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Eastern Partnership Project on
"Good Governance and Fight against Corruption"

Pilot Activity 3.6: Ukraine

Technical Paper

March 2012

Assessment of the Ukrainian "State Programme for Prevention and Combating Corruption 2011-2015"

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This paper has been prepared with the funding
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1 SUMMARY

In its Evaluation Report of 21 March 2007 (Joint 1st and 2nd Evaluation Round), GRECO has recommended “to urgently develop a detailed plan of action for the implementation of the national anti-corruption strategy”. On 21 October 2011, Ukraine adopted a new Anti-corruption Strategy for the years 2011-2015, and for the first time a corresponding Action Plan (“State Programme”) by 28 November 2011. On invitation by the Ukrainian authorities, this Technical Paper assesses the **Action Plan 2011-2015** as a management tool for implementing the Strategy.

The Action Plan is well **structured** and broadly in line with the Strategy. Actions are sufficiently **detailed**; where descriptions are vague, the exact meaning can be derived from the context. Performance **indicators** are kept simple; however, they seem sometimes too brief or one-dimensional. Bodies **responsible** for implementation are identified, with the lead institution not in all cases obvious. **Timelines** are sufficiently divided schematically into five consecutive years and appear unclear in respect of some activities. The Action Plan foresees – a laudable novelty in the region – exact estimates of **funding**, the absence of which has been criticised in the past by Council of Europe Projects in other countries.

The Action Plan opts for a somewhat **simplistic** approach without a refined system of progress indicators etc. This has the advantage that the document can be easily handled by the various stakeholders. It seems as if a concise document with a simple description of realistically doable actions is often more promising than an excessively sophisticated document drafted by international experts, and for which there is often no capacity in state institutions or civil society to handle it.

It is worthwhile stressing that successful anti-corruption reforms depend on **political leadership** and the quality of implementation, for which no policy document can be a substitute, may it be as detailed and well planned as possible.

2 BACKGROUND

2.1 Anti-corruption policies in Ukraine

Type	Title	Time span	Adopted
Strategy	The Anti-Corruption Concept	1998-2005	04/1998
Action Plan	-	-	-
Strategy	Concept ‘On the Way to Integrity’	2007-2011	08/2007
Action Plan	Plan for implementation until 2010	2007-2010	08/2007
Strategy	National Anti-Corruption Strategy	2011-2015	10/2011
Action Plan	State Programme	2011-2015	11/2011

Ukraine was one of the first East European countries to set up an anti-corruption policy. In **1998**, the President decreed the “Anti-corruption Concept for 1998-2005”.

It was followed, on 11 September **2006**, by a Concept Paper “On the Way to Integrity”, also in the form of a Presidential decree. The Concept Paper states that those aspects identified as most important in fighting corruption must be addressed in the “nearest future”. The Cabinet of Ministers was responsible for setting out the specific implementation of the measures, their timing etc. By March 2007, such an

Action Plan had not yet been elaborated. The Evaluation Report of 21 March 2007 of the Joint First and Second Evaluation Round of GRECO therefore gave as recommendation (ii)

"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".

A draft Action Plan was reviewed by UPAC, an EC/Council of Europe Project, in June 2007¹ and adopted in August 2007. This Action Plan covered the period until 2010. An Action Plan for 2011 had not been adopted until May 2011.

According to the Addendum to the Compliance Report on Ukraine (Joint First and Second Evaluation Round) of 27 May 2011, Ukraine had to report on measures taken to implement the recommendations with regard to its anti-corruption policies by the end of 2011.

On 21 October **2011**, Ukraine adopted a new anti-corruption strategy for the years 2011-2015, repealing the previous "Concept Paper". A corresponding Action Plan was adopted by the Cabinet of Ministers on 28 November 2011. On 6 December 2011, after adoption of the Action Plan, the Ministry of Justice asked the Eastern Partnership Project for an assessment of the Action Plan.

