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## **TACIS UKRAINE ACTION PROGRAMME 2004**

# **Support to Good Governance: Project against Corruption in Ukraine - UPAC**

## **4<sup>th</sup> Progress Report**

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The views expressed in this technical report do not necessarily reflect official positions of the Council of Europe or of the donor funding this project.

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# 1 Background Information

UPAC – Support to Good Governance: Project against Corruption in Ukraine started on 8 June 2006. The present report summarises the activities carried out since the last project report of 18 February until 15 July 2008.

## Beneficiary country and institutions

Ukraine

Primary beneficiary: Ministry of Justice of Ukraine.

Project Partners: Ministry of Justice, Council of National Security and Defence, office of the Prosecutor General, Ministry of Interior, and other institutions represented in the Steering Group.

## Contracting authority

European Commission (EC).

## Implementing organisation

The Council of Europe is responsible for the implementation of the project and the use of the project funds under the contract with the European Commission. Within the Secretariat of the Council of Europe in Strasbourg, the Economic Crime Division (Technical Co-operation Department, Co-operation Directorate, Directorate General of Human Rights and Legal Affairs) is responsible for overall management and supervision of the project. A Team Leader and local support staff, based in Kyiv, have been working directly with, and through, the Ministry of Justice.

# 2 The Project

## 2.1 Project Objectives and activities

UPAC's objective is to strengthen the Ukrainian authorities' capacities and legal framework for the fight against corruption, in order to achieve this objective, the project is designed to work in three complementary directions:

1. It aims at supporting the adoption, elaboration and implementation of a Ukrainian National Anti-corruption Strategy and Action Plan against Corruption, and the creation of an efficient and effective monitoring mechanism to oversee and co-ordinate the implementation of the Strategy and Action Plan;
2. It supports policies aimed towards strengthening the institutional capacities of Ukraine in the fight against corruption;
3. It assists Ukraine in the approximation and harmonisation of its legal framework against corruption with European and international standards and legal instruments, in particular those set by the Council of Europe Criminal and Civil Law Conventions against Corruption, and the United Nations Convention against Corruption.

UPAC aims at reaching its objectives through the provision of targeted expertise by European experts, in close co-operation with Ukrainian experts, and through outreach to all relevant stakeholders and civil society on the expertise acquired. UPAC also foresees a number of study tours to European partner institutions to facilitate networking and lessons learned and best practices sharing.

## 2.2 Summary of Project Outputs/Purposes

<b>Overall objective</b>	<b>To contribute to the prevention and control of corruption so that it no longer undermines the confidence of the public in the political</b>
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	<b>and judicial system, democracy, the rule of law and economic and social development in Ukraine</b>
<b>Purpose 1</b>	<b>To improve the strategic and institutional framework against corruption in Ukraine</b>
Output 1.1	Anti-corruption strategy and Action Plan available
Output 1.2	Effective monitoring, coordination and management of anti-corruption measures ensured
Output 1.3	Proposals available to ensure the implementation of Article 6 of the United Nations Convention against Corruption regarding preventive anti-corruption body or bodies
<b>Purpose 2</b>	<b>To enhance capacities for the prevention of corruption</b>
Output 2.1	Anti-corruption concerns incorporated into the process of public administration reform ("anti-corruption mainstreaming")
Output 2.2	Risks of corruption reduced in the judiciary
Output 2.3	Risks of corruption reduced in the prosecution and the police
Output 2.4	Conflicts of interest reduced in the political process
Output 2.5	Capacities enhanced at the level of local and regional authorities for the prevention of corruption and strengthening of integrity
Output 2.6	Public participation in the anti-corruption effort promoted
<b>Purpose 3</b>	<b>To strengthen the anti-corruption legal framework and effective and impartial enforcement of the criminal legislation on corruption</b>
Output 3.1	Draft laws available to improve the prevention and control of corruption in accordance with the Criminal and Civil Law Conventions against corruption of the Council of Europe (ETS 173/174), the United Nations Convention against Corruption and other relevant international legal instruments
Output 3.2	Judges trained and specialised in adjudication of corruption, law enforcement officials trained in the investigation and prosecution of corruption offences

### 2.3 Inputs

The project provides funding for:

- National conferences
- Expert advice
- Written expert opinions/assessments (expertises)
- Workshops, roundtables and in-country training activities
- Study visits
- Surveys
- Awareness raising activities
- Translations and publications
- Risk analyses
- Development of the terms of reference for a grant programme
- IT equipment (ToRs)

## 3 Overall achievements

### 3.1 Steering Group Meeting

Prior to the Steering Group meeting (held on 9 April 2008 in Kyiv), and following the deployment of the new Team Leader in March, the UPAC team conducted a series of bi-lateral meetings with the Ukrainian partner institutions in order to discuss priority activities within the project and enhance compliance with GRECO recommendations.

Bi-lateral meetings were held with:

1. Mr A. Bohdan, Deputy Minister of Justice and Mr R. Riaboshapka, Project Coordinator from the Ministry of Justice;
2. Mr I. Kalietnik, Head of the Committee on Fighting Organised Crime and Corruption of the Verkhovna Rada and several heads of subcommittees – Mr O. Riabeka, Mr A. Pshonka, Mr I. Myrny as well as members of the Secretariat of the Committee;
3. Mr O. Shynalsky, Deputy Prosecutor General of Ukraine;
4. Mr V. Bedrykivsky, Deputy Minister of Interior and Ms L. Butenko, Deputy Head of Division, Main Department of the Fighting against Organised Crime of the Ministry of Interior;
5. Mr T. Motrenko, Head of the Main Civil Service Department;

Prior to the meeting, all Steering Group members had been invited to prepare their suggestions and comments with respect to the continuation and nature of activities of the project on the basis of the existing Workplan of Activities.

Moreover, a series of meetings with representatives of international projects/donor organisations were organised before the Steering Group meeting, with the purpose of proper co-ordination of anti-corruption activities, including a donor co-ordination meeting hosted by UPAC on 14 March 2008.

The Steering Group Meeting took place as scheduled, in Kyiv on 9 April 2008 at the premises of the Ministry of Justice of Ukraine. Representatives of partner institutions members of the Steering Group were present. Those included in particular the representatives of: Ministry of Justice, Ministry of Interior, National Security and Defence Council, Prosecutor General's Office, Presidential Secretariat, Verkhovna Rada, Main Civil Service Administration, Parliamentary Institute, and the Academy of Judges. Also, the UPAC Project Manager and representatives of the Council of Europe Secretariat and the European Commission Delegation participated in the meeting (Annex I - List of Participants).

The Steering Group meeting provided an opportunity to review the progress in the implementation of the project since the last meeting in November 2007, positively assessed by stakeholder institutions, and to review the Workplan taking into account proposals by partner institutions and recent developments. The stakeholders agreed on the activities for the future and the manner in which they should be conducted (Annex II - Revised Workplan of Activities 2008). Thus it was decided to implement several activities in a co-ordinated manner, in particular the following:

- Activities 2.1.2, 2.1.3, 2.1.6, 2.4.4, 3.1.7 regarding prevention of corruption in the public service;
- Activities 2.4.2-2.4.5 regarding prevention of political corruption.

It was decided to hold the next Steering Group Meeting in September-October 2008.

## **4 Overview of Activities**

Several activities planned for/by March 2008 foreseen by the Workplan (version of 29 November 2007) have been postponed (2.4.3, 2.4.5, 3.1.5, 3.1.7, 3.2.2). The main reason for that was the need to adjust the Workplan to current priorities of partner institutions. Moreover, the new Team Leader started his work in Kyiv on 3 March and the preparation of some activities required a certain time.

Finally, the revised Workplan (Annex II - Revised Workplan of Activities 2008) and a Calendar of Activities have been agreed upon during the Steering Group meeting of 9 April. Following the revised Workplan, only Activity 3.2.2 (proposed as debriefing on models of anti-corruption bodies following a study visit to Paris and Ljubljana in May 2008) has been postponed. However, its preparation has started.

During the reporting period a particular emphasis was put on:

- Implementation of GRECO recommendations contained in the Evaluation Report from the 1st and 2nd Evaluation Rounds (adopted in March 2007);
- Assistance in preparing the anti-corruption package for the 2nd reading in Parliament and related parliamentary hearing on 4 June;
- Assistance in improving anti-corruption co-ordination, monitoring and setting up of the institution of Anti-corruption Agent; other assistance aimed at strengthening of institutional capacities against corruption; enhancement of specialisation and international co-operation;
- Assistance to the Ministry of Justice in setting up capacities for its new functions provided by the Decree of the President of Ukraine № 80/2008 ("On certain measures for improving formulation and implementation of state anti-corruption policy");
- Assistance aimed at reducing corruption in the political process.

As a result, the following activities were carried out during the reported period and which constitute the progress made so far in the implementation of this project.

<b>Activities</b>	<b>Status</b>
Expert comments on the draft Law "On the principles of prevention and counteraction of corruption" and assistance to the Parliamentary Committee working group on preparation of drafts of the "Anti-corruption package" to the second reading (March-May 2008), Activity 3.1.7	Completed
Steering Group Meeting (April 2008)	Completed
Expertise on the Draft Resolution of the Cabinet of Ministers on Anti-Corruption policy and appended Regulations on the Government Agent on Anti-corruption policy issues (elaborated by the Ministry of Justice, April 2008), Activity 1.2.1	Completed
Round-table "Looking for the Optimal Model of the System of Anti-corruption Bodies in Ukraine" (April 2008), Activity 1.2.1	Completed
Expertise on the "Methodology for expert examination of normative and legal acts and draft normative and legal acts as to corruption" (anti-corruption proofing, April 2008), Activity 1.3.1	Completed
Study Visit: "Existing Practices from European Anti-corruption Services" to Paris and Ljubljana – with the purpose of learning about models of anti-corruption bodies in France, Slovenia and Croatia (May 2008), Activity 1.2.2	Completed
Contribution to the Parliamentary hearing "Anti-corruption policy and practice: problems of legislative framework" (June 2008), Activities 3.1.7 – 3.1.8	Completed
Expert comments on the draft laws from the "anti-corruption package" prepared for the 2 <sup>nd</sup> reading in Parliament (June 2008), Activities 3.1.7 – 3.1.8	Completed
Expert comments (comparative analysis) on two draft Regulations on the Government Agent for Anti-Corruption Policy – one prepared by the Cabinet of Ministers and the other by the Ministry of Justice (July 2008), Activity 1.2.1	Completed
Conference on prevention of political corruption (July 2008), Activities 2.4.2 – 2.4.5	Completed

#### **4.1 Project Team**

Following the departure of Ms Vera Devine in June 2008, Mr Roman Chlapak has been offered the position of the Team Leader of UPAC project and has been endorsed by both the European Commission Delegation in Kyiv and the Ministry of Justice.

Mr Roman Chlapak took up his post as full-time UPAC project manager/team leader on 3rd March 2008.

Ms Iryna Zaretska was recruited for the position of the National Legal Adviser in February 2008 and worked in the UPAC team until June 2008 when she moved to the new project on "Transparency and efficiency of the judicial system of Ukraine".

Ms Vlasta Sposobna continues to work in the project team in the capacity of Project Assistant.

The project launched the recruitment for the posts of two project legal advisers: "Local long-term expert" – senior legal adviser to replace Ms Zaretska and "Project legal officer" – junior legal adviser - additional post introduced since May 2008.

An advertisement was placed in the newspaper "Kyiv Post" after what 14 interviews were organised with candidates. After these interviews, Ms Kateryna Gayevska was proposed for the position of Senior legal adviser and Ms Valeria Reva for the position of junior legal adviser.

Ms V. Reva started working in the project team as of 18 August while Ms Gayevska is expected to join the team later this year.

## 4.2 Project Office

As during the previous reporting period, the UPAC Project office is located within the Council of Europe Special Representation office on Khmelnytskoho street no. 70-A in Kyiv.

Activities Implemented during the reporting period

<b>PURPOSE 1:</b>	<b>TO IMPROVE THE STRATEGIC AND INSTITUTIONAL FRAMEWORK AGAINST CORRUPTION IN UKRAINE</b>
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### **Output 1.2      Effective monitoring, co-ordination and management of anti-corruption measures ensured**

Assistance in strengthening of institutional capacities was given a particular attention in view of relevant GRECO recommendations and requirements of international legal instruments as well as priorities set by the Ukrainian authorities.

*Activity 1.2.1      Workshop on models, types and tools used by different anti-corruption bodies/structures in view of the feasibility of such structures in Ukraine; their role; and the establishment of a structure/body to monitor, manage and co-ordinate the implementation of the National Anti-Corruption Strategy and its Action Plan*

### **- Expert opinions on drafts of Regulations on the Government Anti-Corruption Agent (April, July)**

In its Evaluation Report from the 1<sup>st</sup> and 2<sup>nd</sup> Evaluation Rounds (adopted in March 2007), GRECO recommended Ukraine (see 1<sup>st</sup> Recommendation) 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".*

Pursuant to the Decree № 80/2008 of the President of Ukraine "On Certain Measures for improving the Formulation and Implementation of State Anti-corruption Policy", the Ministry of Justice has elaborated a draft Resolution of the Cabinet of Ministers "Concerning Anti-corruption Policy", and Regulations "On a Government Agent on Anti-corruption Policy" in March 2008. In the framework of UPAC, Mr Drago Kos, Council of Europe expert provided his comments to this draft Resolution and draft Regulations. They were submitted to the Minister of Justice on 18 April 2008. The expert's main criticism concerned the absence of real decision-making powers and independence of the Agent. The expert recommended to improve



provisions related to the Agent's tasks and his/her appointment and dismissal. Moreover, the expert recommended redefining lines of communication, authority and responsibility within the Ministry of Justice involving the Agent and channels of communication with other anti-corruption actors.

The Cabinet of Ministers adopted a formal decision on the creation of the institution of the Government Anti-corruption Agent on 4 June 2008, but without a clear mandate. The Cabinet asked to prepare a draft of Regulations defining the mandate of the Agent.

Following this decision and taking into account the Council of Europe expert's comments of April, the Ministry of Justice has redrafted the Regulations concerning the Government Agent for Anti-corruption Policy. In addition, the Cabinet of Ministers has elaborated its own (alternative) draft of Regulations regarding the mandate of the Government Agent for Anti-Corruption Policy. Both drafts were submitted to the Council of Europe for expert comments in July 2008.

The same expert – Mr Drago Kos, who provided his comments in April--examined the above-mentioned drafts. His expert opinion emphasised that there were no substantial differences between the two drafts concerning the substance of the Agent's work, nomination and independence, and that both drafts satisfied the requirements of the UN Convention against Corruption. The Ministry of Justice draft proposed to make the Government Anti-corruption Agent part of the structure of the Ministry of Justice (appointed and dismissed by the Cabinet of Ministers on the basis of the nomination of the Minister of Justice, agreed by the Prime Minister), whereas the Cabinet of Ministers' draft described the Agent as being part of the structure of the Cabinet of Ministers (appointed and dismissed by the Cabinet of Ministers upon nomination by the Prime Minister). The only real difference is the existence of the "State Service for Anticorruption Policy" (as an expert anti-corruption body), which would support the work of the Agent according to the draft proposed by the Ministry of Justice (in the Cabinet of Ministers' draft, the activities of the Agent are supported by the appropriate unit of the Secretariat of the Cabinet of Ministers). It is not clear from the draft of the Cabinet of Ministers how the Agent would work without proper expert support. In the Ministry of Justice draft it is not clear how the Agent would ensure the future proper co-ordination of anti-corruption activities of all stake-holders.

