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Joint First and Second Evaluation Round

Fifth Addendum to the Compliance Report on Ukraine

Adopted by GRECO
at its 68th Plenary Meeting
(Strasbourg, 15-19 June 2015)

I. INTRODUCTION

1. GRECO adopted the [Joint First and Second Round Evaluation Report on Ukraine](#) at its 32nd Plenary Meeting (23 March 2007). This report addressed 25 recommendations to Ukraine; it was made public on 29 October 2007.
2. Since then, GRECO has, within the framework of its dedicated compliance procedure, adopted a Compliance Report and four Addenda thereto (the current Report is the Fifth Addendum), based on information provided by Ukraine in the so called Situation Reports and discussions in GRECO's plenary meetings.
3. The Joint First and Second Round [Compliance Report](#) on Ukraine was adopted by GRECO at its 42nd Plenary Meeting (13 May 2009). The Compliance Report, 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.
4. In its first [Addendum to the Compliance Report](#), adopted by GRECO at its 51st Plenary Meeting (27 May 2011), 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.
5. The [Second Addendum to the Compliance Report](#), adopted by GRECO at its 54th Plenary meeting (23 March 2012), 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.
6. In the [Third Addendum to the Compliance Report](#), adopted by GRECO at its 59th Plenary Meeting (22 March 2013) and made public on 24 May 2013, GRECO concluded that recommendations ii and xxii had been implemented satisfactorily, recommendations i, iii, v, xi, xiv, xviii, xix, xx, xxi and xxiv had been partly implemented and recommendation xii had not been implemented. GRECO noted again that just over half of the total number of recommendations had been complied with and that a majority of areas still under review had suffered from a lack of substantial progress and urged the Ukrainian authorities to take determined action.
7. In the [Fourth Addendum to the Compliance Report](#), adopted by GRECO at its 63rd Plenary Meeting (28 March 2014) and made public on 31 March 2014, GRECO concluded that recommendations i, v, xii, xiv, xviii, xix, xx, xxi and xxiv had been partly implemented. GRECO noted that out of the 25 recommendations addressed to Ukraine, in total 16 had been implemented. GRECO referred to still pending reforms to accomplish, including the modalities of the National Anti-Corruption Committee, and requested further information.
8. The purpose of the current report, the [Fifth 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 the still pending recommendations i, v, xii, xiv, xviii, xix, xx, xxi and xxiv in the light of the most recent information¹ provided by the authorities of Ukraine.

II. ANALYSIS

Recommendation i.

9. *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.*

10. It is recalled that in the Compliance Report, GRECO welcomed the formal establishment of the Government Agent for Anti-corruption Policy. However, pending the implementation in practice 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. 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. In the Third Addendum to the Compliance Report, GRECO noted, as in its previous reports, that the NAC's mandate appeared to be in line with the requirements of the recommendation, but that its composition remained unclear and that it reflected a very low representation in practice of civil society; GRECO furthermore noted that one of the members representing civil society had resigned in protest. GRECO maintained its doubts as to the NAC's level of independence and concluded that recommendation i remained partly implemented. In the Fourth Addendum to the Compliance Report, the authorities referred to the Law "On the National Security of Ukraine" (Article 1), according to which the fight against corruption is a component of national security. Taking this into consideration, and given the need to debate the issue of corruption at the highest state level, a meeting of the National Security and Defence Council was to be conducted before the work of the National Anti-Corruption Committee could start. GRECO maintained its conclusion that the recommendation was partly implemented as the final

¹ The information was submitted in writing by the Ukrainian authorities on 3 March and 8 May 2015 as well as during the plenary meeting of GRECO (15-19 June 2015).

composition of the NAC was not established and that it was not yet fully operational, while recalling the importance of keeping this body sufficiently independent in its monitoring function based on a well-balanced composition of public bodies and representatives of civil society.

