process, it accepts that some dialogue seems to have taken place, which resulted in proposals for amendment of the State Programme. It hopes that these proposals will bear fruit, as it is important that the State Programme, covering a time-span of five years, is adjusted in light of new developments and lessons learned in its implementation.
16. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

17. *GRECO recommended to review the system of administrative liability for corruption in order to clearly establish that cases of corruption are to be treated as criminal offences as a main rule, or, at the very least to establish a clear cut distinction between the requirements for applying these two distinct procedures.*
18. GRECO recalls that in the Second Addendum to the Compliance Report, it was concluded that this recommendation had not been implemented, as no substantial results had been achieved in respect of the problems relating to two parallel systems dealing with corruption offences, as addressed in the recommendation.
19. The authorities of Ukraine explain that the “*State Programme on Prevention and Counteraction Corruption 2011-2015*” foresaw the elaboration by the end of 2012 of a draft law in order to bring

the provisions on responsibility for corruption offences in line with GRECO recommendations, also taking into account the results of the Third Evaluation Round. A draft law “*on Amendment of Certain Legislative Acts of Ukraine as regards the Improvement of Legislation in the Area of Prevention and Counteraction to Corruption*” was prepared accordingly and was submitted to Parliament on 17 January 2013. This draft law foresees the deletion from the Code of Administrative Offences (hereafter CAO) of articles 172.2 on “breach of restriction on the use of service position” and 172.3 on “proposal or offer of illegal benefit”, in order to enable criminal liability for active and passive bribery. Moreover, sanctions for active and passive bribery under articles 368, 368.3, 368.4 and 369 of the Criminal Code would be toughened, so as to entail a term of imprisonment.

20. Reference is also made to article 172.5 of the CAO on “violations of legally imposed restrictions on receiving gifts”. The authorities state that this article would not be abolished, but that article 8 of Law 3206 “*On Principles of Preventing and Counteracting Corruption*” provides for a clear-cut distinction between cases giving rise to criminal liability of the offender and cases entailing administrative liability. According to this article, all cases in which a gift is accepted in exchange for an action or inaction in the interest of the giver of the gift are subject to criminal liability under the bribery provisions of the Criminal Code. The only cases subject to administrative liability under article 172.5 CAO are those in which a person violates a legal ban on the acceptance of gifts by receiving a gift, without a specific purpose, from one of his/her subordinates.
21. The authorities add that the Parliament adopted, on 13 April 2012, a new Code of Criminal Procedure which entered into force on 20 November 2012. The final provisions of the Code prescribe that a law “*On Criminal Misdemeanours*” is to be developed. A Decree of the President of Ukraine of 30 May 2012 (No. 98) established a working group on the reform of the legislation on administrative offences and the introduction of the institution of criminal misdemeanour. The authorities state that this will allow full criminalisation of the liability for corruption offences.
22. GRECO welcomes the intention of the Ukrainian authorities to abolish articles 172.2 and 172.3 CAO and to deal with these corruption offences exclusively under the Criminal Code and the Code of Criminal Procedure. It notes, however, that the draft law providing for this abolition has not yet entered into force. GRECO is also satisfied by the explanations provided on article 172.5 CAO and invites the Ukrainian authorities to disseminate them among practitioners, in order to make it clear that the acceptance of a gift in exchange for an action or inaction in the interest of the gift-giver is to be prosecuted as a criminal offence.
23. GRECO concludes that recommendation iii has been partly implemented.

Recommendation v.

24. *GRECO recommended to enhance the independence of the Procuracy from political influence and to provide it with a clearer mandate focused on the leading of pre-trial criminal investigations and prosecutions.*
25. GRECO recalls that following some attempts at legislative reform which had failed, the Prosecutor’s Office operates under the previous version of the Constitution of 1996, according to which it has four main functions: (i) to participate in court prosecutions on behalf of the State; (ii) to represent the interests of citizens or of the State in court; (iii) to supervise all bodies conducting pre-trial investigations and (iv) to supervise the execution of court decisions. *A Working Group on Issues of Reforming the Prosecutors’ Office and the System of Legal*

Advocacy was established in November 2011 to draft a new law on the Prosecutor's Office in the light of international standards and in particular, to fulfil what is required by Council of Europe standards. In the Second Addendum to the Compliance Report, GRECO acknowledged that some new initiatives had been taken to comply with the recommendation but, as they had not yet produced any tangible results, it concluded that the recommendation had not been implemented.