#### **- Roundtable on anti-corruption bodies (Kyiv, 22 April 2008)**

A roundtable "Looking for the Optimal Model of a System of Anti-corruption Bodies in Ukraine" took place on 22 April 2008 in the Ministry of Justice. The event was organised in co-operation with the Ministry of Justice and the OECD anti-corruption technical co-operation project "Strengthening the Capacity for Investigation and Prosecution of Corruption in Ukraine".

The activity brought together representatives of various state institutions, such as the Ministry of Justice, the Presidential Secretariat, the National Security and Defence Council, the Main Civil Service Department, the Ministry of Interior, the Ministry of Economy, the General Prosecutor's office, the National Academy of Prosecutors, the Secretariat of the Committee on Fighting Organised Crime and Corruption of the Verkhovna Rada; MPs, the Accounting Chamber, the State Tax Administration as well as representatives of national and international NGOs and organisations (Transparency International, NATO, MCC, US Embassy, Kharkiv Institute for Applied Humanitarian Researches).

The Council of Europe expert, Ms Marijana Trivunovic, presented different types of preventive and law enforcement anti-corruption bodies. She invited the Ukrainian authorities to establish a system of anti-corruption bodies: such responsible for the development of anti-corruption policy and the monitoring of its implementation, as well as such in charge of investigation of corruption cases. She underlined the importance of creating independent, transparent and accountable anti-corruption bodies that are provided with adequate financial and human resources. She stressed the necessity for Ukraine to adopt an anti-corruption action plan linked to the strategy. Representatives of the state institutions and bodies and of international organisations had the opportunity to discuss Ms Trivunovic's proposals and to present their own positions. The weakness and inefficiency of the current system and the need to reinforce the anti-corruption legislation aimed at creating efficient preventive and law enforcement bodies

were discussed. Following the roundtable, Ms Trivunovic prepared a technical paper on models of anti-corruption bodies in Ukraine (see **Annex III - Technical Paper regarding models of anti-corruption bodies in Ukraine, Marijana Trivunovic**).

Based on the roundtable discussion, the participants formulated the following recommendations:

- Support the creation, within the Ministry of Justice, of a body empowered to co-ordinate the formulation and realisation of anti-corruption policy. This body should have sufficient autonomy in the decision-making process and proper resources. Appointment and dismissal of its members should be specifically regulated. The Ministry of Justice should conduct anti-corruption proofing of legislation and draft legal acts, prepare proposals on improving anti-corruption legislation, organise anti-corruption research, carry out educational and information campaigns to prevent corruption, etc. Furthermore, this body should report to the Parliament, Cabinet of Ministers and the public. The aforementioned measures should be conducted with active involvement of civil society representatives.
- Hold, at least once a year, a meeting of the National Security and Defence Council of Ukraine dedicated to anti-corruption issues with a view to consider the current situation and necessary measures to ensure effective actions by state authorities to prevent and combat corruption.
- Create, on a legal basis, an effective system for collection, verification and publication of public servants' declarations of assets, income and expenses, as well as for detection and resolution of conflicts of interests in the public service.
- Determine by law an authorised institution (official) in the area of ensuring the right of access to public information
- Set up on the basis of law a specialised agency to detect and investigate corruption offences with powers of conducting operative and search activity and pre-trial investigation.
- Introduce specialisation of prosecutors in investigating corruption offences.
- Review the draft legal acts to be prepared in line with these recommendations by international experts, in particular Council of Europe and OECD experts. (**Annex IV - Recommendations adopted at the roundtable discussion on anticorruption bodies**).

#### **- Participation in the Inter-institutional Working Group meetings (Kyiv, April-July)**

An Inter-institutional Working Group was set up by Decree of the President of Ukraine of 17 April 2008 as an auxiliary body of the President of Ukraine, with the purpose of preparing proposals on how to improve interagency co-ordination, work out a plan of actions regarding prevention and counteraction of corruption as well as examine proposals on how to improve anti-corruption legislation. The Working Group is chaired by the Prosecutor General and the Acting Head of the Security Service. The UPAC Team Leader and the Representative of the Secretary General for the co-ordination of co-operation programmes with Ukraine underlined on several occasions that pursuant to the 1<sup>st</sup> GRECO Recommendation and opinions provided by Council of Europe experts on the Concept paper "On the Way to Integrity" and the current anti-corruption action plan, the body in charge of coordination and monitoring of national anti-corruption efforts should not have a law enforcement functions. Therefore, it was recommended to the Inter-institutional Working Group to focus exclusively on issues related to law enforcement. Moreover, it was stressed that UPAC could provide assistance only to the Working Group activities related to law enforcement that overlap with the UPAC Workplan. The UPAC Team Leader attended several meetings of the Working Group. During the meeting held on 23 June, chaired by Mr Nalyvaichenko, Head of the Security Service of Ukraine (SBU), the UPAC Team Leader informed the Group about the expert opinions provided to the draft Law on the National Bureau of Investigations (initiated by the Secretariat of the President) and the draft Law on the Anti-Corruption Bureau of Ukraine (tabled by Mr Moskal, MP) through the OECD project. He emphasised that UPAC is ready to contribute through the provision of legal expertise if requested.

*Activity 1.2.2                      System comparing process – Study visit and three Workshops on existing practices and lessons learned from other anti-corruption mechanisms for the Working Group (3 merged in one trip: France, Slovenia, Croatia)*

**- Study visit on specialised anti-corruption bodies (Paris and Ljubljana, 26-30 May 2008)**

A delegation comprising representatives of various Ukrainian institutions—including the Parliament (2 MPs and Head of Secretariat of the Committee on fighting organised crime and corruption), Secretariat of the Cabinet of Ministers, Secretariat of the President, Secretariat of the National Council for Security and Defence, Ministry of Justice, Ministry of Interior (including a Deputy Minister), Office of the Prosecutor General, Main Civil Service Department and also Ukrainian delegates to GRECO—visited Paris and Ljubljana from 26 to 30 May to study models of preventive and law enforcement anti-corruption bodies of France, Slovenia and Croatia.

In France, the delegation met with judges dealing with corruption cases (*pole économique et financier*), representatives of the Central Service for the Prevention of Corruption (*Service Central de prévention de la corruption*), of the Central Brigade for the Fight against Corruption (*Brigade Centrale de lutte contre la corruption*) of the Financial Brigade of the Department of Economic and Financial Cases of the Criminal Police (*Brigade financière de la Sous-direction des affaires économiques et financières de la police judiciaire*), as well as the representatives of the Asset Recovery Service (*Plate-forme d'Identification des Avoirs criminels*), OECD, including OECD/Sigma. Moreover, the two MPs, the Head of Secretariat of the Committee on fighting Organised Crime and Corruption and the Deputy Minister of Interior met with Mr Eric Diard, Chair of the Group of Friendship with Ukraine at the National Assembly to exchange experiences in the legislative process.

In Slovenia, the Commission for the Prevention of Corruption, the Group of State Prosecutors for the Prosecution of Organised Crime, and the Anti-corruption Unit of the Economic Crime Section within the Criminal Investigation Police Directorate were visited. They also met representatives of the Ministry of Justice.

Finally, the delegation had an opportunity to hear an in-depth presentation by a Croatian expert from USKOK (Office for the Suppression of Organised Crime and Corruption) on its structure and case studies in combating corruption. The Croatian expert came to Ljubljana to make her presentation for the Ukrainian delegation.

The main issues discussed during the study visit included organisation and functioning of specialised bodies, specialisation of the police, prosecutors and judges, multidisciplinary approach, inter-agency co-operation, international co-operation, police performance indicators, statistic data in the anti-corruption field, seizure and confiscation of corruption proceeds.

The debriefing roundtable has been postponed. This roundtable is expected to provide an opportunity for discussion on a range of issues regarding relevant international experience and reform of anti-corruption bodies in Ukraine. The participants will receive recapitulative tables about anti-corruption bodies of France, Slovenia and Croatia.

The participants remained satisfied with the study visit and the parliamentarians who participated in it often referred to its findings later, including during the Hearing in the Parliament on 4 June.

***Output 1.3    Proposals available to ensure the implementation of Article 6 of the United Nations Convention against Corruption regarding preventive anti-corruption body or bodies***

*Activity 1.3.1                      Two Seminars on the implementation of the UN Treaty Law focused on issues related to UNCAC applicability in Ukraine and its domestic legislation*

## **- Support in the elaboration of a methodology for anti-corruption proofing (April 2008)**

Pursuant to the Decree № 80/2008 of the President of Ukraine "On Certain Measures for Improving the Formulation and Implementation of State Anti-corruption Policy", the Ministry of Justice has elaborated a draft "Methodology for Expert Examination of Normative and Legal Acts and Draft Normative and Legal Acts with regards to corruption" (anti-corruption proofing).

The methodology foresees that expert examination of normative legal acts should have three main goals: (1) the identification of corruption factors in the texts of legal acts; (2) an assessment of the degree of vulnerability to corruption; (3) development of recommendations aimed at reducing risks of corruption.

Two Ukrainian experts, from the National Law Academy of Kharkiv, contributed to the process of improving the text in view of domestic Ukrainian legal standards.

Moreover, an international expert, Dr. Laurynas Pakstaitis from the Special Investigation Service of Lithuania, provided expert comments on the draft methodology. These comments have been submitted to the Ministry of Justice in April 2008. The expert underlined that the use of methodology should be combined with other preventive anti-corruption measures to obtain tangible results. Designing the methodology should be accompanied by clear ideas on procedural matters. The expert stressed that adequate legislation is not the main factor preventing corruption. Dr. Pakstaitis indicated that the methodology failed to provide clarifications as to which legal acts and draft legal acts will have to be examined and by which institutions. The expert insisted that legal acts/draft legal acts should be analysed in co-ordination with other (related) legal acts. Furthermore, according to the expert's comments, the methodology was lacking a strong emphasis on provisions regulating the responsibility of public officials. He specified that besides discovering corruption prone factors, the methodology should focus on: defining the objectives of the analysed (draft) legal act and finding out if the aims of the (draft) legal act are possible to reach within proposed regulation; establishing the place of the (draft) legal act in the legal hierarchy; finding out discrepancies between different steps in the legal hierarchy (e.g. redundancy of functions between bodies according to different acts); analysing provisions on responsibility (disciplinary, administrative or criminal) for a particular official or official executing his/her power within a collegial body; analysing compliance with international anti-corruption standards.

Moreover, the expert found that there was a weak reference to social factors generating corruption. The methodology should provide analysis of courts practice (case-law), statistical data and sociological surveys. Besides, dogmatic analysis and legal knowledge, functional analysis should be undertaken, especially in cases when new institutions or bodies are created.

<b>PURPOSE 2: TO ENHANCE CAPACITIES FOR THE PREVENTION OF CORRUPTION</b>
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### **Output 2.4**

#### **Conflicts of interest reduced in the political process**

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|-----------------------|---|
| <i>Activity 2.4.2</i> | <i>Workshop to support disclosure, reporting, monitoring and enforcement of legislation and regulations on financing of political parties and electoral campaigns (follow-up to recommendations from GRECO)</i>               |
| <i>Activity 2.4.3</i> | <i>Analysis of tools to minimise the vulnerability of the legislative process to corruption including regulation of lobbying (analysis of national practices, case studies from Europe and USA, elaboration of proposals)</i> |
| <i>Activity 2.4.4</i> | <i>Workshop to support the implementation of obligations of elected office holders to declare assets and conflict of interests as well as other measures to reduce, and control conflict of interests in general.</i>         |
| <i>Activity 2.4.5</i> | <i>Workshop and follow-up on GRECO recommendations with regard to immunities and privileges of parliamentarians and judges and other categories.</i>  |

### **- Conference on prevention of political corruption (Kyiv, 1-2 July 2008)**

On 1-2 July, a conference on prevention of political corruption was organised in co-operation with the Ministry of Justice. The issues of funding of political parties, immunities, conflicts of interest and lobbying have been analysed during the four different working sessions. The conference provided an opportunity for participants to:

- Analyse the effectiveness of the Ukrainian system of funding of political parties and electoral campaigns in the light of European standards and in perspective of the 3<sup>rd</sup> GRECO Evaluation Round, and to elaborate proposals for improvement;
- Analyse the functioning of the system of immunities in the light of relevant GRECO recommendations, and to formulate proposals for improvement (Recommendation 10: *to consider reviewing the system of immunities in such a way as to provide for speedier decisions on the lifting of immunities*);
- Analyse the issue of conflicts of interest of elected representatives and to elaborate proposals for improvement;
- Study good practices of regulation of lobbying and formulate proposals for Ukraine.

A group of national experts (Agency of Legislative Initiatives) prepared a technical paper before the conference containing:

- A comprehensive review of the system of financing of political parties and electoral campaigns, as well as a system of immunities of elected representatives in Ukraine in light of European standards, GRECO and Venice Commission requirements and recommendations;
- An analysis of the national legal framework and European practices on conflicts of interest of elected representatives;
- An analysis of the system of lobbying in Ukraine.

Apart from the technical paper elaborated by the Agency of Legislative Initiatives and presented by Mr Denys Kovryzhenko, three Council of Europe international experts made presentations and moderated discussions during the conference. Mr Jean-Christophe Geiser (Main Division of Public Law, Federal Office of Justice, Switzerland) presented European standards, monitoring and best practices on enhancing transparency of funding of political parties. Mr Omer Atalar (Council of Ethics for the Public Service of Turkey) presented international and European standards and best practices on conflicts of interest of elected representatives, in particular the case of the Council of Ethics for the Public Service in Turkey. Finally, Dr. Tilman Hoppe (Bundestag research section, Constitutional Law and Public Administration, Germany) presented international standards, GRECO recommendations and a comparative review of national practices on immunities, as well as a comparative analysis of national practices on the regulation of lobbying.

The above-mentioned presentations gave rise to interesting discussions among the over 50 participants, including in particular MPs, representatives of Parliamentary committees, political parties, the Ministry of Justice, the Central Electoral Commission, the Ministry of Finance, the National Security and Defence Council, the Secretariat of the President of Ukraine, the Secretariat of the Cabinet of Ministers, the General Prosecutor's Office, the Security Service and NGOs.

The conference entailed the adoption of detailed recommendations on how to:

- improve transparency of funding of political parties and electoral campaigns in line with European standards;
- simplify too complicated and lengthy procedures of lifting immunities to comply with recommendations 9 and 10 of the GRECO Report of the 1<sup>st</sup> and 2<sup>nd</sup> Evaluation Rounds;
- improve the system of regulation of conflicts of interest and establish a comprehensive system of declarations of financial interests by public servants, ensuring proper institutional set-up and transparency;
- improve access to public information and ensure transparency of lobbying.

The detailed recommendations are enclosed in **Annex V - Recommendations adopted at the Conference on the prevention of the political corruption.**

**Output 2.5                      Capacities enhanced at the level of local and regional authorities for the prevention of corruption and strengthening of integrity**

*Activity 2.5.1                      Support the drafting of a short manual on ethics in local government based on the Public Ethics Handbook, and translation of other relevant documents into Ukrainian.*

**- Publication of the National Handbook on Public Ethics at Local Level (Kyiv, May 2008)**

The revised version of the National Handbook on Public Ethics at Local Level ("Introduction of standards of public ethics at local and regional level: Ukrainian practices and European experience"), was published in May 2008.

