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Support to Good Governance: Project against Corruption in Ukraine (UPAC)

Technical Paper/Expert Opinion on

DRAFT LAW OF UKRAINE

**"ON AMENDMENTS TO THE LAW OF UKRAINE "ON PRINCIPLES OF
PREVENTION AND COUNTERACTION OF CORRUPTION" AND**

DRAFT STANDARD REGULATION

**"ON PREVENTION AND COUNTERING OF CORRUPTION DIVISION AT
EXECUTIVE BODIES"**

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TABLE OF CONTENTS

I. Introduction	4
II. Draft Law “On Amendments to the Law of Ukraine “On Principles of Prevention and Counteraction of Corruption”	4
III. Draft Standard Regulation “On Prevention and Countering of Corruption Division at Executive Bodies“	6
IV. Conclusion	9
V. Annexes	11
Annex 1. Draft Law of Ukraine “On Amendments to the Law of Ukraine “On Principles of Prevention and Counteraction of Corruption“	11
Annex 2. Draft Standard Regulation “On Prevention and Countering of Corruption Division at Executive Bodies“	13

I. Introduction

Two documents, draft Law of Ukraine “On Amendments to the Law of Ukraine on Principles of Prevention and Counteraction of Corruption” and draft Standard Regulation “On Prevention and Countering of Corruption Division at Executive Bodies”, which were prepared by the Ukrainian authorities have many things in common and are strongly substantially and procedurally related. It therefore made most sense to create a single expert opinion concerning both documents, especially due to the fact that both drafts are changing the existing legal situation in the same direction.

In 2009 Ukraine has begun to step up its anti-corruption efforts with the adoption of the so-called “anti-corruption package” consisting of three anti-corruption laws and by introduction of the institution of the Governmental Agent for Anti-Corruption Policy. There are some other new drafts of anti-corruption legislation still pending the parliamentary procedures and it is obvious that the government of Ukraine is firmly determined to introduce all relevant mechanisms to reduce corruption. The present two drafts are an additional step in this direction.

A dramatic increase of anti-corruption activities in Ukraine should be welcomed, notwithstanding the fact that such accelerated activities may also cause some problems in the area of coordination and consistency.

In this expert opinion there will first be some general comments made on each of the documents, followed by some concrete remarks to their content. At the end, in the conclusive part, a general opinion on the value and usefulness of the documents will be presented.

II. Draft Law “On Amendments to the Law of Ukraine “On Principles of Prevention and Counteraction of Corruption”

The Law of Ukraine “On Principles of Prevention and Counteraction of Corruption” (hereinafter: the Law) introduced a very positive impetus to the Ukrainian anti-corruption system. Changes foreseen by the Draft Law “On Amendments to the Law of Ukraine “On Principles of Prevention and Counteraction of Corruption” (hereinafter: the Draft Law) are changing the established system significantly, mainly by introducing new institutions in the area of fighting corruption.

Changes to Part 5 of Article 3

Changes are introducing the two following institutions:

- The “special body (person) for the anti-corruption policy” – most probably the already existing Governmental Anti-Corruption Agent (hereinafter: The AC Agent) and
- The internal control units (hereinafter: ICU).

The system of internal control units is based on the system of Inspection General (IG) known in the USA, which is giving extremely positive results in the area of prevention and suppression of internal corruption in the US public institutions. So far this system has been hardly ever used in Europe but, of course, that does not mean that it cannot prove to be useful also in the European circumstances. Almost all law enforcement units in Europe are familiar with the concept of the so-called “internal affairs units” but outside of the law enforcement system such units are not very often met. Since the level of public corruption in Ukraine is very high, the establishment of ICUs in all institutions of executive power might be a solution for that, but it will have to be thoroughly prepared.

An unfortunate and extremely important issue that has to be mentioned is that an immediate problem will occur when the Draft Law will be adopted: tasks of the AC Agent referred to in Article 3, Part 3 of the Law will differ from its tasks stipulated in the amended Article 3, (new) Part 5 of the same Law. Such difference between two parts of the same law can cause many theoretical and practical problems with the adoption and the implementation of the Law and does not serve as a very positive start of a new system of AC institutions in Ukraine.