26. The authorities of Ukraine now submit that the Parliament adopted, on 18 March, 2012 a law "*On Amendments to Particular Legislative Acts of Ukraine on Issues of Improving the Activity of the Prosecutor's Office*", which entered into force on 1 December 2012. They explain that this law narrows the scope of powers of the Prosecutor's Office in the area of general supervision over application of the law. A first change is of a procedural nature: checks performed by prosecutors on the application of the law outside the criminal law sphere may now only be carried out after prior consideration of the matter by the competent authority within the executive branch of power or further to a failure by this authority to take a decision within the established time-limits. Such a check may only be carried out after the prosecutor – by a resolution – informs the natural or legal person under review of the reasons for this review and the breach that is alleged. This resolution is subject to appeal by the person under review, either to the higher level prosecutor or to the administrative justice system.
27. The law also abolishes the powers of the prosecutor regarding the issuance of binding acts of prosecution (protest and instruction) with suspensive effect and replaces them by a single act of prosecution, without suspensive effect, called "submission". Submissions may be used by prosecutors to react to breaches of the law and request their elimination, to engage the responsibility of concerned persons, to request the reimbursement of damage incurred, to abolish legal acts or bring them into conformity with the law and to request the termination of office of officials or service persons further to their unlawful action or inactivity. Suspensions may be served to any entity or person within the executive power, as well as commercial and non-commercial entities. In case of inaction or refusal of the person or entity concerned to act in conformity with the submission, the prosecutor may bring the case to court. The authorities state that this change is intended to limit the powers of prosecutors on the persons or entities subject to legality checks.
28. Another important element, according to the Ukrainian authorities, is the entry into force on 20 November 2012 of the new Criminal Procedure Code. Within the new model of criminal justice introduced by the Code, prosecutors are given a greater role within criminal procedure. They are vested with the tasks of procedural guidance of the investigation, conduct of public prosecution and supervision over the execution of judicial decisions. The Ukrainian authorities add that the working group referred to under paragraph 25 is continuing its work with a view to a comprehensive reform of the system of the Prosecutor's Office.
29. Finally, as regards the independence of the Prosecutor's Office from political influence, the authorities state that article 7 of the Law "On Prosecutor's Office", currently in force, forbids any interference in the activity of the Prosecutor's Office by state and local self-government bodies, their officials and also the media and other entities and their representatives.
30. GRECO takes note of the information provided. It accepts that the legal changes reported appear to go some way towards limiting the powers of the Prosecutor's Office outside criminal proceedings. It also notes the statement by the Ukrainian authorities that its role within criminal proceedings is at the same time reinforced. However, it takes the view that these reforms are not sufficient to fulfil the core objectives of the recommendation. Such objectives need to be covered

within the law on the Prosecutor's Office - which is apparently still under preparation within the working group referred to above - and changes to the Constitution are likely to be required. The procedural changes referred to under paragraphs 26 and 27 actually highlight that the Prosecutor's Office still has a wide role outside the criminal law sphere, even if this role has been reduced. Moreover, as regards possible political influence over the Prosecutor's Office, especially at top level, GRECO is aware that certain provisions of the Constitution, such as article 122 which gives power to the Parliament to express a vote of no confidence in the Prosecutor General, continue to block the adoption of regulations on the Prosecutor's Office that would be fully in line with European standards, as highlighted again recently by the Venice Commission¹.

31. GRECO concludes that recommendation v has been partly implemented.

Recommendations xi and xii.

32. *GRECO recommended:*

to introduce regulations with respect to confiscation and seizure of proceeds from crime which would make it possible to apply measures with regard to direct as well as indirect (converted) proceeds, the value of the proceeds and in respect of proceeds held by a third party in conformity with the Criminal Law Convention on Corruption (ETS 173) (recommendation xi) and

to introduce regulations on the management of seized property, which can be applied in a flexible way in order to sufficiently preserve the value of such property (recommendation xii).

33. GRECO recalls that in the Compliance Report, it assessed recommendations xi and xii as partly implemented, as a reform of the criminal process to address the shortcomings raised in the recommendations was at an advanced stage of preparation. In the Addendum to the Compliance Report, the Ukrainian authorities referred to the draft law "On Amendments to the Criminal and the Criminal Procedure Codes of Ukraine on improvement of confiscation measures", which had been prepared by the Ministry of Justice in order to comply with recommendations of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL). The draft law was submitted for appraisal by experts appointed by the Council of Europe in July 2010 and was subsequently approved by the *National Anti-corruption Committee* in October 2010 which recommended its forwarding to Parliament. In the Second Addendum to the Compliance Report, GRECO noted that the draft law had passed first reading in Parliament and that a second reading of the draft was planned later in 2012. It concluded that recommendations xi and xii were partly implemented as the draft had not been adopted and noted, furthermore, that temporary measures, such as seizure, did not appear to form part of the draft law.