11. The authorities of Ukraine now report that, on 14 October 2014, Parliament adopted the Law on Prevention of Corruption which entered into force on 26 April 2015. This law establishes the “National Agency for Prevention of Corruption” (NAPC) as a central body of the executive power with special status and responsibilities - controlled by Parliament - and accountable to the Government. The NAPC has been made responsible for the development of anti-corruption strategies as well as for their implementation. The independence of the NAPC is ensured by the law, *inter alia*, through a special procedure for the selection of its five members; these are to be appointed by the Cabinet of Ministers for a period of four years (renewable once), following a selection procedure. Members are to be selected by a special Competition Commission, comprising eight members, appointed by Parliament (one person), the President of Ukraine (one person), the Government (one person), the central civil service (one person) and by civil society groups (four persons). Furthermore, the members are to be remunerated for their work and the NAPC has been provided with its own budget. The law also provides that the civic control over the NAPC is to be ensured through a public oversight mechanism exercised within the NAPC by a Public Council, according to rules to be established by the Government. For the launching of the NAPC, the Cabinet of Ministers has adopted a resolution (18 March 2015) which establishes the NAPC as a central executive authority with a special status, directed and coordinated by the Government. On 25 March 2015, another resolution of the Cabinet was adopted introducing regulations of the competition-based selection of the members of NAPC as well as regulations for the Competition (selection) Commission. On 22 April 2015, the Ordinance of the Cabinet of Ministers “On Conducting Competition for Selection of Members of the National Agency for Prevention of Corruption” was adopted. It identifies, *inter alia*, a “focal point” responsible for the competition (Deputy Minister of the Cabinet of Ministers) and specifies the requirements of the candidates to the NAPC. The Government has also adopted a resolution on the competition for setting up the Civic Council that will perform civic control over the operation of NAPC (Resolution # 140 of 25 March 2015). The Civic Council is to comprise 15 members to be identified directly by the NGOs through competition. Finally, the authorities state that following the appointments to the NAPC in June 2015, its activities are due to start in July the same year.
12. GRECO takes note of the information provided, supported by the law on Prevention of Corruption, adopted in October 2014 as part of a larger anti-corruption legislative package. It notes that with the adoption of this legislation, Ukraine has established a new public institution 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. It is to be welcomed that the NAPC is clearly distinct from the operational law enforcement bodies (the latter being co-ordinated by another dedicated mechanism). The members of the NAPC are to be appointed by the Government (controlled by its “focal point”), however, following a competitive selection procedure which is said to be open to public scrutiny, including non-governmental organisations. GRECO welcomes features, such as transparency of the work of the NAPC and its separate budget, which aim at establishing a degree of independence of the NAPC. GRECO notes that while the NAPC will clearly represent public institutions and external expertise may be brought into the work of the NAPC, it still appears doubtful as to whether civil society will be given a sufficiently important role within the NAPC in practice as intended by the

recommendation under consideration². In this context, GRECO recalls its repeated concern that such a body be provided with a well-balanced mix of representatives of public bodies on the one hand, and civil society representatives, on the other hand. The legislation indicates a degree of “civic control” over the NAPC and that civil society is to be represented in the selection process of these members; however, there is no legal guarantee that the selected candidates will be finally appointed and - to date - the members of the NAPC have not yet been appointed. The actual composition of the NAPC will be crucial for this body to function as intended by the current recommendation. Although much has been achieved, GRECO cannot conclude that this recommendation has been fully complied with as the appointment procedure to the NAPC has not been finalised.

13. GRECO concludes that recommendation i remains partly implemented.

Recommendation v.

14. *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.*
15. GRECO recalls that following a number of attempts at legislative reform of the prosecution service which had failed, GRECO - in its Fourth Compliance Report - took note of draft changes to the Constitution as well as in respect of the law "*On the Prosecutor's Office*" which were pending before Parliament, *inter alia*, aiming at reducing the broad prosecutorial supervisory functions and at making the Prosecution Service more independent. However, the draft legislation was still not adopted by Parliament at the time and GRECO concluded that the recommendation was partly implemented.
16. The authorities now report that, on 14 October 2014, the Law on the Public Prosecutors Office (No. 1697-VII) was adopted by Parliament in a second reading (316 out of 450 MPs supported this decision). The authorities refer to the following new features of the Prosecution Service following introduction of the new legislation:
- The so-called “general oversight” of the Procuracy has been eliminated: Thus, the supervision functions of the prosecution office are limited to the enforcement of laws by law enforcement authorities involved in the operative inquiry and pre-trial investigations (Articles 2 and 25 of...).
 - The exercise of “representation functions” in the interests of citizens or the state in court have been limited to the following instances: i) in respect of citizens (minors, non-capable or with limited capabilities) – if their rights, freedoms or interests are not provided for or not properly provided for by the legal representatives or bodies that are entitled to do so according to law; ii) in respect of the state – if its lawful interests are not provided for or not properly provided for by the appropriate state bodies which is responsible for such functions or if such bodies do not exist (Article 23 of...).
 - The new law defines instances in which the prosecutor is not allowed to carry out representational functions, i.e., with regard to state enterprises, legal relations connected to the election processes, the organisation of referenda, activities of Parliament, the President of Ukraine, activities of mass media outlets, political parties, religious organisations, bodies of the self-governance, trade unions and other public unions (Article 23.3 of...).

