



**GRECO**  
Group of States against Corruption  
Groupe d'États contre la corruption



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## FOURTH EVALUATION ROUND

Corruption prevention in respect of members of  
parliament, judges and prosecutors

### COMPLIANCE REPORT

### UKRAINE

Adopted by GRECO at its 84<sup>th</sup> Plenary Meeting  
(Strasbourg, 2-6 December 2019)

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## **I. INTRODUCTION**

1. The Compliance Report assesses the measures taken by the authorities of Ukraine to implement the recommendations issued in the Fourth Round Evaluation Report on Ukraine which was adopted at GRECO's 76<sup>th</sup> Plenary Meeting (23 June 2017) and made public on 8 August 2017, following authorisation by Ukraine ([GrecoEval4Rep\(2016\)9](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. As required by GRECO's Rules of Procedure, the authorities of Ukraine submitted a Situation Report on measures taken to implement the recommendations. This report was received on 11 July 2019 and served, together with the information submitted subsequently, as a basis for the Compliance Report.
3. GRECO selected Sweden (PA) and Armenia (JUD) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Monika OLSSON, on behalf of Sweden and Ms Kristinne GRIGORYAN, on behalf of Armenia. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

## **II. ANALYSIS**

5. GRECO addressed 31 recommendations to Ukraine in its Evaluation Report. Compliance with these recommendations is dealt with below.
6. A new Parliament was elected in July 2019 and a new government was in place in August 2019. Although some legislative initiatives were taken by the previous legislature to address GRECO recommendations, apparently most of them have been abandoned. In the meantime, the newly elected President has proposed several legislative drafts, some of which have already been adopted and are of critical importance for anticorruption purposes.

*Corruption prevention in respect of all categories under review*

### **Recommendation i.**

7. *GRECO recommended (i) developing appropriate measures, including of a regulatory nature to enhance the independence and impartiality of the National Agency on Corruption Prevention (NACP) decision-making structures; and (ii) laying down detailed, clear and objective rules governing NACP's work, in particular, its investigative tasks, in order to fully secure transparency and accountability in practice of NACP action.*
8. Concerning the first part of the recommendation, the authorities of Ukraine report that the Law On Amendments to Some Legal Acts of Ukraine to Ensure an Efficient Functioning of the Institutional Corruption Prevention Mechanism (hereafter "Law Rebooting the National Agency on Corruption Prevention / NACP") was adopted and entered into force in October 2019. It includes, *inter alia*, changes in the management system of the NACP (one Head, instead of five Commissioners, to be chosen through

competition with the involvement of international experts)<sup>1</sup>, the selection of NACP staff and the Civic Council, full automatic access for the Agency to all state registries, automatic verification of asset declarations of public officials and more stringent control mechanisms. On 18 October 2019, with the entry into force of the above-mentioned amendments, the powers of the Commissioners, the Head and Deputy Head of the NACP staff and members of the NACP Civic Council terminated. On 20 October 2019, the Government nominated the new temporary acting Head of the NACP, who will be in charge until the new Head is selected through a competition, to be held within two months. On 28 October 2019, the Government nominated the members of the Competition Commission which will select the new NACP Head. The new Head will hold his/her position for a non-renewable term of four years. S/he will have the power to appoint and dismiss his/her three deputies.

9. Moreover, the authorities indicate that the operational capacities and the proactivity of the NACP have been strengthened. A Strategy of Institutional Development for 2017-2020 is in place. Currently, the NACP is operational, with 13 structural divisions, including 5 divisions in charge of key functional competencies. Since 1 January 2019, the NACP staff has increased to its statutory maximum of 408 employees. The Scientific and Expert Council, including NGO representatives and international experts, provides assistance in the elaboration of the anti-corruption strategy and of new legislation. The NACP Civic Council, set up in April 2017, carries out public oversight of the Agency's activities. A new department of internal control is to be set up and biennial independent audit has now been introduced.
10. Furthermore, the authorities report that the Agency has been legally empowered to directly access the state and local self-government-owned registries and databases. Access has been awarded to three out of the six necessary registers held by the Ministry of Justice (MoJ)<sup>2</sup>. Measures are underway to ensure the automatised exchange of information with three MoJ registers with restricted access<sup>3</sup>, for e-declaration verification purposes. The NACP has also established a register of physical and legal persons who committed corruption or corruption related offences (criminal, administrative, disciplinary and civil law). The [register](#) is publicly accessible online. With the adoption of the Law on the Protection of Whistleblowers<sup>4</sup>, the NACP has been vested with new competencies to facilitate whistleblowing, to protect whistleblowers and to check the information provided by them.
11. With respect to the second part of the recommendation, the authorities indicate that the NACP Rules of Procedure and the Regulation on the Staff of the Agency have been issued.
12. Moreover, the NACP has approved the following rules of procedure:
  - Rules of procedure for drawing up protocols for administrative offences and making prescriptions;

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<sup>1</sup> The competition commission comprises three experts proposed by the Cabinet of Ministers and three experts from international organisations. The selection process is to be completed within two months from the adoption of the Law rebooting the NACP, i.e. by 18 December 2019.

<sup>2</sup> The State-Owned Register of Property Rights to Real Assets, the Unified State-Owned Register of Legal Entities, Individual Entrepreneurs and NGOs and the State-Owned Register of Encumbrance of Real Estate.

<sup>3</sup> The State-Owned Registry of Civil Status Acts, the Unified Registry of Powers of Attorney, and the Registry of Heritage.

<sup>4</sup> Law of Ukraine on Making Amendments to the Law of Ukraine on Prevention of Corruption in respect of Whistleblowers, adopted on 17 October 2019 and entering into force on 1 January 2020.

- Rules of procedure for sending electronic copies of court decisions concerning the persons who committed corruption or corruption related offences and the legal entities subject to criminal law measures linked to a corruption offence;
  - Rules of procedure for carrying out controls and comprehensive verification of asset declarations of persons authorised to perform the functions of the state or local self-government as well as other rules of procedure *inter alia* related to asset declarations (see paragraph 18);
  - Rules of procedure for processing reports on corruption and notifications on violations of requirements of the Law on Political Parties of Ukraine, submitted to the NACP (by mail, email, telephone, website).
13. The authorities further report that the NACP has introduced a new procedure for selection of NACP Civic council members. It has adopted a [strategy of institutional development for 2017-2020 and](#) a communication strategy for 2018-2020. The NACP meetings and related documents (agendas, minutes, decisions) are public. The meetings are streamed and can be watched on YouTube<sup>5</sup>. The NACP publishes annual activity reports.
14. Concerning the first part of the recommendation, GRECO welcomes the new Law Re-booting the NACP and the changes it introduces to foster a more streamlined decision-making process, transparent recruitment procedures, upgraded control mechanisms (internal control and biennial audit), direct access to databases and automatic verification of asset declarations. These are all positive legislative changes which now need to be effectively implemented. Given the recent introduction of the Law, substantial work lies ahead. Moreover, considering the past allegations of conflict of interest and political interference in the work of the NACP<sup>6</sup>, it will be crucial to ensure its independence and impartiality in practice. The first part of the recommendation has thus been partly implemented.
15. When it comes to the second part of the recommendation, GRECO notes a series of new rules governing various aspects of the NACP work: these include the procedure for drawing up protocols for administrative offences and making prescriptions, as well as verification of asset declarations. Some of these regulations need to be reviewed (see the next recommendation regarding the rules of procedure for verification of asset declarations). GRECO also notes the efforts undertaken to raise the transparency of the Agency's activities. Nevertheless, some issues regarding accountability and transparency of the Agency remain open. They concern, in particular, insufficient cooperation with the Civic Council. Furthermore, while the Agency has a communication strategy since 2018, more efforts are required to ensure its adequate implementation in practice (regular update of the NACP website, improved level of replies to requests for public information etc.<sup>7</sup> GRECO expects that the on-going re-boot of the NACP will contribute to full implementation of the second part of the recommendation. For now it cannot be considered more than partly implemented.
16. GRECO concludes that recommendation i has been partly implemented.

<sup>5</sup> <https://www.youtube.com/channel/UCKwoUDbscWm4BT7BoBo0kMg>

<sup>6</sup> <https://rpr.org.ua/en/news/rpr-calls-for-resignation-of-the-head-of-the-national-agency-on-corruption-prevention-and-demands-not-to-delay-the-investigation-of-the-abuses-of-power-at-the-agency/> ; <https://www.atlanticcouncil.org/blogs/ukrainealert/no-good-deed-goes-unpunished-the-saga-of-hanna-solomatina/>

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[http://www.pravo.org.ua/img/books/files/1553535186shadow%20report%20on%20evaluating%20the%20effectiveness%20of%20state%20anticorruption%20policy%20implementation\\_short.pdf](http://www.pravo.org.ua/img/books/files/1553535186shadow%20report%20on%20evaluating%20the%20effectiveness%20of%20state%20anticorruption%20policy%20implementation_short.pdf)

## **Recommendation ii.**

17. *GRECO recommended that appropriate regulatory, institutional and operational measures be taken to ensure effective supervision of the existing financial declaration requirements, including, but not limited to the enactment of by-laws allowing the NACP to perform its verification tasks; the adoption of an objective lifestyle monitoring procedure; the introduction, without delay, of automated cross-checks of data and interoperability of databases, with due regard for privacy rights; and the institution of appeal channels for sanctions imposed.*
18. The authorities of Ukraine indicate that several regulations have been adopted, in particular the following:
  - Rules of procedure to check the submission of declarations in accordance with the Law on Prevention of Corruption and on reporting to the NACP about cases of non-submission or late submission of such declarations;
  - Form of electronic declaration and rules for completing the form;
  - Rules of Procedure for compiling, managing and disclosing the data from the Register of Declarations;
  - Rules of procedure for carrying out controls and comprehensive verification of asset declarations of persons authorised to perform the functions of the state or local self-government;
  - Rules for logical and arithmetical control of declarations of the persons authorised to perform functions of the state or local self-government, automatised verification of these declarations and their weighting factors.
19. Moreover, the authorities report that the NACP has also developed guidelines for working with the Register of Declarations, answers to the most frequently asked questions, as well as guidelines for completing a declaration. Online training video tools have also been developed. These are all available on the Agency's website, together with information resources of other state authorities.
20. Furthermore, the authorities specify that on 15 January 2019, the NACP launched its system of automated verification of declarations, built up on the basis of software provided by the UNDP. The NACP has reviewed the rules for logical and arithmetical verification of declarations. The Rules of Procedure for carrying out controls and comprehensive verification of asset declarations have been amended accordingly. The new Law Rebooting the NACP provides for full direct access of the Agency to all state registries needed for the verification of asset declarations of public officials. However, currently the data are still cross-checked with other databases through protected communication channels, the full interoperability is under preparation. The NACP Department for Verification of Declarations and Life Style Monitoring includes 58 staff members, 20 of whom conduct verifications of declarations and are assisted by 20 more staff members. From the outset, the NACP checks non-submission or late submission of declarations. Then it automatically checks if the data in the declarations are correct. Under "Component 1" the data in the declarations are ranked by analysing and comparing them with the information contained in the previously submitted declarations (based on risk assessment). If the score (sum of "weighting factors") exceeds a certain threshold (level of risk), the declarations are checked under "Component 2" – by (cross) checking data with other registers. The full verification of declarations is conducted only under certain circumstances (ex. allegations of incorrect information from whistleblowers or media) and following a specific procedure.
21. Finally, the authorities indicate that the NACP decisions (including on action and omission to act) can be appealed before an administrative court. In the period 2016- until first half of 2019, there have been a certain number of administrative lawsuits

against the NACP, including 7 administrative lawsuits contesting the decisions to conduct comprehensive verifications of declarations, 83 administrative lawsuits contesting the results of comprehensive verifications of declarations and 11 administrative lawsuits requesting comprehensive verification of declarations.