34. The authorities of Ukraine now report that the draft law referred to in previous GRECO compliance reports was abandoned, as a result of the adoption of the new Code of Criminal Procedure. The Cabinet of Ministers submitted, on 17 December 2012, to the Parliament a new draft law "On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine as regards the Improvement of Procedure for Forfeiture" (registration number 1103), which is aimed at improving the confiscation procedure and extending the possibility to confiscate property to all crimes, without exception. According to the provisions of the draft, new articles would be added to the Criminal Code, according to which confiscation would become compulsory in all cases in which the property was: a) obtained by committing a crime and/or is the proceeds of

¹ See [Opinion of 15 October 2012 on the draft law on the Public Prosecutor's Office of Ukraine \(prepared by the Ukrainian Commission on strengthening democracy and the rule of law\)](#), paragraphs 14-15.

such property; b) used to incite or remunerate a person to commit a crime, or to facilitate a crime; c) the target of a crime or d) found, produced, adapted and used as a means or instrument to commit a crime. The authorities also submit that the Cabinet of Ministers adopted, on 19 November 2012, a Resolution (No 1104) “*On the Implementation of Particular Provisions of the Criminal Procedure Code of Ukraine*” concerning storage and sale of seized items in criminal proceedings.

35. As regards recommendation xi, GRECO takes note that the draft law referred to in the Second Addendum to the Compliance Report has been abandoned and that yet another draft law has been prepared to comply with the recommendation, namely draft law “*On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine as regards the Improvement of Procedure for Forfeiture*”. GRECO regrets that it results in further delays in the adoption of a suitable legal framework on confiscation and seizure of crime proceeds. That said, the current draft law would – if adopted – satisfy some of the requirements of the recommendation: articles 96.1 and 96.2, which would be added to the Criminal Code, foresee direct and indirect confiscation of the proceeds from crime, confiscation of the value of the proceeds in case they have been converted, as well as confiscation of proceeds held by third parties, in case the third party knew or should have known that the proceeds were obtained from a crime. The draft law also foresees the amendment of article 167 of the Code of Criminal Procedure to provide for seizure of proceeds from crime. The wording of this provision, however, raises some issues with regard to the requirements of the recommendation. It allows the seizure of “property in the form of belongings, documents, monetary assets, etc.”, a rather imprecise wording which creates uncertainty about the exact scope of the provision. Direct and indirect seizure of the proceeds from crime, as well as seizure of assets held by third parties, are foreseen, but the element of seizure of the value of the proceeds appears to be missing. GRECO invites the Ukrainian authorities to address these issues before adopting the draft law.
36. As regards recommendation xii, GRECO takes note of the adoption of Resolution No. 1104 of the Cabinet of Ministers. It takes the view that this resolution does not adequately respond to the purpose of the recommendation, but rather deals with storage and preservation of material means of evidence. It does contain paragraph 27 which addresses the issue of temporarily withdrawn property, but this paragraph only specifies that such property is to be dealt with according to the preceding paragraphs of the resolution. These paragraphs contain a list of material goods and GRECO notes that several types of property that are especially relevant to seizure in the context of the fight against corruption, such as immovable property, certain types of vehicles (planes or boats) and immaterial property (bonds, shares etc.), are missing from this list. The resolution does not contain any provision on the management of seized property, nor on the costs incurred by such management.
37. GRECO concludes that recommendation xi has been partly implemented and recommendation xii has not been implemented.

Recommendation xiv.

38. *GRECO recommended to adopt a clear set of rules governing the administrative process and decision making as well as clear guidelines with regard to the hierarchy of different legal norms and standards governing public administration.*
39. GRECO recalls that, at the time of adoption of the Compliance Report, a draft Administrative Procedure Code was pending before Parliament and that a law “*On Normative Legal Acts*”,

regulating among other things the hierarchy of norms, had been adopted by Parliament on 1 October 2008, but had subsequently been vetoed by the President of Ukraine. At the time of adoption of the Addendum to the Compliance Report, the authorities submitted that another draft Administrative Procedure Code had been elaborated by the Ministry of Justice and sent to the Cabinet of Ministers. The authorities also indicated that a draft law “*On Normative Legal Acts*”, had been submitted to Parliament by an individual MP on 1 December 2010. At the time of adoption of the Second Addendum to the Compliance Report, the authorities explained that the draft Administrative Procedure Code, which had been submitted to the Cabinet of Ministers, was being re-worked by the Ministry of Justice. The draft law “*On Normative Legal Acts*” had been through a first reading in Parliament and was being prepared for a second reading some time in 2012. GRECO consequently assessed recommendation xiv as partly implemented.

40. The authorities of Ukraine indicate that the Parliament adopted, on 6 September 2012, the Law of Ukraine “*On Administrative Services*” which stipulates the conditions for the exercise of the rights of natural and legal persons in their relations with administrative authorities. In particular, the law clearly defines procedures and time-limits for the provision of administrative services. Regarding the previously referred-to draft Administrative Procedure Code, the authorities state that it was submitted on 26 November 2012 to the Cabinet of Ministers. No progress is reported regarding the draft law “*On Normative Legal Acts*”.
41. GRECO notes the adoption of the Law “*On Administrative Services*” which represents a positive step towards implementation of the recommendation, by establishing some rules governing the provision of certain administrative services, such as the conditions for application, information to be provided to the public and deadlines for the provision of requested services and documents. However, no tangible results have been achieved since the adoption of the Second Addendum to the Compliance Report regarding the draft Administrative Procedure Code and the issue of hierarchy of legal norms and standards.
42. GRECO concludes that recommendation xiv remains partly implemented.