2.2 Scope of assignment

On invitation by the Ukrainian authorities, this Technical Paper assesses the **Action Plan 2011-2015**.

This Technical Paper does not assess the underlying **Strategy** and its selection of objectives, which are assumed as a given prerequisite. However, it would appear that some important component, such as improving the independence of the judiciary does not form part of the action, nor is present in the Strategy. Furthermore, this Paper cannot – given the resources – build on an assessment of the current state of corruption and counter-measures in Ukraine. Any observation on the substance of the Action Plan is primarily focused on the general consistency with the Strategy.

3 STRUCTURE AND WORDING

3.1 Structure

The lines of the Action Plan should follow the structure and numbering of the Strategy, in order to allow the reader to **track** how the Strategy's objectives are translated into concrete actions. Whereas a draft of the previous Action Plan for implementation of the previous Strategy (2007-2011) had been criticised as being "explicitly and implicitly

¹ Support to good governance: Project against corruption in Ukraine – UPAC, "Draft Anti-corruption Action Plan Implementing the Concept: On the Road to Integrity", Opinions prepared by Drago Kos and Vera Devine, 28 June 2007, www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/UPAC/Technical%20papers/344-d-Expert_Opinion_Kos_Devine_ENG.pdf.

very weak² in its relation to the Strategy, the current Action Plan 2011-2015 follows the same structure as the Strategy and allows to trace each line of the Action Plan back to the respective objective of the Strategy and vice versa. It is somewhat unfortunate, in this context, that the numbering of the Action Plan (I 1, I 2 ...) differs from that of the Strategy (1 a, 1 b ...), making the similarity in structure less obvious and accessible.

3.2 Objectives

Since action plans are implementation documents, the wording used is normally very **concrete** and **simple**, leaving no room for interpretation. The concrete actions ("Activities") in column 4 of the Action Plan fulfil this requirement.

It must be mentioned that the description of action can obviously not anticipate in all detail the outcome of each action. For example, action "III 1 3" foresees the following activity: "develop efficient mechanisms of civil servants rotation". The concrete mechanism to be installed will in the end depend on the various agencies and circumstances, requiring a process of identification of the best solution. However, the basic objective of having civil servants rotate their posts is sufficiently clear.

A few descriptions are too **vague**, such as for the activity "enhancing efficiency of tax administration system" ("XIV 4 2"). The corresponding objective "reducing the number of formal procedures" makes it clear, though, in which respect efficiency is to be enhanced.

3.3 Timelines

The Action Plan 2011-2015 chooses **schematic** yearly timelines for each action. In Eastern Partnership countries, a similar approach has been chosen by the Armenian Action Plan for 2009-2012.³ This appears to be sufficient as in many cases a more detailed date would appear not necessary or somewhat artificial. A number of actions would appear to require more time than foreseen in the Action Plan. Some actions have end of 2011 as deadline (for example action "I 4 1"), which is probably unrealistic, given the adoption of the Action Plan by 28 November 2011. In some cases, Ukraine might have to deliver action before the indicated timeline, as for example with action "VI 1 1" – political finance rules, where implementation of GRECO-recommendations of 3rd Round Evaluation (Report of 21 October 2011) has to be reported until 30 April 2013, whereas the timeline of the Action Plan would be until end of 2013.

3.4 Responsibility

The Action Plan 2011-2015 does not explicitly **designate** a body responsible for implementation of each action but only a "key budget spending unit". However, it is more or less obvious that the "budget spending unit" will also be responsible for implementation. Responsible bodies include all levels of government, including local governments.

² Opinion (above note 1) at page 3.

³ <http://www.gov.am/en/anticorruption/>.

In some cases, for example "II 3 1)", some specific ministries are mentioned, and in addition "other central executive authorities". At first look, it could seem unclear how these authorities are identified, and it could seem preferable to either refer to "all other central executive authorities", if that is the case, or to further identify the envisaged bodies. However, the Ministry of Justice has pointed out that all **line ministries** are identified in the Action Plan. Furthermore, the Action Plan needs to leave room in case competencies or names of agencies "below" ministries change.