What is also very challenging is the appointment of managers of the ICUs. According to the Draft Law heads of the ICUs in the Ukrainian bodies of the executive power are appointed and dismissed by the government (Cabinet of Ministers) on the proposal of the Governmental AC Agent and with the consent of the designated committee of the Parliament (Verkhovna Rada). That means that the whole system of appointment and dismissal of heads of the prime internal anti-corruption units is in the hands of the government. A similar system – with a major involvement of the AC Agent - is introduced also in other institutions. This implicitly poses a great threat to independence of the ICUs. Not only in view of provisions of international legal instruments¹ but also in view of the fact that the influence the government is planned to have on the non-conditional operational autonomy of such bodies is far too strong, especially with regard to all the tasks for which the new ICUs will be responsible. There are two different solutions for the problem:

1. To establish yet another high-level and independent body, responsible for the introduction and management of the ICUs' system, authorised not only for the staff appointments and dismissals but also for the substantial development of the newly introduced system;
2. To establish a balanced system where different players from different branches of power² are engaged in staff appointments and dismissals while the Governmental AC Agent is authorised for the substantial development of the new system (but without any possibility to influence the operational work of the ICUs).

Both options will be difficult to implement, but some solution, perhaps even a third one, will have to be found. In any case, a very thorough discussion of all possible solutions with their positive and negative consequences before the introduction of a new system is strongly required.

In addition, it has to be mentioned that involvement of the Governmental AC Agent in the appointments and dismissals of the ICUs' heads at the local level puts in question also the autonomy of the local level.

Changes to Paragraph 3 of Part 1 of Article 9

The problem here is very simple: if there isn't anybody responsible for the substantial development of the new system and for the development of its basic and common principles³, the most important one being equal treatment of all persons seeking or occupying public positions, Ukraine will face the situation in which different ICU's in different institutions will perform their functions in a very different way.

Changes to Article 10

See comments to Article 9

Changes to Article 12

See comments to Article 9

Changes to Article 13

Changes to this Article can be divided into two different parts: first, the part on "public expertise" and second, on "civic expertise".

With regard to the "public expertise" entrusted to the Governmental AC Agent it has to be said that it probably runs against the constitutionally established system of division of powers in Ukraine. Since laws and draft laws will be submitted to the expertise of the AC Agent (as a governmental institution) and since its results shall be considered obligatory for consideration during adoption of legal acts, that means that the government will also be in position to very strongly interfere with legal acts of other

¹ Especially Article 6 of the UN Convention against Corruption

² Which would mutually neutralise each other's improper intentions

³ Since there are provisions only on the appointments and dismissals given by the Draft Law

branches of power. The expert is not familiar enough with the constitutional system of Ukraine and therefore strongly recommends to examine the constitutionality of the newly proposed system.

With regard to the “civic expertise” it has to be said that it is absolutely unacceptable that it would have to be paid by the relevant persons initiating the expertise. This will present an extremely hard obstacle for real development of the “civic expertise”. It would be much better to change the system in the following way:

- a) Natural persons, associations of citizens and legal persons can submit their own expertises of drafts/laws to the AC Agent,
- b) Natural persons, associations of citizens and legal persons can suggest to the AC Agent to conduct the expertise (at its own expense!); in case of rejection of the proposal the AC Agent would have to present reasons for such a decision.

Changes to Article 15

The notion of “privileges and advantages” is not described in the Draft Law. It would be good if these terms were completely clear and the expert therefore hopes that they are described in some other acts.

III. Draft Standard Regulation “On Prevention and Countering of Corruption Division at Executive Bodies“

This draft Regulation (hereinafter: the Regulation) completes the system of ICUs introduced by the above mentioned Draft Law. In this Regulation those bodies are called “Prevention and Countering of Corruption Divisions” but based on the descriptions of their functions and tasks it can be concluded that the Regulation is regulating the position and tasks of the so-called internal control units (ICUs) from the Draft Law above. Comments to concrete articles of the Regulation are thus as follows:

Article 2

Criteria for establishment of Prevention and Countering of Divisions (hereinafter: Divisions) are given in a much too flexible way which allows for the development of significant inexcusable differences in the implementation of the system.

Article 3

Division of powers among the heads of Divisions and the heads of relevant executive bodies⁴ has to be very clear and precise, otherwise various situations will occur causing – among other – the improper interference with the operations of the Divisions.