² GRECO was informed that a pre-process for selecting NGO candidates to the NAPC had been challenged by some non-governmental organisations, including Transparency International (TI), in June 2015 and that the matter was under consideration by the Ukrainian authorities.

- The new law provides for judicial oversight over the procedure of collecting evidence by the prosecutor for further submission to the court. This oversight is ensured through the fact that the prosecutor represents the interests of the citizen or the state in court only upon approval by the court of the basis for such representation (Article 23.4 of ...).
 - The new law introduces “prosecutorial self-governance”, which is to be carried out through its own bodies – the All-Ukrainian Conference of the Prosecutorial Staff and the Council of the Prosecutors of Ukraine (Articles 67 and 71 of ...).
 - The procedure for selection and promotion of staff, as defined in the law, has been made more open and transparent, under the responsibility of the Qualification Disciplinary Commission, which will be responsible for selection of staff for the prosecutorial bodies and for disciplining of prosecutors (Articles 28-30 and 34-38 of...)
 - The new law guarantees independence of prosecutors as ensured by the special procedure of their appointment, disciplinary punishment and dismissal; through a ban on illegal influence, pressure or interference into the functioning of this service; through the procedure for financing and organisation of the work of the Procuracy prescribed in the new law (Article 16 of the Law); through appropriate material, social and retirement support of the prosecutor; through functioning of the prosecutorial bodies of self-governance; through stipulated by the law measures of personal protection of the prosecutor, members of his family, his property, and through other measure of legal protection (Article 16 of the Law).
17. GRECO takes note of the information provided in respect of the amended law on the Public Prosecutors Office (No. 1697-VII). GRECO is not in a position to assess the law in its entirety; however, it notes that the parts of the new legislation referred to by the authorities of Ukraine clearly go in the direction of focusing the functions of this institution on its core objectives within the criminal justice pre-trial and prosecution process. A number of general supervisory objectives outside this process have been eliminated from its functions. Moreover, GRECO notes that measures have been taken in order to enhance the independence of the Prosecution Service as such, including in respect of the recruitment procedures and the rights of prosecutors. Moreover, the self-governance of this institution through its own bodies has been strengthened. GRECO welcomes these legislative measures which clearly go in the direction required by the recommendation. Practical experience will show the real impact of the measures taken by Ukraine.
18. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

Recommendation xii.

19. *GRECO recommended 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.*
20. It is recalled that the main reason for this recommendation was that there were no effective means in practice in Ukraine for handling seized property the value of which is diminishing rapidly. In the Third Addendum to the Compliance Report, the recommendation was considered not implemented as Resolution No. 1104 of 19 November 2012 (“*On the Implementation of Particular Provisions of the criminal procedure Code*”) of the Cabinet of Ministers, was not seen to go beyond the pure storage of seized property and there were no rules to cover all types of property; this Resolution, therefore, did not adequately respond to the purpose of the recommendation. In the Fourth Addendum to the Compliance Report, the authorities submitted that Article 100.6 of the Code of Criminal Procedure regulates the disposition of seized perishable goods or products property, the value of which is diminishing. Such property can be put on sale, subject to consent by its owner or by court decision. They also referred to the Resolution of the Cabinet of Ministers (No. 1104) which regulates the procedures for storage of seized property

and evidence, their realisation, technological processing, destruction, etc, which according to the authorities regulates in detail the storage and management of physical property and evidence, including vehicles or securities. The authorities added that the Ministry of Justice was in the process of drafting amendments to the Resolution in order to make it more complete. GRECO acknowledged that there had been progress in this area, but considered the recommendation only partly implemented as drafting of provisions was still on-going.

21. The authorities now report that further progress is underway in this area. In order to implement the Plan for Immediate Measures to Counter Corruption (Cabinet of Minister's Order 02.07.2014 No. 647) new draft legislation has been prepared regarding the management of confiscated property and the use of seized property. The draft law aims at enlarging the list of property concerned and at widening the powers regarding the identification of such property. Provisions for the sale of such property are also envisaged.
22. GRECO takes note of the additional information provided, which reveals that the issue of flexible management of seized and confiscated property is still subject to consideration by the Government and that draft legislation is underway. GRECO cannot take a final position in respect of this recommendation before the related issues have been finally regulated. However, it notes that the measures now reported show additional progress in this area. The authorities are urged to pursue their efforts in this respect.
23. GRECO concludes that recommendation xii remains partly implemented.

Recommendation xiv.