In many cases, more than one agency is mentioned, when it is obvious that the action needs to be implemented in each agency separately (for example "I 8 3)" – setting up web pages. In a few other cases, more than one agency is mentioned for implementing one overarching task, without it being formally obvious which agency would have the **lead responsibility** (for example "II 4 1)" – simplifying state registers). However, the Ministry of Justice has confirmed that the first mentioned agency always has lead responsibility. This understanding is supported by the apparent relevance the first mentioned agency has in each case for the corresponding action/objective.

3.5 Progress indicators

Indicators are the pivotal point of action plans: They allow for the monitoring of progress on implementation. Without indicators, action plans are declarations of intent without much commitment.

The Action Plan opts for a simple approach to "performance indicators", by simply describing the desired **output**. This is a realistic approach, as action plans often set out with ambitious methods of measuring progress, without the human resources and capacities available for doing so, let alone the feasibility of exact measuring. The performance indicators avoid any reference to the indirect or long-term **impact** of the actions, which makes sense since the indirect impact of an activity – such as reduction of corruption – is hard to measure and action plans are mainly management tools.

Most of the actions described in the Plan have outputs which can be rather simply measured, such as putting in place certain laws or regulations. Some other actions, such as "IV 3 1) media coverage of results of audits", are harder to measure by exact benchmarks. The corresponding indicator "information in mass media" is indirectly referring to quantitative criteria, without an exact **benchmark** though. On the other hand it would seem somewhat arbitrary to set a more concrete benchmark such as "at least two reports quarterly in all national newspapers" – the number of reports depends also on the "sensational" value of the audits. As an alternative, one could have also thought about an indicator such as "press release available for each audit and inspection result".

Other actions are clearly lacking a more **quantitative** indicator, such as "IX 3 1)" – "introduction of specialisation for prosecutors", where the indicator has the same wording as the action itself. In addition, the number of investigated and prosecuted cases would be – also to the public – interesting information about the effectiveness of such prosecutors. Such an indicator would probably have only theoretically the **adverse** effect of bringing unjustified charges in order to raise statistical numbers. With action "X 1 1)" – training for judicial officials – it is similar. Relevant are not only the "curriculum and training provisions" – as described in the performance indicator –, but also the **number** of actually trained judicial officials in relation to the total

number. The immediate **impact** of the training on the officials, on the other hand, would be decisive criteria for progress, but hard if not impossible to measure, and thus would be a rather unsuitable indicator.

Some indicators also rely on rather **general qualitative** descriptions such as "effective system of electronic procurement" ("V 3 1"). The question arises according to which criteria this "effectiveness" will be measured. On the other hand, an action plan can not anticipate the output of an activity and its quality can generally at least be measured with regards to international standards.

A few indicators are too vague and thus hard to use for **measurement**, such as the indicator "efficiently functioning tax administration system" for the activity "enhancing efficiency of tax administration system" ("XIV 4 2). Keeping the corresponding objective "reducing the number of formal procedures" in mind, a more fitting indicator would have probably been "number of formal procedures in tax administration system reduced". From the context though, this would become clear.

3.6 Funding

Of all Eastern Partnership countries, Armenia, Azerbaijan and Ukraine include a column on the funding of measures in their Action Plans. In Armenia and Azerbaijan, there is no concrete estimate, but only general references:

Armenia Action Plan 2009-2012, "Action 2.3: Continuously enhance the professional qualifications of the FMC staff", "Source of Funding: The RA State budget, the donor community support"; Azerbaijan Action Plan 2007-2011, "Measure 9: Improving system of filing complaints on administrative decisions; [...] "Financial sources: State budget and other sources not prohibited by the legislation".

A similar general budget reference is found in the Moldovan Strategy 2011-2015:

"The financial resources necessary for the attainment of objectives set out in this Strategy are planned in accordance with the applicable laws. The sources of financing may include: 1) the state budget and the budgets of administrative-territorial units, within the limits of costs allocated /approved for the involved institutions; 2) external technical and financial assistance projects and programs of various donors; 3) Sponsors and other sources not prohibited by the law."