22. GRECO appreciates that legal and regulatory measures have been taken to improve the control of financial declarations and to provide for appeal channels. However, GRECO regrets that an objective “lifestyle monitoring procedure” has not been enacted as required by the present recommendation<sup>8</sup>. GRECO further notes that the Law Re-booting the NACP provides for several novelties, including direct access for NACP to state registers and databases, automated processing of full declarations, filling certain gaps in the scope of the reporting categories covered, expanding the data to be reported, clarification of notion of close relatives etc. These are all welcome developments, all the more given some noticeable drawbacks of legislative reform in this area in recent years, such as the decision to subject anticorruption fighters to declaration requirements (overturned by the Constitutional Court), the de-criminalisation of the offence of illicit enrichment (recently re-criminalised) or the variation of reporting thresholds.
23. GRECO, however, still has some reservations concerning the effective operation of the system in practice. While automated verification has been finally introduced, the risk for hand-picking and manual processing remains high. Likewise, much criticism has been cast during the last years regarding the malfunctioning and technical problems occasionally experienced by the e-declaration system<sup>9</sup>, allegations of unlawful interference<sup>10</sup> and limited interoperability with other databases. In view of the above, while improvements have been made in legislation, they will need to be coupled with more practical measures which would address the deficiencies highlighted above and thereby ensure adequate supervision of e-declarations.
24. GRECO concludes that recommendation ii has been partly implemented.

### **Recommendation iii.**

25. *GRECO recommended ensuring that in practice, the NABU is granted proper and unhindered access a) to the complete asset declarations received by the NACP and b) in the framework of criminal proceedings started on the basis of such declarations, to all national and regional databases necessary for the proper scrutiny of asset declarations.*
26. Concerning the first part of the recommendation, the authorities of Ukraine report that the new Law Rebooting the NACP provides for NABU’s access to state registries, including to asset declarations. Draft Rules of Procedure have been developed, in cooperation of the NACP, the NABU and the Ombudsman, to regulate NABU’s access to personal data in asset declarations, in line with data protection obligations. The NACP has provided access to the register of declarations to NABU’s authorised personnel in a specially-equipped room ensuring due protection of information. In 2018, the NACP provided such access 35 times to 20 NABU detectives. There have been no cases of refusal of access to NABU’s employees. In 2019 such access was provided 72 times to 22 NABU Detectives. The relevant software is being upgraded.

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<sup>8</sup> The NACP has adopted a regulation on lifestyle monitoring in May 2017, however, it has not been registered by the Ministry of Justice and enacted.

<sup>9</sup> <https://nv.ua/ukr/ukraine/politics/server-ne-vidpovidaje-chinovniki-skarzhatsja-na-pereboji-v-roboti-sistemi-podachi-e-deklaratsij-879551.html>

<sup>10</sup> While the NACP is the custodian of the system of e-declaration, it is effectively administered by a state owned company (“Ukrainian Special Systems”) linked to the State Service for Special Communication and Protection of Information.

27. As regards the second part of the recommendation, the authorities specify that since 24 April 2019, NABU has direct access to more than 40 automated information and reference systems, registries and databases, owned or held by state or local self-government authorities. In particular, NABU has access to individual tax-payers' information, data on import-export transactions, data on legal entities, real estate property rights, movable property, civic state acts, powers of attorney, debtors, offences committed, registered weapons, registered data on individuals and registered vehicles, videos of vehicle routes, passports and data on crossing borders, diplomas, securities, procurements, court decisions, users and recipients of state or local budgets, accounting of financial and budgetary obligations, spending by the state and local budgets etc. The authorities indicate that this access to different databases has facilitated the detection and investigation of criminal corruption offences. The authorities add that a law re-criminalising illicit enrichment has been adopted<sup>11</sup>. It provides *inter alia* for the access of NABU to specific bank account operations and other related financial information. Finally, the authorities report that the NABU has investigated cases with respect to MPs (in total 3), judges (22) and prosecutors (3).
28. GRECO takes note of the information provided. Concerning the first part of the recommendation, GRECO welcomes the new legal provisions allowing full access of NABU to state registries, in particular to the register of asset declarations, and access to specific bank account operations. GRECO also appreciates that the NACP Guidelines preventing NABU from starting pre-trial investigations in cases of false declarations and illicit enrichment, which had not been subject to NACP verification, and approval, have finally been abolished<sup>12</sup>. All this goes in the right direction. GRECO looks forward to ensuring proper implementation of these new legal provisions and overcoming the practical difficulties which have been experienced in relation to NABU-NACP cooperation in the past years. The first part of the recommendation has thus been partly implemented.
29. When it comes to the second part of the recommendation, GRECO welcomes the new legal provisions allowing full access of NABU to state registries and access to specific bank account operations. GRECO also appreciates that NABU was granted access to a certain number of national and regional databases. However, the system is new and GRECO looks forward to assess its practical implementation at a later stage. The second part of the recommendation has also been partly implemented.
30. On a more general note, GRECO notes that there have been several draft legal initiatives aimed at curtailing NABU's remit and operational independence. Recently, a draft law has been tabled in the Verkhovna Rada to broaden the powers of the President in relation to the NABU (e.g. concerning the appointment and dismissal procedures of the Director of NABU and the Director of the State Bureau of Investigations)<sup>13</sup>. The authorities nevertheless argue that the proposed legislative changes aim at giving a constitutional basis to the powers of the President provided for by law. This draft law is currently pending a decision of the Constitutional Court. GRECO can only reiterate its call to shield NABU from improper influence or pressure and to guarantee its operational independence, fully addressing the requirements of the present recommendation.

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<sup>11</sup> Law on Amendments to Some Legal Acts of Ukraine regarding the Confiscation Illegally Acquired Assets of Persons Empowered to Perform Functions of the State or Local Self-Government and Punishment for Acquiring Such Assets, adopted on 31 October 2019.

<sup>12</sup> NACP decision n°2729 of 27 August 2019 abolishing the NACP decision n°1375 of 8 December 2017.

<sup>13</sup> Draft Law n°1014 On Amendments to Article 106 of the Constitution of Ukraine (Regarding Formalising the Powers of the President of Ukraine to create independent regulatory bodies, National Anti-Corruption Bureau, to Appoint and Dismiss the Director of the National Anti-Corruption Bureau and the Director of the State Bureau of Investigations).

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

**Recommendation iv.**

32. *GRECO recommended (i) further developing the rules applicable to the acceptance of gifts by members of parliament, judges and prosecutors, in particular, by lowering the threshold of acceptable gifts; providing for more precise definitions to ensure that they cover any benefits including those in kind; clarifying the concept of hospitalities which may be accepted; (ii) establishing internal procedures for the valuation and reporting of gifts, and return of those that are unacceptable.*

33. With respect to the first part of the recommendation, the authorities of Ukraine report that the Methodological Guidelines on the Prevention and Resolution of Conflicts of Interests<sup>14</sup>, include provisions on the acceptance of gifts. The relevant legal provisions and the guidelines indicate that a gift is allowed if it meets “generally acceptable notions of hospitality” and does not exceed one monthly “living wage” (around 72-75 Euro), or if the aggregate value of individual gifts received during one year from the same person or group of persons does not exceed two living wages (144-150 Euro). The authorities believe that the thresholds for receiving gifts are considerably low. They specify that in recent years, the living wage has not changed substantially.

34. Concerning the second part of the recommendation, the authorities clarify that the existing rules and procedures for “the persons authorised to perform functions of the state or local self-government” apply to MPs, judges and prosecutors. Consequently, they should report in writing unlawful gifts or benefits to their direct superiors or anti-corruption bodies. The NACP has not received any such notification from MPs, judges or prosecutors. The authorities indicate that the Office of the Prosecutor General adopted an order detailing rules on the acceptance of gifts<sup>15</sup>.

35. GRECO takes note of the information provided. GRECO regrets that the maximum permissible threshold per individual gift and the aggregated annual value of permissible gifts remain too high and continue to be tied to the cost of living scale (currently monthly “living wage”). GRECO had already warned in the Evaluation Report that this may raise doubts as to the actual appropriateness of the gifts received. Even though some clarifications on the acceptance of gifts have been developed in regulation, clarifications are still needed regarding in kind benefits and the concept of hospitality, possibly with illustrative examples.

36. Regarding the second part of the recommendation, GRECO notes that there is a requirement to report gifts which applies across the public service. It appears also that there are some general explanations which say that the authority in question should create a special commission to value gifts and decide on the use or storing of gifts. While some explanations have been adopted for prosecutors, the actual articulation in practice of the reporting requirement is lacking for judges and MPs.

37. GRECO concludes that recommendation iv has been partly implemented.

**Recommendation v.**

38. *GRECO recommended that the NACP, in close coordination with Parliament, the judicial and prosecution services, further develops communication and advisory*

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<sup>14</sup> Approved by NACP Decision n°839 from 29.09.2017.