Recommendation xviii.

43. *GRECO recommended that the external independent audit of local authorities be extended to cover all their activities and that such an audit is built on the same principles of independence, transparency and control which apply to the Accounting Chamber.*
44. GRECO recalls from the Evaluation Report that local authorities were subject to auditing by the independent Accounting Chamber only in so far as their state funding was concerned and that the remaining auditing was carried out by bodies of the Ministry of Finance (internal monitoring by the State). The Ukrainian authorities indicated in the Compliance Report that an extension of the powers of the Accounting Chamber required changes to Article 98 of the Constitution and, in the Addendum to the Compliance Report, GRECO was informed that the Accounting Chamber was working on draft amendments to the Constitution, including its Article 98, in order to allow it to control local authorities. The recommendation was at the time considered partly implemented. In the Second Addendum to the Compliance Report, the authorities explained that a new central executive body, the State Finance Inspection, had been created to carry out financial control and audits. GRECO criticized this development, stating that this new body, like the former State Control and Revision Office which existed at the time of the Evaluation Report, was an arm of the executive power with a main focus on state financing. However, as a new Constitutional Assembly had been mandated, *inter alia*, to examine possible changes in the powers of the

Accounting Chamber in respect of auditing local authorities, GRECO maintained its previous conclusion that the recommendation was partly implemented.

45. The authorities of Ukraine report that the “*State Programme on Prevention and Counteraction Corruption 2011-2015*” requires the improvement of the external audit over the use of funds by local authorities, through adoption of an appropriate law. The “*Concept for the Development of Public Finances*” approved by Edict No. 633-p of the Cabinet of Ministers, foresees a broadening of the powers of the Accounting Chamber to control the revenues and expenses of local budgets. However, the authorities also reiterate that amendments to Article 98 of the Constitution are necessary to this end. This issue was considered by the Constitutional Assembly, which decided to support such amendments and proposed to the President of Ukraine to consider and submit to Parliament a draft Law of Ukraine “*On Amendments to Article 98 of the Ukrainian Constitution (on powers of the Accounting Chamber)*”. This draft law was submitted by the President to the Parliament on 18 January 2013.
46. GRECO takes note of the information provided. It welcomes the intention of the Ukrainian authorities to amend the Constitution in order to extend the mandate of the Accounting Chamber, in line with the recommendation. However, it cannot but note that progress of the implementation of this recommendation has been, and continues to be, very slow.
47. GRECO concludes that recommendation xviii remains partly implemented.

Recommendation xix.

48. *GRECO recommended that public procurement legislation be thoroughly reviewed in order to bring it into compliance with European norms and standards in respect of policy, accountability and transparency.*
49. GRECO recalls that it assessed this recommendation as partly implemented in the Compliance Report, as a former law on procurement had been abolished and the process of preparing new legislation had been initiated. In the Addendum to the Compliance Report, GRECO welcomed that the law “*On Public Procurements*” had been adopted by Parliament (1 June 2010). This law is aimed at ensuring a fair competitive environment and effective use of state funds and at preventing corruption. GRECO considered this a step in the right direction, but was concerned that a number of amendments had been introduced to exclude significant areas from the scope of application of the law, *inter alia*, procurement relating to the Euro 2012 football championship as well as in the energy area. In the Second Addendum to the Compliance Report, GRECO noted an improvement to the public procurement legislation, thanks to amendments to the law “*On Public Procurements*” adopted in July 2011. However, it pointed out the need for further alignment of certain issues with European norms (EU directives), for example, the definition of “*procuring entities*” in relation to state owned enterprises and enterprises of public interest. The recommendation was therefore concluded as partly implemented.
50. The authorities of Ukraine submit that a series of sub-legislative acts² have been adopted to implement the mechanism of procurement under framework agreements, which is introduced by

² Resolutions of the Cabinet of Ministers of 4 July 2012 No. 602 “*On Adoption of the Procedure for Assigning General Purchasing Entities and Interaction of Purchasing Entities with General Purchasing Entity under Framework Agreements*” and No. 603 “*On Peculiarities of Framework Agreements Execution*”, Orders of the Ministry of Economic Development and Trade of 24 April 2012 No. 503 “*On the Adoption of the List of Goods and Services which may be procured under Framework Agreements*” and No. 504 “*on Peculiarities of Framework Agreements Conclusions*”.

the law “*On Public Procurements*”. Moreover, within the draft Free Trade Agreement between Ukraine and the EU, it is planned, over the course of the next three to eight years, to gradually bring Ukrainian public procurement legislation into conformity with EU directives on public procurement. The Parliament accordingly adopted, on 24 May 2012, the Law “*On Peculiarities of Conducting Procurement in Particular Spheres of Economic Activity*” which implements the provisions of EU Directive 2004/17 into national legislation. This law was elaborated in cooperation with international experts, in particular from the European Commission and the World Bank. Another Law “*On Amendments to the Law of Ukraine “on Public Procurement” on the Introduction of the Procedure of Electronic Reverse Auction*” was adopted by Parliament on 7 June 2012, which introduces a new electronic procurement system. Based on the experience of other countries, the authorities state their belief that this system should favour an effective and transparent use of public funds and favour fair competition in this sphere.