The publication focuses on the following issues:

- Codes of ethics for public officials;
- Activities of the Council of Europe in the anti-corruption field and promotion of public ethics;
- Promotion of public ethics at local and regional level in Ukraine;
- Preparation of municipal codes of ethics and promotion of standards of public ethics: case studies of Artemivsk, Vinnytsia, Kamianets-Podilsky, Slavutych, and Trostianets.

The National Handbook includes a very large number of suggestions and recommendations made to all stakeholders (central and local authorities, local elected and appointed officials) for improving legislation, institutions and practices in order to foster public ethics at local level.

**PURPOSE 3: TO STRENGTHEN THE ANTI-CORRUPTION LEGAL FRAMEWORK AND EFFECTIVE AND IMPARTIAL ENFORCEMENT OF THE CRIMINAL LEGISLATION ON CORRUPTION**

**Output 3.1                      Draft Laws available to improve the prevention and control of corruption in accordance with the Criminal and Civil Law Conventions of the Council of Europe (ETS 173/174), the United Nations Convention against corruption and other relevant international legal instruments**

*Activity 3.1.7-3.1.8              Expert consultations/comments on the proposals of change to the draft laws and opinions before the 2nd readings  
Participation in the hearings in the Committee on fighting organised crime and corruption of the Parliament on 'Anti-corruption policy and practice: problems of legislative framework'*

**- Expert comments on the draft laws of the "Anti-corruption package" (Draft Law "On the principles of prevention and counteraction of corruption", Draft Law "On the responsibility of legal persons for corruption offences" and Draft Law "On amending certain legal acts regarding responsibility for corruption offences"), April and June 2008**

During the reporting period, UPAC provided extensive and continuous assistance to the improvement of the above-mentioned draft laws.

Mr Drago Kos, Council of Europe expert, submitted on 1 April 2008 his expert opinion on the language of the draft law "On the Principles of Prevention and Counteraction of Corruption" proposed by Mr Olexander Riabeka, MP and member of the Committee on Fighting Organised Crime and Corruption of the Verkhovna Rada.

Following this first expertise, UPAC continued to assist parliamentarians, and in particular, the Committee on Fighting Organised Crime and Corruption of the Verkhovna Rada.

The UPAC Team Leader and National Legal Adviser took part in a series of working meetings of the Committee on Fighting Organised Crime and Corruption of the Verkhovna Rada to discuss the finalisation of the drafts that are part of the "Anti-corruption Law Package" in light of European standards and in perspective of the 2<sup>nd</sup> reading in Parliament.

Finally, Mr Drago Kos, Council of Europe expert, in June 2008 provided a new comprehensive expert opinion on the three draft laws of the anti-corruption package finalised for the 2<sup>nd</sup> reading. He praised the efforts of the Ukrainian authorities in reforming the anti-corruption legislation and called further improvements to be made.

The expert praised further improvements made to the draft law of Ukraine "On the Principles of Prevention and Counteraction of Corruption". He underlined that the adoption of this draft would be "a very important achievement for Ukraine since this draft contains plenty of excellent solutions and not known yet in all countries." The expert considers that the draft is already "a very solid piece of legislation" but suggested additional changes, in particular the following:

- Conflict of interest should be defined not only as a real but also as apparent contradiction between individual and public interests;
- Corruption should be understood clearly as both receiving of unlawful benefits and acceptance of promises or offers of such benefits in accordance with the definition given by international conventions;
- Provisions about specialised institution(s) should be included, at least regarding preventive anti-corruption bodies;
- The right and the duty of all employees of public authorities, legal entities and their structural units to notify special authorities about their suspicions concerning behaviour of their superiors should be provided;
- Local elected representatives ("deputies") should be included in the general system of restrictions;
- "Officials of foreign states" and "officials of international organisations" should be excluded from the scope of Art. 10 to comply with international law.

The draft law of Ukraine "On Liability of Legal entities for corruption offences" requires further improvement. In the expert's opinion, one piece of legislation should cover liability of legal entities for all criminal offences, whereas the draft law covers liability of legal entities for only corruption offences.

Other recommendations include:

- Legal entities subject to private law and fully maintained at the expense of the State or local budgets should not be excluded from the scope of application of this law (to comply with Art. 1 of the Criminal Law Convention on Corruption);
- The list of offences serving as the ground for liability of legal persons has to be extended (currently only 5 articles of the Criminal Code are mentioned);
- Owners should have formal managerial positions and tasks in order to serve as a basis for liability of legal persons;
- Lack of supervision or control by a manager should be added as a condition for liability of legal persons (to comply with Art.18 of the Criminal Law Convention on Corruption);
- Cancel the requirement of an effective court sentence for a physical person as a precondition for initiation of proceedings against a legal entity and allow to proceedings to be conducted in parallel;
- Allow for cases against natural and legal persons to be dealt with by the same judge/s;
- The term of 15 days for considering a case against a legal entity is too short; the possibility of an extension should be added.

The expert underlined that establishment of the liability of legal persons is a mandatory requirement of the relevant international conventions.

Mr Drago Kos deplored that many of the observations, comments and remarks made by Mr Marin Mrcela to a previous version of the draft law of Ukraine "On Amending Certain Legislative Acts as to the Liability for Corruption Offences" have not been taken into account.

The expert suggested to the authorities to carefully review his and Mr Mrcela's remarks to ensure compliance with the Criminal Code with relevant international conventions, in particular with the CoE Criminal Law Convention on Corruption and the UN Convention against Corruption. These Conventions require mandatory criminalisation of active and passive bribery in both public and private sectors, of obstruction of justice and of money-laundering.

The draft law does not explicitly cover active and passive bribery as required by international standards. Furthermore, criminalisation of embezzlement (public and private sector); abuse of functions; illicit enrichment; concealment and trading in influence is not mandatory. However, as Ukraine has decided to incriminate these types of behaviour, it should follow definitions given in the international conventions, which is not the case in this draft law.

Thus the wording used in the draft law does not seem to cover "promising". Not only receiving of benefits with a criminal intent should be criminalised but also acceptance of promises or offers of benefits. Abuse of authority does not cover omissions (failure to perform an act) and receiving benefits for a legal person (entity) is not specified in the definition. A person having granted or conveyed the benefits could be relieved of criminal responsibility not only because such benefits were solicited but also because that person would voluntarily report the case to the authorities. Solicitation of benefits and reporting of corruption have to be fulfilled cumulatively.

The expert recommended to delete Art. 27-1 of the Criminal Procedure Code that violates provisions on mandatory prosecution. This article specifies that a criminal case may be initiated exclusively on request from the (co-)owner of a legal entity of private law that suffered damage.

Furthermore, the expert praised the proposed changes to the Code of Administrative Offences and suggested some minor improvements.

**- Participation in the Parliamentary Hearing "Anti-corruption policy and practice: problems of legislative framework" in the Verkhovna Rada, Kyiv, 4 June 2008**

The UPAC project supported the organisation of a hearing in the Parliament that focused on the "Anti-corruption Package" of laws (draft Law "On the Principles of Prevention and Counteraction of Corruption", draft Law "On the Responsibility of Legal Persons for Corruption Offences" and the draft Law "On Amending Certain Legal Acts Regarding the Responsibility for Corruption Offences") before its 2<sup>nd</sup> reading in the Verkhovna Rada.

At the beginning of the hearing, Mr Daniel Thelesklaf, Council of Europe expert, presented a technical paper on "Transposing international standards into domestic legislation—proposals for Ukraine". The expert underlined the importance of incorporating international anti-corruption standards into domestic legislation to effectively combat corruption and to adopt a new anti-corruption framework for Ukraine.

This event, which was broadcasted by the Parliament TV channel, was attended by Members of Parliament, the Minister of Interior, the Deputy Ministers of Justice and of the Interior, the Deputy Prosecutor-General as well as Council of Europe and other international experts, civil society and private sector representatives.

The participants of the hearing recommended in particular:

- To strictly comply with European and international anti-corruption standards in the process of elaboration of new laws;
- To submit the draft laws from the "anti-corruption package" for the consideration of the Parliament following improvements suggested by the Council of Europe and national experts;



- To continue monitoring of compliance with relevant international anti-corruption treaties as well as GRECO and OECD ACN recommendations;
- To promote preventive anti-corruption measures involving civil society in the framework of international anti-corruption projects in Ukraine;
- To improve the draft law "On Ethics of Persons Authorised to Perform the Functions of State and Local Self-Governance Bodies" taking into consideration the draft Code of Professional Ethics for Civil Servants developed with the support from MCC/USAID;
- To take comprehensive measures to counter corruption in the judiciary;
- To include anti-corruption issues among objectives of the Inter-agency Scientific and Research Center of the Fight against Organised Crime;
- To determine the mechanisms of implementation of the provisions of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" regarding public administration and anti-corruption;
- To distribute the CoE Action Plan against corruption, as well as explanatory reports to the Criminal and Civil Law Conventions on Corruption to all national stakeholders;
- To take measures to introduce a new methodology of statistics and reporting in the anti-corruption field.

The text of the Recommendations is enclosed--**see Annex VI - Recommendations adopted at the Parliamentary Hearing**).

*Activity 3.1.8                      Support to publicising the contents of the anti-corruption law package, submitted by the President of Ukraine to the Parliament*

#### **Publication of booklets for MPs and publication of materials of the Parliamentary hearing, Kyiv, March and June 2008**

In March 2008, all MPs, members of the Committee on Fighting Organised crime and Corruption received booklets in Ukrainian containing the GRECO assessment report of March 2007, a synopsis of UPAC activities, all CoE expert opinions provided through UPAC, and a translation of some materials and activity reports carried out within the framework of UPAC project.

Moreover, the Project supported the publication of materials of the hearing held in the Verkhovna Rada on 4 June 2008, including booklets with relevant international and national documents (in particular CoE Conventions and GRECO Recommendations) in the anti-corruption field.

## **5 Other meetings and missions**

Since the deployment in Kyiv of the new Team Leader, a number of meetings with representatives of Ukrainian partner institutions took place. Those included in particular meetings with:

1. Mr A. Bohdan, Deputy Minister of Justice and Mr R. Riaboshapka, Project Coordinator from the Ministry of Justice;
2. Mr I. Kalietnik, Head of Committee on fighting organized crime and corruption of the Verkhovna Rada and several heads of subcommittees – Mr O. Riabeka, Mr A. Pshonka, Mr I. Myrny as well as members of the Secretariat of the Committee;
3. Mr O. Shynalsky, Deputy Prosecutor General of Ukraine;
4. Mr V. Bedrykivsky, Deputy Minister of Interior and Ms L. Butenko, Deputy Head of Division, Main Department of the Fighting against Organised Crime of the Ministry of Interior;
5. Mr T. Motrenko, Head of the Main Civil Service Department;
6. Mr Volodymyr Vyshnevsky, Deputy Head of the Main Civil Service Department.

The UPAC Team attended a meeting organised by the Main Civil Service Department of Ukraine on the draft "Concept of Training, Retraining and Upgrading of Specialists in the Field of the European and Euro-Atlantic Integration (Kyiv, 25/03/08)."

The UPAC Team Leader was invited to follow the work of the Inter-institutional Working Group on anti-corruption issues created by a Decree of the President of Ukraine on 17 April 2008. The UPAC Team contributed to each of the Working Group meetings. The assignments of the Group included the overall coordination of the national anti-corruption policy. In the same time the project recommended that the Inter-institutional Working Group focuses exclusively on law enforcement issues and that co-ordination of the anti-corruption policy be performed by a body, "distinct from the law enforcement functions" as recommended by GRECO. One of the meetings of the Group (2/07/08) was dedicated to the role of NGOs in revealing corruption acts, and on co-operation with anti-corruption authorities.

The UPAC project works in close co-operation with a number of NGOs. The Team has had a series of bi-lateral meetings with NGO representatives, in particular a meeting with Mr Victor Tymoshchuk, Head of the Center for Political and Legal Reforms and expert in the field of civil service reform (21/05/2008).

The Agency of Legislative Initiative, which has a valuable expertise in the field funding of political parties, contributed to the Conference on prevention of political corruption (1-2/07/08).

The UPAC Team Leader contributed to the First Seminar of the Civil Society Leadership Network (17/06/2008, Kyiv) giving a presentation and moderating discussions on the topic "Corruption and the future of Democracy".

The Team attended a press meeting "New Public Initiatives to Overcome Corruption and Raider Attacks in Ukraine" (09/07/08). The issue of raider attacks is increasingly debated in the Ukrainian society. It is linked to both lack of proper regulation of ownership and certain corruption practices (in particular in the judiciary).

Moreover, the UPAC team also maintained regular contacts with other international organisations and donors, in particular with representatives of EC Delegation, ABA/ROLI, MCC, USAID, OECD, US DoJ resident experts, the embassies of France and US.

On 14 March 2008, the UPAC Team organised a co-ordination meeting with representatives of international donors and other international anti-corruption projects. It was an opportunity to introduce the new Team Leader and to present the UPAC achievements and future priorities in order to ensure proper co-ordination between various international projects.

The Team contributed to all meetings of the Anti-corruption Co-ordination Initiative led by ABA-ROLI during the reporting period (27 March 2008, 14 May 2008 and 17 July 2008). The first meeting was devoted to the issue of specialised anti-corruption bodies and relevant draft laws, whereas during the second one, the UPAC Team Leader presented the 20 Guiding Principles in the Fight against Corruption, and the themes of the 3rd round of the GRECO evaluation process. The third meeting focused on the newly created institution of the Anti-corruption Government Agent and the 7th General Meeting of the OECD Anti-Corruption Network that took place on 25-27 June 2008 in Tbilisi.

The UPAC Team attended the monthly Rule of Law Implementers Meetings to properly co-ordinate efforts in the activities related to the reform of the judiciary. During the last meeting (09/07/08), novelties of the combined draft Law on Judiciary and Status of Judges (tabled for the 2nd reading in Parliament) were presented together with a new survey on corruption within the judicial system in Ukraine conducted in the framework of the Action Project.

Regular meetings and exchange of information with the Action Project (Promoting active citizens engagement [Action] in combating corruption in Ukraine) supported by USAID took place throughout the reporting period.

The Team closely co-operated with MCC/USAID, supported working groups and US DoJ Resident experts on the elaboration of a Code of Ethics for Public Officials and a draft Law on Asset Declarations by Public Officials and Prevention of Conflict of Interests.

The UPAC Team hosted a delegation from the Department of Justice of Canada led by Mr Aly N. Alibhai, Senior Counsel, International Legal Programmes Section (12/06/2008) to discuss a new project of technical assistance in the anti-corruption field by the Department of Justice of Canada (with the MoJ of Ukraine as the main partner), with the aim to ensure complementarity and co-ordination of donor assistance. The Team also hosted (12/06/2008) Mr Eric K. Hontz, Programme Assistant, Eurasia, from the Center for International Private Enterprise (CIPE); the aim of the meeting was to discuss the involvement of Ukraine's private sector in anti-corruption related reforms.

The UPAC Team had an opportunity to meet the CoE Secretary General, Mr Terry Davis, during his official visit in Ukraine (19-20 March 2008), and to report about the implementation of the project.

Many efforts have been undertaken to raise the visibility of UPAC. The UPAC website has been up-dated, and regular articles on UPAC activities are published on the website and through the EC Delegation Newsletter in Ukraine. UPAC also sends weekly "flash notes" to the European Commission in Brussels to give information on ongoing activities. The UPAC team contributed to the information fair held at the Ukrainian Parliament on 17 and 18 April 2008.