<sup>15</sup> Order n° 96 of 21.05.2018 On the Peculiarities of Receiving Gifts for the State by Authorised Persons of the Prosecution Bodies and their Transfer.



*channels with the latter and prepares tailored guidance on implementation of the Law on Prevention of Corruption, as applied to each of the respective professions.*

39. The authorities of Ukraine report that, in August 2017, the NACP signed a memorandum of cooperation with the National School of Judges. In October 2018, the NACP signed a memorandum of cooperation and exchange of information with the Council of Judges. Moreover, the authorities indicate that the NACP cooperates with the Committee of the Verkhovna Rada for Anti-corruption Policy.
40. GRECO notes that the NACP has taken some measures to improve cooperation with parliamentary and judicial authorities. However, no information was provided on the elaboration of tailored guidance for MPs, judges and prosecutors.
41. GRECO concludes that recommendation v has been partly implemented.

*Corruption prevention in respect of members of parliament*

**Recommendation vi.**

42. *GRECO recommended ensuring that all legislative proposals are processed with an adequate level of transparency and consultation, notably by (i) safeguarding inclusiveness of parliamentary committee work both on paper and in practice, including through public consultations and expert hearings, as well as adequate timeframes; (ii) introducing precise rules regarding the fast-track legislative procedure in Parliament and ensuring that it is applied only in exceptional and duly justified circumstances.*
43. Concerning the first part of the recommendation, the authorities of Ukraine report that the Verkhovna Rada has approved an Action Plan for the implementation of the Declaration on Parliamentary Openness, aimed at increasing transparency in the activities of Parliament, its structures, individual MPs and the parliamentary secretariat. In the framework of this plan, a communication strategy (2017-2021) was adopted; it aims at improving awareness on parliamentary activities, the Parliament's image and public trust in the institution.
44. Moreover, the authorities indicate that the Verkhovna Rada website contains, in particular, information on laws, draft laws, parliamentary resolutions, international treaties, plenary sessions and parliamentary hearings, activities of committees and of temporary special and temporary investigative commissions, inter-parliamentary cooperation, inspections conducted in accordance with the law on lustration, access to public information, rules for public access to Parliament, media coverage of parliamentary activities, and that of the parliamentary secretariat etc. Parliament has launched the new "[Portal for public discussion of draft laws](#)" on its website with the purpose of involving citizens in the law-making process in real time. Moreover, the authorities report that parliamentary committees inform the public about their activities, in particular, by publishing their work plan, the schedule and minutes of their meetings and hearings, as well as the acts adopted. The media and NGOs are allowed to attend committee meetings.
45. Furthermore, the authorities report that despite the use of the fast-track procedure, the Law Rebooting the NACP and the Laws on Illicit Enrichment and on the Protection of Whistleblowers went through the process of consultations. The Parliamentary Committee for Anti-corruption Policy requested and received opinions from both domestic and foreign experts on the draft laws in question. As a result of these consultations, amendments to the draft laws were developed and subsequently approved by the Committee. The Committee also ensured the participation of

interested experts and NGO representatives in the committee hearings on these draft laws.

46. More specifically, the authorities report that the Committee for Anti-corruption Policy ensures transparency and openness in its activities, involving experts, academia as well as civil society, international organisations and diplomatic missions' representatives (committee meetings, committee/parliamentary hearings, etc.). The Committee receives and considers public comments and proposals to draft laws (emanating from individual citizens, public organisations, experts etc.). In addition, government or relevant state bodies / ministries' representatives are invited to committee meetings. During the period February 2017 - June 2019, the Committee held 49 meetings and scrutinised 2 623 bills on their compliance with anti-corruption standards ("corruption proofing"); 152 bills were considered non-compliant. The Committee prepared 41 draft laws. It adopted decisions concerning 19 additional draft laws. Since 2017, the Committee issued five semi-annual activity reports<sup>16</sup> and a final report for 2017-2019. The Committee has also regularly published its reports as well as the transcripts, minutes and audio recordings of all its meetings. In addition, the Committee meetings and hearings are streamed via its website.
47. GRECO takes note of the information provided. GRECO recalls that the reason for the current recommendation was uneven practice by various parliamentary committees with respect to transparency and consultation on draft legislation and the frequent use of the fast-track procedure when adopting legislation. GRECO notes that, on a more general note, the Verkhovna Rada has taken measures to enhance its transparency, namely by adopting a Plan for the implementation of the Declaration on Parliamentary Openness and launching a new "Portal for public discussion of drafts of laws" on its website. From the information provided by the authorities, it appears that the Committee for Anti-corruption Policy has ensured a certain level of transparency and consultation. The authorities indicate that the general trend for other committees is also encouraging (all have their websites and publish minutes, drafts, agenda etc. and involve NGOs representatives). GRECO calls upon the authorities to pursue their efforts to systematically ensure an adequate level of transparency and consultation, notably by improving the inclusiveness of committee work, considering in particular the lack of consultations referred to under the second part of the recommendation. It follows that the first part of the recommendation has been partly addressed.
48. GRECO notes that recently Parliament has considered an impressive number of laws using the fast-track procedure. GRECO regrets that many important draft laws including the draft Law n°1008 Reforming the Judicial Self-Governance and the draft Law n°1032 on the Reform of the Public Prosecutor's Office, analysed later in this report, went through the fast-track procedure, without sufficient discussion and justification, adequate involvement of all stakeholders and genuine public consultation. GRECO recalls that the fast-track procedure should be used exceptionally in duly justified circumstances and be based on clear and objective rules. Therefore, the second part of the recommendation has not been addressed.
49. GRECO concludes that recommendation vi has been partly implemented.

#### **Recommendation vii.**

50. *GRECO recommended (i) that a code of conduct for members of Parliament be developed and adopted with the participation of MPs themselves and be made easily accessible to the public; and (ii) that it be coupled with detailed written guidance on*

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<sup>16</sup> <http://www.golos.com.ua/article/313206>; <http://www.golos.com.ua/article/307403>;  
<http://www.golos.com.ua/article/313206>

*its practical implementation (e.g. prevention of conflicts of interest when exercising the parliamentary function, ad-hoc disclosure and self-recusal possibilities with respect to specific conflict of interest situations, gifts and other advantages, third party contacts, etc.).*

51. The authorities of Ukraine report that pursuant to Article 92 (§21) of the Constitution of Ukraine, the status of MPs is determined exclusively by laws. They recall that Article 8 of the Law on the Status of the People's Deputy of Ukraine regulates the issues of parliamentary ethics, with general rules on morality, dignity and honour. This article also specifies that an MP should not use his/her mandate in his/her personal interest.
52. Moreover, the authorities indicate that the NACP has completed its monitoring of the implementation of conflict of interest provisions contained in the Law on Prevention of Corruption by MPs of the former legislature. The monitoring revealed in particular the violations of requirements to transfer enterprise management or corporate rights after election. The NACP has issued 38 protocols on administrative violations of requirements of the Law on Prevention of Corruption by 23 MPs; 29 protocols concerned the requirements for the prevention and resolution of conflicts of interest.
53. GRECO takes note of the information provided. The authorities refer to the Law on the Status of the People's Deputy of Ukraine, which was in place at the time of the Evaluation Report. This law contains some general provisions on ethical principles and requirements for MPs. The Evaluation Report also refers to the relevant provisions of the Rules of Procedure of Parliament and the conflict of interest requirements contained in the Law on Prevention of Corruption. However, the national legal framework does not regulate some ethical issues, such as lobbying or ethical conduct outside Parliament. GRECO recalls that the reason for the current recommendation was to elaborate, with active involvement of parliamentarians themselves, a code of conduct providing a comprehensive overview of existing standards in one document, and complemented with practical illustrative guidance and explanations for their application. Although the expected results of the Communication Strategy of the Verkhovna Rada foresee the elaboration of a code of conduct for MPs, and its absence is considered as a weakness, no measures have been reported in this respect. In the absence of any tangible results, both parts of the recommendation remain to be addressed.
54. GRECO concludes that recommendation vii has not been implemented.

### **Recommendation viii.**

55. *GRECO recommended undertaking further appropriate measures to prevent circumvention of the restrictions of parliamentary members' engagement in entrepreneurial activities, not only in law, but also in practice.*
56. The authorities of Ukraine recall that MPs cannot engage in any other paid work than their parliamentary mandate, with the exception of teaching, scientific and creative activity, as well as medical practice. They cannot be members of the governing body or supervisory board of an enterprise / profit making organisation<sup>17</sup>. Moreover, the authorities recall that in case an MP engages in an incompatible activity, s/he is to put an end to the latter within a maximum of 20 days, or otherwise renounce the parliamentary mandate. The Committee in charge of parliamentary ethics considers the issue of early termination of the powers of an MP, upon his/her request. The Committee then makes a submission to the Speaker of Parliament who, within 10

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<sup>17</sup> Article 78 of the Constitution, Article 25 of the Law on Prevention of Corruption and Article 3 of the Law on Status of People's Deputies of Ukraine

days, may forward the case to a court or return it back to the Committee. If finally the MP is considered to be compliant with the incompatibility requirement, s/he gets a pardon.

57. Furthermore, the authorities report that the NACP had conducted a monitoring of compliance by MPs of the former legislature with the incompatibility requirements contained in the Law on Prevention of Corruption. As a result of this monitoring, during the period 2017-2019, the NACP had drawn up seven administrative offence protocols with respect to MPs (two protocols concerning carrying out profitable activity or business and five protocols for involvement in a governing body or supervisory board of an enterprise / profit making organisation). There is already one court ruling bringing an MP to administrative responsibility for failure to comply with incompatibility requirements. The NACP addressed the Chair of the Verkhovna Rada with a request to assign the competent committee<sup>18</sup> with a task to issue guidelines on the respect of incompatibility provisions by MPs.
58. GRECO takes note of the information provided. GRECO welcomes the measures taken by the NACP to enhance compliance of MPs with existing incompatibility requirements. It looks like these efforts have resulted in some limited progress in line with the current recommendation (e.g. several administrative proceedings by the NACP against MPs and the unique court decision on the matter). However, considering the scale of the problem (see paragraph 84 of the Evaluation Report), much more needs to be done to reach tangible results in implementing the current recommendation. For this reason, GRECO can only welcome the development of targeted guidance on incompatibilities, which has been anticipated by the authorities. These plans need to materialise in practice.
59. GRECO concludes that recommendation viii has been partly implemented.