51. GRECO takes note of the continuing process of alignment of Ukrainian public procurement legislation with European norms, in particular EU directives. However, it would appear from the documents submitted that certain issues still need to be aligned with European norms. GRECO understands that legislative reforms are still on-going in order to further improve the public procurement legislation in Ukraine.
52. GRECO concludes that recommendation xix remains partly implemented.

Recommendation xx.

53. *GRECO recommended to introduce a reform process covering an appropriate range of all public officials – and not only civil servants – following the principles foreseen with respect to civil service reforms.*
54. GRECO recalls that at the time of adoption of the Compliance Report, a draft law “*On Civil Service*” and several other draft laws were pending before Parliament aiming at modernising public administration, including the conditions for public officials and other employees who are not civil servants. GRECO noted in the Addendum to the Compliance Report that as a result of the change of Government in March 2010, this draft law was withdrawn and replaced by another draft law “*On Civil Service*”, which passed a first reading in Parliament on 7 April 2011, aiming at separating political and administrative posts, reforming the management of the civil service and the procedures of appointment and promotion and raising the salaries of civil servants. In addition, the authorities indicated that two draft laws amending existing legislation (Reg. No. 3155 of 16 September 2008 and Reg. No. 3155 of 3 February 2010) were pending before Parliament, granting the status of public servants to medical and pharmaceutical employees, pedagogical and scientific pedagogical employees of state-owned medical and educational establishments. In the Second Addendum to the Compliance Report, the authorities indicated that the draft law “*On Civil Service*” had been adopted and would enter into force on 1 January 2013. It was also reported that the Cabinet of Ministers had submitted to Parliament a draft law “*On Service in Self-Government Bodies*”, aiming at reforming areas, such as the recruitment, legal status and social security of officers in local authorities. GRECO noted that the reform of public administration had been largely limited to the drafting of new legislation and regulations and that the process had been slow. It stressed that an appropriate legal framework is a fundamental prerequisite, but that reform of public administration needs to go beyond legislative measures and to tackle practice, for example, by training staff. GRECO concluded that this recommendation was partly implemented.

55. The authorities of Ukraine now indicate that the entry into force of the Law “*On Civil Service*” was postponed by Parliament to 1 January 2014, due to budgetary reasons and to the necessity of coordinating the introduction of new versions of this law and of the draft law “*On Service in Self-Government Bodies*” (No. 9673 of 11 January 2012), which was meanwhile sent back to the Cabinet of Ministers for further revision. The Government submitted to Parliament a draft law “*On Amendments to Certain Laws of Ukraine in Connection with the Adoption of the Law of Ukraine on Civil Service*” which was adopted at first reading, in November 2012, and is currently being prepared for second reading. In order to implement the amended Law “*On Civil Service*”, the National Agency of Ukraine on Civil Service developed seven draft decrees of the Cabinet of Ministers and adopted 11 procedural orders.
56. The authorities also report that the President of Ukraine approved, on 1 February 2012, the *Strategy of State Personnel Policy for 2012-2020* (Decree No.45) and, on 20 July 2012, the *Action Plan for the Implementation in 2012 of the Strategy of State Personnel Policy for 2012-2020* (Decree No. 453). Measures implemented in 2012 according to this Plan focused on the implementation of the amended Law of Ukraine “*On Civil Service*” and training of various categories of personnel, such as personnel released from the military and public officials and public servants in the environmental field. The authorities report several training initiatives focused on new legislation on the civil service: 220 training seminars were held for public servants working in the human resources departments of central and local government bodies, which were attended by 94% of the public servants of those departments; 12 seminars were held by the National Agency on Civil Service, with the participation of representatives of central and local government bodies as well as civil society organisations, to discuss priorities and perspectives of civil service development; 27 higher education institutions were selected on a competitive basis to provide training on state administration and civil service to 1457 trainees.
57. Finally, the authorities stress that the legislative measures taken on the reform of public service do not apply only to civil servants, but also to other personnel of the public sector. For instance, the Law “*On Principles of Prevention and Counteraction to Corruption*” applies to all public sector employees, including officials of legal entities of public law who are paid from the state or local authorities’ budget, as well as to individuals who are not civil servants or local officials but who provide public services.
58. GRECO regrets that legislative reforms of public administration have suffered further setbacks since the Second Addendum to the Compliance Report. The Law “*On Civil Service*”, the adoption of which had been announced in that report, has still not entered into force but has meanwhile already been amended. This focus being put on the legislative side of public administration reform and the lack of progress thereon is detrimental to the implementation of a legal framework that is still not fixed. GRECO notes the considerable training efforts that have apparently been carried out by the Ukrainian authorities, but questions the pertinence of providing training on a legal framework that is constantly undergoing change. It also notes – and welcomes – the fact that the Law “*On Principles of Prevention and Counteraction to Corruption*” applies to all public officials, whatever their status. However, it is unclear whether this is also the case for the other legislative acts that still need to be adopted.
59. GRECO concludes that recommendation xx remains partly implemented.