## **6 Strategic Overview and Conclusions**

During the reporting period, UPAC successfully implemented activities following the defined objectives and timelines of the Workplan.

On the one hand, project activities supported the implementation of GRECO recommendations contained in the report of the 1st and 2nd Evaluation Round (on which Ukraine will report by 30 September 2008), on the other hand, UPAC assisted the Ukrainian counterparts on issues that will be covered under 3rd Evaluation Round, focusing on incriminations of corruption and transparency of political funding.

In June 2008, UPAC entered its last phase of implementation. The next six months will aim at carrying out the activities as foreseen by the Workplan as updated in April 2008. At the same time, the next Steering Group meeting will need to decide on possible additional activities to enhance compliance with international standards and GRECO recommendations. The cooperation with the Ministry of Justice, Parliament, Ministry of Interior and other partner institutions has been fruitful and constructive during the reporting period.

Progress towards the achievement of project objectives can be summarized as follows.

### **Purpose 1: The improvement of the strategic and institutional framework against corruption**

UPAC specifically supported Ukraine in building the capacities of the relevant anti-corruption institutions. It provided expert advice on draft legal texts, organised a roundtable and a study visit on models of anti-corruption bodies and contributed to the work of the Inter-institutional Working Group (set up by Presidential Decree of 17 April 2008). The above activities aimed in particular at assisting Ukraine in the implementation of the 1st GRECO recommendation regarding the establishment of an anti-corruption body "distinct from the law enforcement functions". The Cabinet of Ministers formally decided to create the institution of the Government Anti-corruption Agent on 4 June 2008. The project provided continuous assistance in the elaboration of the Regulations on the Government Anti-corruption Agent since March 2008. Two drafts of Regulations have been proposed by the Ministry of Justice and the Cabinet of Ministers. Both texts have been gradually improved and finally complied with the CoE expert's recommendations. Despite this progress, the final decision on the institutional place and the mandate of the Agent is still outstanding. The project provided several opportunities for review and discussion of models of anti-corruption bodies (roundtable of 22 April and study visit of 26-30 May) and elaboration of concrete recommendations regarding the creation of anti-corruption bodies in Ukraine and enhancement of specialisation of law enforcement and

judicial authorities. Moreover, the project supported the elaboration by the Ministry of Justice of a methodology for anti-corruption proofing ("anti-corruption expertise").

The project will organise a roundtable on the "Effectiveness of the National anti-corruption policy, role of civil society and the private sector" on 16 October 2008 (Activity 1.1.2). This activity will provide an opportunity to strengthen the action of civil society and private sector against corruption and review the effectiveness of the national anti-corruption strategy and action plan by NGOs and private sector; to discuss proposed reforms and to contribute to enhancing compliance with GRECO recommendations as well as international and European standards. This activity will be a follow-up to the assistance provided in the past to the elaboration of a national anti-corruption strategy and action plan. The Ministry of Justice has elaborated a new draft Action Plan against Corruption following the relevant GRECO Recommendation. The roundtable is expected to increase the role of civil society and the private sector in the elaboration, implementation and monitoring of the national Action Plan against Corruption.

## **Purpose 2: To enhance capacities for the prevention of corruption**

The activities implemented to enhance the preventive capacities against corruption focused in particular on reduction of conflicts of interest in the political process. The conference on prevention of political corruption allowed:

- To analyse the effectiveness of the Ukrainian system of funding of political parties and electoral campaigns in the light of European standards and in the perspective of the 3rd round of GRECO evaluation and to elaborate proposals for improvement;
- To analyse the functioning of the system of immunities in the light of relevant GRECO recommendations and to formulate proposals for improvement;
- To analyse the issue of conflicts of interest of elected representatives and to elaborate proposals for improvement;
- To study good practices of regulation of lobbying and to formulate proposals for Ukraine.

The adopted recommendations strongly support the implementation of several GRECO recommendations, in particular recommendations 9 and 10 of the GRECO Report on Ukraine from the Report of the 1st and 2nd valuation Rounds regarding immunities. Moreover, the recommendations regarding funding of political parties and electoral campaigns shall further assist the preparation for the 3rd Round of GRECO evaluation. It is expected that the recommendations will be followed by the elaboration of concrete draft legislative provisions in the near future with the involvement of experts from the Ministry of Justice and the Agency of Legislative Initiatives.

The publication of the revised Ukrainian National Handbook on Public Ethics at Local Level ("Introduction of standards of public ethics at local and regional level: Ukrainian practices and European experience") in May 2008 was the final activity of Output 2.5 aimed at strengthening of capacities of local and regional authorities for the prevention of corruption and strengthening of integrity.

After having focused its activities mainly on the political process and local ethics, UPAC will, from now on, put a special emphasis on the enhancement of the preventive capacities in the public administration, the judiciary and the prosecution/police sectors following relevant GRECO recommendations. The project will support the reform of public administration in the light of anti-corruption standards and best practices (Conference/expert support on prevention of corruption in civil service--Activities 2.1.2, 2.1.3, 2.1.6, 2.4.4, 3.1.7). It will conduct risk assessment studies in the public administration (specific sector to be confirmed), judiciary and Ministry of the Interior/Prokuratura systems and provide relevant training, guidelines and methodologies and elaborate/improve corruption prevention plans (Activities 2.1.4, 2.1.5, 2.2.1, 2.2.2, 2.3.1, 2.3.2). It will also support the elaboration/implementation of codes of conduct in the Prosecutor's Office and the Ministry of the Interior bodies (Activities 2.3.5-2.3.6).

### **Purpose 3: To strengthen the anti-corruption legal framework and effective and impartial enforcement of the criminal legislation on corruption**

The UPAC project has strongly supported the strengthening of the anti-corruption legal framework in line with relevant international (in particular CoE and UN) standards and GRECO Recommendations. The project continued to assist Ukraine in the work on the "anti-corruption package" of laws. It provided continuous expert advice in the process of improvement of the texts, expert opinion on the three draft laws finalised for the 2nd reading and supported the hearing in the Parliament. It is expected that the revised drafts of the "anti-corruption package" will be soon adopted in the Committee on Fighting Organised Crime and Corruption and tabled for the second reading to Parliament session. The cooperation with the Parliament is very fruitful especially with the rapporteurs responsible for the anti-corruption package: Mr M. Dzhyha, Deputy Head of the Committee on Fighting Organised Crime and Corruption and Mr O. Riabeka, Head of Subcommittee (both participated in the study visit to France and Slovenia) as well as with the Secretariat of the Committee.

Therefore, an expert opinion on draft amendments to the Criminal and Criminal Procedure Code regarding confiscation of crime proceeds (Activity 3.1.5) will be provided by the end of August 2008. Moreover a follow-up roundtable on the topic "Identification, seizure and confiscation of corruption proceeds" will be held on 19 September 2008 (Activity 3.1.5).

In the future, the project will particularly focus its activities on training and specialisation of judges and law enforcement officials in adjudication, investigation and prosecution of corruption offences. Indeed, GRECO underlined, in its reports from the 1st and 2nd Evaluation Rounds that the level of specialisation to prosecute corruption offences is insufficiently developed. A series of training activities are planned (see the Workplan).

### **Assumptions**

The project is based on the assumption that the Ukrainian authorities are committed to tackling corruption in a comprehensive manner in line with European and other international standards. Since autumn 2007, the political situation in Ukraine has allowed the UPAC project to implement planned activities successfully. Earlier in 2007 the project experienced difficulties due to the change of government and a period of political instability following the dissolution of Parliament. The continuing implementation of project activities will depend to a large extent on the commitment of the partner institutions, in particular the Ministry of Justice. It is assumed that this commitment will remain consistent even with possible changes of government.

### **Timeframe of the project**

As indicated above, the next Steering Committee meeting may need to decide on additional activities to be carried out before June 2009 to use the funds unspent during the first 16 months for the reasons outside the control of the project.

## **7 ANNEXES**

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## 6.1 Annex I: List of Participants – UPAC Steering Group meeting of 9 April

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## 6.2 Annex II: Revised Workplan of Activities 2008

European Commission  
Commission européenne



Council of Europe  
Conseil de l'Europe

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

## Revised Workplan of Activities

*Implementation status and changes as agreed at the 4<sup>th</sup> Steering Committee meeting on 9 April 2008*



Timing	Level/ Activity	Description	Sources of verification	Assumptions /Risks	Responsible Institutions	Possible Input Required
<b>Purpose (1): To improve the strategic and institutional framework against corruption in Ukraine</b>						
<u>Objectives supported through activities under Purpose 1:</u> <ul style="list-style-type: none"> <li>• Anti-corruption strategy and Action Plan;</li> <li>• Effective and efficient coordination and monitoring mechanisms of Anti-corruption Strategy and Action Plan.</li> </ul>						
<u>Sources of verification of objectives reached:</u> <ul style="list-style-type: none"> <li>• GRECO reports, communications and web-sites of the government and administration of Ukraine; media coverage of strategy and action plan etc.</li> </ul>						
<u>Assumptions/risks:</u> <ul style="list-style-type: none"> <li>• Commitment of the Ukrainian authorities to counter corruption in coordinated and coherent manner.</li> </ul>						
<u>Counterpart/beneficiary institutions:</u> <ul style="list-style-type: none"> <li>• Ministry of Justice, Cabinet of Ministers, Presidential secretariat, Ministry of Interior, National Defence Council, State Prosecutor's Office, State Audit Office.</li> </ul>						
<b>Output (1.1): Anti-corruption strategy and action plan available</b>						
Timing	Level/ Activity	Description	Sources of verification	Assumptions /Risks	Responsible Institutions	Possible Input Required
October 2006 – March 2007  <b>Expert opinion provided in June 2007</b>	Activity 1.1.1	Support to the drafting and elaboration of the Anti-corruption Action Plan in accordance with NACS, involving all relevant stakeholders (national and local government) and including public consultations (civil society and business community representatives).	Workshop/Consultative meeting reports, recommendations, and final outcomes from the drafting process of Action Plan; Action Plan document and content including any potential evaluation/assessment carried out prior to its finalisation; Participatory data of all relevant	Delays and controversies on asserting or merging Concept 2006 into a NACS version; Clarity of assignation of tasks and responsibilities in relation with implementing, operationalising and	Presidential Secretariat; Ministry of Justice; Cabinet of Ministers; All institutions as assigned by the	3-4 Experts; Desk Review/Field Work (3-4 days each); Delivery of Training, Technical Papers and guidelines  4-6 working Sessions

			institutions and key stake holders; Systematic and verifiable outreach efforts to the public and between institutions; Projects reports; Other reporting and communications of relevant Ukrainian institutions; GRECO Evaluation Report[s] and recommendations and GRECO compliance reports	monitoring NACS. Lack of the institutional capacities and absorption of relevant tasks and responsibilities in line with the endorsed NACS. Political will and continuous institutional support in launching, implementing and monitoring the NACS. NACS not met with broad based public support; Institutional commitment throughout the drafting process, and recognition of assigned lead authority in coordinating the action plan drafting process; Clear time-line for the process to be finalised	president's decree.	or Round Table Discussion (RTD);  Public Participation
June September 2008 –	Activity 1.1.2	Assessment/Review and Recommendations on the effectiveness of the National Anti-corruption Strategy, its Action Plan and other policy related reforms in Ukraine	Reports available;  Recommendations and Observation as issued.	Assessment unable to draw clear conclusions and recommendations due to the limited time and experience to produce results as per required reforms and measures against corruption	Designated institution in charge to monitor implementation of the Anti-corruption Strategy and Action Plan;	2 Experts; 1 Local Expert; Desk review and field work; TP; RT discussion to present findings to counterpart institution
October 2006 – January 2007  <b>Survey</b>	Activity 1.1.3	<b>1<sup>st</sup> National (and regional) Public Baseline Survey:</b> - Perception, experience, and attitude on corruption and service delivery in the system of justice (police, prosecution, notary service,	1st Survey Report (in both languages); Other international community reports; All forms of media reporting; GRECO evaluation report[s];	Quality and Professionalism of Survey Providers (Contractor); Time line; Survey findings are not received adequately and	All relevant institutions which will be determined by Survey Providers and Service	Independent institution as an outside contractor (Survey Provider)

<b>methodology and questionnaire finalised in February 2007</b>		enforcement of civil and criminal judgements); and - Perception, experience, and attitude on corruption and service delivery in the public administration and the political system (including elected officials and officials of local and regional authorities)	Government response and acknowledgment of findings (reports, interviews, press releases); Specific measures designed in response to system identification tools; Reports on implementation of the Anti-corruption Action Plan	therefore are not incorporated into policy making; Restriction of distribution and publication of Survey findings by beneficiary; A survey on corruption in the Judiciary has been carried out in spring 2006, albeit with a different methodology	Provider ToR.	
<b>Output (1.2): Effective monitoring, coordination and management of anti-corruption measures ensured</b>						
<b>Timing</b>	<b>Level/ Activity</b>	<b>Description</b>	<b>Sources of verification</b>	<b>Assumptions /Risks</b>	<b>Responsible Institutions</b>	<b>Possible Input Required</b>
January 2008 - September 2008  <b>RT held on 22 April 2008</b>	Activity 1.2.1	Workshop on models, types and tools used of and by different anti-corruption bodies/structures in view of a feasibility of such structures in Ukraine; their role and their establishment of a structure/body to: Monitor; Manage; and Coordinate The implementation of the National Anti-corruption Strategy and its Action Plan	Monitoring reports; reports assessing the efficiency of the NACS and AP	Sufficient resources (human and financial) made available to establish efficient and effective monitoring and coordination mechanism	Main Civil Service Department and Ministry of Justice as co-implementer	1 CoE Experts;  1 Local Expert.
May 2008  <b>Study visit held on 26-30 May 2008</b>	Activity 1.2.2	System comparing process – Study visit and Three Workshops on existing practices and lessons learned from other European AC mechanisms for the Working Group (3 merged in one trip: Croatia, Slovenia, France)	Study visit reports; evaluation/feedback of Study visits by participants.	Genuine readiness and capacity to share lessons learned and best practices and to incorporate them into day-to-day operations	Main Civil Service Department and Working Group	CoE Kiev Project Team Experts from counterpart (receiving) institutions (in-kind contribution)
April 2009	Activity 1.2.3	Closing conference: Support to national anti-corruption conference to review the implementation of anti-	Final report of project activities against purposes, stipulating achievements	Project has managed to carry out activities for all purposes foreseen	All SG/stakeholder institutions	6 experts (international and national) having been

		corruption measures in Ukraine			reached by the project	involved in key project activities
<b>Output (1.3): Proposals available to ensure the implementation of Article 6 of the United Nations Convention against Corruption (UNCAC) regarding preventive anti-corruption body or bodies</b>						
Timing	Level/ Activity	Description	Sources of verification	Assumptions /Risks	Responsible Institutions	Possible Input Required
May 2008  <b>1<sup>st</sup> Activity Seminar held on 15/02/2008</b>	Activity 1.3.1	2 Seminar[s] on implementation of UN Treaty Law focussed on issues related to UNCAC applicability in Ukraine and its domestic legislation.  (One Seminar designed for Codification Department of MOJ); one Seminar designed for all main key players and specifically on Article 6 of UNCAC)	Proposals reflected in legislative changes.	Continued commitment of Ukrainian authorities to the implementation of the UNCAC	Codification Department of the MoJ; SG members/stakeholders of the projects	2 Seminars  1 international 1 local expert  Desk review In-country visits Follow-up recommendations
<b>Purpose (2): To enhance capacities for the prevention of corruption</b>						
<u>Objectives supported through activities under Purpose 2:</u> <ul style="list-style-type: none"> <li>Documents related to the public administration reform amended in the light of anti-corruption standards and best practices;</li> <li>Guidelines for risks analysis, prevention of corruption and elaboration / implementation of codes of conduct in the judiciary, public administration (in particular in the Ministry of Interior, Prosecution and local and regional authorities available;</li> <li>Recommendations and draft laws aimed at reducing conflicts of interests in the political process available.</li> </ul> <u>Sources of verification of objectives reached:</u> <ul style="list-style-type: none"> <li>Activity reports; Web-site and documents of the Main Civil Service Department, High Council of Justice, Ministry of Justice, CEC, Prosecution, Ministry of Interior, National</li> </ul>						

associations / Congress of local and regional authorities of Ukraine, GRECO, Congress of local and regional authorities (CoE), media