Article 4

Article 4 introduces accountability of the Divisions to the Governmental AC Agent. This is extremely questionable since it establishes a two-tier system of responsibility of the Divisions –responsibility to the Agent and to the relevant executive body. Such a solution can cause significant problems in the coordinated implementation of the Division’s tasks. There is an even more pressing issue: how can Divisions be under such influence of the AC Agent and be accountable to somebody, who is not even part of their executive bodies. That kind of a system is hardly ever seen in the organisation of public administration in any country of the continental legal system and it is questionable whether the Regulation can introduce such a solution. No previous legal documents have ever mentioned such position and powers of the AC Agent.

Moreover, in Article 3, Part 3 of the Law of Ukraine “On the Principles of Prevention and Countering of Corruption” the tasks of the AC Agent are precisely defined⁵. This provision will be “extended” with the

⁴ According to this Article in some cases heads of executive bodies can give orders and directions to Divisions (ICUs)

Draft Law in the part on changes to Article 3, Part 5 (see also above) but an immediate non-compliance will occur when the Draft Law is adopted – tasks of the AC Agent from Article 3, Part 3 will be different than its tasks from the same Article, Part 5. Therefore, it will not be clear what are the actual tasks of the AC Agent.

It is clear, however, that any new tasks of the AC Agent can be prescribed only by law and not by any other legal document.

Article 5

Article 5 describes tasks of the new units in a way, which opens some questions with regard to the last Paragraph (No 5):

- Why would a Division report the facts of violation of anti-corruption legislation to the Governmental AC Agent (“Government Anti-Corruption Policy Commissioner”), which is not a part of the executive body? If there are grounds for such solution, they have to be explained. In addition, see also comments to Article 4.
- What does “designated Counter Corruption Entity” refer to? It is obviously not the Agent, nor the Division itself.

There is also a general and more important problem that tasks of the Divisions as given by this Article can be defined by law only (and not by a Regulation).

Article 6

Text of this Article clearly shows that members of the Divisions will have investigative powers (paragraphs 6, 7, 8, 9, 10, 11, 12), which in some cases (i.e. para 7, 9) will be very specific. Authorities given in Article 9 of this Regulation will not suffice for the implementation of these powers. There are two possible solutions to this problem:

1. To extend the authorities in Article 9 with typical police-type authorisations,
2. To limit investigations in this Article (6) to administrative investigations only.

There is also a general and more important problem which is that the powers of the Divisions as given by this Article can be defined by law only (and not by a regulation).

In addition, it is worth mentioning the sub-items 5 and 7:

Sub-item 5

This Sub-item stipulates that there will be two types of evaluation of draft normative and legal acts: the external one (by the AC Agent, referred to by the Draft Law in the part concerning Article 13) and the internal one. This solution can prove to be very useful – providing that those evaluations/expertises will not prolong and slow down the legislative process. But again, it is questionable whether a new type of evaluation – the internal one – can be established by the Regulation⁶ only?

Sub-item 7

Sub-item 7 is establishing the power of the Division to “conduct security check of applicants seeking employment with the government...”. According to Article 9 of the Law of Ukraine “On the Principles of Prevention and Countering of Corruption” this is the responsibility of the “principal of the government or local self-government body”. That means that, considering also the amendments planned by the Draft Law, Article 6, Sub-item 7 is not in conformity with Article 9 of the Law because Divisions will not be accountable to heads of executive bodies but to the AC Agent (as foreseen in Article 4 of this Regulation).

⁵ Development of the anti-corruption policy, implementation of the anti-corruption strategy, coordination of the subject activities of central bodies of executive branch.

⁶ External expertises are mentioned in Article 13 of the Law of Ukraine “on the Principles of Prevention and Countering of Corruption”

Article 7

If requirements of the Divisions' employees will really be mandatory for all officials of executive bodies and its subordinated bodies, this will again introduce a two-tier system (this time in the area of management): officials will have to follow instructions of the Head of the executive body and of the Divisions' members. There is no system, which could function efficiently in such a way. It would be a much better solution to entrust the employees of the Divisions to submit proposals to the Head of the executive body, which would then have to make a decision.

Article 9

See comments to articles 4 and 6. In addition, there is an issue whether the mandatory nature of the Divisions' employees' requirements from Article 7 extends also to these authorities? If so, than the heads of the executive bodies will have no power to make any decision in the areas mentioned in this Article. This is hardly acceptable.