Ukraine, on the other hand, introduced for the first time the requirement of a **concrete financial estimate** for each action proposed in the action plan with its new Strategy for 2011-2015. The Ministry of Justice, responsible for drafting the action plan, has thus to develop financial estimates for each action:

Anti-corruption strategy 2011-2015, IX: The Action Plan will "contain the list of measures, scope and sources of finance, expected outcome, indicators, deadlines, executives in charge as well as the partners in implementation of the measures."

Of the total of 120 actions contained in the Plan, only eight require additional funding, with a total funding of the equivalent of 78 Mio. € over five years, equalling an average of about 15 Mio. € per year.

The lion's share of about 77 Mio. € is allocated to the introduction of electronic documentation systems within the competence sphere of the Ministry of Health ("I 2 2"), for which no funding is as yet earmarked in the budget.

Leaving action "I 2 2)" aside, the strategy foresees a total extra cost of about 1 Mio. € over five years for all activities. According to the Ministry of Justice, some actions receive additional funding from other sources, such as donors or designated budget positions.

The estimation of funding is a positive feature of the Action Plan, as the lack of resources is often a key reason for the slow or non implementation of particular measures. Therefore, some experts have highly recommended estimating the cost of undertaking specific measures, if not in the initial draft of an action plan, then in later versions, as part of regular updates to the action plan.⁴ The indication of necessary funding in the Action Plan does however not replace the necessary approval of a corresponding budget figure in parliament.

3.7 Civil society involvement

According to the Ministry of Justice, civil society has been consulted intensively for drafting the Anti-corruption Strategy. However, it yet has to be confirmed to what extend there has been any civil society involvement. Several proposals by civil society organisations had been reportedly so detailed that they could have been considered for the drafting of the Action Plan as well. The narrow time frame for drafting the Action Plan – 20 days – did, according to the Ministry of Justice, not allow for further consultations with the public. However, the Action Plan was unfortunately presented only after adoption to the public at a roundtable⁵ on 19 January 2012 with 24 civil society organisations present. The experts are not in a position to assess the details and inclusiveness of this process, however it seems that the civil society could have been more sufficiently involved in the preparations and the content of the Action Plan. Possible ways of involving these organisations in the implementation and monitoring of the Action Plan have reportedly been discussed, in particular for the activities on public awareness of corruption ("XIII 1 1"). A second roundtable is planned for the third Quarter of 2012 to review the first results and possible amendments to the Action Plan. The examiners, in line with good practices, would argue in favour of keeping the process of civil society consultation open to groups that have not been, or possibly insufficiently, consulted in earlier stages. The civil society should also preferably be involved in the process of monitoring the implementation of the Action Plan.

4 IMPLEMENTATION ASPECTS

4.1 Coordination of implementation

Article 5 of the Law of Ukraine "On Preventing and Combatting Corruption" (No. 1506-VI) foresees the following with regards to coordinating the implementation of anti-corruption policies:

"Coordination of implementation by the executive bodies of anticorruption strategy which is defined by the President of Ukraine is performed by specially authorized

⁴ Marijana Trivunovic, "Tools for reporting and implementation of anticorruption measures in line with the new anti-corruption action plan", Technical Paper for Council of Europe Project "Support to the Anti-Corruption Strategy of Georgia (GEPAC)", February 2008, www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/GEPAC/coexpertpresent_en.asp.

⁵ http://minjust.gov.ua/photoalbum/photoalbum_497.

agency on anticorruption policy, which is created by the President of Ukraine and shall function in accordance of requirements provided by the Law.”

The law has become effective as of 1 July 2011. However, the respective special agency on anti-corruption policy has not yet been set up. For the time being, the President has assigned the Ministry of Justice to take on the responsibilities of the agency ad interim.