#### **Recommendation ix.**

60. *GRECO recommended the introduction of rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process.*
61. The authorities report that on 20 March 2018, the draft Law on Public Advocacy was added to the parliamentary agenda (n°2351-VIII). The draft law regulates "advocacy" (lobbying) and provides for the registration of lobbyists, defining their rights and responsibilities, and for a public oversight of lobbying. Moreover, the draft Law on Ensuring Transparency and Legitimacy of Communication with Subjects of Power has also been included on the parliamentary agenda. These drafts are no longer in the Verkhovna Rada. The authorities indicate that in November 2019 the Committee for Anti-corruption Policy of the Verkhovna Rada created a working group to prepare a draft Law on lobbyists' activities.
62. GRECO notes with regret that two draft laws providing some rules for lobbying activities were registered in Parliament, but that they have finally been revoked. Therefore, the current recommendation remains to be addressed.
63. GRECO concludes that recommendation ix has not been implemented.

#### **Recommendation x.**

64. *GRECO recommended significantly strengthening the internal control mechanisms for integrity in Parliament so as to ensure independent, continuous and proactive*

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<sup>18</sup> Committee on Rules of Parliamentary Procedure and Support to Work of the Verkhovna Rada

*monitoring and enforcement of the relevant rules. This clearly presupposes that a range of effective, proportionate and dissuasive sanctions be available.*

65. The authorities of Ukraine recall that the parliamentary Rules of Procedure were amended, following the adoption of the Law on Prevention of Corruption, to improve the management and control of conflicts of interest. Moreover, the authorities recall the role that the Committee on Rules of Parliamentary Procedure and Support to Work of the Verkhovna Rada plays in this respect.
66. GRECO takes note of the information provided. The authorities referred to the relevant reforms of the parliamentary rules of procedure that took place in 2014 and were known at the time of the evaluation visit. GRECO recalls that the reason for this recommendation was inappropriate internal parliamentary mechanisms of supervision and enforcement of integrity rules, including the absence of a credible system of sanctions. As no progress has been reported to this effect, GRECO concludes that recommendation x has not been implemented.

#### **Recommendation xi.**

67. *GRECO recommended that determined measures be taken in order to ensure that the procedures to lift the immunity of parliamentarians do not hamper or prevent criminal proceedings in respect of members of parliament suspected of having committed corruption related offences, notably by introducing guidelines containing clear and objective criteria in this respect.*
68. The authorities report that the Constitution of Ukraine was amended in September 2019 to abolish procedural immunity of parliamentarians. Draft laws with relevant amendments to the Criminal Procedure Code have been registered in Parliament, accordingly.
69. The authorities further add that, as of 9 November 2018, the Prosecutor General has made 23 submissions to Parliament to obtain consent for arrest, detention and prosecution of MPs. NABU has made 7 similar requests.
70. GRECO welcomes the recent constitutional amendments abolishing procedural immunity of MPs, which are reportedly targeted at facilitating the prosecution of offences committed by them, including corruption. GRECO understands that further legislative (procedural) changes are now underway; GRECO is trustful that the latter are completed without delay.
71. GRECO further notes that the practical implementation of the new law, in a way that is not misused or politically biased - thereby undermining the democratic workings of Parliament and the rights of the political opposition - is very much linked to improvements in the independence of the justice system, as per the recommendations issued by GRECO in that area (see below).
72. GRECO concludes that recommendation xi has been dealt with in a satisfactory manner.

#### **Recommendation xii.**

73. *GRECO recommended developing efficient internal mechanisms to promote and raise awareness on integrity matters in Parliament, both on an individual basis (confidential counselling) and on an institutional level (training, institutional discussions on ethical issues, active involvement of leadership structures).*

74. The authorities have not submitted any information in respect of this recommendation.
75. GRECO regrets the absence of any progress in the implementation of this recommendation and concludes that recommendation xii has not been implemented.

*Corruption prevention in respect of judges*

**Recommendation xiii.**

76. *GRECO recommended abolishing the criminal offence of "Delivery of a knowingly unfair sentence, judgment, ruling or order by a judge" (article 375 of the Criminal Code) and/or, at the least, otherwise ensuring that this and any other criminal offences criminalise only deliberate miscarriages of justice and are not misused by law enforcement agencies to exert undue influence and pressure on judges.*
77. The authorities recall that judges enjoy functional immunity as they cannot be brought to responsibility for the decisions they take, except for the commission of a crime or a disciplinary offence (Article 126 of the Constitution). The authorities explain that Article 375 of the Criminal Code should be interpreted taking into account this functional immunity. On 1 March 2018, the High Council of Justice adopted a decision requesting the President of Ukraine and the Cabinet of Ministers to propose amendments to Article 214 of the Criminal Procedural Code specifying that only the Prosecutor General or his/her deputy can initiate criminal proceedings against a judge and register them in the Unified Register of Pre-trial Investigations. The authorities believe that such amendments would reduce undue pressure on judges and speed up the pre-trial investigations against judges.
78. GRECO takes note of the information provided. GRECO notes that the draft amendments referred to by the authorities have not been tabled in Parliament. Meanwhile, a draft law has recently been registered in Parliament aimed at reinforcing the liability of judges under Article 375 of the Criminal Code<sup>19</sup>. GRECO is concerned about this worrying development, going contrary to the present recommendation. GRECO also notes that an alternative draft law has been registered in Parliament providing for abolishment of Article 375<sup>20</sup>, which is a positive development. GRECO calls the authorities to show determination and implement the current recommendation. For now it remains to be addressed.
79. GRECO concludes that recommendation xiii has not been implemented.

**Recommendation xiv.**

80. *GRECO recommended that measures be taken to ensure the safety of judges to make them less vulnerable to external pressure and corruption.*
81. The authorities report that the establishment of the Court Security Service, responsible for ensuring protection and public order in courts, is under way. Following an open competition and the required integrity checks, the High Council of Justice appointed the Head of the Court Security Service, in March 2019. It appointed four deputies to the Head, the employees of the central office, directors as well as the deputy directors of territorial divisions in June 2019. Specific funding is foreseen for 2020.

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<sup>19</sup>Draft Law 2113 on Amendments to Some Legal Acts of Ukraine regarding optimisation of criminal responsibility of judges for delivery of knowingly unfair sentence

<sup>20</sup> Draft Law 2113-1 on Amending Article 375 of the Criminal Code to align it with Council of Europe GRECO recommendations

82. Furthermore, the authorities specify that before the Court Security Service starts exercising its powers in full, the National Police and the National Guard Service of Ukraine ensure public order in courts and protect court premises, as well as the personal safety of judges and members of their families, court employees and participants in court trials. The High Council of Justice has adopted Provisional Rules of Procedure on protecting courts<sup>21</sup>.
83. Finally, the authorities indicate that the High Council of Justice has statutory competencies aimed at ensuring the independence of judges and the authority of the judiciary (Article 73 of the Law on High Council of Justice). In particular, it publishes and follows up notifications on interference in the activities of judges, monitors the investigation of crimes against courts, judges and court employees, etc. On those matters, the High Council of Justice cooperates with the Council of Judges, the Public Council of Integrity, NGOs, foreign counterparts and international organisations. The High Council of Justice has adopted 223 decisions related to the interference in the activities of judges, in particular regarding attacks on judges, blocking the work of courts, obstructing justice by means of threats, physical harassment, abusive language, organisation of protests /rallies, etc.
84. GRECO welcomes the measures taken to improve the safety of judges, in particular, the protection currently exercised by the National Police and the National Guard Service, the relevant activities of the High Council of Justice, as well as the on-going measures in view of launching the work of the Court Security Service. This goes in the right direction. However, despite some pre-conditions secured (approved regulatory framework and appointed leadership) the Court Security Service has not yet started to function in its full capacity. Therefore, GRECO concludes that recommendation xiv has been partly implemented.

#### **Recommendation xv.**

85. *GRECO recommended (i) reviewing the need to reduce the number of bodies involved in the appointment of judges; (ii) defining more precisely the tasks and powers of the Public Council of Integrity, further ensuring that its composition reflects the diversity of society, and strengthening the rules on conflicts of interest – including through the provision of an effective control mechanism.*
86. Concerning the first part of the recommendation, the authorities of Ukraine indicate that the Law on Amendments to Some Laws of Ukraine regarding the Activities of Bodies of Judicial Self-Governance (hereafter “Law Reforming the Judicial Self-Governance”) was adopted on 16 October 2019. The new law provides for the subordination of the High Qualifications Commission (HQC) to the High Council of Justice (HCJ), unifying procedures for nomination and dismissal of judges and simplifying judicial career proceedings. Pursuant to the law, the High Council of Justice appoints members of the High Qualification Commission (12 in total) on a competitive basis. The Selection Board for the latter includes three members from the Council of Judges and three international experts. Additionally, a new body, the Integrity and Ethics Commission, has been established within the HCJ. The authorities underline that, while the Venice Commission found that the parallel existence of the HCJ and of the HQC as distinct bodies (instead of specialised branches of the HCJ) made the system complex, it left the matter at the discretion of the Ukrainian

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<sup>21</sup> Rules of Procedure for Protecting Courts and Judicial Institutions and Maintaining Public Order in Them, adopted by Decision n°3470/0/15-16 of 26 December 2016.

authorities<sup>22</sup>. They also add that the OSCE was rather in favour of two separate bodies<sup>23</sup>.