24. *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.*
25. GRECO recalls that, at the time of adoption of the Compliance Report, a draft *Administrative Procedure Code* was pending before Parliament and that the law "*On Normative Legal Acts*", regulating, *inter alia*, 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* 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 sometime in 2012. GRECO assessed recommendation xiv as partly implemented. In the Third Addendum to the Compliance Report, GRECO welcomed the adoption of the Law "*On Administrative Services*", which, *inter alia*, defines procedures and time-limits for the provision of administrative services, such as public documents, as a positive step towards implementation of the recommendation. However, no tangible results regarding the draft *Administrative Procedure Code* and the issue of hierarchy of legal norms and standards had been reported and the recommendation remained partly implemented. In the Fourth Addendum to the Compliance Report the authorities reported that, following criticism of the draft *Administrative Procedure Code* from a number of stakeholders, a new working group had been established in July 2013 by the Ministry of Justice (Order № 675 /7 on July 11, 2013, as amended by Order

№ 758/ 7 on 31 July 2013) to revise the draft Code. This work was on-going and GRECO concluded that the recommendation remained partly implemented.

26. The authorities now report that the drafting of a Law on Administrative Procedure is still on-going. The Ukrainian authorities received expert opinions from both the Council of Europe and the “OECD/SIGMA programme” at the end of 2014. However, the Government has not as yet submitted a draft law on this matter to Parliament.
27. GRECO notes that the reform of the administrative process is still on-going and that international expert opinions have been considered during this process. GRECO wishes to repeat its earlier position that the current situation where the legal framework governing administrative decisions is still not finalised makes it difficult for the public officials to carry out their functions in a coherent way, as well as for the larger public to know their rights and obligations in all respects of public administration. The recommendation requires further urgent attention.
28. GRECO concludes that recommendation xiv remains partly implemented.

Recommendation xviii.

29. *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.*
30. 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 criticised this development, stating that this new body, like the former State Control and Revision Office which existed at the time of the adoption of the Evaluation Report, was an arm of the executive power. In the Third Addendum to the Compliance Report, GRECO was pleased that the powers of the Accounting Chamber to control the revenues and expenses of local budgets were again being considered and that amendments to Article 98 of the Constitution were envisaged to this end. In the Fourth Addendum to the Compliance Report, the authorities reported that Law No. 586 - VII of 19 September 2013 introduced amendments to Article 98 of the Constitution, providing that the Accounting Chamber is to exercise control on behalf of the Verkhovna Rada of Ukraine on the flow of funds of the State Budget and their use. The authorities added that the “*Strategy of public financial management systems*” adopted by the Cabinet of Ministers (No. 774 -p dated 1 August 2013) foresaw the drafting of a new law on the Accounting Chamber to clarify its status as the supreme body of the external audit of public finances, including the state budget and the receipt and use of local budgets. At the time, GRECO was not convinced that the new Article 98 of the Constitution would allow the Accounting Chamber also to audit local authorities in respect of all their activities/funding and called for further clarifications in this respect.

31. The Ukrainian authorities now confirm that the independent Accounting Chamber may audit local authorities only in so far as their state funding is concerned and that the State Financial Inspection is the only body responsible for the remaining audit of local authorities. The authorities also refer to a draft law on the Accounting Chamber that was passed in a first reading in Parliament on 5 March, expanding the mandate of the Accounting Chamber in terms of monitoring revenues of the State Budget, including - to some extent - the monitoring of local authorities.
32. GRECO takes note of the clarifications and additional information provided. It recalls that GRECO's main concern when addressing this recommendation was to provide for more transparency and independent auditing in respect of all finances of local authorities, along the lines that was carried out by the independent Accounting Chamber in respect of state funding. The recommendation does not, however, require the Accounting Chamber as such to carry out this function. What has been reported now does not change much in this respect as the State Finance Inspection (like its predecessor, the State Control and Revision Office), which is responsible for the auditing of local authorities, is an arm of the executive branch. The draft legislation referred to may well expand the mandate of the State Audit, including in respect of funding provided to local authorities, but this mandate is still limited to state funding of such authorities. Consequently, GRECO notes that the current situation remains largely the same now as it was at the adoption of the Evaluation Report.
33. GRECO concludes that recommendation xviii has not been implemented.

Recommendation xix.