It has to be underlined (again) that authorities of the Divisions as given by this Article can be established by law only (and not by a Regulation).

Article 10

The role of the AC Agent in the concrete preparations of work plans is highly questionable – see also comments to Article 4. In addition, how can a work plan of a Division within the executive body be adopted without a decisive involvement of the executive body's Head? His/her role has to be much stronger, after all s/he is the Head of the executive body responsible for its operations!

Article 11

According to Article 11, the AC Agent should be responsible for reviewing complaints concerning the responsibility of Divisions' employees. There is no legal document known to the expert that would provide legal basis for such a solution. In addition, the Head of the executive body would most probably have to follow instructions from the AC Agent in this area. This seriously undermines his/her position and gives immense powers to the Agent, which will be able to control almost the entire activity of the Division and of the executive body. Even if this would have some logical explanations, it is questionable whether the Agent has enough resources and capacities to cope with this task.

Comments to Article 4 have to again be reiterated here.

Article 12

The Agent's consent in each and every concrete case of re/organisation will result in an extremely high workload for the Agent and will enable the latter to directly interfere with the responsibilities of the Head of the executive body and of the Division. Therefore, the Agent can be appointed only with the preparation of criteria for organisation and structure of the Divisions and for monitoring of those criteria, but not for involvement in the concrete decisions.

An even more important issue is that according to the legislation in force there is no provision giving the AC Agent such authority – see comments to Article 4 again.

Article 13

There is a question of what kind of guidance can the AC Agent provides to the Division – general (and non-mandatory) or concrete (and mandatory)? Since mandatory guidance would present a significant change in the powers and authorities of the AC Agent, it would have to be established by law. Non-mandatory guidance can be regulated by this Regulation but only in the framework of the Agent's tasks as stipulated in Article 3 of the Law of Ukraine "on the Principles of Prevention and Countering of Corruption".

Article 14

The role of the AC Agent in the appointments and dismissals of the Director of the Division is again questionable – see also comments to Article 4. In addition, in its amendments to Article 3 of the Law, the Draft Law mentioned above establishes different system of appointments and dismissals.

Article 16

Sub-items 3, 4 and 6

The role of the AC Agent in the appointments and dismissals of deputy directors of Division, in the area of stimulation and liability of the Director, in the area of structure and size of the Division (all in Sub-item 3) and in the area of Division's reporting obligations (Sub-item 4) is also questionable – again, see comments to Article 4.

Sub-item 6 presents the Division's obligation to submit statistical reports to the AC Agent. Such a solution is not in conformity with Article 16 and Article 3 (Part 4, Paragraph 2) of the Law of Ukraine "On the Principles of Prevention and Countering of Corruption", which gives an explicit and closed list of anti-corruption entities obliged to report to the AC Agent.

IV. Conclusion

It is obvious that Ukraine is continuing its anti-corruption efforts at a very high level and with great speed. The system of anti-corruption institutions would change significantly, if the planned changes of the Draft Law and Regulation entered into force. It is obvious that the basic anti-corruption system of Ukraine would then be composed of some very specialised services:

- National Bureau of Anti-Corruption Investigations (hereinafter: the Bureau),
- Governmental Anti-Corruption Agent,
- Prevention and Countering Corruption Divisions completely submitted to the AC Agent.

Until now there was a consensus in Ukraine that the AC Agent will deal with preventive tasks only while the Bureau will manage repressive tasks. The establishment of Divisions with preventive and repressive tasks and authorities opened the question of their coordination. Draft Law and Regulation are introducing a system, according to which the nature of the institution of the AC Agent is changing significantly: it would no longer deal only with the anti-corruption policies. Instead, the AC Agent would become a peak of the system of Divisions in which it would have the chance to influence the work and activities of almost all public institutions in Ukraine. First of all, it has to be reiterated that several amendments and new provisions brought by the Regulation are in breach of the Law of Ukraine "On the Principles of Prevention and Countering of Corruption" and in breach of the basic legal postulates, as they are not only directly breaching the Law but are also bringing solutions, which can only be brought by a legal instrument with the power of law.

In addition, such system would immediately raise the question on the autonomy of Divisions and bodies in which Divisions will be operating. The AC Agent would have all the most important tools for control and guidance of Divisions in its hands. Being a part of the Government such change would immediately result in a far too strong direct influence of the government in relation to all other parts of the system. This was not a problem when the AC Agent was dealing with preventive functions only, but it would certainly become problematic by changing the nature of its tasks.