87. As regards the second part of the recommendation, the authorities recall that the Public Council of Integrity (PCI) assists the HQC to review the integrity of individual judges (Article 87 of the Law on the Judiciary and Status of Judges). The previous PCI acted from 11 November 2016 to 10 November 2018. The new Public Council of Integrity was elected on 17 December 2018 and its first meeting followed on 27 December 2018.
88. With respect to the first part of the recommendation, GRECO notes the adoption of the Law Reforming Judicial Self-Governance, which brings closer the HCJ and the HQC, which is positive.
89. However, GRECO remains cautious as to the recently adopted reform, which entails an overhaul of the judicial system evaluated in the Evaluation Report. At the time, GRECO acknowledged the positive features of the reforms taken in the period 2016-2017 to strengthen judicial independence, accountability and efficiency, and proposed targeted improvements. In this connection, GRECO is particularly concerned about the absence of the requirement for a majority of judges elected by their peers in the proposed composition of the High Council of Justice, as well as the restructuring of the Supreme Court and the reappointment of all its judges.
90. Furthermore, GRECO notes that the newly established Integrity and Ethics Commission receives considerable powers in relation to the selection and dismissal of HQC and HCJ members, as well as with respect to disciplinary proceedings. Its decisions can be taken by simple majority (four out of six votes, including only one out of three votes of international experts). While the latter would potentially speed up processes and hinder major operational blockages (a recurrent problem of decision-making structures in the Ukrainian judiciary), it also entails the risk that a group of persons has strong power and influence over the judicial governing structures. Safeguards would be required for the new body to limit risks of conflicts of interest, undue influence and abuse.
91. Likewise, it will be pivotal to ensure that the new institutional set-up guarantees, at all times, the individual independence of judges (including dissenting voices) and shield them from undue political pressure. Finally, GRECO regrets that such an important reform was not adequately reviewed and discussed with the relevant stakeholders.
92. Regarding the second part of the recommendation, GRECO notes that no new development has been reported concerning the tasks, powers, composition and accountability system of the Public Council of Integrity (PCI). It follows that the second part of the recommendation remains to be addressed. Moreover, it remains to be seen how the PCI will coordinate its role with the newly established Integrity and Ethics Commission. More generally, the functioning of all newly created bodies needs to be followed closely.
93. GRECO concludes that recommendation xv has been partly implemented.

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<sup>22</sup> See the Opinion of the Venice Commission CDL-AD(2015)026, paragraph 35.

<sup>23</sup> OSCE/ODIHR Opinion JUD-UKR/298/2017 [RJU/AT] on the Law of Ukraine On the judiciary and the status of judges, 30.09.2017, see <https://www.osce.org/odihr/335406?download=true> Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010), See <https://www.osce.org/odihr/KyivRec?download=true>



#### **Recommendation xvi.**

94. *GRECO recommended broadening the appeal possibilities for candidate judges in appointment procedures to ensure that decisions taken in such procedures can be appealed by unsuccessful candidates both on substantive and procedural grounds.*
95. The authorities of Ukraine indicate that a candidate judge can appeal the decisions taken by the High Qualification Commission regarding his/her qualification assessment on substantial and procedural grounds in the manner prescribed by the Code of Administrative Legal Proceedings of Ukraine. The authorities recall that the Law on the Judiciary and Status of Judges defines the grounds for appealing decisions taken by the HQC after the qualification assessment of candidate judges. These grounds concern in particular failure to mention the relevant legal grounds/provisions or non-motivated decisions by the Commission (Article 88). The authorities also stress that the decisions of the HCJ concerning appointments can be appealed to the Supreme Court on procedural and substantive grounds. There is court practice in this respect.
96. GRECO notes that the authorities have provided new information. This information indicates that candidate judges are in a position to appeal in the appointment procedures on substantive as well as procedural grounds. GRECO concludes that recommendation xvi has been dealt with in a satisfactory manner.

#### **Recommendation xvii.**

97. *GRECO recommended that periodic performance evaluation of judges is carried out by judges on the basis of pre-established, uniform and objective criteria in relation to their daily work.*
98. The authorities of Ukraine recall that the regular evaluation of judges is carried out following a formal procedure (by lecturers of the National School of Judges) and an informal procedure (by other judges of the same court or by the judge himself/herself by filling in a self-appraisal questionnaire). In addition, a judge can be appraised by public associations carrying out an independent evaluation of the judge's work during court sessions (equally by filling in a questionnaire). The authorities believe that the system in place allows a comprehensive evaluation of judges' activities, competencies and integrity. The regular evaluation of judges follows the methodology of a qualification assessment, using unified and objectives criteria (covering professional ethics and integrity). The High Qualification Commission has developed a draft Order and Methodology for Judge's Evaluation and Self-Evaluation.
99. GRECO takes note of the information provided. GRECO observes that the situation has not changed since the Evaluation Report, except for on-going work on the elaboration of a methodology for the regular evaluation of judges. The system needs to be streamlined towards the peer evaluation by judges as the main form of regular evaluation. It should be based on clear criteria, as required by the recommendation.
100. GRECO concludes that recommendation xvii has not been implemented.

#### **Recommendation xviii.**

101. *GRECO recommended ensuring that in all court proceedings any decisions on disqualification of a judge are taken without his/her participation and can be appealed.*
102. The authorities of Ukraine refer to the Law on Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of

Administrative Legal Proceedings of Ukraine and other legislative acts (n° 2147-VIII), adopted on 3 October 2017 and enacted on 15 December 2017. This Law introduced a new approach to the procedure for the recusal of a judge (part three of Article 39 of the Commercial Procedural Code of Ukraine, part three of Article 40 of the Civil Procedural Code of Ukraine, part four of Article 40 the Code of Administrative Proceedings of Ukraine). In particular, if the court comes to the conclusion that the alleged recusal is unjustified, it shall suspend the proceedings. In this situation, a judge who is not part of the court hearing the case, and who is selected by the Single Judicial Information and Telecommunication System (randomly, considering specialisation, workload, chronological order etc.), will decide on disqualification.

103. GRECO takes note of the information reported. GRECO notes that the amended procedure for recusal of a judge provides that the court trying the case decides on recusal of a judge. When this is impossible, the closest court of the same instance decides on the matter. In courts with less than three judges, the judge dealing with the case decides on recusal. This is not different from the situation described at the time of the Evaluation Report, as the judge whose recusal is decided, participates in the decision on his/her own recusal. However, the new procedure provides that when the court decides that the recusal is not grounded, the decision on recusal is then to be taken by a judge from another court, selected randomly. This additional guarantee goes in the sense of the present recommendation. However, nothing has been said specifically as to appeal channels for recusal decisions.
104. GRECO concludes that recommendation xviii has been partly implemented.

**Recommendation xix.**

105. *GRECO recommended defining disciplinary offences relating to judges' conduct more precisely, including by replacing the reference to "norms of judicial ethics and standards of conduct which ensure public trust in court" with clear and specific offences.*
106. The authorities of Ukraine report that on 21 September 2018, the representatives of the High Council of Justice, of the Council of Prosecutors of Ukraine and of the Council of Advocates of Ukraine discussed the standards of professional ethics in the area of justice and compliance with these standards. The Resolution "Professional Ethics of Justice" was signed and the Coordinating Committee on Justice was created.
107. Furthermore, the authorities indicate that in June 2018, the Council of Judges together with the National School of Judges, the High Council of Justice, and the State Court Administration, set up a working group to update the provisions of the Code of Judicial Ethics, to prepare a commentary to the Code of Judicial Ethics, to update the Rules of Conduct of a Court Worker, and to work out common ethical rules for lawyers in justice. The working group held a series of meetings and events on this issue throughout the country. The draft amendments to the Code of Judicial Ethics have been elaborated and agreed with the judicial community and will be submitted for approval by the Congress of Judges of Ukraine. Finally, the authorities specify that the disciplinary offences alone cannot lead to dismissal; they have to be combined with procedural violations. They argue that the judicial practice specifies the disciplinary offences such as provided for in the Law on the Judicial System and Status of Judges.
108. GRECO takes note of the information provided. GRECO recalls that the reason for the current recommendation were not clearly defined disciplinary offences provided for in the Law on the Judicial System and Status of Judges. Since the legal situation has not changed since the Evaluation visit, GRECO concludes that recommendation xix has not been implemented.

### **Recommendation xx.**

109. *GRECO recommended analysing the practical application of the new constitutional and legal provisions on judges' immunity and, if necessary for effective law enforcement, taking appropriate legal measures to further limit their immunity.*
110. The authorities of Ukraine report that the High Council of Justice has analysed the application of the new legislation on immunities of judges. The HCJ annual reports for 2017 and 2018 cover this matter. The HCJ considers that the existing procedural immunity requiring its consent to judges' detention (except cases of *flagrante delicto* of grave or especially grave crimes), custody or arrest should be preserved to avoid undue pressure on judges. It does not consider it appropriate to further limit judicial immunity. Moreover, the HCJ indicates that it considers promptly the prosecutorial submissions seeking consent for a judge's detention, custody or arrest (the law requires those submissions to be granted within five days, or immediately for serious or grave crimes). The HCJ has improved communication in this respect with the Prosecutor General's Office, by using electronic means of contact and by setting up operational interaction channels between the competent bodies.
111. GRECO recalls that the reason for the present recommendation was the need to follow-up the application of the new legislation on immunities of judges in order to prevent impunity, which had been a recurrent concern in the past (with judges having fled to escape punishment under previous legislation). In this connection, GRECO takes note of the explanations provided by the authorities as to the need to retain inviolability (and as a guarantee of judicial independence) and the assurances provided regarding the timeliness of the HCJ consent to lift judges' immunity.
112. GRECO concludes that recommendation xx has been implemented satisfactorily.

### **Recommendation xxi.**

113. *GRECO recommended providing to all judges dedicated, regular training as well as further illustrative guidance on ethics and integrity, prevention of conflicts of interest and corruption, raising judges' awareness of such matters and strengthening the Ethics Committee of the Council of Judges to enable it to play a proactive role in this context and to offer advice to a large number of judges.*
114. The authorities of Ukraine recall that the National School of Judges (NSJ), established under the HQC, deals with regular training of judges - they must take on-going training at the NSJ every three years.
115. In 2017, the NSJ and its regional divisions held the following training events:
- 52 lectures on anti-corruption legislation and the Law on Prevention of Corruption for 1 455 judges;
  - 16 specialised training sessions on the anti-corruption legislation and the practice of its implementation for 655 judges;
  - 2 seminars on conflict of interest for 69 judges;
  - 27 trainings on judicial ethics and integrity for 746 judges;
  - Online course on judicial ethics and integrity for 50 judges.
116. In the period 2018-May 2019, the NSJ and its regional divisions conducted the following training events:
- 67 lectures on anti-corruption legislation for 1 868 judges;
  - 12 specialised training sessions on the anti-corruption legislation and the practice of its implementation for 244 judges;