34. *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.*
35. 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 the law “*On Public Procurements*” which had been adopted by Parliament on 1 June 2010, which was aimed at ensuring a fair competitive environment and effective use of state funds and at preventing corruption. GRECO considered this as 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 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 considered as partly implemented. In the Third Addendum to the Compliance Report, GRECO welcomed the measures that had been taken and/or were underway, *inter alia*, the adoption of further amendments to the law “*On Public Procurements*” and to the law “*On the Introduction of the Procedure of Electronic Reverse Auction*” and the adoption of the law “*On Peculiarities of Conducting Procurement in Particular Spheres of Economic Activity*”, aiming at a gradual integration of Ukrainian public procurement legislation into conformity with EU directives. In the Fourth Addendum to the Compliance Report, the authorities submitted that regulations necessary to implement the provisions of the law “*On the Introduction of the Procedure of Electronic*

Reverse Auction” were being developed; on 1 August 2013, the Cabinet of Ministers adopted a decree “*On the Strategy of development of public financial management*”, including, *inter alia*, rules in line with EU Directives. In particular, the strategy envisages further amendments to the law “*On Public Procurements*”. The authorities also referred to a new draft law “*On Public Procurement*”, aiming at establishing a competitive procurement environment and counteracting corruption through more transparency. On 27 March 2014, the Cabinet of Ministers submitted the draft law to Parliament (#4587).

36. The authorities now report that on 20 April 2014, the new Law (No. 1197-VII) on Public Procurement was adopted by Parliament. This law was developed by the Ministry of Economic Development and Trade in order to harmonise the procurement provisions in Ukraine with EU standards. The authorities stress that as compared to previous legislation in this field, the new law broadens the scope of application and reduces the number of areas which are excluded from the public procurement regulations. Furthermore, the implementation of the law aims at more transparency of procurement proceedings and the monitoring of these procedures has been enhanced. The authorities also make reference to the Law (No. 183) on Openness of the Use of Public Finance, adopted on 11 February 2015, which determines the conditions and procedures of access to information in respect of the use of public funds from state and local budgets. According to this law, detailed information concerning procurement procedures are to be made publicly accessible in terms of the description of such procedures or the justification why the procurement legislation was not applied in a particular case. Information concerning procurement contracts, contractors and the details of specific agreements are to be contained in the information. Such information is to be published at the Unified Public Finance Web-portal which provides open and free public access.
37. GRECO takes note of the information provided, as supported by the new legislation referred to by the authorities. GRECO is pleased that following a rather lengthy process aiming at aligning Ukrainian public procurement legislation with European norms, in particular in respect of EU directives, the adoption of Law No. 1197-VII on Public Procurement is a real achievement. Ukraine has now in place new legislation that provides more openness to public procurement procedures than in the past. The exceptions from the main public procurement rules have been further limited. GRECO also notes that this new legislation has been welcomed by institutions such as the World Bank and the European Union. The latter organisation has been funding a project on the “*Harmonisation of Public Procurement system in Ukraine with EU Standards*”, since 2013 and has *inter alia* produced a commentary to the new legislation, aiming at assistance to all participants of the public procurement process³. In conclusion, GRECO acknowledges that Ukraine has substantiated that thorough reviews of the former legislation have been carried out in order to bring the procurement legislation more in line with European norms (i.e. EU standards) in respect of *policy, accountability and transparency* as was intended by this recommendation.
38. GRECO concludes that recommendation xix has been implemented satisfactorily.

Recommendation xx.

39. *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.*

³ <http://eupublicprocurement.org.ua/wp-content/uploads/2014/12/Commentary-to-Ukrainian-PP-legislation-ENG-031220141.pdf>

40. 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*”, then pending before Parliament together with other draft laws concerning the status of certain public servants (i.e. medical and pharmaceutical employees). 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 reform of public administration needs to go beyond legislative measures and to tackle practice, for example, by training staff and concluded that this recommendation was partly implemented. In the Third Addendum to the Compliance Report, GRECO noted that the entry into force of the law “*On Civil Service*” was postponed by Parliament until 1 January 2014, due to budgetary reasons and to the necessity of coordinating the introduction of new versions of this law with 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. GRECO also noted that a draft law “*On Amendments to Certain Laws of Ukraine in Connection with the Adoption of the Law of Ukraine on Civil Service*” had been submitted to Parliament. In order to implement the amended law “*On Civil Service*”, the National Agency of Ukraine on Civil Service had developed seven draft decrees of the Cabinet of Ministers and adopted 11 procedural orders. Moreover, on 1 February 2012, the President of Ukraine had approved the *Strategy of State Personnel Policy for 2012-2020* (Decree No. 45) and, on 20 July 2012, an action plan for the implementation of the Strategy (Decree No. 453), and massive training of various categories of personnel was reported. Finally GRECO welcomed the legislative measures taken on the reform of the public service which did not apply only to civil servants, but also to other personnel of the public sector. GRECO regretted that the legislative reforms had suffered further setbacks and that the law “*On Civil Service*” had still not entered into force (it had meanwhile been amended). In the Fourth Addendum to the Compliance Report, the authorities submitted that the entering into force of the law “*On Civil Service*” had been postponed to 1 January 2015 (instead of 1 January 2014 as earlier decided), in order to cater for further amendments. GRECO concluded that the recommendation remained partly implemented.
41. The authorities now report that, on 13 May 2014, Ukraine signed an agreement with the European Union, *inter alia*, on a project concerning reforms of the civil service, local self-governance, administrative services, management of state financing, strengthening the fight against corruption, access to information etc. They also report that, in December 2014, expertise on the latest version of the draft law on the Civil Service was received from OECD/SIGMA. On 23 April 2015, Parliament adopted in a first reading the draft law “*On Civil Service*” initiated by the Government (registration # 2490 of 30 March 2015). The draft law takes into account recommendations issued by the experts of OECD/SIGMA. In particular, the draft law provides for delineation of political and administrative positions, it regulates the status of state official, competition-based selection of state officials, including of high-ranking officials, ensures equal access to public service, links the reward system to performance evaluation, strengthens personal responsibility for fulfilling obligations and creates conditions for transparent activity of state authorities etc.