4.2 Monitoring mechanism

The implementation of the Action Plan 2011-2015 will be monitored and evaluated by the National Anti-corruption Committee (see chapter X of the Strategy), with the Ukrainian President being its head, and the Justice Minister secretary of the committee. The President approves the list of the committee members submitted by the executive secretary.⁶

4.3 Political commitment

The Action Plan is adopted by Presidential decree, but has not been formally adopted by Parliament. Such inclusion of Parliament might enhance the political commitment to the document, but is – of all Eastern Partnership states – only the case in Moldova.

4.4 Sustainability

An Action Plan cannot anticipate all issues concerning the quality and timeliness of implementation. In other words, the Action Plan cannot define implementation so narrowly as to fully ensure its quality upfront. The actual value of the Action Plan 2011-2015 thus will depend on the eventual quality of implementation and can only be fully evaluated with hindsight.

It is questionable whether the Ministry of Justice will have the resources to coordinate implementation of the Action Plan well into 2012, instead of the foreseen special agency. Coordination of implementation therefore seems to depend on the timely creation of this agency, or of the sufficient allocation of staff at the Ministry of Justice.

4.5 Updating of Action Plan

The Action Plan is a long-term commitment covering a time span of 5 years. Obviously, this document will probably need to be revised and adapted over the course of time depending on the monitoring results. There is no update mechanism explicitly foreseen, but as the President is heading the monitoring body, the Action Plan will be updated anytime by another Presidential decree if need be. The Ministry of Justice has pointed out that the Action Plan will be reviewed every year for possible changes/amendments.

5 RELEVANCE OF PLANNED ACTIVITIES

⁶ Kyiv Post, 1 September 2011, www.kyivpost.com/news/politics/detail/112046/.

As for the relevance of the planned activities with regards to the strategic objectives, the following observations can be made:

Activity I 2 – “e-government”: The range of activities does certainly not cover the full range one could theoretically imagine under the corresponding objective. However, activities are complemented by activity “V 3 1)” – “e-procurement”, as well as reportedly by activities under the “State Program of Social and Economic Development of Ukraine for 2012”.

Activity II 4 – “prevent undue pressure on businesses”: The activity of simplifying the registration processes seems to be only one aspect of preventing undue pressure on businesses. Abusive inspections (health, tax, fire hazard etc.) would be another major aspect of undue pressure on businesses with relevance for corruption. The Ministry of Justice has pointed to plans in this context (which are not mentioned in the Action Plan) to put the frequency and procedure of inspections on a more regulated basis.

Activity III 1 6) – “civil service trainings”: The sustainability will depend on the number of trainings conducted per year in relation to the total number of civil servants.

Activity IV 3) – “transparency of administration”: The wording of this action seems to focus only on the “media coverage” of administration, whereas proactive information of the public and the media would seem to be not only a prerequisite, but also the only step within control of the state. This understanding has been confirmed by the Ministry of Justice.

Activity V 4 – “illicit enrichment”: The wording of this activity is a bit abstract, but the Ministry of Justice has clarified that this activity will focus on the improvement of the existing system of asset declaration (for example, one shortcoming could be the rather high current threshold of 15.000 € for transactions to be reported). Furthermore, the Ministry of Justice plans the introduction of the offence of illicit enrichment in line with Article 20 UNCAC.

Activity VIII 2 2) – “report on preventing and combating corruption”: This activity does not foresee a reporting cycle. The Ministry of Justice has pointed out that law enforcement agencies are obliged by law to publish respective reports every 15th February. Accordingly, the Action Plan foresees implementation of this activity each year.

Activity X 1 2) – “career control of judges”: This activity is not relevant to the objective but nonetheless very relevant for independence and integrity in the judiciary.

Activity XI 1 1) – “concept of law enforcement reform”: The Action Plan refers to the Concept of 27 September 2008, N 1153-p.

Activity XIII 1 1) – “public awareness”: This action is formulated very broadly, but allowing for a wide range of measures to be identified with civil society organisations.

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