- 2 seminars on the role of the head of court in ensuring compliance with the anti-corruption legislation for 25 heads of courts of appeal and local courts;
  - 4 seminars on compliance with the requirements of the Law on Prevention of Corruption and practical issues of implementation of anti-corruption standards in professional activities for 146 judges;
  - 17 lectures on conflicts of interest for 771 judges;
  - 11 trainings on judicial ethics and integrity for 427 judges;
  - 4 online courses on judicial ethics and integrity for 90 judges.
117. Moreover, in 2018-2019, the NSJ conducted two phases of initial training for judicial candidates (for the positions of judges of first instance courts). The initial training curriculum includes interactive one-day training sessions covering the topics regarding anti-corruption legislation and its implementation and related European standards, as well as how to hear corruption cases etc. A total of 656 judicial candidates attended these training sessions. Specific training sessions on anti-corruption have also been organised for court employees.
118. On 1-19 April 2019, the NSJ conducted a course for 38 judges of the High Anti-Corruption Court. The NSJ also held training sessions for judges of the Supreme Court: in November 2017 for 107 judges and in May 2019 for 75 judges.
119. The authorities recall that the Code of Judicial Ethics was adopted in 2013 and the Commentary to the Code of Judicial Ethics was approved in 2016. The Council of Judges has developed and published explanations on conflicts of interest for judges. Moreover, the Council of Judges has developed a Manual on Conflict of Interest containing recommendations on prevention and resolution of conflicts of interest. Finally, the Council of Judges, and in particular its Ethics Committee, has developed, in cooperation with the NSJ, training courses on disciplinary liability of judges and the implementation of anti-corruption legislation.
120. A series of activities on conflict of interest and integrity have been organised for judges, in particular by the Council of Judges, including the following:
- Roundtable for judges of Lviv region, organised under the aegis of the Canadian Judicial Reform Support Project (20 June 2018);
  - Consultative meeting for judges of Odesa region (3 September 2018);
  - Roundtable in Odesa on judicial independence and liability for violating the requirements on prevention of corruption and conflicts of interest (4 September 2018);
  - Roundtable in Lviv on the role of advocacy on judicial independence (16 January 2019);
  - Advisory meeting in Ivano-Frankivsk, organised within the Canadian Judicial Reform Support Project (18 January 2019);
  - Roundtable for chairs of local courts of Zaporizhzhya region (24 January 2019);
  - Seminar for judges of Zhytomyr region (28 February 2019);
  - Consultative meeting for chairs of Zaporizhzhya regional courts, organised under the Canadian Judicial Reform Support Project (25 May 2019).
121. GRECO takes note of the information provided. The National School of Judges and the Council of Judges have organised a number of training events for judges relating to ethics, integrity, conflict of interest and the prevention of corruption, including through technical assistance. It would appear that training on ethics has been a regular part of the preparatory and induction training of judges. It is also positive that online training courses on judicial ethics and integrity have been developed. Moreover, the Council of Judges published a Manual with explanations and recommendations on conflict of interest for judges. GRECO understands that the Ethics Committee of the Council of Judges has been involved in training and

awareness raising activities. GRECO encourages the authorities to finalise the updated commentary to the Code of Judicial Ethics.

122. GRECO concludes that recommendation xxi has been dealt with in a satisfactory manner.

*Corruption prevention in respect of prosecutors*

**Recommendation xxii.**

123. *GRECO recommended that due consideration be given to reviewing the procedures for the appointment and dismissal of the Prosecutor General in order to make this process less prone to undue political influence and more oriented towards objective criteria on the merits of candidates.*
124. The authorities of Ukraine recall that the Prosecutor General is appointed and dismissed by the President of Ukraine with the consent of Parliament (Article 131-1 of the Constitution). Parliament can initiate a vote of no confidence in the Prosecutor General, leading to his/her resignation (Article 85 of the Constitution). The Law on the Prosecutor's Office specifies the grounds for dismissal of the Prosecutor General. Moreover, the authorities indicate that the Rules of Procedure of the Verkhovna Rada (Articles 212 and 213) provide for the approval by the competent Committee of the Verkhovna Rada of the motions for appointment and dismissal of the Prosecutor General. The candidates for appointment to this position undergo a special audit.
125. Furthermore, the authorities report that Parliament has recently adopted the Law providing for amendments to some legal acts regarding priority measures to reform the Prosecutor's Office (hereafter "Law on the Reform of the Prosecutor's Office"). The law brings back the requirement for the Prosecutor General to have a law degree ("higher legal education and work experience in legal field of at least ten years").
126. GRECO takes note of the information provided. GRECO recalls that the reason for the present recommendation was the need to lower the risk of improper political influence or pressure during the appointment and dismissal of the Prosecutor General. This called for the involvement of professional, non-political expertise, e.g. by seeking advice on the professional qualification of candidates from relevant sources such as representatives of the legal community (including prosecutors), the prosecutorial self-governing bodies, or at the level of Parliament; through preparatory work by a parliamentary committee, etc (paragraph 208 of the Evaluation Report).
127. GRECO takes note of the new Law on the Reform of the Prosecutor's Office. Overall, the law provides for extensive powers vested in the Prosecutor General, in particular, regarding structural and personnel matters, as well as disciplinary proceedings. It is reportedly also aimed at a comprehensive reform and at downsizing the prosecution service. Furthermore, the law provides for a requirement for the Prosecutor General to have a law degree, which was not the case before, and a requirement of work experience in the legal field of at least 10 years, which is also new. These elements are positive developments. It is also positive that the motions for appointment and dismissal of the Prosecutor General are subject to pre-discussions and approval by the competent parliamentary committee before being confirmed by Parliament.
128. Even if further reforms to limit political influence would appear to be necessary, GRECO accepts that the present recommendation, which only requires Ukraine to consider reviewing the procedures for appointment and dismissal of the Prosecutor General, has been subject to due consideration. For example, qualification criteria have been introduced and transparent parliamentary procedures appear to be followed.

129. GRECO concludes that recommendation xxii has been dealt with in a satisfactory manner.

**Recommendation xxiii.**

130. *GRECO recommended amending the statutory composition of the Qualifications and Disciplinary Commission to ensure an absolute majority of prosecutorial practitioners elected by their peers.*
131. The authorities of Ukraine recall that the Roadmap for the Reform of the Prosecutor's Office, approved by the Prosecutor General, provides for a number of measures aimed at ensuring the independence of prosecutors and prosecutorial self-government bodies and for strengthening corruption prevention capacities, in line with the Council of Europe standards.
132. The authorities refer to the new Law on the Reform of the Prosecutor's Office, which suspends the work of the Qualification Disciplinary Commission (QDC) until 2021. During this transition period, before the resumption of the work of the QDC, special personnel commissions will deal with recruitment and career of prosecutors in a more expeditious way. Clear requirements for the composition and functions of these commissions as well as relevant procedures will be developed with the participation of international experts. Commissions will be formed from among prosecutors who have completed a difficult four-stage re-qualification ("attestation") process and who have high professional qualities and a high level of integrity. The commissions will include three representatives of international organisations, who will constitute half of their members and who will serve as a safeguard for impartiality in the work of the commissions.
133. GRECO notes that the new Law on the Reform of the Prosecutor's Office drastically changes the situation assessed at the time of the evaluation visit, altogether suspending the prosecutorial self-governing bodies, in particular the Qualification Disciplinary Commission for a provisional period until 1 September 2021, with insufficient clarity on how their work will resume.
134. While in the context of Ukraine, a comprehensive reform of the prosecutorial bodies may still be needed; it should be properly justified and explained. GRECO has most critical concerns regarding the suspension of the self-governing bodies, as these bodies are guardians of the independence and autonomy of prosecutors and should be in place to shelter the prosecution service from undue political influence, both real and perceived. Moreover, replacing the current system for recruitment and career progression of prosecutors with personnel commissions, without regulating by law their composition, functions and procedures, is clearly unsatisfactory.
135. GRECO concludes that recommendation xxiii has not been implemented.

**Recommendation xxiv.**

136. *GRECO recommended regulating in more detail the promotion/career advancement of prosecutors so as to provide for uniform, transparent procedures based on precise, objective criteria, notably merit, and ensuring that any decisions on promotion/career advancement are reasoned and subject to appeal.*
137. The authorities of Ukraine report that the Roadmap for the Reform of the Prosecutor's Office provides for measures to improve the recruitment/career procedure of prosecutors. The authorities recall that the transfer of a prosecutor to a higher-level prosecutor's office is carried out with his/her consent, based on a competition (Article 38 of the Law on Prosecutor's Office). The Qualification and Disciplinary

Commission has approved the rules for running a competition and updated the rules on appointing candidates to the posts of prosecutors<sup>24</sup>. It has also approved a methodology for assessing the professional level, experience and qualities of candidates (with a set of tests, practical tasks and specific indicators). The profile of a position in a local prosecutor's office with corresponding competencies and requirements has been approved. More general regulations regarding the human resources and the work of the Qualification and Disciplinary Commission have also been adopted (covering updated procedure for selection, appointment, transfer and dismissals of prosecutors). These documents are public.

138. Moreover, the authorities indicate that the Prosecutor General approved a procedure for the verification of the integrity of prosecutors and an integrity questionnaire periodically filled in by each prosecutor (Order n°205 from 16 June 2016, registered by the Ministry of Justice on 17 June 2016 under n°875/29005).
139. Furthermore, the authorities report that the salaries of prosecutors have increased and bonuses based on the results of the performance of a prosecutor have been limited to counter manipulations of salaries and reduce corruption risks.
140. Finally, the authorities add that, following the adoption of the new Law on the Reform of the Prosecutor's Office, a new model for the promotion / career advancement of prosecutors is being developed with the participation of international experts.
141. GRECO takes note of the information provided. Some positive measures have been taken to regulate in more detail the promotion / career advancement of prosecutors. The regulation of integrity checks, the increase of salaries and the limits on bonuses, are positive developments under the new Law. That said, the system has drastically changed. GRECO has already expressed some concerns in connection to the new situation (see in particular paragraphs 133-134), and particularly, the restructuring process which has been started. The lack of clearly articulated procedures at key moments of career life, including regarding appeal channels, is unsatisfactory. The transfer of prosecutors without their consent, provided for by the new Law, can potentially create possibilities for undue pressure on prosecutors.
142. GRECO concludes that recommendation xxiv has been partly implemented.

#### **Recommendation xxv.**

143. *GRECO recommended introducing by law periodic performance evaluation of prosecutors within the prosecution service – involving the self-governing bodies – on the basis of pre-established and objective criteria, while ensuring that prosecutors have adequate possibilities to contribute to the evaluation process.*
144. The authorities of Ukraine report that the new Law on the Reform of the Prosecutor's Office adopted recently provides for the adoption by the Prosecutor General of a system of evaluation of prosecutors (Article 9). The new model is to be based on the work already conducted by the Council of Europe and the European Union Advisory Mission (EUAM) experts. Performance of each prosecutor will be assessed annually on the basis of a plan and goals set for the year and a related training plan. The decisions taken in the framework of an annual individual performance evaluation will serve as a ground for promotion and career advancement. The relevant regulation would have to be adopted by the Prosecutor General, specifying the assessment

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<sup>24</sup> Procedure for conducting the competition for occupation of vacant or a temporarily vacant post of prosecutor in the order of transfer to the higher level prosecutor's office; Regulation on the procedure of the work of the Qualification and Disciplinary Commission.

criteria. The prosecutor would have the opportunity to disagree and appeal the results of his/her evaluation.