Recommendation xxi.

60. *GRECO recommended to introduce clear rules/guidelines for all public officials to report suspicions of corruption and to introduce protection of those who report in good faith (whistle-blowers) from adverse consequences.*
61. GRECO recalls that in the Second Addendum to the Compliance Report, it noted the adoption and entry into force on 1 July 2011 of the law “*On the Principles of Preventing and Combating Corruption*”. It welcomed in this law the introduction of a clear duty upon public officials to report suspicions of corruption and the stipulation that persons who report are to be protected from any adverse consequences. However, as subsequent provisions for the practical implementation of the law still had to be adopted and no concrete arrangements had been taken for the actual protection of whistle-blowers, it considered that Ukraine had not yet complied in full with the recommendation.
62. The authorities of Ukraine state that the Parliament adopted on 17 May 2012 a Law “*On amendments to particular laws of Ukraine in connection with the adoption of the Law on the Principles of Preventing and Combating Corruption*”. This law introduces in several sectorial laws and regulations³ provisions according to which persons who report on suspicions of corruption cannot be dismissed, forced to resign or subject to disciplinary liability in connection with their reporting. They may also appeal any disciplinary decision or decision of dismissal, according to the relevant legal procedures. The Ministry of Justice also submitted to the government a draft law “*On amendments to particular laws of Ukraine on the improvement of financial control and resolution of conflicts of interest*”. This draft law prescribes *inter alia* supplementing the Law on the Principles of Preventing and Combating Corruption with general provisions according to which no person may be dismissed or forced to resign, brought to disciplinary liability or be subject to negative means of influence (transfer, formal evaluation, change of working conditions etc.) as a result of a report on the violation of that Law by one of their colleagues.
63. GRECO takes note of the information provided. It welcomes the fact that provisions on whistle-blower protection have been introduced in a series of sectorial laws and regulations. However, concrete arrangements for the actual protection of whistle-blowers, such as the introduction of systems allowing for anonymous reporting or the reversal of the burden of proof in case a person was subject to retaliation measures by his/her employer, still appear to be missing. GRECO also points out that retaliation measures may be much wider than dismissal or disciplinary measures and that whistle-blowers need to be protected against any unjustified sanction or measure taken as a result of their report. In this connection, it welcomes the intention of the Ukrainian authorities to add a more general provision on the protection of whistle-blowers in the Law “*On the Principles of Preventing and Combating Corruption*”.
64. GRECO concludes that recommendation xxi remains partly implemented.

Recommendation xxii.

65. *GRECO recommended to establish a new model code of conduct/ethics for public administration to strengthen the education and instruction of public officials on their obligations and related*

³ Laws of Ukraine “On Security Service of Ukraine”, “On the State Penitentiary Service of Ukraine”, “On the State Special Transport Service”, Disciplinary Regulations of the Armed Forces of Ukraine, Prosecutor’s Office of Ukraine, Customs Service of Ukraine, Internal Affairs Bodies of Ukraine, State Service for Special Communication of Information Protection of Ukraine, Civil Defence Service.

appropriate behaviour with regard to their service, in particular, with respect to reporting suspected corruption, conflicts of interest and properly assisting the public. To enhance the regular rolling training for public officials on anti-corruption measures and ethical conduct in public life as provided for in law, regulations and policy (soft law).