That said, it has to be mentioned again that the introduction of Internal Control Units might really help to reduce corruption in public institutions in Ukraine and it would be worth trying to find a solution for their coordination and general substantial guidance. Introduction of yet another high-level anti-corruption body (for the coordination of the ICUs' work) in Ukraine with certain distance to the government does not seem to be a very realistic idea. It would therefore have to be one of the existing institutions that would have to be granted such authority.

Prior to any other measures, the system of ICU's, their tasks and responsibilities and their relations with other bodies will have to be brought in line with the Ukrainian legal framework.

After that a decision will have to be made on their position in a system: will they really be completely (as is currently the case) submitted to a body positioned outside of their environment or will they become real parts of the institutions in which they will be operating and will thus be only generally and in a non-binding way submitted to an outside institution? Both solutions are possible but each of them would influence the nature and the position of a body, authorised for their "supervision". If the relation between the ICU and the supervisory body would remain at the general and non-binding level (of course, the body can still have some influence on the appointments and dismissals of heads of the ICUs) than this can easily remain a task of the AC Agent, regardless of the Agent's proximity to the government. If the relation remains strong as it is foreseen by the Draft Law and Regulation, than either another body would have to be authorised for the guidance of the ICUs, or the AC Agent would have to get a much more independent position, not so close to the government.

In addition to the questions posed above, the Ukrainian authorities might wish to consider another step in the development of the system: following extremely good results in some other countries (Lithuania, Latvia,..) it would be worth considering the idea to merge both existing top AC institutions (the Bureau and the AC Agent) into one with at least the same level of independency as it is given to the Bureau. This way, several problems would be resolved as follows:

- A clear responsibility for the situation in the field of corruption would be established,
- Preventive and repressive functions of the state would be coordinated by the same body,
- Institution's independence would ensure full compliance with all relevant requirements of the international legal instruments,
- This solution could prove to be the most economically viable (only one administration, no duplications,..),
- There will be no more problems with regard to relations between the ICUs and the new body, etc.

It goes without saying that all future decisions and changes will have to follow the existing legal situation in the country.

V. Annexes

Annex 1. Draft Law of Ukraine “On Amendments to the Law of Ukraine “On Principles of Prevention and Counteraction of Corruption“

The Verhovna Rada (Parliament) of Ukraine decides to:

1. Amend the draft law Ukraine on principles of prevention and counteraction of corruption (Official bulletin of Ukraine, 2009, #53, p/ 1822) with the following amendments:

1) in part 5 of the Article 3:

to substitute § 1) -2) with § 1) -3) in the following wording:

“1) special body (person) for the anti-corruption policy;

2) internal control unites for preventing and countering corruption in bodies of State power and local self-government;

3) local self-government authorities”

Therefore § 3 should become §4

Complete this part with new paragraphs of the following wording:

“The heads of unites of internal control within bodies of the executive power are appointed and dismissed by the Cabinet of Ministers of Ukraine on the proposal of the special authorised body (person) for anti-corruption policy, agreed by the Committee on combating organised crime and corruption of the Verhovna Rada of Ukraine for the period of seven years.

The heads of internal control of the Autonomous Republic of the Crimea, oblasts, Kyiv and Sevastopol State administrations are appointed and dismissed by relevant superiors on the proposal from the special authorised body (person) for anti-corruption policy, agreed with the Committee on combating organised crime and corruption of the Verhovna Rada of Ukraine for a period of 7 years.

The heads of the units of internal control and other local bodies of executive power are appointed and dismissed by heads of this bodies with the agreement of the specially authorised body (person) for anti-corruption policy.

2) §3 of the part 1 of Article 9 should be exposed in the following wording :

The special checks are performed by units of internal control (“units for prevention and counterring corruption”) of the State authorities with the involvement of special competent bodies in the anti-corruption field and if necessary other bodies of the executive at the national level.”