145. The authorities also indicate that, back in 2018, the Prosecutor General's Office had established a specific working group<sup>25</sup> to introduce a periodic evaluation of prosecutors. The working group had elaborated the necessary amendments to the Law on Prosecutor's Office (which were subject to a Council of Europe expert opinion) and a draft regulation on periodic performance evaluation of prosecutors. They provide, in particular, that the competent commissions to be established in the Prosecutor's Office will conduct periodic evaluation of prosecutors every four years. The development of qualitative and quantitative evaluation criteria is underway.
146. Finally, the authorities report that, with the support of the Council of Europe<sup>26</sup>, international consultants have carried out an organisational analysis of the institutional management and administrative aspects of the Prosecutor General's Office (covering human resources management).
147. GRECO takes note of the information provided. The new Law on the Reform of the Prosecutor's Office provides for a system of evaluation of prosecutors. The modalities of its operation, including its assessment criteria, are yet to be regulated. Efforts are currently undertaken in this respect, on the basis of previous work conducted through technical assistance.
148. GRECO concludes that recommendation xxv has been partly implemented.

#### **Recommendation xxvi.**

149. *GRECO recommended introducing a system of random allocation of cases to individual prosecutors, based on strict and objective pre-established criteria including specialisation, and coupled with adequate safeguards – including stringent controls – against any possible manipulation of the system.*
150. The authorities of Ukraine report that since 1 January 2019 a system of electronic workflow has been introduced in the Prosecutor's Office in the framework of the reform roadmap. Moreover, a working group has been set up to develop and introduce electronic criminal proceedings. Moreover, the authorities specify that an Action Plan for the establishment of an e-case management system between SAPO (as part of the Prosecutor General's Office), NABU and the High Anti-Corruption Court was adopted in September 2019. The e-case management system is under elaboration, with the support of international technical assistance<sup>27</sup>, and is expected to be launched on 20 April 2020. It is further planned to be expanded to the whole prosecutorial system.
151. Furthermore, the authorities indicate that the Anti-Corruption Programme of the Prosecutor General's Office for 2019-2020 foresees the implementation of this recommendation. The Prosecutor General's Office is currently studying the best practices on random allocation of cases between prosecutors in the Council of Europe member states. After this analysis, a decision will be taken on the mechanism to be introduced.

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<sup>25</sup> Established by Order of the Prosecutor General of 3 March 2018, n° 38; The Working group is composed of representatives of the Prosecutor General's Office, regional prosecutor's offices, National Academy of Prosecutor's Office, NGOs, Council of Europe and EU experts.

<sup>26</sup> Council of Europe project "Continued support to criminal justice reform in Ukraine".

<sup>27</sup> European Union Anti-Corruption Initiative (EUACI), financed by the EU, co-financed and implemented by DANIDA.



152. GRECO notes that a system of electronic workflow has been put in place. Moreover, GRECO notes the on-going elaboration of an e-case management system for the anti-corruption bodies, including SAPO, with the intention to further expand it to the whole prosecutorial system. This work is at an initial stage. GRECO recalls that the reason for the present recommendation was the need to regulate more precisely case assignment, so that it be based on strict and objective pre-established criteria. GRECO encourages the authorities to pursue their efforts on this front.
153. GRECO concludes that recommendation xxvi has not been implemented.

#### **Recommendation xxvii.**

154. *GRECO recommended (i) that the new code of ethics for prosecutors be complemented by illustrative guidelines (e.g. concerning conflicts of interest, gifts and other integrity-related matters) and (ii) that those documents be brought to the attention of all prosecutors and made public.*
155. The authorities of Ukraine report that on 21 December 2018, the All-Ukrainian Conference of Prosecutors approved amendments to the current Code of Professional Ethics Conduct of Public Prosecutors, enhancing corruption prevention requirements (in particular, introducing a requirement to prevent out of office relationships leading to misuse of professional duties or position, Article 19 of the Code of Ethics).
156. Moreover, the authorities report that the Prosecutor General's Office has approved and published the recommendations to prevent and resolve conflicts of interest<sup>28</sup>. The recommendations are accompanied by detailed and visual (including graphic) materials, including a self-assessment test, guidelines for employees and their superiors as well as examples and sample documents. In addition, in August 2018, the Prosecutor General's Office sent a letter to all regional prosecutor's offices to raise awareness on conflict of interest. On 21 May 2018, it issued an order on acceptance of gifts (Order n°96). On 24 September 2018, the Prosecutor General's Office approved and published recommendations regarding restrictions on gifts<sup>29</sup>. In addition, it has published other guidelines, in particular, regarding e-declaration of assets, interests and liabilities and financial control<sup>30</sup>.
157. Furthermore, the authorities indicate that the National Academy of the Prosecutor's Office has developed and introduced manuals covering, in particular, ethics of prosecutors and other anti-corruption matters. They refer *inter alia* to the following training activities:
- 2017: Seminar on main aspects of implementation of anti-corruption legislation, covering restrictions on gifts (Kyiv, 326 participants); 5 regional seminars on investigation of corruption cases (Kharkiv, Kyiv, Vinnytsia, Lviv, Dnipro, 293 participants);
  - 2018: Seminar on compliance with requirements of financial control / anti-corruption legislation;
  - January-May 2019: 6 training activities on ethics of prosecutors and prevention of corruption.
158. Finally, the authorities report that the reforms underway at the Prosecutor General's Office foresee the revision of the Code of Ethics. A support package, which has been

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<sup>28</sup> [https://www.gp.gov.ua/ua/adminkor.html?\\_m=publications&\\_t=rec&id=252776](https://www.gp.gov.ua/ua/adminkor.html?_m=publications&_t=rec&id=252776)

<sup>29</sup> [http://www.gp.gov.ua/ua/adminkor.html?\\_m=publications&\\_t=rec&id=252776](http://www.gp.gov.ua/ua/adminkor.html?_m=publications&_t=rec&id=252776)

<sup>30</sup> [https://www.gp.gov.ua/ua/adminkor.html?\\_m=publications&\\_t=cat&id=117078](https://www.gp.gov.ua/ua/adminkor.html?_m=publications&_t=cat&id=117078)

approved by the Prosecutor General, within the framework of the PRAVO-Police cooperation project<sup>31</sup>, further adds to the efforts made in this area.

159. GRECO takes note of the information provided. It observes that corruption prevention requirements have been further specified in the Code of Ethics for prosecutors. GRECO welcomes the guidelines / recommendations with respect to gifts and conflict of interest. The recommendations on gifts (prepared by the Office of the Prosecutor General and the National Academy of Prosecutors Office contain illustrative guidance and practical examples. Although less illustrative, the guidelines on conflict of interest also contain useful comments and practical examples. There are also some explanations on the website of the Prosecutor General's Office regarding e-declaration and financial control. All these guidelines are public. However, no guidelines were reported with respect to other integrity related matters (such as incompatibilities, etc). Moreover, the available guidelines are scattered in various regulatory documents. The National Academy has elaborated a manual covering ethics for prosecutors. The reported training and awareness raising activities have been enhanced. GRECO looks forward to a genuinely systemic approach in this respect, in particular by the future Training Centre of Prosecutors (which is to replace the National Academy).

160. GRECO concludes that recommendation xxvii has been partly implemented.

**Recommendation xxviii.**

161. *GRECO recommended (i) encouraging prosecutors in suitable ways to recuse themselves from a case whenever a potential bias appears; (ii) ensuring that any decisions on disqualification of a prosecutor can be appealed.*

162. With respect to the first part of the recommendation, the authorities of Ukraine refer to the Prosecutor General's Office recommendations regarding conflicts of interest, which contain explanatory comments on disqualification of a prosecutor. Moreover, the authorities indicate that prosecutors apply in practice the legal requirements for disqualification / recusal in cases of conflict of interest, mentioning examples of self-recusal by the Prosecutor General and his deputies as well as the Director of the Specialised Anti-Corruption Prosecutor's Office (SAPO). Other examples provided concern e.g. the cases of disqualification or self-recusal of prosecutors of regional or local prosecutor's offices (Zakarpattia region, Lviv region, Kherson region, Chernihiv). The authorities also admit that there were cases of failure to comply with disqualification / recusal requirements.

163. The authorities add that the issue of preventing and resolving conflicts of interest was discussed during 5 regional seminars on investigation of corruption offences (Kharkiv, Kyiv, Vinnytsia, Lviv and Dnipro). Examples of best practices have been disseminated among prosecutors. The authorities further underline that prosecutors receive information and guidance about corruption prevention and conflicts of interest and in particular about disqualification / self-recusal.

164. No relevant information has been provided with respect to the second part of the present recommendation.

165. GRECO takes note of the update provided. GRECO appreciates that some measures have been taken to improve prosecutors' awareness on the requirements of

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<sup>31</sup> EU funded Project "Support for Rule of Law Reforms in Ukraine in the Areas of Police and Public Prosecution and Good Governance"), implemented by the United Nations Office for Project Services (UNOPS) in close coordination with the European Union Advisory Mission (EUAM).

disqualification / self-recusal. GRECO understands that the legal basis for appeal of recusal decisions is the same as at the time of the Evaluation visit.

166. GRECO concludes that recommendation xxviii has been partly implemented.

**Recommendation xxix.**

167. *GRECO recommended (i) defining disciplinary offences relating to prosecutors' conduct and compliance with ethical norms more precisely; (ii) extending the range of disciplinary sanctions available to ensure better proportionality and effectiveness.*

168. Concerning the first part of the recommendation, the authorities of Ukraine specify that the provisions of the Code of Professional Ethics and Conduct of Public Prosecutors are general, defining the basic principles, moral norms and rules of prosecutorial ethics. The authorities recall that the Law on Prosecutor's Office (Article 43) provides for grounds of disciplinary liability of prosecutors, such as "violation of prosecutorial ethics", "systematic (two and more times within one year) or one-time severe violation of the rules of prosecutorial ethics", "committing acts which discredit the title of a public prosecutor and may cast doubt on their objectivity, impartiality and independence, on honesty and integrity of prosecution authorities". The authorities specify that the Procedure for Organisation of Work of Internal Security in Prosecution Authorities of Ukraine, refers to "acts which discredit the title of a public prosecutor...".