42. GRECO welcomes further progress reported in respect of reforms of the public and civil service in Ukraine. This important process has been very slow; however, recent work underway is promising and GRECO wishes to commend Ukraine for the achievements made in respect of the amended draft law following valuable expertise from OECD/SIGMA. That said, GRECO notes that the legislative reform process has still not come to an end, more than eight years after the adoption of the Evaluation Report and urges the authorities to ensure that a legislative framework will come into place as soon as possible in order to provide a solid platform for progress in practice.
43. GRECO concludes that recommendation xx remains partly implemented.

Recommendation xxi.

44. *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.*
45. 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 complied in full with the recommendation. In the Third Addendum to the Compliance Report, GRECO noted that, in May 2012, the Ukrainian Parliament adopted amendments to the law “*On the Principles of Preventing and Combating Corruption*”, introducing several sectorial laws and regulations⁴, according to which persons who report suspicions of corruption cannot be dismissed, forced to resign or subject to disciplinary liability in connection with their reporting. They may also appeal disciplinary decisions or decision of dismissal, according to the relevant legal procedures. The Ministry of Justice had also prepared a draft law “*On amendments to particular laws of Ukraine on the improvement of financial control and resolution of conflicts of interest*” prescribing, *inter alia*, that the law “*On the Principles of Preventing and Combating Corruption*” be supplemented with general provisions according to which no person may be dismissed or forced to resign, brought to disciplinary liability or subject to negative means of influence (transfer, formal evaluation, change of working conditions etc.) as a result of whistle-blowing. GRECO requested further measures to be taken in this respect, such as the introduction of systems allowing for anonymous reporting or the reversal of the burden of proof in case a person is subject to retaliation measures. GRECO welcomed the intention to further increase the protection of whistle-blowers in the Law “*On the Principles of Preventing and Combating Corruption*” and concluded that the recommendation remained partly implemented. In the Fourth Addendum to the Compliance Report the authorities reported that, on 14 May 2013, Parliament adopted the law “*On Amendments to Certain Legislative Acts of Ukraine on Implementation of the State Anti-Corruption Policy*”. This law, which entered into force on 9 June 2013, is aimed at strengthening the safeguards of persons who assist in preventing and combating corruption, such as a prohibition on using retaliatory means against whistleblowers (dismissal, disciplinary action, transfer, attestation, changes in

⁴ 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.

working conditions etc.). Furthermore, the draft law "On Amendments to Certain Legislative Acts of Ukraine in the area of state anti-corruption policy on the implementation of the Visa Liberalisation Action Plan" was pending before Parliament (registration № 4556 dated 25 March 2014). This draft foresees further guarantees for the protection of whistleblowers, such as a reversed burden of proof in such cases. GRECO was pleased to note the principles introduced, in particular, to prohibit various forms of retaliation against whistle-blowers, but noted that the reforms were still not finalised and concluded that the recommendation was partly implemented.