Assumptions/risks:

- Cooperation of relevant stakeholders

**Output (2.1): Anti-corruption concerns incorporated into the process of public administration reform (“anti-corruption mainstreaming”)**

Timing	Level/ Activity	Description	Sources of verification	Assumptions /Risks	Responsible Institutions	Possible Input Required
February 2007 <b>Expert opinion provided in August 2007</b>	Activity 2.1.1	Promotion and introduction of the Draft Law on the Ethics Behaviour for Public Officials in order to facilitate the adoption of the new law	Number of participants in the promotion and introduction event	Delays on finalising the parliamentary sessions and reading of the draft law	Members of Parliament  Public Administration	1 expert
June 2008 - September 2008	Activity 2.1.2	RTD to Follow up on implementation issues with regard to the draft Code of Ethics on behaviour of the Public Officials <i>To be implemented in connection to activities 2.1.3, 2.1.6, 2.4.4., 3.1.7</i>		Delays in adopting the new law by parliament	Members of Parliament  Public Administration	
June – September 2008	Activity 2.1.3	Training of public administration members on issues related legislation on Civil Service Draft Law in light of international standards and best practices (i.e., OECD, WB) <i>Note: the current draft law is expected to change the system</i>	GRECO and other international reports acknowledging progress on this issue.  Stakeholder/beneficiary feedback	Need for this type of training (need not covered by other donors/organizations)	Main Civil Service Department	TBD
February - August 2008	Activity 2.1.4	Corruption Risk Assessment and Prevention Plans: <b>System Study No. 1</b> on Corruption Risks within the Public Administration Services (Development of methodology; System Study Analysis; Identification of risk area and their causes; and Developing prevention proposals and plans.)	Various reports (international/local)  Media reports  Stakeholder feedback	Need and readiness of relevant stakeholder institutions to participate in survey  Relevance and adequacy of methodology developed	Main Civil Service Department	2 international 2 local experts Scoping study  In-country visits to carry out survey and analyse findings Presentation of findings to

						stakeholders
October 2008 – January 2009	Activity 2.1.5	Provision and training of standard guidelines and methodologies in carrying out periodical corruption risk assessments based on the System Study No. 1 provision of methodology on the implementation of prevention plans	Various reports (including GRECO reports).  Reports used as starting point for initiation of policy changes	Need for corruption risk assessments and its periodic repetition understood by stakeholders	Main Civil Service Department	RTD  2 international 2 local experts
June - September 2008	Activity 2.1.6	Expertise Opinion on the Draft Legislation on Civil Service <i>To be implemented in connection to activities 2.1.2, 2.1.3, 2.4.4.,3.1.7</i>	Expert Opinion	Draft law delayed	Main Civil Service Department (TBC)	2 International experts
<b>Output (2.2): Risks of corruption reduced in the judiciary</b>						
Timing	Level/ Activity	Description	Sources of verification	Assumptions /Risks	Responsible Institutions	Possible Input Required
July 2008- November 2008	Activity 2.2.1	Corruption Risk Assessment and Prevention Plans on Judiciary: <b>System Study No. 2</b> on Corruption Risks within the System of 3 different level courts and their administration Services (Development of methodology; System Study Analysis; Identification of risk area and their causes; and Developing prevention proposals and plans.)	Various reports (national/international), including GRECO  Survey findings acknowledged by stakeholders and publicly discussed (incl. in media)	Cooperation of Ukrainian judicial authorities in particular of the High Council of Justice. Cooperation of the Ministry of Justice	MoJ, High Judicial Council	2 international 2 local experts  Scoping study  In-country visits to carry out survey and analyse findings  Presentation of findings to stakeholders
October - December 2008	Activity 2.2.2	Provision and training of standard guidelines and methodologies in carrying out periodical corruption risk assessments based on the System Study No. 2 provision of methodology on the implementation of prevention plans	Various reports (including GRECO reports).  Reports used as starting point for initiation of policy changes	Need for corruption risk assessments and its periodic repetition understood by stakeholders	MoJ, High Judicial Council	Experts who participated in 2.1.1

Output (2.3): Risks of corruption reduced in the prosecution and police						
Timing	Level/ Activity	Description	Sources of verification	Assumptions /Risks	Responsible Institutions	Possible Input Required
May – September 2008  ToR finalised in August 2007.	Activity 2.3.1	Corruption Risk Assessment and Prevention Plans: <b>System Study No. 3</b> on Corruption Risks within the System of Ministry of Interior (Development of methodology; System Study Analysis; Identification of risk area and their causes; and Developing prevention proposals and plans.)	Various reports (national/international), including GRECO  Survey findings acknowledged by stakeholders and publicly discussed (incl. in media)	Commitment of Mol and relevant departments to participate in survey	Mol	1 international 2 local experts Scoping study In-country visits to carry out survey and analyse findings Presentation of findings to stakeholders
August 2008	Activity 2.3.2	Provision and training of standard guidelines and methodologies in carrying out periodical corruption risk assessments based on the System Study No. 3 provision of methodology on the implementation of prevention plans	Various reports (including GRECO reports).  Reports used as sources for initiation of policy changes	Need for corruption risk assessments and its periodic repetition understood by stakeholders	Mol	Experts who participated in 2.3.1
May – September 2008	Activity 2.3.3 in coop with  Activity 2.3.1	Corruption Risk Assessment and Prevention Plans in Prosecutorial Services: <b>System Study No. 4</b> on Corruption Risks within the System of Prosecutorial Services (Development of methodology; System Study Analysis; Identification of risk area and their causes; and Developing prevention proposals and plans.)	Various reports (national/international), including GRECO  Survey findings acknowledged by stakeholders and publicly discussed (incl. in media) Various reports (national/international), including GRECO  Survey findings acknowledged by stakeholders and publicly discussed (incl. in media)	Commitment of prosecution and relevant departments to participate in survey	Prosecution	2 international 2 local experts  Scoping study  In-country visits to carry out survey and analyse findings  Presentation of findings to stakeholders
December 2008 – February 2009	Activity 2.3.4	Provision and training of standard guidelines and methodologies in carrying out periodical corruption risk	Various reports (national/international), including GRECO Survey findings acknowledged	Need for corruption risk assessments and its periodic repetition	Prosecution	Experts who participated in 2.3.2

		assessments based on the System Study No. 4 provision of methodology on the implementation of prevention plans	by stakeholders and publicly discussed (incl. in media) Various reports (national/international), including GRECO Survey findings acknowledged by stakeholders and publicly discussed (incl. in media)	understood by stakeholders		
February - March 2009	Activity 2.3.5	Workshop and expert advice for the elaboration, introduction and implementation of codes of conduct in the Prosecution system	Reports and public communications on Codes of Conducts in the prosecution system	Issue not yet covered by other TA programmes; Prosecution committed to introducing Codes of Conduct; Commitment translates into the allocation of human and financial resources to make system efficient and effective	Prosecution	1 – 2 Experts (national and international)  TP  Workshop
September 2008– February 2009	Activity 2.3.6	Workshops and expert advice for (the elaboration) and implementation of codes conduct and disciplinary and redress/appeal procedures in the Ministry of Interior bodies	Reports and public communications on Codes of Conducts	Issue not yet covered by other TA programmes;  Prosecution committed to introducing Codes of Conduct;  Commitment translates into the allocation of human and financial resources to make system efficient and effective  Ministry of Interior is ready to implement such measures	Ministry of Interior	2-3 experts (national and international)  TP  Workshop(s)



**Output (2.4): Conflicts of interest reduced in the political process**

Timing	Level/ Activity	Description	Sources of verification	Assumptions /Risks	Responsible Institutions	Possible Input Required
January/ February 2008  <b>Held on 29 January 2008</b>	Activity 2.4.1	RTD on European standards of legislation, regulations and practices on financing of political parties and electoral campaigns in the light of European standards and good practices: Council of Europe guidelines "Financing political parties and election campaigns", (GRECO documents) related to immunities, lobbying and corruption of members of national assemblies. (identification of issues of concern as per subject)	Relevant reports, including GRECO reports  Public debate on identified issues	Continued commitment of Ukrainian authorities to tackle issues	MoJ  Central Election Commission  Parliament	1 international expert  2 national experts  Desk review and TP paper  Workshop
June – September 2008  <b>RT held on 1-2 July 2008</b>	Activity 2.4.2	Workshop to support disclosure, reporting, monitoring and enforcement of legislation and regulations on <u>financing of political parties and electoral campaigns</u> (follow-up to recommendations from GRECO) <i>To be implemented in connection to activities 2.4.3, 2.4.5</i>	Relevant reports, including GRECO reports  Public debate on identified issues	Continued commitment of Ukrainian authorities to tackle issues	Central Election Commission  MoJ  Parliament	2 international experts  2 national experts Desk review and TP paper  Workshop
June - September 2008  <b>RT held on 1-2 July 2008</b>	Activity 2.4.3	Analysis of tools to minimise the vulnerability of the legislative process to corruption including regulation of <u>lobbying</u> (analysis of national practices, case studies from Europe and USA, elaboration of proposals).	Relevant international reports (including GRECO)  Issues at stake discussed through public hearings, in parliament and in the media	Continued commitment of Ukrainian authorities to advance issues  UPEPLAC project findings/recommendations	Ministry of Justice	2 international experts  2 national experts  Desk review and TP

		<i>To be implemented in connection to activities 2.4.2, 2.4.5</i>		to be incorporated and considered		paper Workshop
June – September 2008  <b>RT held on 1-2 July 2008</b>	Activity 2.4.4	Workshop to support the implementation of obligations of elected office holders to <u>declare assets and conflict of interests</u> as well as other measures to reduce, and control conflict of interests in general. <i>The issue of declaration of assets of elected representatives to be covered in connection to activities 2.1.2, 2.1.3, 2.1.6 related to civil service</i>	Relevant national and international reports (including GRECO).	Continued commitment of Ukrainian authorities and relevant stakeholders to advance issues	Tax administration  MOJ (TBC)	2 international experts  2 national experts  Desk review and TP paper  Workshop
June – September 2008  <b>RT held on 1-2 July 2008</b>	Activity 2.4.5	Workshop and follow-up on GRECO recommendations with regard to <u>immunities and privileges of parliamentarians and judges</u> and other categories. <i>To be implemented in connection to activities 2.4.2, 2.4.3</i>	International reports, incl. GRECO. Media reports  Public discussions	Continued commitment of Ukrainian authorities to tackle issues at stake.  (TBC)	MoJ; Parliament; Supreme Court High Judicial Council of Judges	2 international experts 2 national experts Desk review and TP paper Workshop (TBC)

**Output (2.5): Capacities enhanced at the level of local and regional authorities for the prevention of corruption and strengthening of integrity**

Timing	Level/ Activity	Description	Sources of verification	Assumptions /Risks	Responsible Institutions	Possible Input Required
November 2007  <b>Completed March 2007</b>	Activity 2.5.1	Support the drafting of a short and structured National Handbook on ethics in local government, based the European Public Ethics Handbook, and translation of other relevant documents into Ukrainian	Draft National Handbook	Identification of a competent local expert Help from national and local stakeholders in identifying and accessing sources of information		1 local expert 1 international expert
December 2007  <b>Completed in March 2007</b>	Activity 2.5.2	Raise interest among local government stakeholders and create a Steering Group for supporting public ethics in local government	Letters of interest in taking part in the Steering Group Other forms of interest expressed in relation to the benchmarking programme	Identification of a committed local partner Interest from local stakeholders 5 municipalities are		1 local expert

			Clear commitment expressed by at least 5 municipalities in implementing the full programme	committed to the programme		
February 2007 <b>Completed in May 2007</b>	Activity 2.5.3	Organise the first meeting of the Steering Group to revise the National Handbook and to revise and adopt the National Score Card for the benchmarking exercise	Documents of the Steering Group meeting Meeting report Revised National Handbook National Score Card	Identification of a committed local partner Interest from local stakeholders 5 municipalities are committed to the programme		1 local expert 1 international expert 1 workshop
March – April 2007 <b>Completed in May 2007</b>	Activity 2.5.4	Organise the first round of self-assessments and preparation of the National Benchmark on public ethics at local level	Self-assessment forms National Benchmark (composed of the National Score Card plus average scores)	Identification of a committed local partner Interest from local stakeholders 5 municipalities are committed to the programme		1 local expert
May - June 2007 <b>Completed in August and September 2007.</b>	Activity 2.5.5	Selection and training to the use of the peer review and benchmarking process for 15 peer reviewers (5 local elected representatives, 5 senior local public servants and 5 specialists in public administration)	Training report Training evaluation forms filled in by the trainees at the end of the training session	Identification of a local partner Identification of a competent local expert Identification of 15 qualified volunteers for the role of peers		1 Training workshop 1 local expert 1 international expert
February 2008 <b>Completed in December 2007</b>	Activity 2.5.6	Organise peer reviews in the 5 pilot municipalities to evaluate their experience in view of its improvement and, if appropriate, dissemination and replication throughout Ukraine. Each peer review should lead to the preparation of reports including Recommendations for the improvement of the situation in the municipality under review	5 reviews reports 5 review Recommendations Reports on Dissemination	Identification of a local partner Commitment of peer reviewers 5 municipalities are committed to the programme		1 local expert 5 review visits of 4 days for peer review teams of 4 persons each
December	Activity	Support the preparation and	5 Corruption Prevention Plans	Identification of a local		1 local expert

2007 – February 2008  <b>Completed in January 2008</b>	2.5.7	implementation of Corruption Prevention Plans in the 5 pilot municipalities (risk analyses and benchmarking, review status of local officials, review effectiveness of internal and external monitoring and control mechanisms, implementation of codes of conduct)		partner 5 municipalities are committed to the programme		
March - April 2008  <b>Completed in January 2008</b>	Activity 2.5.8	Revise the National Handbook on public ethics in the light of the results of the Benchmarking exercise (Score Card, Benchmark, peer review recommendations and Corruption Prevention Plans) and, if appropriate, prepare a draft National Strategy to improve public ethics at local level	Revised National Handbook Possibly, the National Strategy	Identification of a local partner Identification of a competent local expert		1 local expert 1 international expert
June 2008  <b>Completed in January 2008</b>	Activity 2.5.9	Organise the Second Steering Group meeting to adopt the revised National Handbook (and, if appropriate, the National Strategy) and to assess the implementation of the programme	Meeting report Meeting documents Handbook on Public Ethics at local level	Identification of a local partner		1 international expert 1 local expert 1 workshop
April 2008  <b>Completed in May 2008</b>	Activity 2.5.10	Publish the revised National Handbook. Subject to agreement by participating municipalities, review Recommendations and Corruption Prevention Plans could be appended to the Handbook	Publication “Handbook on Public Ethics at local level” Distribution list Reactions from addressees and the media	Identification of a local partner		
<b>Output (2.6): Public participation in the anti-corruption effort promoted</b>						
<b>Timing</b>	<b>Level/ Activity</b>	<b>Description</b>	<b>Sources of verification</b>	<b>Assumptions /Risks</b>	<b>Responsible Institutions</b>	<b>Possible Input Required</b>
October 2006  <b>Completed in January 2007</b>	Activity 2.6.1	Develop the terms of reference for a grant programme open to NGOs and other civil society organisations aimed at promoting public involvement in the	Call for submission of proposals from NGOs	N.A.	Council of Europe Kyiv Project Team	Team Leader in conjunction with EC consultants.