169. Furthermore, the authorities indicate that the issue of compliance with the rules of professional ethics and integrity may be raised during interviews with the personnel commissions in the framework of the re-qualification ("attestation") of prosecutors<sup>32</sup>.

170. Regarding the second part of the recommendation, the authorities admit that the sanctions provided for by the Law on Prosecutor's Office (Article 49) are not broad enough to ensure proportionality and need to be extended.

171. GRECO takes note of the information provided. GRECO notes that the explanation of the notion of "acts which discredit the title of a public prosecutor..." at the level of secondary legislation was already in place at the time of the Evaluation report. The grounds for disciplinary liability of prosecutors remain to be legally clarified. No measures have been taken to address the second part of the recommendation. In the absence of any tangible results with respect to both parts of the recommendation, GRECO concludes that recommendation xxix has not been implemented.

**Recommendation xxx.**

172. *GRECO recommended enhancing the efficiency of disciplinary proceedings by extending the limitation period, ensuring that proceedings can be launched also by the relevant self-governing bodies (which are not entrusted with decision-making in disciplinary proceedings) and heads of prosecution offices, and providing that appeals against disciplinary decisions can ultimately (after a possible internal procedure within the prosecution service) only be made to a court, both on substantive and procedural grounds.*

173. The authorities of Ukraine specify that the limitation period for disciplinary offences (one year) is longer than the term set legally for the prosecution (three months) and the term provided for in the Labour code (six months). With the adoption of the new

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<sup>32</sup> Procedure for Attestation of Public Prosecutors, approved by Order of the Prosecutor General of Ukraine No. 221 of 03 October 2019.

Law on the Reform of the Prosecutor's Office the personnel commissions and the regional offices will now deal with disciplinary proceedings.

174. The authorities also indicate that the Constitution provides for an appeal against disciplinary decisions to the High Council of Justice. Any streamlining of the system of appeal, with only an opportunity to appeal to a court, would require constitutional amendments.
175. GRECO takes note of the information provided. The current limitation period of one year is insufficient as often prosecutors avoided disciplinary liability because of lengthy disciplinary proceedings. The new Law on the Reform of the Prosecutor's Office suspends the application of rules related to disciplinary proceedings (Articles 45 and 48 of the Law on Prosecutor's Office). The personnel commissions and the regional offices will apparently deal now with disciplinary proceedings. Not only the suspension of the self-governing bodies is problematic, but also the lack of regulation for the responsible personnel commissions, which is to be decided by the Prosecutor General. Finally, no progress has been made to review the system of appeal.
176. GRECO concludes that recommendation xxx has not been implemented.

**Recommendation xxxi.**

177. *GRECO recommended providing to all prosecutors dedicated, regular training and confidential counselling on ethics and integrity, prevention of conflicts of interest and corruption, and raising prosecutors' awareness of such matters.*
178. The authorities of Ukraine report that in 2017-2018 the National Academy of Prosecutor's Office has trained 2 449 employees of the prosecutor's office on the issues of ethics and integrity, conflict of interest and corruption prevention. In total 4 500 employees of the prosecutor's office were trained during this period. The special training covering prosecutorial ethics was delivered to 257 candidate prosecutors. The employees of the General Inspectorate participated systematically in training activities regarding integrity and prevention of corruption. The authorities have reported in particular the following training events:
- In 2017: 19 training events; seminar on application of anti-corruption legislation regarding acceptance of gifts for 326 prosecutors (Kyiv) and 5 regional seminars on investigation of corruption offences for 293 prosecutors (Kharkiv, Kyiv, Vinnytsia, Lviv and Dnipro);
  - In 2018: 5 training events on ethics and integrity, conflict prevention and anti-corruption, seminar on anti-corruption legislation and compliance with financial control requirements, 9 training sessions and lectures and round tables covering ethics for prosecutors and prevention of corruption;
  - In 2019: the NAP organised thematic training events on professional ethics, integrity, conflict of interest and prevention of corruption for 495 prosecutors directly and for 883 prosecutors through remote participation. A total of 516 candidate prosecutors went through a dedicated training.
179. The authorities also report that the Prosecutor General's Office and the National Academy of Prosecutor's Office / Training Centre of Prosecutors have signed a memorandum of cooperation to enhance awareness raising / educational activities on prevention of corruption, considering the best international and national practices and the efforts to improve the relevant legal framework and its application. Also, they have elaborated a manual on legal remedies against corruption.

180. Finally the authorities clarify that, following the on-going re-qualification (“attestation”) of prosecutors, a dedicated regular thematic training on ethics, integrity, conflict of interest, prevention of corruption etc, will be put in place.
181. GRECO takes note of the information provided. The National Academy of Prosecutor’s Office has organised a number of training events for prosecutors relating to ethics and integrity. While it would appear that training efforts have been intensified, there is no systematic approach yet. Induction training is in place, but in-service training needs to be secured; at present, in-service training is more of an ad-hoc nature. The new Training Centre of Prosecutors (to replace the National Academy) is planning a regular training on ethics as of 1 January 2020. Further, GRECO regrets that no information was provided on confidential counselling on ethics and integrity, prevention of conflict of interest and corruption.
182. GRECO concludes that recommendation xxxi has been partly implemented.

### **III. CONCLUSIONS**

183. In view of the foregoing, GRECO concludes that Ukraine has implemented satisfactorily or dealt with in a satisfactory manner five out of the thirty one recommendations contained in the Fourth Round Evaluation Report. Of the remaining recommendations, fifteen have been partly implemented and eleven have not been implemented.
184. More specifically, recommendation xx has been implemented satisfactorily. Recommendations xi, xvi, xxi and xxii have been dealt with in a satisfactory manner. Recommendations i-vi, viii, xiv, xv, xviii, xxiv, xxv, xxvii, xxviii and xxxi have been partly implemented. Recommendations vii, ix, x, xii, xiii, xvii, xix, xxiii, xxvi, xxix and xxx have not been implemented.
185. A new Parliament was elected in July 2019 and a new government was in place in August 2019. Although some legislative initiatives were taken by the previous legislature to address GRECO recommendations, apparently most of them have been abandoned. In the meantime, the newly elected President has proposed several legislative drafts, some of which have already been adopted and are of importance for anticorruption purposes. GRECO welcomes the new Law on rebooting the NACP that was adopted and entered into force in October 2019. It is aimed at enabling more operational work protocols for the NACP by establishing, *inter alia*, direct access to state registries and automated verification of financial declarations. It is also positive that illicit enrichment has been re-criminalised, civic activists are no longer subject to financial disclosure, the legal basis for protecting whistleblowers has been strengthened and the anti-corruption court launched. Although these issues are not subject to specific recommendations, they matter for the adequate articulation of the anti-corruption system. It is crucial that the newly established legislative measures are properly implemented. Given the recent introduction of related legislation, substantial work lies ahead. Likewise, the independence and impartiality of anti-corruption institutions must be ensured not only in law, but also in practice.
186. While Parliament had adopted measures to enhance transparency, a large number of laws have recently been considered and adopted through a fast-track procedure, without sufficient discussion and justification, adequate involvement of all stakeholders and genuine public consultation. GRECO is concerned about this trend. When it comes to MPs, GRECO also regrets that no meaningful progress has been made to adopt a code of conduct for parliamentarians with relevant guidance on integrity related issues, to regulate the interaction of MPs with lobbyists, to strengthen internal oversight and to develop mechanisms for raising awareness on

integrity matters among MPs. More should be done to prevent circumvention of the restrictions of parliamentary members' engagement in entrepreneurial activities. Finally, the Constitution of Ukraine was amended in September 2019 to abolish procedural immunity of parliamentarians, which is a positive development. The practical implementation of this fundamental change (in a way that is not misused or politically biased), is very much linked to improvements in the independence of the justice system, which is still an outstanding issue as described below.

187. With regard to judges, a Law Reforming Judicial Self-Governance was adopted in October 2019. It introduces a new institutional set-up, with reshaped responsibilities. At the start, GRECO regrets that such an important reform was not preceded by an assessment of the former system, which would justify its complete overhaul, and was not coupled with adequate involvement of all relevant stakeholders. Moreover, it will be crucial to ensure that the new institutional set-up guarantees, at all times, the individual independence of judges (including dissenting voices) and shields them from undue political pressure. GRECO further regrets that no meaningful progress has been made to review the system of periodic performance evaluation of judges and to review the definitions of disciplinary offences. On a more positive note, GRECO notes the measures taken to improve the safety of judges, to keep under review the practical application of the inviolability regime regarding judges in order to prevent impunity, and to provide for regular training on integrity for judges.
188. Finally, as regards prosecutors, a new Law on the Reform of the Prosecutor's Office was adopted in October 2019. It entails a comprehensive restructuring and downsize of the prosecution service. The reform provides for a revision of the system of selection, appointment and disciplining of public prosecutors. A re-qualification procedure of all serving prosecutors has been launched reportedly for integrity purposes. This development requires close follow-up. The establishment of temporary personnel commissions, whose composition and rules of functioning are deferred to the Prosecutor General, and which are entrusted with appointment and discipline powers, is a matter of concern. A system of random allocation of cases also is yet to be put in place. On a more encouraging note, qualification criteria have been introduced for the appointment of the Prosecutor General and efforts are underway to introduce a new system for promotion and periodic evaluation of prosecutors, as well as to improve their awareness on integrity matters (conflict of interest, disqualification/self-recusal, gifts, e-declarations, etc.).
189. In view of the above, GRECO notes that in the present absence of final achievements, further significant material progress is necessary to demonstrate that an acceptable level of compliance with the recommendations within the next 18 months can be achieved. However, bearing in mind that several substantial reforms are underway and on the understanding that the Ukrainian authorities will further pursue their efforts, GRECO concludes that the current low level of compliance with the recommendations is not "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of GRECO's Rules of Procedure. GRECO invites the Head of delegation of Ukraine to submit additional information regarding the implementation of recommendations i-x, xii-xv, xvii-xix, xxii-xxx by 30 June 2021.
190. Finally, GRECO invites the authorities of Ukraine to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.