46. The authorities now add to the previous information that, on 4 June 2014, the Law No. 1261-VII introducing several amendments to various laws entered into force. This Law, *inter alia*, strengthens the guarantees for the protection of persons who report instances of corruption, for example, the burden of proof in cases concerning retaliation against whistle-blowers is shifted to the party applying such measures, anonymous reporting is now acceptable and state bodies are obliged to create mechanisms for receiving and processing reports on corruption. Furthermore, the Law on Prevention of Corruption (which entered into force on 26 April 2015) also preserves such guarantees. According to amendments to Article 35 of the Civil Procedure Code, the National Anti-Corruption Agency can be brought in as a third party in civil proceedings concerning repercussions.
47. GRECO takes note of the information provided. It acknowledges that a number of regulatory measures have been taken in order to comply with the current recommendation. GRECO notes, in particular, the introduction of a duty to report suspicions of corruption in public administration. Moreover, this duty has been coupled with some safeguards against retaliation - substantial as well as procedural - in respect of public officials who report such suspicions. The measures taken respond positively to the requirements of this recommendation and the Ukrainian authorities are to be commended for these achievements at the same time as they are encouraged to continue their efforts to ensure that these measures are implemented in practice as foreseen in the law.
48. GRECO concludes that recommendation xxi has been implemented satisfactorily.

Recommendation xxiv.

49. *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.*
50. It is recalled that a draft law "On Responsibility of Legal Person for Committing Corruption Offences" was pending before Parliament at the time of adoption of the Compliance Report, that this draft was subsequently adopted and then abrogated by Parliament on 5 January 2011. The issue of liability of legal persons was later established as a priority under the *National Anti-corruption Strategy 2011-2015*. In the Third Addendum to the Compliance Report, GRECO welcomed the new draft law "On Amendments to Particular Legal Acts of Ukraine on Establishment of Measures having Criminal-Legal Character in respect of Legal Persons" which had been submitted to Parliament in January 2013. The draft law included amendments to the Criminal Code providing for criminal liability for legal persons when corruption had been committed in the interests - or on behalf of the legal person - by their founders, directors, members or any authorised person. The sanctions contained in the draft were fines, prohibition on pursuing certain activities, confiscation of property and liquidation. GRECO noted, however, that the draft did not cover 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) and urged the authorities to address this issue before adopting the law. GRECO also noted that no considerations were reported in respect of the establishment of a registration system for legal persons subject to sanctions and concluded that the recommendation had been partly implemented. The authorities reported in the Fourth Addendum to the Compliance Report that, on 23 May 2013, the law "*On Amendments to Certain Legislative Acts of Ukraine on implementation of the Action Plan for the liberalisation of the EU visa regime for Ukraine on the liability of legal persons*" had been adopted (N314-VII). The authorities explained that the law introduces a mechanism for applying criminal means to legal persons for criminal offences related to bribery, undue influence, laundering of proceeds from crime and terrorism. The Law provides for criminal law sanctions and measures (fines, confiscation of assets and liquidation of legal persons). The offences that are the basis for sanctioning a legal person, must have been committed by one or more of its "authorised persons", on behalf of, or in the interests of, the legal entity (e.g. officials of legal persons, employees or other persons acting on its behalf under the law). The authorities added that criminal law measures against a legal person can be applied regardless of the role of the authorised person (actual doer, organiser, instigator or accomplice), the main thing being that the person acted in the interests of a legal person. The authorities furthermore added that a draft law "*On amendments to certain legislative acts of Ukraine in the area of state anti-corruption policy on implementation of the Visa Liberalisation Action Plan*" which was submitted to Parliament on 25 March 2014 (#4556) would extend the liability of legal persons also to cover situations where there is a lack of supervision in accordance with Article 18.2 of the Criminal Law Convention on Corruption. The authorities also reported that, in accordance with the *State Program on Preventing and Combating Corruption for 2011-2015*, the Ministry of Justice is preparing regulations for the registration of legal entities, to which measures of criminal law for corruption have been applied. GRECO concluded that the recommendation was partly implemented as the particular situation of a lack of supervision was not covered by the law.

51. The authorities of Ukraine now add to the foregoing that with the adoption, on 13 May 2014, of Law No. 1261-VII, Article 96-3 of the Criminal Code has been amended in order to also cover situations where the corruption offence committed by a legal person has been possible due to a lack of supervision by a natural person under the authority of the legal person. Article 96-3 reads in relevant parts: "*Grounds for applying measures of criminal and legal character to legal entities shall be as follows:*
- 1) ...
 - 2) *failure to ensure to exercise by its authorised person authorised by law or by statutory documents of a legal entity of duties to take measures to prevent corruption and resulted in the commission of any crime envisaged in Articles 209 and 306, parts one and two of Article 368-3, parts one and two of Article 368-4, Articles 369 and 369-2 of this Code.*
52. Moreover, the authorities report that the Law on Prevention of Corruption, which entered into force, on 26 April 2015, establishes a registration system for legal persons which are convicted for corruption offences.
53. GRECO takes note of the information reported. It welcomes the introduction by Ukraine, in 2013, of criminal liability of legal persons for corruption offences. Furthermore, GRECO is pleased that the Criminal Code has been amended in order to extend this liability also to cover situations of a lack of supervision by a natural person under the authority of a legal person, as required by Article 18.2 of the Criminal Law Convention. As far as the last part of the recommendation is concerned, GRECO notes that Ukraine has not only considered, but also introduced, a registration system in respect of legal persons convicted of corruption offences.