3) To add part 4 to Article 10 with the following content:

“ 4. The units of internal control (“units for prevention and counterring corruption”) take measures of control over submissions by persons mentioned in §1 and subparagraphs “a” and “r”(e) of §2 of part 1, Article 2 of this Law.;

4) complete Article 12 with part 3 of the following content:

“3. Units of internal control (“units for prevention and counterring corruption”) in the State authorities take measures to detect and resolve conflicts of interest of the persons linked to the execution of State functions”

6) To formulate Article 13 with the following wording:

Article 13. Anti-corruption “expertise” (proofing or screening) of legal acts and their drafts

1. For the purpose of detection in legal acts and their drafts of provisions that could contribute to committing of corruption offences and elaboration of recommendations to overcome problems, the specially authorised body (person) for anticorruption policy shall deal with the anti-corruption “expertise” (proofing or screening).

The procedure and the methodology of the anti-corruption “expertise” (proofing or screening) and the procedure of publication of its results shall be defined by the Cabinet of Ministers of Ukraine.

The results of the anti-corruption “expertise” (proofing or screening) shall be considered as obligatory for consideration during adoption of a legal act.

2. The following legal acts should be subject to the anti-corruption “expertise” (proofing or screening):

- Laws of Ukraine, Acts of the President of Ukraine and the Cabinet of Ministers as well as their drafts on the decision of the specially authorised body (person) for anti-corruption policy;
- Acts of central authorities of executive power on decision of a central body of executive power or of the specially authorised body (person) for anti-corruption policy;

3. Public / civic anti-corruption “expertise” (proofing or screening) can be conducted on the initiative of physical persons, associations of citizens and legal persons.

The specially authorised body (person) for anti-corruption policy sets up the procedure of accreditation of civic experts and consideration of conclusions of a civic anti-corruption “expertise”.

Public / civic anti-corruption “expertise” (proofing or screening) of drafts and publication of its results are made on the expense of relevant physical persons, associations of citizens and legal persons or other sources allowed (“not forebidden”) by law.

Public / civic anti-corruption “expertise” (proofing or screening) of draft acts containing data with restricted access or data considered as State secret cannot be conducted.

7) Parts 3 and 4 of Article 15 shall be substituted by the following text :

“3. Draft acts providing for privileges and advantages for certain economic players / entities and delegation of functions and competencies of bodies of executive power and bodies of local self-government including to non-governmental organisations (NGOs) shall be subject to public discussion following the procedure established by the Cabinet of Ministers of Ukraine”;

8) in Article 19:

part 4 shall be deleted;

New part 2 shall be added to the Article with the following wording:

“A service investigation is conducted following the procedure established by the Cabinet of Ministers in order to detect the reasons and the conditions which contributed to (committing) corruption offences or non execution of requirements of this law”;

In this respect parts 2-5 shall become respectively 3-6”.

Annex 2. Draft Standard Regulation “On Prevention and Countering of Corruption Division at Executive Bodies“

APPROVED
by Resolution of Cabinet of Ministers of Ukraine
of 2009 No.

**DRAFT STANDARD REGULATION
on Prevention and Countering of Corruption Division at Executive Bodies**

1. This Regulation regulates the issues of operations of Prevention and Countering of Corruption Divisions at ministries, other central bodies of executive branch, oblast, Kyiv and Sevastopol City state administrations (hereinafter – executive body).

2. Appropriate prevention and countering of corruption divisions (departments, offices, units, cells), or position of specialist on subject issues (hereinafter – Division) shall be established at the staff of executive bodies depending on the size of the staff, subordinated agencies, enterprises, institutions and organizations within the sphere of administration of the ministry (hereinafter – subordinated agencies), and also, on the scope, nature and complexity of work.

If an executive body has subordinated agencies, the latter may also establish prevention and countering of corruption divisions (or appoint staff) reporting to the head of appropriate agency or and subordinated to the head of Division.

3. The Division in its activity shall be governed by Constitution of Ukraine and laws of Ukraine, decrees of President of Ukraine and resolutions of Verkhovna Rada of Ukraine adopted in accordance with Constitution of Ukraine and laws of Ukraine, acts of Cabinet of Ministers of Ukraine, international agreements of Ukraine, this Regulation, other normative and legal acts, and also, orders and directives of the head of executive body pertaining to the issues, which do not restrict execution of the tasks assigned to the Division.

4. This Division is a component reporting to the head of executive body, reporting and accountable to the Government Anti-Corruption Policy Commissioner, unless otherwise provided by law.

The following are specifics of Division operations, in particular:

- specifics of establishment of Division and appointment of director;
- ban on assignment of responsibilities to the Division, which are other than authorized or beyond the authority vested therein.