66. GRECO recalls that this recommendation consists of two parts: i) to establish a model code of conduct/ethics and ii) to enhance regular rolling training for public officials. As far as the first part is concerned (code of conduct), GRECO welcomed in the Addendum to the Compliance Report the progress made in the form of the adoption, in 2010, of the General Rules of Conduct for Public Servants as a soft law instrument (Order of the Main Department of Civil Service of 4 August 2010), which appear to offer useful instructions and guidance regarding the prevention of conflicts of interest. GRECO also welcomed the duty of public officials to report suspicions of corruption set out in the Law “*On the Principles of Preventing and Combating Corruption*” (adopted in April 2011). However, the authorities had not addressed matters such as the service conduct of public officials in the form of soft law instruments as foreseen in the recommendation. In the Second Addendum to the Compliance Report, GRECO noted the massive measures undertaken in order to establish codes of conduct/ethical codes on a broad scale in public administration. It pointed out, however, that the legal reform process was still not finalised.
67. With respect to the second part of the recommendation, GRECO welcomed the training activities which seemed to be made available to a large number of officials under the responsibility of Kyiv’s National University of Internal Affairs and the Academy of Governance under the President of Ukraine for managerial staff and for lower grade staff by the relevant ministries or entities which employ them. The training relating to anti-corruption measures and ethical conduct appeared to form part of a systematic and comprehensive approach. That said, GRECO pointed out that the implementation of this part of the recommendation was dependent on completion of the first part, as the implementation of ethical principles through training presupposed that such ethical norms were established by normative acts. The recommendation was concluded as partly implemented.
68. Regarding the first part of the recommendation, the authorities of Ukraine recall that the “*National Anti-corruption Strategy for 2011-2015*” mentions as a priority the formulation in law of principles of ethical conduct for persons authorised to perform functions of state or local government administration, as well as the introduction of a mechanism for the prevention and resolution of conflicts of interest in their activities. These principles and the mechanism are to be inspired by the Model Code of Conduct for Public Officials contained in the *Council of Europe Recommendation No. R (2000) 10 on codes of conduct for public officials*. In order to implement this priority, the Parliament adopted, on 17 May 2012, the Law of Ukraine “*On the Rules of Ethical Conduct*” which establishes uniform rules of conduct for “persons authorised to perform state or local self-government functions” and contains *inter alia* provisions on objectivity, political impartiality, competence, avoidance of illegal decisions, prevention of conflicts of interest and prohibition to accept gifts. It also establishes the principle that violation of the rules of ethical conduct in the law can entail disciplinary, administrative, criminal and financial liability of the person concerned.
69. The authorities make reference to several laws and regulations adopted to implement the provisions of the Law “*On the Rules of Ethical Conduct*”, such as an Order of the National Agency of Ukraine on Civil Service updating the *General Rules of Conduct for Civil Servants* and a new *Code of Professional Ethics and Conduct of Prosecutors* (adopted by the Conference of Prosecutors and approved by Order No. 123 of the Prosecutor General of 28 November 2012).

This process of implementation of the Law in sectorial codes of conduct is currently underway. In this connection, the new version of the Code of Judicial Ethics was adopted by the 11th Congress of judges of Ukraine.

70. The authorities further refer to the Law “*On amendments to particular laws of Ukraine in connection with the adoption of the Law on the Principles of Preventing and Combating Corruption*” adopted by the Parliament, on 17 May 2012, which introduces rules on the prevention and resolution of conflicts of interest. In the case of occurrence of a conflict of interest, the person concerned has to immediately inform his/her direct manager, who shall advise him/her on the necessary course of action. Similar provisions were introduced in a series of sectorial laws⁴.
71. Regarding the second part of the recommendation, the authorities report that the “*State Programme on Prevention and Counteraction Corruption 2011-2015*” foresees the organisation, in a centralised manner, of professional initial and in-service training on the prevention of and fight against corruption, ethical conduct and resolution of conflicts of interest for civil servants and local government officials whose official duties include the implementation of anti-corruption measures at the workplace. The National Agency of Ukraine on Civil Service has undertaken several activities to implement this part of the programme, such as the definition of a procedure for the organisation of the training, the development of a model training programme, the training of 200 trainers and an expansion of the network of educational institutions – from 1 to 32 – providing such professional training. In 2012, 29 917 employees, representing 8% of the total number of civil servants and local self-government officials – have undergone this mandatory professional training. Similar training activities are reported for the employees of the Ministry of Justice. The National Agency on Civil Service and the Ministry of Justice will continue this training on ethical and anti-corruption issues in 2013.
72. GRECO takes note of the new information provided. It welcomes the adoption of the Law “*On the Rules of Ethical Conduct*” which is inspired by the Council of Europe’s Model Code of Conduct for Public Officials and may serve as a legal basis for sectorial codes of ethics/conduct, as intended by the first part of the recommendation. It encourages the Ukrainian authorities to pursue the process of adoption of laws and regulations implementing the provisions of the law in all sectors of public administration. It also welcomes the training measures that have been further implemented and seem now to form part of a concerted and regular policy, as requested by the second part of the recommendation.
73. GRECO concludes that recommendation xxii has been implemented satisfactorily.

Recommendation xxiv.

74. *GRECO recommended to introduce liability of legal persons for corruption offences, including effective, proportionate and dissuasive sanctions, and to consider establishing a registration system for legal persons which would be subject to corporate sanctions.*

⁴ Laws of Ukraine “On Militia”, “On Prosecutor’s Office”, “On Security Service of Ukraine”, “On Civil Service”, “On the State Protection of the Government Authorities of Ukraine and Officials”, “On the State Service of Special Communication and Protection of Information”, “On Service in the Local Self-Government Authorities”, “On Diplomatic Service”, “On State Border Guard Service of Ukraine”, “On Legal Basis for Civil Protection”, “On the State Penitentiary Service of Ukraine”, “On the State Special Transport Service”, “On State Service for Special Communication of Information Protection of Ukraine”, “On Military Duty and Military Service”.