		anti-corruption effort				
<b>Purpose (3): To strengthen the anti-corruption legal framework and effective and impartial enforcement of the criminal legislation on corruption</b>						
<u>Summary of objectives supported under Purpose 3:</u> <ul style="list-style-type: none"> <li>Relevant draft amendments in line with international anti-corruption standards and technical reports on specialisation, training, and multidisciplinary approach of law enforcement and judicial authorities in the fight against corruption elaborated</li> </ul>						
<u>Sources of verification of objectives reached:</u> <ul style="list-style-type: none"> <li>Activity reports, GRECO reports, draft amendments, technical reports, partner institutions documentation</li> </ul>						
<u>Assumptions/risks:</u> <ul style="list-style-type: none"> <li>Commitment and co-operation of relevant partner institutions</li> </ul>						
<b>Output (3.1): Draft laws available to improve the prevention and control of corruption in accordance with the Criminal and Civil Law Conventions of the Council of Europe (ETS 173/174), the United Nations Convention against corruption and other relevant international legal instruments</b>						
Timing	Level/ Activity	Description	Sources of verification	Assumptions /Risks	Responsible Institutions	Possible Input Required
November 2008 – March 2009	Activity 3.1.1	Expert Opinion and Review of coherence of Draft Concept of Administrative Reform with European anti-corruption standards.	Projects reports;  Other reporting and communications of relevant Ukrainian institutions;  Relevant institutions' web-sites disseminating information and providing feed back;  Media coverage;  GRECO Evaluation Report[s] and recommendations and GRECO compliance reports	Draft Concept available for review by responsible institutions;  Political will to undertake necessary reforms, and review the on-going legislative process in line with the European standards;  Consistency of coordination and cooperation among all relevant institutions and	Main Civil Service Department of the of Ukraine;  MOJ;  National Commission for the Strengthening of Democracy and Rule of Law;  Secretariat of the	2 Experts Desk review;  1 Fact finding mission;  Delivery of Technical Paper (Expertise Opinion); Round Table Discussion (RTD);  Follow up.

				<p>key players during the entire process;</p> <p>Clear transparent process and a thorough stake holder consultation mechanism;</p> <p>Available resources provided and committed by the relevant beneficiary and coordinating bodies/institutions.</p>	<p>President of Ukraine;</p> <p>Council of National Security and Defence;</p> <p>School of Public Administration;</p>	
<p>January 2007</p> <p><b>Expert opinion provided in May 2007.</b></p>	Activity 3.1.2	Expert Opinion and Review of the Draft Concept of the Reform of Criminal Justice and Law Enforcement Agencies in line with European anti-corruption standards.	<p>Projects reports;</p> <p>Other reporting and communications of relevant Ukrainian institutions;</p> <p>Relevant institutional web-sites disseminating information and providing feed back;</p> <p>Media coverage;</p> <p>GRECO Evaluation Report[s] and recommendations and GRECO compliance reports</p>	<p>Draft Concept available for review by responsible institutions;</p> <p>Political will to undertake necessary reforms, and review the on-going legislative process in line with the European standards;</p> <p>Consistency of Coordination and Cooperation among all relevant institutions and the key players during the entire process;</p> <p>Clear transparent process, including thorough stake holder consultation mechanism;</p>	<p>Ministry of Justice;</p> <p>National Commission for the strengthening of democracy and the rule of law;</p> <p>Secretariat of the President of Ukraine;</p> <p>Council of National Security and Defence.</p>	<p>2 Experts;</p> <p>Desk Review;</p> <p>1 Fact finding Mission;</p> <p>Technical Paper (Expertise Opinion);</p> <p>Round Table Discussion (RTD);</p> <p>Follow up.</p>

				Available resources provided and committed by the relevant beneficiary and coordinating bodies/institutions.		
October 2006 <b>Expert opinion provided in October 2006</b>	Activity 3. 1.3	Expert Opinion and Review on the coherence of:  - Draft Law on the Judiciary; and - Draft Law on the Status of judges,  with European anti-corruption standards.	Projects reports;  Other reporting and communications of relevant Ukrainian institutions;  Relevant institutions' web-sites disseminating information and providing feed back;  Media coverage;  GRECO Evaluation Report[s] and recommendations and GRECO compliance reports	Draft Concept available for review by responsible institutions;  Political will to undertake necessary reforms, and review the on-going legislative process in line with the European standards;  Consistency of coordination and cooperation among all relevant institutions and key players during the entire process;  Clear transparent process, including a thorough	Ministry of Justice  National Commission for Strengthening Democracy and the Rule of Law  Supreme Court  Council of Judges  Secretariat of the President of Ukraine  Association of Judges of	2 Experts  Desk review  1 Fact-finding mission  Technical Paper (Expertise Opinion)  Round Table Discussion (RTD)  Follow up.

				<p>stake holder consultation mechanism;</p> <p>Available resources provided and committed by the relevant beneficiary and coordinating bodies/institutions;</p> <p>In addition a financial feasibility concept has been provided and agreed/committed by government</p>	Ukraine	
<p>June 2007</p> <p><b>14 December 2007</b></p>	Activity 3.1.4	<p>Support the implementation of GRECO recommendations on compliance with relevant international anti-corruption legal instruments.</p> <p>(Activities need to be defined upon issuance of GRECO report)</p>	<p>Database of legal acts of Ukraine</p> <p>GRECO compliance reports</p> <p>Other relevant monitoring reports (OECD)</p>	Continuous commitment of Ukrainian authorities to adhering to international legal standards.	MoJ	<p>Council of Europe local project team</p> <p>Relevant international and national experts</p>
<p>November 2008 – December 2009</p> <p>July 2008</p>	Activity 3.1.5	<p>Expert opinion on the Draft Amendments on the Confiscation of Crime Proceeds provisions;</p> <p>RTD on the Expert opinion with regard to the draft amendments and the impact in the legal system as well as their implementation in practice</p>	<p>Expert Opinion</p> <p>Evaluation reports from monitoring mechanisms</p> <p>Activity reporting</p>	Draft Amendments are available and presented in time to parliament	MOJ	<p>1 Council of Europe Expert</p> <p>Council of Europe local project team</p>
<p>December 2006 – August 2007</p> <p><b>Expert opinions provided in</b></p>	Activity 3.1.6	<p>Support to the drafting of legislation that results from anti-corruption law package, submitted by the President of Ukraine to the Parliament.</p> <p>Follow-up will be defined further after review.</p>	<p>Database of Legal Acts</p> <p>Criminal Code</p> <p>Code of Administrative Offences</p>	<p>Continuous commitment of Ukrainian authorities to align Ukrainian legal framework with international standards;</p> <p>Sufficient resources</p>	MoJ	<p>6 TP's</p> <p>2-6 experts</p>



<b>December 2006 and January 2007</b>		<i>(Note: the provisions on the liability of legal persons is included in this package)</i>		(human and financial) made available		
April - May 2008  <b>Hearing held on 4 June 2008</b>	Activities- 3.1.7-3.1.8	Expert consultations and comments on the proposals of change to the draft laws and opinions before the 2nd reading  Participation in the hearings in the Committee on fighting organised crime and corruption of the Verkhovna Rada on the topic "Anti-corruption policy and practice: problems of legislative framework"	Database of Legal Acts  Criminal Code  Code of Administrative Offences	Continuous commitment of Ukrainian authorities to align Ukrainian legal framework with international standards;  Sufficient resources (human and financial) made available	Anti-corruption Commission at the Parliament	2 experts Expert opinions
June 2008 – March 2009	Activity 3.1.7	Expert support/opinion in aligning the draft Law of Ukraine "On Public Service" (new version) with the anti-corruption law package, submitted by the President of Ukraine to the Parliament <i>Issue of compliance of the (draft) legislation on civil service will be covered in connection to activities 2.1.2, 2.1.3, 2.1.6, 2.4.4</i>	GRECO compliance reports  Other relevant monitoring reports (OECD)	Continuous commitment of Ukrainian authorities and parliament to align Ukrainian legal framework with international standards	MoJ	2 experts to carry the review
January/ February 2008	Activity 3.1.8	Support to publicising the contents of the anti-corruption law package, submitted by the President of Ukraine to the Parliament	Database of Legal Acts	Broad-based commitment to fighting corruption, including through relevant legislations.	MoJ, Parliament	Workshop; Local and international experts
<b>Output (3.2): Judges trained and specialised in adjudication of corruption; law enforcement officials trained in the investigation and prosecution of corruption offences</b>						
<b>Timing</b>	<b>Level/ Activity</b>	<b>Description</b>	<b>Sources of verification</b>	<b>Assumptions /Risks</b>	<b>Responsible Institutions</b>	<b>Possible Input Required</b>
January 2009	Activity 3.2.1	Multidisciplinary Conference on issues related to investigation and prosecution of corruption related offences (challenges, national practices and foreign experience, case	Various reports (including GRECO)	Issue not yet covered by other donors	SG partners	TP

		studies, pro-active and multidisciplinary approach, participation of relevant bodies, including supreme audit institutions)				
June 2008	Activity 3.2.2	Debriefing on models of anti-corruption bodies following the study visit Expert Review and Recommendations on the effectiveness of bodies responsible for the pre-trial investigation and prosecution of corruption offences (follow-up to recommendations from GRECO, special emphasis on specialisation and from the Multidisciplinary Conference Conclusions)	GRECO reports	Reform of system of prosecution is underway/finished in conjunction with international legal standards	Bodies responsible for pre-trial investigation and prosecution	2 experts (international and national)  TP and Fact Finding Mission
December 2008 – February 2009  (back to back with Activity 3.2.4)	Activity 3.2.3	In-country training activity for prosecutors and investigators from central and regional offices (case studies, pro-active and multidisciplinary approach, participation of relevant bodies, including supreme audit institutions)	Reports, including GRECO  Training Package	Reform of system of prosecution is underway/finished in conjunction with international legal standards	Investigation and prosecution authorities from central and regional level and other relevant authorities	1 Training Activity  2 international experts  2 national experts
December 2008 – February 2009  (back to back with Activity 3.2.3)	Activity 3.2.4	In-country training activity for police officers and other law enforcement officials from central and regional offices (case studies, pro-active and multidisciplinary approach, participation of relevant bodies, including supreme audit institutions)	Reports, including GRECO  Training Package	Reform of system of prosecution is underway/finished in conjunction with international legal standards	Mol, Prosecution	1 Training activity  2 international experts  2 national experts  TP
November 2008 – March 2009	Activity 3.2.5	Upon adoption of relevant legislation: Provide training tools through a Manual of Training on Investigation and Prosecution of Corruption related offences.	Training Manual	Reform of system of prosecution is underway/finished in conjunction with international legal	Mol, Prosecution	2 international experts  2 national experts

		<i>(Note: training manual will be drafted and improved during the above mentioned trainings)</i>		standards Legal acts have adopted		TP
January – March 2009	Activity 3.2.6	Joint multidisciplinary training for judges, prosecutors, police and other law enforcement officers from central and regional levels on pro-active and multidisciplinary approach, specialised officers on finance and economics, inter-agency and international cooperation during criminal proceedings on corruption related offences.	GRECO reports  Training Package	Reform of system of prosecution is underway/finished in conjunction with international legal standards	MoJ, Prosecution, Mol	2 international experts  2 national experts  TP
October 2008 – March 2009	Activity 3.2.7	Provide Technical Advice on the introduction and application of case management systems for the Ministry of Interior and Prosecution services, in particular of a unique system for registration of corruption and economic crime related offences	Technical Paper	Need not yet covered by other donors	Mol, Prosecution	2 International experts 2 Local experts Scoping Study TP 2 Workshops (introduction and feedback)
January – March 2009	Activity 3.2.8	Provision of IT equipment / advice (to be specified if needed)			TBC	

Last update: 25 July 2008

## **6.3 Annex III: Technical Paper regarding models of anti-corruption bodies in Ukraine, Marija Trivunovic (United Kingdom)**

### **1. INTRODUCTION**

The objective of this paper is to summarise key issues in considering an optimal model of the system of anti-corruption institutions in Ukraine. It follows a Round Table discussion that took place on 22 April 2008 in Kyiv organised as part of Council of Europe Project against Corruption in Ukraine (UPAC).

UPAC aims to contribute to the prevention and control of corruption so that it no longer undermines the confidence of the public in the political and judicial system, democracy, the rule of law and economic and social development in Ukraine. Its three principal objectives are as follows:

To improve the strategic and institutional framework against corruption in Ukraine  
To enhance capacities for the prevention of corruption

To strengthen the anti-corruption legal framework and effective and impartial enforcement of the criminal legislation on corruption

#### **1.1 What are Anti-Corruption Bodies?**

Confusion exists with regard to the very concept of *anti-corruption bodies*. It is therefore advisable to begin the discussion with a clarification of the key terms.

Most comprehensively, as “anti-corruption bodies” we consider the variety of bodies that have a role in the fight against corruption. This includes bodies that do not necessarily include the term ‘anti-corruption’ in their name. In fact, it is important to realise that globally, agencies that do have the term ‘anti-corruption’ in their name address *only a portion* of the wide range of issues and/or sectors that need to be taken into account in order to build an effective national anti-corruption system.

As the notion of anti-corruption itself comprises a broad range of issues and/or sectors, it is furthermore advisable to “dis-aggregate” or “unbundle” the concept and speak of specific issues or tasks that need to be considered in order to define a strategy and/or institutional framework for the effective fight against corruption.

#### **1.2 Types of Anti-Corruption Bodies:**

Within the anti-corruption community, there is a broad consensus that the fight against corruption must include elements of prevention, repression, and education (although arguably, educational and other public outreach efforts are essential components of both preventive and repressive measures). Anti-corruption bodies, therefore, can be broadly categorized as either preventive or repressive or law-enforcement types.

### **2. MULTI-PURPOSE BODIES**

There do exist institutions designed specifically to improve the fight against corruption that combine preventive and repressive elements (investigation). The most famous of these is the Hong Kong Anti-Corruption Commission, established in 1974. The spectacular success of Hong Kong has given rise to efforts to reproduce this model elsewhere in the world, the great majority of which have been modest successes at best.

The reasons for the lack of success of Hong Kong model copies have been analysed in a number of studies. The most important ones include:

- Insufficient analysis of the national context (including the constitutional and legislative framework and political developments) for the applicability of the Hong Kong model in other countries;
- Too-wide a remit of responsibilities for the new body, not supported by

commensurate human and financial resources to carry out all the mandated tasks;

- Unrealistic expectations, guided by the misconception that a single agency—even with extraordinary powers—can “cure” corruption without a broader system of effective preventive and repressive elements effectively performing their tasks.