54. GRECO concludes that recommendation xxiv has been implemented satisfactorily.

III. CONCLUSION

55. **With the adoption of this Fifth Addendum to the Joint First and Second Round Compliance Report, GRECO concludes that out of the twenty-five recommendations issued to Ukraine, in total twenty recommendations have now been implemented satisfactorily or dealt with in a satisfactory manner, four have been partly implemented and one not implemented.** Recommendations ii, iii, vii, viii, xi, xvi, xvii, xxi, xxii, xxiv, xxv have been implemented satisfactorily, recommendations iv, v, vi, ix, x, xiii, xv, xix, xxiii have been dealt with in a satisfactory manner, recommendations i, xii, xiv, xx have been partly implemented and recommendation xviii has not been implemented.
56. GRECO acknowledges that Ukraine received a vast number of recommendations in the Joint First and Second Evaluation Rounds, many of which required fundamental reforms, including constitutional, legislative, organisational and policy changes. The themes and, accordingly, the recommendations of the Evaluation Report cover mainly the executive and judicial branches of administration; however, the implementation of most of the recommendations requires involvement also by the legislature. It goes without saying that the follow-up to the Evaluation Report has been extremely challenging and that it requires strong political commitment and a rather long term approach. In addition, the turbulent political environment in Ukraine in recent years has not made the necessary reforms an easy task to accomplish. Against this background, it is understandable that the roadmap to reforms since the adoption of the Evaluation Report, has been cumbersome, that the efforts made have sometimes been inconsistent and taken a long time.
57. With the adoption of the current Fifth Addendum to the Joint First and Second Round Compliance Report, Ukraine has substantiated that vast reforms, to a large extent in the form of new legislation, have addressed the large majority of GRECO's recommendations in an adequate way. GRECO wishes to highlight the importance of the adoption of the National Anti-corruption Strategy for 2011-2015, which has served as a framework for the various reforms embarked upon. The current report reflects, *inter alia*, that considerable progress has been achieved in respect of criminalising corruption activities under the Criminal Code (as opposed to dealing with such matters as administrative offences), liability of legal persons for corruption, regimes for confiscation and seizure, public procurement procedures and in respect of the protection of whistle-blowers. Yet important reforms concerning areas such as administrative procedures and justice as well as regulating the civil/public service are still to be carried out. That said, the adoption on 14 October 2014 of the so called "2014 Anti-Corruption Package" by Parliament puts in place a continued anti-corruption strategy until 2017. The "Package" also contains new laws and amendments to significant laws which address several of the shortcomings highlighted by GRECO in its Evaluation Report, for example, to establish the National Agency for Preventing Corruption (NAPC) as an anti-corruption mechanism distinct from law enforcement functions, as well as the establishment of the Anti-Corruption National Bureau (NABU) for better co-ordination of the law enforcement efforts in this respect. Moreover, the Anti-Corruption Package contains amendments to the Law on the Public Prosecution Service, the Civil Code, the Administrative Code, the Commercial Code, the Law on Registration of Business, the Law on Prevention of Corruption and the Criminal Procedure Code. These legislative efforts are commendable; however, they require continued efforts for the implementation of the legislation in practice. In this respect, GRECO recalls that throughout the compliance procedure, it has continuously stated the

importance of involving not only the pertinent public officials and public institutions but also providing for adequate representation of civil society in the overall policy work against corruption, as corruption in Ukraine affects society at large and cannot be seen as an isolated problem (as stressed in the Evaluation Report, paragraph 239). To this end, GRECO reiterates its strong concern that civil society be adequately represented in the NAPC when the appointments to this body materialise.

58. The adoption of the present Fifth Addendum to the Joint First and Second Round Compliance Report terminates the First and Second Evaluation Round Compliance Procedure in respect of Ukraine. The Ukrainian authorities may, however, wish to inform GRECO of further developments with regard to the implementation of recommendations xii, xiv, xviii and xx. Moreover, GRECO asks the Ukrainian authorities to submit further information on the implementation at recommendation I, in particular concerning the appointments to the NAPC, at GRECO's 69th plenary meeting (12-16 October 2015) under item 4 of its agenda.
59. GRECO invites the Ukrainian authorities to authorise, as soon as possible, the publication of the Fifth Addendum, to translate it into the national language and to make the translation public.