5. Division is tasked with the following:

1) involvement in implementation of public anti-corruption policy in accordance with the powers of the executive body, within which the division has been established;

2) engagement in the prevention, detection and deterrence of corrupt and other offences, rehabilitation of rights or interests of physical and legal entities, interests of the state, and also, information and research support of prevention and countering of corruption related efforts, international cooperation in this area;

3) organizational activities and advice to the executive body and its subordinated agencies in the area of prevention and countering of corruption and monitoring of action taken in this connection;

4) within its authority, oversight of compliance of executive body and its subordinated agencies with anti-corruption legislation;

5) immediate written notification of the head of executive body, Government Anti-Corruption Policy Commissioner and the designated Counter Corruption Entity of the facts of violation of anti-corruption legislation by officials of executive body and its subordinated agencies.

6. In accordance with its assigned tasks, the Division shall:

1) develop, implement within its authority and monitor proactive efforts to prevent corrupt practices at the executive body and its subordinated agencies;

2) advise other components and employees of executive body and its subordinated agencies on the issues of application of anti-corruption legislation;

3) take action to detect and settle conflict of interest of employees of executive body and its subordinated agencies to handle it appropriately;

4) control submission of information pertaining to property, income, financial obligations, including the ones outside Ukraine, and disclosure (where applicable) of subject information by officials of executive body and its subordinated agencies. Involve in verification of such information within its authority;

5) in accordance with established procedure, involve in internal evaluation of draft normative and legal acts, executive documents issued by executive body to identify the factors, which result or may result in corrupt practices, and where such factors have been identified, submit proposals to the head of entity (agency) concerning adjustment or revocation of relevant acts (documents);

6) submit proposals to the head of executive body concerning official investigations and reviews at executive body and its subordinated agencies or conduct investigation or review to identify the cause and conditions resulting in corrupt practices or non-compliance with anti-corruption legislation;

7) conduct security checks of applicants seeking employment with the government related functions requiring appointment by the head of executive body, including checks of personally submitted information;

8) in accordance with established procedure, review reports from public, legal entities, and also information published in printed, audio-visual media concerning involvement of employees of executive body and its subordinated agencies in corrupt practices;

9) jointly with audit divisions of executive body, involve in financial audits of executive body and its subordinated agencies to review compliance with anti-corruption legislation;

10) based on the findings of reviews and official investigations into non-compliance with anti-corruption legislation requirements, submit proposals to the head of executive body related to corrective action to eliminate the factors which result or may result in corrupt practices, an such proposals are mandatory for consideration;

11) in case indications of corrupt offences have been found, submit proposals to the head of executive body concerning referral of findings of reviews and official investigations to designated counter corruption entities;

12) obtain and process information concerning corrupt practices among employees of executive body and its subordinated agencies, prepare proposals and recommendations concerning elimination of their impact;

13) maintain the register of action taken against employees for corrupt offenses at executive body and its subordinated agencies;

14) interact with prevention and countering of corruption divisions of other executive bodies;

15) exercise other powers in accordance with the tasks assigned thereto.

7. Requirements of employees of the Divisions compliant with current legislation are mandatory for execution by all officials of executive body and its subordinated agencies.

If necessary and as requested by director of Division, officials of executive body and its subordinated agencies shall visit the Division and provide explanations concerning the issues pertaining to adherence with anti-corruption legislation.

8. No assignments beyond the authority of Division are allowed.

9. Division has the following authority:

1) to request and obtain copies of documents, other information related to the tasks assigned to the Division, and also in accordance with established procedure, restricted information or information containing state secrets from components of executive body and its subordinated

agencies;

2) use information systems and data bases of executive body and its subordinated agencies when exercising its powers;

3) obtain written and verbal explanations from employees of executive body and its subordinated agencies during reviews and official investigations;

4) when exercising their authority, to have unimpaired access to facilities and sites of executive body and its subordinated agencies, documents and materials, which constitute the subject of review (official investigation), provided they present their identity card;

5) submit proposals to the head of executive body concerning involvement of employees of other components at the consent of their supervisors in reviews and official investigations and provision of appropriate assistance;

6) submit proposals to the head of executive body concerning initiating in accordance with established procedure audits and reviews to be conducted by control and audit service at executive body and its subordinated agencies;

7) initiate before the head of executive body that requests for information and duly certified copies of documents are sent to business entities having relations with executive body;

8) submit advice to head of executive body concerning action against officials of this body and subordinated agencies for unlawful decisions, performance or non-performance.