The last point above deserves additional comment. Unrealistic expectations with regard to an “anti-corruption body” can be closely related to overall misconceptions about “anti-corruption” as an idea, and a failure to “dis-aggregate” or “unbundle” the idea into its “constituent parts”—the broad range of sectors, institutions, and processes that require attention from a preventive perspective, as well as the range of law enforcement measure, that together form a system that is resistant to, and effectively able to tackle corruption.

### **3. PREVENTIVE BODIES:**

In order to speak about “preventive anti-corruption bodies” one must first recognize preventive anti-corruption functions. It is the functions that matter most, while the institutional/organisational arrangements to perform those functions should be derived from the demands of the functions.

#### **3.1 Functions related to the implementation of (national) anti-corruption strategies and programs**

In a number of countries where corruption has been recognized as a significant problem and the fight against corruption has been placed high on the public policy agenda, there have been elaborated comprehensive national anti-corruption strategies and action plans. The idea behind a strategy is that—considering the broad range of sectors and issues that need to be addressed, and the interdependence of issues that require coordination of measures among the various relevant sectors—such a document helps to identify and *prioritise* the set of measures/reforms that need to be implemented. Such a strategic approach recognises not only that the fight against corruption requires a complex and multi-sectoral set of responses, but also that these responses need to be sequenced from an operational perspective and from the perspective of limited human and financial resources required to implement the inevitably broad range of reforms.

#### ***Monitoring the implementation of anti-corruption strategies and programs***

Where this type of a strategic framework exists, there arises a need to monitor the progress of its implementation and the effectiveness of the proposed reforms. This task is often the principal function of a number of anti-corruption agencies, committee, or commissions. These bodies tend to be composed of high-level government officials, parliamentarians, or well-respected independent public figures, including representatives of civil society organisations. The idea is to have a visible high-level body whose evaluation of the progress made and recommendations will carry sufficient “weight.” The process inevitably needs to be public.

#### ***Reporting on the implementation of anti-corruption initiatives***

In order for monitoring to be carried out effectively, all institutions that have obligations under the anti-corruption strategy or program need to report periodically on their progress. The sum of the individual reports is typically further shaped into a manageable single document and possibly preliminarily evaluated/checked against the deadlines and benchmarks outlined in action plans. This function is typically performed by the monitoring body’s secretariat or support unit, although a number of other institutional arrangements can be equally appropriate.

### ***Periodic updating of anti-corruption strategies and action plans***

No reform strategy is ever perfect, but as implementation of reforms progresses, new issues will arise, or as additional diagnostics bring to attention new circumstances, it will become necessary to revise and update parts of the strategy. In addition, new sector-specific reform policy proposals may be presented by international donors, implementers, or national civil society organisations and think tanks, which can greatly improve specific parts of the strategy. The need for updates is even more frequent with regard to action plans, as these should reflect the current status in conjunction with the monitoring process (minimum once per year). Updating of action plans can be a fairly straightforward, almost “mechanical” process if no substantive changes are made; if this is the case, the task can be performed, as above, by the monitoring body’s secretariat or support unit, or another appropriate body.

Substantive updates to the strategy, and corresponding amendments to the action plan, however, do require an appropriate level of expertise and a public consultative process involving all relevant stakeholders—from state institutions implementing reforms, to donors (current and potential), to civil society.

The body responsible for strategy update can also be responsible for carrying out some of the diagnostics itself. It is important to know that in addition to the most commonly used perception surveys, there is a wealth of other more reliable diagnostic tools, including risk assessments, performance surveys, etc.

The body responsible for this function, therefore, should have and/or be prepared to develop anti-corruption policy capacities to support these activities over the medium- to long-term, recognizing that the fight against corruption is a long-term process that requires continual assessments of the institutional framework and other vulnerable processes, and evaluation of existing arrangements to prevent, detect, and prosecute corruption.

### ***Coordination of anti-corruption reforms***

As reforms progress, there will inevitably emerge a need to coordinate activities, particularly among sectors and institutions whose effectiveness depends on one another, or with regard to sequencing reforms that cannot be performed simultaneously in view of resource limitations or other operational considerations. Coordination is also strongly advised with regard to donor-supported activities, especially those carried out by external implementers, be they international organisations or national NGOs. There is no set prescription as to the agency or body that should undertake these functions, provided that it is done in close communication with the body or bodies carrying out the previous three. Arguably, greater efficiency can be achieved if a number of the above tasks are performed by the same body, but national circumstances may provide convincing reasons to organise the work separately.

### ***Participation in international anti-corruption mechanisms***

An appropriate national representative should be designated to participate in GRECO, the OECD Anti-Corruption Network (ACN), and other international anti-corruption mechanisms to which Ukraine is a party. Such representatives are typically heads of one of the bodies responsible for the functions described above (or one body that performs a number of the above functions). The key consideration is that the representative is intimately involved in and knowledgeable about the national anti-corruption efforts, and have the authority to both represent Ukraine in the international fora and also communicate back to national decision-makers the recommendations and obligations arising from these mechanisms.

## **3.2 Recommendations for Ukraine:**

In a number of countries, many (if not all) of the above functions relating to the implementation of national anti-corruption strategies and programs are undertaken by a single, often independent state agency. While there are compelling reasons to combine these tasks—not the least of which are efficiency and ease of coordination—it is conceivable that other institutional arrangements can be equally effective in a specific national context. It is beyond the scope of this paper to offer a specific recommendation as to the best model for Ukraine, the following considerations should be taken into account in making the decision:

- The monitoring mechanism should be a high-level body that should, at a minimum, include some independent (non-governmental) members, and perform its reviews publicly.
- Anti-corruption policy development requires extensive expertise and human resources. The extent to which Ukraine invests in building up the necessary capacities will be an indication of the seriousness with which it tackles corruption.
- There needs to exist a single coordinating mechanism for anti-corruption activities. At the April 22 round table, it emerged that there were several anti-corruption coordination initiatives underway by different state agencies. While different agencies may (and should) have specific anti-corruption programmes, the coordination of these efforts needs to be centralised within one preventive-type body (distinct from law-enforcement functions), otherwise there will be a significant duplication of efforts and unnecessarily increased administrative burden on national agencies.

### **3.3 Other preventive functions:**

It is essential to remember that the full range of preventive anti-corruption functions extend far beyond the functions related to the implementation of anti-corruption strategies and programs enumerated above. There are a number of regulatory regimes necessary to reduce opportunities for corruption, the most common ones relating to public procurement, conflict of interests, asset declarations of public officials, political party and campaign financing, among others. The freedom of information regime is likewise considered as having an important anti-corruption function, providing access to state documents that may reveal potential corruption. Bodies overseeing the implementation of these regimes—as well as numerous other supervisory bodies—together with bodies dedicated to other explicit anti-corruption policies, collectively form the overall institutional framework of preventive anti-corruption bodies. Each of these bodies therefore requires considered attention in terms of assuring its capacity and independence.

While it is beyond the scope of this paper to map out the necessary preventive functions and assess the extent to which appropriate institutional framework has been created to meet the requirements of these functions, it is highly recommended that this kind of assessment be undertaken within the anti-corruption policy review process. A number of concerns have already been identified in the GRECO report.

### **3.4 Recommendations for Ukraine:**

Ukrainian authorities should consider the effectiveness of the variety of preventive functions and bodies noted in sections 3.1 and 3.2 with regard to obligations imposed by the United Nations Convention Against Corruption (UNCAC) Article 6, Preventive anti-corruption body or bodies:

*1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:*

*- Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;*

- *Increasing and disseminating knowledge about the prevention of corruption.*

*2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.*

It is important to realise that there is no obligation to create a single independent preventive anti-corruption body as such. It is even more important to realize that each of the above noted bodies has a critical role to play in a system of corruption prevention, and that each of these deserves equal attention in providing the conditions for them to carry out their functions effectively, including resources and appropriate levels of independence.

#### **4. LAW ENFORCEMENT BODIES**

In a number of ways, the detection, investigation, and prosecution of corruption does not differ from that of many other, particularly financial, crimes. The particular challenges relate to the concealed nature of corruption, and the possibility in a significant portion of the cases of no individual victims—the “victim” of the crime is the public interest and the public purse.

In a country where the system of preventive anti-corruption bodies is not fully robust, even the most competent law enforcement agencies would have a difficulty in addressing the sheer number of cases that arises due to the opportunities for corruption. To make matters more difficult, law enforcement organisations in countries in transition are themselves undergoing reforms and often do not possess the full range of capacities necessary to meet the challenge. Furthermore, in a great number of cases, law enforcement agencies are plagued by corruption within their own ranks, and are subject to political influence that discourages them from pursuing particular, typically high-level political corruption, cases. In these contexts, it is a considerable challenge to identify the appropriate set of measures to increase the law enforcement agencies’ capacities to perform their duties. However, some general principles applicable also (if not especially) in countries where corruption is a serious problem, have been defined in international standards:

##### ***Specialisation:***

The Council of Europe Criminal Law Convention on Corruption (Article 20), Specialised authorities:

*Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.*

United Nations Convention against Corruption (Article 36), Specialised authorities:

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

In addition to meeting international obligations, there are additional reasons for investing in specialisation of law enforcement capacities with regard to the fight against corruption.



- Due to the often complex nature of the crimes where corruption plays a part, a high level of skills is needed, and no law enforcement body in the world has the resources to build such high competencies across the organisation;
- High levels of resources may be needed, including specialised expertise (e.g. relating to financial investigations), that is likewise most efficiently used when concentrated within a specific unit;
- Confidentiality of investigations is more easily protected (and breaches detected) when communicated within a smaller group rather than through an extensive chain of command;
- The increased public profile of such specialised units can serve to protect them from political influence and interference ("the untouchables").

### ***Independence:***

In addition to specialisation, both the Council of Europe and the UN conventions speak of "necessary independence in accordance with the fundamental principles of the legal system of the [country]". This formulation has sometimes been taken to mean that the establishment of a fully independent law enforcement body is advocated. This is not the case. The very useful OECD publication *Specialised Anti-Corruption Institutions: Review of Models* clearly elaborates on this point: "...[O]ne of the prominent and mandatory features of specialised institutions is not full independence but rather an adequate level of *structural and operational autonomy* secured through institutional and legal mechanisms aimed at preventing undue political interference as well as promoting 'pre-emptive obedience'" (p. 17). The Explanatory report to the Council of Europe Criminal Law Convention on Corruption further elaborates that "the independence of specialised authorities for the fight against corruption, should not be an absolute one. Indeed, their activities should be, as far as possible, integrated and co-ordinated with the work carried out by the police, the administration or the public prosecutors office. The level of independence required for these specialised services is the one that is necessary to perform properly their functions"(par. 99)<sup>1</sup>.

The concern for possible interference in the work of law enforcement officials is exacerbated by the hierarchical organisation of these bodies, particularly in cases where superiors are permitted to directly interfere in the investigation or prosecution of cases handled by lower-level officials. However, this is a risk inherent in any hierarchical structure, even one that is independent from the "main/traditional" law enforcement bodies. The risk can be addressed in other ways, however. The OECD elaborates on the above points regarding the value of specialisation, explaining that "...special anti-corruption departments or units within the police or the prosecution service can be subject to separate hierarchical rules and appointment procedures; police officers working on corruption cases, though institutionally placed within the police, should in individual cases report only and directly to the competent prosecutor" (Ibid).

### **4.1 Lessons from practice:**

In an effort to improve the law enforcement capacities to tackle corruption, law enforcement organisations in countries in transition in particular have implemented a number of models of specialisation. While it is beyond the scope of this paper to provide a comprehensive overview (and while such an overview

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<sup>1</sup> See <http://conventions.coe.int/Treaty/en/Reports/Html/173.htm>

conveniently exists in the form of the OECD publication *Specialised Anti-Corruption Institutions: Review of Models*), a few general trends are worth noting:

Pre-trial investigation:

- In a number of instances—including the agencies in Latvia and Lithuania recognized as successfully in adapting the Hong Kong multi-purpose anti-corruption agency model—the new bodies that have been created with regard to anti-corruption law enforcement approaches have focused on detection and *investigation* of corruption;
- As in the Ukraine, in most countries there are a number of different agencies mandated to *investigate* corruption; conflicts of jurisdictions/competencies are not uncommon, and these are typically responded to by:
  - Revising the legal framework to clarify the different bodies substantive jurisdictions, where possible;
  - Empowering the responsible prosecutor to determine the competent agency for a particular case; or,
  - A combination of the two (absolute clarity on substantive jurisdiction may not be achievable with regard to cases where, for instance, there are elements of both corruption and organised crime).
- New specialised units are most often mandated to investigate or prosecute only the most serious and complex cases, or cases of high public importance, such as those involving high level public officials;
- New specialised units often have the combined mandate for both corruption and organised crime cases;
- New specialised units responsible for investigating corruption are often structured as separate units within the police organisations, not subject to the normal institutional hierarchy; examples of higher levels of independence also exist in Lithuania and Latvia, where the investigation services are part of an independent specialized anti-corruption agency.

Prosecution:

- There also increasingly exist models of specialised prosecution units, operating independently within the prosecution service (i.e. not subject to the regular hierarchy) and reporting directly to the Prosecutor General.
- The heads of the specialised units typically have the rank of Deputy Prosecutor General;
- New specialised units often have the combined mandate for prosecuting both corruption and organised crime cases;
- There exist different models of cooperation with investigators in the pre-trial phase:
  - Specialised units typically collaborating only with investigators from specialised police units;
  - Specialised units having their own investigators;
- Specialised prosecution units increasingly have, on a permanent basis, experts from other fields such as economy, finance, banking, customs, IT, auditors, etc.
- It also appears to be an emerging practice to use mixed teams of investigators and other experts, led and directed by the prosecutor.

It should also be noted that measures to tackle corruption within their own ranks is one of the priorities of many national law enforcement agencies.

#### **4.2 Recommendations for Ukraine:**

The review of the existing arrangements in Ukraine should be included as part of the overall review of needs and policy options for law enforcement taking place at

the moment. During the April 22<sup>nd</sup> Round Table, there was discussion of a comprehensive reform of the criminal justice system, which includes most notably a review of the constitutional position and powers of the prosecution service. In doing so, attention should be paid to the particular challenges associated with the fight against corruption, some of which had been outlined in the GRECO evaluation report for Ukraine, and include, among others, lack of clarity of competencies between the Security Services and the specialised anti-corruption division under General Department of Organised Crime, difficulties in coordination among the various law enforcement bodies, as well as a lack of clarity between administrative violations and criminal offences relating to bribery.

## **5. RECOMMENDED NEXT STEPS IN CONSIDERING THE APPROPRIATE INSTITUTIONAL ARRANGEMENTS FOR ANTI-CORRUPTION FUNCTIONS IN UKRAINE**

Defining appropriate institutional arrangements for the fight against corruption in any country is a challenging task, particularly in view of the extensive range of preventive functions outlined in section 2. Because of the complexity of the issue, it is important not allow **terminology** ("anti-corruption") to obscure the full range of **functions** that need to be defined and performed in order to create institutional framework truly effective in fighting corruption. The following set of steps is recommended in order to avoid these potential pitfalls and identifying the institutional framework appropriate for Ukraine, rather than simply transplanting potentially inappropriate models from other countries.