75. GRECO recalls that a draft law “*On Responsibility of Legal Person for Committing Corruption Offences*” was pending before Parliament at the time of the adoption of the Compliance Report. Subsequently, that draft was adopted by Parliament. However, this law together with other anti-corruption legislation was abrogated by Parliament on 5 January 2011 and replaced by new draft legislation submitted by the President to Parliament in December 2011. The latter draft did not include provisions on corporate liability for corruption offences. The issue of liability of legal persons was later established as a priority under the *National Anti-corruption Strategy 2011-2015* and the Ministry of Justice was tasked to draft legislation to that end during 2012. In the absence of concrete results, GRECO concluded in the Second Addendum to the Compliance Report that recommendation xxiv had not been implemented.
76. The authorities of Ukraine now report that a draft Law of Ukraine “*On Amendments to Particular Legal Acts of Ukraine on Establishment of Measures having Criminal-Legal Character in respect of Legal Persons*” was submitted by the government to Parliament on 17 January 2013. This draft law foresees amendments to the Criminal Code providing criminal liability for legal persons when offences of bribery, trading in influence and laundering of proceeds of crime have been committed in their interest or on their behalf by their founders, directors, members or any authorised person, as well as for cases of complicity in committing such offences. The sanctions foreseen for the legal persons concerned are fines, prohibition to pursue certain activities, confiscation of property or liquidation. The draft law also contains provisions amending the Code of Criminal Procedure, to specify the procedure of application of these sanctions to legal entities.
77. GRECO welcomes the presentation to Parliament of a draft law introducing criminal liability of legal persons for corruption and related offences. It represents a positive step towards implementation of the recommendation. GRECO notes, however, that no provision seems to be made in the draft text for liability of the legal person in case of a lack of supervision or control, as required by Article 18.2 of the Criminal Law Convention on Corruption (ETS 173). It urges the authorities to address this issue before the adoption of the law. Moreover, GRECO notes that no consideration seems yet to have been given to the establishment of a registration system for legal persons which would be subject to sanctions under the future law.
78. GRECO concludes that recommendation xxiv has been partly implemented.

III. CONCLUSION

79. In addition to the conclusions contained in the Joint First and Second Round Compliance Report on Ukraine and in view of the above, GRECO concludes that recommendation(s) ii and xxii have been implemented satisfactorily, recommendations i, iii, v, xi, xiv, xviii, xix, xx, xxi and xxiv have been partly implemented and recommendation xii has not been implemented.
80. **With the adoption of this Third Addendum to the Joint First and Second Round Compliance Report, GRECO concludes that out of the twenty-five recommendations issued to Ukraine, in total only fourteen recommendations have been implemented satisfactorily or dealt with in a satisfactory manner.** GRECO notes that a *State Programme for Preventing and Combating Corruption 2011-2015* has been adopted and that progress has been accomplished on a number of issues, with the adoption of a Law “*On the Rules of Ethical Conduct*”, of provisions on conflicts of interest for public officials and the setting up of a systematic programme of training for civil servants. Positive initiatives have been taken to comply with some recommendations, for instance as regards the review of the system of administrative liability for corruption offences and the adoption of provisions on whistle-blower protection in

several sectorial laws and regulations. Depending on whether these initiatives are pursued and complemented with necessary measures, compliance with more recommendations could be ensured.

81. GRECO regrets however, that the total number of recommendations that have been complied with – just over half of the recommendations issued – remains low. It is noticeable that a majority of areas still under review have been affected for years by a lack of substantial progress. The initiatives taken since the Second Addendum to the Joint First and Second Round Compliance Report do not unfortunately modify this overall picture. Since the adoption of GRECO's Compliance Report in 2009, numerous and sometimes contradictory measures have been taken, but have rarely been pursued to reach meaningful results. The legal framework as regards such fundamental areas as the Prosecutor's Office, public administration reform and public procurement procedures is still not fixed, leading to a lack of legal security and rendering the necessary implementation measures meaningless. Additional measures to target the proceeds of crime still need to be adopted. GRECO also wishes to reiterate its previously expressed doubts about the National Anti-corruption Committee which, in spite of some efforts to increase – on paper – the representation of civil society in its membership, has not yet shown that it is able to carry out a meaningful monitoring function of anti-corruption policies.
82. Taking into account the lack of such a crucial element as an independent and operational anti-corruption body as well as the numerous remaining uncertainties in the legal framework governing the anti-corruption policy in Ukraine, GRECO urges the Ukrainian authorities to take determined action with a view to addressing its outstanding recommendations and in particular, to adopt draft legislation that is currently pending before Parliament. Therefore, in accordance with Rule 31 paragraph 9.1 of its Rules of Procedure, it requests the Ukrainian authorities to submit additional information on the implementation of recommendations i, iii, v, xi, xii, xiv, xviii, xix, xx, xxi and xxiv by 31 December 2013.
83. Finally, GRECO invites the Ukrainian authorities to authorise, as soon as possible, the publication of the Third Addendum, to translate it into the national language and to make the translation public.