Where action against the head of executive body is concerned, the Division shall submit an appropriate proposal to Government Anti-Corruption Policy Commissioner to be duly forwarded to Cabinet of Ministers of Ukraine;

9) as applicable, in connection with review or official investigation into non-compliance with anti-corruption legislation, make submission to the head of executive body concerning suspension of official employed by the subject executive body or its subordinated agency for the duration of review or official investigation.

If the issue of suspension concerns the head of executive body, the Division shall submit subject proposal to the Government Anti-Corruption Policy Commissioner to be further forwarded to the Cabinet of Ministers of Ukraine;

10) generate data bases to maintain records of information required for execution of tasks assigned to the Division.

10. Division shall operate based on work plans developed by the Division, coordinated with the Government Anti-Corruption Policy Commissioner and approved by director of Division.

Proposals of the head of executive body shall be considered in the plan development process.

11. The Government Anti-Corruption Policy Commissioner shall review complaints against actions taken by employees of the Division, if any.

The head of executive body shall take decisions concerning action against employees of the Division based on the referral from Government Anti-Corruption Policy Commissioner.

12. The structure and size of Division shall be approved by the head of executive body following the established procedure and agreed upon with the Government Anti-Corruption Policy Commissioner.

Restructuring of Division shall be coordinated with the Government Anti-Corruption Policy Commissioner.

13. The Government Anti-Corruption Policy Commissioner shall provide guidance to the Division in support of its activity.

14. The Division is headed by Director.

Director of Division at executive body shall be appointed and dismissed by the head of this body at submission of the Government Anti-Corruption Policy Commissioner, except as otherwise provided by law of Ukraine.

15. Position of director of Division requires Master or specialist degree in law or another appropriate discipline with appropriate experience in civil service or at least five years in leadership positions in other areas.

16. According to the tasks assigned to the Division, Director of Division shall:

1) manage the Division and bear personal responsibility for accomplishment of the tasks assigned thereto;

2) distribute responsibilities between deputies and heads of components of Division;

3) submit proposals to the head of executive body concerning the following:

Appointment and dismissal of deputy directors of Division in coordination with the Government Anti-Corruption Policy Commissioner;

Appointment and dismissal of other employees of Division;

Stimulation and liability of Director of Division in coordination with the Government Anti-Corruption Policy Commissioner;

Stimulation and liability of other employees of Division;

Structure and size of Division in coordination with the Government Anti-Corruption Policy Commissioner;

Financial and logistic support requirements of the Division;

4) on a monthly basis, submit current information concerning counter corruption activity and action against employees employed by executive body or its subordinated agencies in connection with corrupt practices to the Government Anti-Corruption Policy Commissioner in the format established by the latter, and if necessary, proposals concerning the issues requiring review at the level of Cabinet of Ministers of Ukraine;

5) if necessary, inform the Government Anti-Corruption Policy Commissioner and the head of executive body concerning the incidents of hindrances to activity of employees of Division, failure to meet the requirements of employees of Division, failure to submit or failure to submit documents or other materials in timely manner by officials of executive body;

6) every six months, no later than 15 July and 30 January of the year following the reporting year submit semi-annual and annual performance reports, accordingly, to the Government Anti-Corruption Policy Commissioner to include:

Statistics concerning corrupt offenses at the executive body and its subordinated agencies, indicating the following:

a) number of reports of corrupt offenses;

b) number of convictions or administrative penalties for corrupt offenses;

c) data per each category of entities responsible for corrupt offenses and types of liability for corrupt offenses;

d) data concerning the amount of damage caused by corrupt offenses, the status and amounts recovered;

information concerning performance of public agencies in terms of prevention and countering of corruption, including within the framework of international cooperation;

other information concerning performance of Division.

Division reports are also sent to the head of executive body and posted at the official web-site of executive body.

17. The head of executive body where the Division is established shall create appropriate conditions in support of effective execution of tasks assigned to the Division.

In particular, it will provide facilities to meet safety requirements and sanitary standards, telephone and electronic communication equipment, up-to-date computers and office equipment, transportation for official needs, normative and legal acts and reference materials, electronic system of information and legal support and also, access to data banks.