### **5.1 Definition of functional needs:**

- Mapping of the wide range of preventive and repressive functions that need to be performed for the successful fight against corruption; the GRECO evaluations are a useful starting point but the effort ultimately needs to be much broader;
- Assessment of existing arrangements: what functions are currently being carried out by which institutions;
- Identification of gaps: what functions are not covered by existing institutions, and how effectively is the performance of those that are covered;
- Consideration of whether it is more effective and efficient to improve existing structures, to add new/additional functions to existing structures, or to create new institutions.

The process above will provide an overview of the range of the **functions** of a new anti-corruption structure or structures, or a basis for redefining existing structures. Great caution is advised in deciding to create a new institution, however: the costs of failure of poorly conceived institutions are very high, including the devaluation and (further) erosion of public trust in state institutions in general.

This is not to say that new institutions should not be created. On the contrary, there are experiences where creating a new body was the best possible way to meet the challenge, particularly when the existing institutions that are supposed to be carrying out a particular function are very large or difficult to reform for other reasons.

The actual **models** for a new structure should follow from the identified functions and be defined with due consideration of the constitutional, legislative, and institutional framework of Ukraine. In addition, the following issues should be considered with utmost care:

### **5.2 Coordination with existing bodies:**

As noted in several places in the above discussion, there already exists duplication of anti-corruption efforts in Ukraine and a disruptive lack of coordination particularly among law enforcement agencies. It is essential that modes of cooperation be clearly defined and formalised, possibly through inter-agency cooperation agreements.

### **5.3 Resources needed to perform functions:**

To be effective, a new agency or unit must be adequately resourced to effectively perform its functions. This includes not only an adequate operational budget, but also financing and regulations that permit the retention of highly qualified staff and their continuing education and specialisation.

### **5.4 Independence:**

Discussed in some detail in section 4 above, operational independence of both preventive and repressive anti-corruption bodies is essential for its effectiveness. In determining the appropriate framework for safeguarding the appropriate levels of independence, the following aspects should be considered with care:

- Legal basis
- Institutional placement
- Appointment and removal of director
- Selection and recruitment of personnel
- Budget and fiscal autonomy

### **5.5 Accountability and transparency:**

Issues of accountability are closely tied considerations about independence noted in the previous point. Accountability arrangements need to be proportional to the levels of independence and range of powers an agency has, and be defined in line with principles of the rule of law and human rights. Accountability arrangements include submitting regular performance reports to executive and legislative bodies, and making them public. While law enforcement bodies are limited in transparency by operational constraints (e.g. confidentiality of investigations) and human rights principles, preventive bodies on the other hand should be as transparent as possible in their operations. Showing the citizens of Ukraine the steps being undertaken to fight against corruption—if done properly—will also serve an educational function in demonstrating the complexity of the challenge, the seriousness with which the Ukrainian government is tackling the challenge, and as encouragement to citizens to support and participate in the multitude of small steps needed to tackle corruption over time.

**6.4 Annex IV: Recommendations adopted at the round-table discussion on anticorruption bodies**

**RECOMMENDATIONS**

**of participants of the round-table discussion**

**«Looking for the Optimal Model of the System of Anti-Corruption Bodies in Ukraine»**

*22 April 2008, Kyiv*

**We**, participants of the round-table discussion “Looking for the Optimal Model of the System of Bodies to Prevent and Combat Corruption in Ukraine”, that was organised jointly by the Ministry of Justice of Ukraine, Council of Europe/European Commission Project “Support to Good Governance: Project Against Corruption in Ukraine” and Organisation for Economic Co-operation and Development Project “Strengthening Capacity for Investigation and Prosecution of Corruption in Ukraine”,

**Bearing in mind** the serious threat that corruption poses for the development of democracy and economy of Ukraine,

**Noting** an urgent need of creating an effective institutional mechanism in the area of co-ordination of anti-corruption policy, prevention of corruption and counteraction to corruption through law enforcement means,

**Basing on** the international standards of specialisation of anti-corruption institutions and best practices of foreign states,

**Have approved the following recommendations to state authorities of Ukraine,**

In the area of anti-corruption policy co-ordination

- 1) Support creation within the Ministry of Justice of a body empowered to co-ordinate formulation and realisation of anti-corruption policy (in particular by co-ordinating implementation of anti-corruption action plans by executive authorities, preparing and publishing reports on such implementation, preparing proposals on revision of the anti-corruption

strategy and action plans). This body should have sufficient autonomy in the decision-making process and proper resources. Appointment and dismissal of its members should be specifically regulated. The Ministry of Justice should conduct anti-corruption screening of legislation and draft legal acts, prepare proposals on improving anti-corruption legislation, organise anti-corruption research, carry out educational and information campaigns to prevent corruption, etc., as well as to report to the Parliament, Cabinet of Ministers and the public. The aforementioned measures shall be conducted with active involvement of civil society representatives.

- 2) Hold, at least once a year, meeting of the National Security and Defence Council of Ukraine dedicated to anti-corruption issues with a view to consider current situation and necessary measures to ensure effective actions by state authorities to prevent and combat corruption.

#### In the area of corruption prevention

- 3) Create on the basis of law an effective system for collection, verification and publication of public servants' declarations of assets, income and expenses, as well as for detection and resolution of conflicts of interests in the public service.
- 4) Determine by law an authorised institution (official) in the area of ensuring the right of access to public information (functions of considering complaints, inspecting situation with openness of information in public authorities, etc.).

#### In the area of detection, investigation and prosecution of corruption offences

- 5) Set up on the basis of law a specialised agency to detect and investigate corruption offences with powers of conducting operative and search activity and pre-trial investigation. Jurisdiction of this agency can be limited by subject (corruption offences), by persons (highest state and local self-government officials, deputies of all levels, judges, prosecutors, law enforcers, etc.) and gravity of the offence and its consequences (level of damage).

The law shall define the procedure for appointment of the head and employees of such anti-corruption agency on the basis of an open, transparent competition according to professional qualities and experience, determine guarantees from politically motivated dismissal. According to international standards the law shall define other guarantees of independence of the agency and its employees, mechanisms of its accountability, in particular to the public, ensure provision of proper resources and powers.

- 6) Finalise implementation of the pilot project of the Millennium Challenge Corporation regarding creation within the State Border Guard Service of internal investigation units and based on its results decide on the expediency of introducing such units in other state authorities.
- 7) Introduce specialisation of prosecutors in prosecution of corruption offences.
- 8) Creation of the anti-corruption agency responsible for detection and investigation of corruption offences shall be carried out along with the reform of criminal legislation (adoption of the anti-corruption package of draft laws – “On principles of prevention and counteraction to corruption”, “On amending certain legal acts concerning liability for corruption offences”, “On liability of legal persons for commission of corruption offences” and “On the integrity of persons authorised to perform functions of the State and local self-government”).

Besides, participants of the round-table discussion have proposed that draft legal acts which would be prepared in line with these recommendations be discussed by public and reviewed by experts of international organisations, in particular of the Council of Europe and Organisation for Economic Co-operation and Development.

## **6.5 Annex V: Conclusions adopted at the Conference on the prevention of the political corruption (1-2 July 2008)**

The conclusions are of a conceptual character, the detailed recommendations are specified in the documents prepared by experts.

### **Funding of political parties and electoral campaigns**

The legislative framework requires changes. To a large extent it is not applied in practice. Funding of political parties' statutory activities as well as funding of electoral campaigns lack transparency.

It is proposed to:

- Bring the rules on funding of political parties and electoral campaigns in line with European standards
- Introduce State funding of political parties' statutory activities
- Unify parties' reporting forms, in particular regarding content, periodicity of their submission and publication; determine the procedure for monitoring of established standards
- Introduce compulsory periodic publication of political parties' reports
- Determine the subjects and mechanisms for monitoring use of financial resources by parties
- Establish preventive, adequate and efficient sanctions for violation of rules on funding of political parties and electoral campaigns.

### **Immunities**

Complete abolishment of immunities is not typical for most of European countries. The list of categories of officials enjoying immunities in Ukraine does not need to be extended. There is also an urgent need in simplifying the procedures of lifting immunities according to recommendations 9 and 10 of the GRECO Report of the 1<sup>st</sup> and 2<sup>nd</sup> Evaluation rounds. These procedures are too complicated and lengthy (taking more than a month). Therefore it is proposed to:

- Reduce the terms for examining in the Parliament the issue of lifting immunities, limit the role of the Speaker of the Verkhovna Rada (Parliament) of Ukraine in determining the grounds of submissions by the Prosecutor General or the President of the Supreme Court of Ukraine regarding lifting of immunities
- Investigatory (search, seizure, surveillance, interception of communications) and procedural measures, not linked with restrictions of movement for MPs, should not be excluded from the scope of immunities
- Situations where MPs or judges are caught in "flagrante delicto" – in the act of committing a serious crime, including corruption offences, should be excluded from the scope of immunities
- Ensure a real possibility for removing the President from office by impeachment if indications of a crime are established in his/her actions
- Adopt a law on temporary special and investigation commissions, which will determine in particular the status of a temporary special commission on impeachment, the status of special prosecutors and special investigators, the rights of persons participating in the investigation conducted in relation to the initiation of impeachment of the President.

### **Conflicts of interest**

It is proposed to:

- Legally determine the rules of professional ethics for public servants (persons empowered with the functions of the State and bodies of local self-government)
- Legally establish the notion of conflict of interest, mechanisms of prevention and resolution of conflicts of interest, mechanisms of



monitoring of respect of relevant legal provisions as well as sanctions for violation of legal provisions on conflict of interest

- Legally establish a comprehensive system of declarations of financial interests by public servants, including the declarations of revenues, assets and expenditure and determine the procedure for these declarations, specifying:
  - List of subjects;
  - Procedure for submission and content of declarations;
  - Procedure of State control (monitoring) of declarations;
  - Rights and obligations of the persons subject to the declaration regime as well as rights and obligations of other physical and legal persons;
  - Legal responsibility for violation of established requirements for declarations.
- Determine the functions of bodies responsible for ensuring the respect of legal provisions on conflicts of interest and declaration of financial interests of public servants, including their revenues, assets and expenditure, providing for separation of preventive and repressive functions of these bodies
- Ensure a legal separation of the regime of declarations submitted by public servants from the regime of fiscal declarations; legally empower the body responsible for detection of conflicts of interest with the function of checks of declarations submitted by public officials;
- Provide for the right of citizens in receiving (accessing to) information, contained in the declarations of public servants and also the mechanisms of its implementation, in particular – ensuring obligation to submit information contained in the declarations of public servants on requests and obligation to make public the content of declarations by categories of public servants determined by law.

## **Lobbying**

It is proposed to:

- Ensure the relevant level of transparency of public authorities (bodies of the State and local self-government); improve access to public information and mechanisms of decision-making in the public sphere;
- Examine the issue of voluntary registration of interests groups in the public authorities and introduction of standards of ethics for these groups;

## **6.6 Annex VI: Recommendations adopted at the Parliamentary Hearing**

### **RECOMMENDATIONS**

#### **developed during Hearing at the Parliamentary Committee of Ukraine on Fighting Organised Crime and Corruption: 'Anti-Corruption Policy and Practice: Legislative Framework'**

The participants of the hearing on the topic "***Anticorruption Policy and Practice: Legislative Framework***", held on 4 June 2008, in the Committee on fighting organised crime and corruption of the Verkhovna Rada of Ukraine **underline** the following:

The fight against corruption that started in Ukraine in 1995 does not correspond to the actual level of penetration of this extremely negative phenomenon.

Eleven attempts to amend the basic anti-corruption legislative act – the Law of Ukraine "On the fight against Corruption" did not contribute to the anti-corruption efforts.

Ukraine still is not a Party to the United Nations Convention against Corruption, Criminal Law Convention on Corruption and its Additional Protocol.

The activities of the relevant Ukrainian authorities to implement the GRECO recommendations and the recommendations adopted in the framework of the Istanbul Anti-Corruption Action Plan of the OECD Anti-Corruption Network for Eastern Europe and Central Asia lack systematic character.

The participants of the hearings **recommend** that:

1. The Government authorities and local self-governance bodies build their practical anti-corruption measures on the general principles of corruption prevention and counteraction that are in line with international anti-corruption standards and are defined by law. In connection with this, Committee on fighting organised crime and corruption of the Verkhovna Rada of Ukraine shall:

1) while drafting legislation, strictly comply with each of the Twenty Guiding Principles for the Fight against Corruption as determined by the Resolution n°97 (24) of the Committee of Ministers of the Council of Europe of November 6, 1997, the provisions of the UN Conventions against Corruption and against Transnational Organised Crime, the Criminal Law Convention on Corruption and its Additional Protocol as well as the Civil Law Convention on Corruption;

2) continue development, with the help of leading Ukrainian academic institutions, of proposals designed to improve legislation on liability for committed corruption offences;

3) taking into consideration expert opinions of the Council of Europe and Ukrainian experts, submit to the Parliament the improved draft law of Ukraine "On Principles of Prevention and Counteraction Corruption" (Registration No 0876), provisions of which were discussed, among other draft laws, and basically supported by the participants of the hearing as the national anti-corruption strategy; draft law "On Amendments to Certain Legislation Acts on Liability for Corruption Offences (Registration No 0875) and draft law "On Principles of Liability of Legal Persons for Corruption Offences" (Registration No 0877);

4) keep on performing control functions over implementation of international anticorruption agreements to which Ukraine is a Party, of GRECO recommendations and recommendations approved in the framework of the Istanbul Anticorruption Action Plan of the OECD Anticorruption Network for Eastern Europe and Central Asia;

5) introduce, in the framework of international anticorruption projects implemented in Ukraine (Support to Good Governance: Project Against Corruption in Ukraine (UPAC), Millennium Challenge Corporation Programme designed to reduce the level of corruption, OECD Anticorruption Network for Eastern Europe and Central Asia) extensive corruption prevention activities involving relevant Ukrainian civil society institutions.

2. The Committees of Verkhovna Rada of Ukraine:

1) on State Capacities Building and Local Self-governance

– prepare the draft law of Ukraine "On Ethics of Persons Authorised to Perform the Functions of State and Local Self-Governance Bodies" (Reg. No 2362) submitted by the Cabinet of Ministers of Ukraine, for the first reading, taking into consideration the provisions of the draft Code of Professional Ethics for Civil Servants developed under the Millennium Challenge Corporation Programme designed to decrease the level of corruption;

– determine a set of activities to prevent at the legislative level any corruption offences in local self-governance bodies;

2) on judicial issues – consider implementation of systematic activities to counter corruption in the judicial system.

3. The Council of National Security and Defense of Ukraine – consider including anti-corruption issues to the list of the objectives of the Interagency Scientific and Research Center for Fighting Organised Crime

4. The Cabinet of Ministers of Ukraine:

1) to determine the mechanisms of implementation of provisions of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" regarding public adoption of relevant measures;

2) based on the provisions of preambles to the Criminal Law and the Civil Law Conventions on Corruption, Additional Protocol to the Criminal Law Convention on Corruption, to ensure providing stakeholder institutions with the texts of the Action Plan against corruption adopted by the Committee of Ministers of the Council of Europe in November 1996 and the Explanatory Report to the Criminal Law Convention on Corruption;

3) to take measures to introduce following established procedures a new methodology of statistics and reporting in the fight against abuse of office and corruption.

The participants of the hearing express their confidence that the above Recommendations will be taken into consideration by public authorities in their further work aimed at improving the national anticorruption legislation and in their anticorruption activities.