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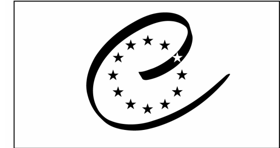

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING

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Joint First and Second Evaluation Rounds

Evaluation Report on Ukraine

Adopted by GRECO at its 32nd Plenary Meeting
(Strasbourg, 19-23 March 2007)

INTRODUCTION

1. Ukraine joined GRECO on 1 January 2006, i.e. after the close of GRECO's First Evaluation Round, but during the Second Round. Consequently, Ukraine was submitted to a joint evaluation procedure covering the themes of both the First and the Second Evaluation Rounds (cf. paragraph 3 below). The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Algimantas CEPAS, Director of the La

- **Public administration and corruption[4]:** Guiding Principles 9 (hereafter "GPC 9": public administration) and 10 (hereafter "GPC 10": public officials);
- **Legal persons and corruption[5]:** Guiding Principles 5 (hereafter "GPC 5": legal persons) and 8 (hereafter "GPC 8": fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

4. The present report was prepared on the basis of the replies to the questionnaires and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Ukrainian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report presents – for each theme - a description of the situation, followed by critical analysis. The Conclusions include a list of recommendations adopted by GRECO and addressed to Ukraine in order to improve its level of compliance with the provisions under consideration.

I. OVERVIEW OF ANTI-CORRUPTION POLICY IN UKRAINE

a. Description of the situation

Perception of corruption

5. The perception of corruption in Ukraine has been the subject of numerous surveys ever since the independence of the country in 1991. Corruption has been described as a systemic phenomenon existing in all sections and at all levels of public administration.

6. Following the "Orange revolution" in 2004, the President of Ukraine, speaking before the Parliamentary Assembly of the Council of Europe in early 2005, stated that corruption had permeated Ukraine from top to bottom, that he was appalled by the bureaucrats accepting bribes and that the complexity of government bureaucracy had inflated the position and power of the bureaucrats within it such that corruption was allowed to flourish.

7. According to a survey carried out by the Institute of Applied Humanitarian Research (an Ukrainian NGO) in 2006, corruption in governmental bodies and in everyday life is perceived by the general public as one of the most crucial problems in Ukraine (together with low salaries and high prices). The same survey indicates that a large majority of the population considers that the level of corruption is stable or increasing. The survey also shows that almost every field and level of the public sector is perceived as being considerably affected by corruption and that public institutions generally enjoy a low level of trust by the public.

8. Another survey carried out by the Kyiv International Institute of Sociology, also in 2006 (funded through a Joint programme between the Council of Europe and the European Commission), indicates that more than 85 per cent of the population believes corruption to be widespread in Ukraine.

9. The Anti Corruption Network for Eastern Europe and Central Asia (ACN) of the OECD reported in 2006 that corruption in Ukraine has been a significant obstacle to doing business since the country gained independence and that corruption is most frequently noted in relation to business licenses, tax collection and customs. Other surveys indicate that corruption exists in every public

[4] Theme II of the Second Evaluation Round
[5] Theme III of the Second Evaluation Round

institution, including law enforcement bodies, the Procuracy and the Judiciary as well as local authorities.

10. The above description of the current climate in Ukraine is largely supported by civil society, including the media representatives met by the GET. Public officials met by the GET during the visit also described corruption as a critical problem and some of them characterised it as a social and systemic phenomenon within Ukrainian society.

11. According to the Corruption Perceptions Index for 2006 produced by Transparency International (TI), Ukraine is ranked 99 (out of 163) with a score of 2.8 (out of 10). Ukraine was according to the TI Corruption Index for 2005, ranked 107 (out of 158) with a score of 2.6 (out of 10). The TI corruption index score for 2004 and earlier was even lower. This places Ukraine among the group of countries perceived as the most corrupt in Europe.

Anti-corruption measures

12. The first anti-corruption legislation in Ukraine dates back to its independence in 1991. The Law on Combating Corruption, adopted in 1995, provides a definition of corruption and an administrative procedure for reporting it. In 1998 a Presidential strategy (Anti-corruption Concept) was presented. The Strategy was overseen by a Coordinating Committee against Corruption, reporting to the President.

13. In 2003, Ukraine joined the ACN of the OECD. According to the ACN assessment report of January 2004, Ukraine was in need of an updated national anti-corruption strategy, *inter alia,* with a focus on prevention, to identify systemic gaps that allow corruption to take root, and to concentrate law enforcement capacity more effectively on the fight against corruption.

14. A Presidential Decree issued in 2005 (No. 1615, 18 November) gave priority to fighting corruption and Ukraine's shadow economy. In the same year, the previously mentioned Anti-Corruption Coordination Committee was dismantled and replaced by an Interagency Commission under the National Council for Security and Defence, in accordance with a Presidential Decree (No. 1865, 28 December 2005).

15. The Interagency Commission was given the leading role to establish a new anti-corruption policy. Its tasks, amongst others, was to analyse the various state authorities in charge of combating corruption and to develop a coordinated policy and strategy which recognises the seriousness of corruption within the country and takes into account international norms and standards. The Commission consists of 18 high level officials (Ministers, and heads of agencies), representing the Presidency, Prime ministry, Parliament, Security service, Foreign Office, Prosecution service, the Ministry of the Interior, the Ministry of Justice etc.

16. On 11 September 2006, the President of Ukraine issued a Concept Paper *"On the Way to Integrity"*, in the form of a Decree. The Concept Paper - which had been prepared by the Ministry of Justice and agreed by the Interagency Commission - describes corruption as "one of the most pressing problems to be resolved in Ukraine" and one which poses a significant threat to democracy, the rule of law, social progress, national security and the formation of civil society. It further states that corruption has become a systemic social phenomenon which has penetrated and undermined vitally important social institutions such that, for some, the corrupt activity is a key function. The Paper also refers to the politically ineffective measures taken against corruption in Ukraine and that corruption is increasingly tolerated by society at large. The Concept Paper mentions official statistics indicating, *inter alia,* that some 3000 – 5000 administrative protocols

on corruption and some 3000 criminal bribery cases are filed every year, but estimates that this data does not reflect the real depth and scope of corruption. Bribery of civil servants is described as the most common form of corruption, however, a broad variety of other forms of corruption are also considered latent, including nepotism in public administration.

17. The Concept Paper describes ways of dealing with the problem. It refers to shortcomings such as lack of proper legislation and regulation in public administration, lack of transparency and shortcomings in the managerial decision making, problems of accountability and ineffective state control. Furthermore, the Concept Paper lists - in broad terms and in a general manner - how and where measures should be considered. The importance of reforming the executive branch, including the various agencies and the civil service, the legislature and other elected bodies and the judicial system through the adoption of new basic legislation, reformed organisations, new accountability and controlling structures, codes of conduct and training etc is highlighted. Moreover, other suggested measures are, for example, to revise the number of state personnel, to improve the regulatory framework of the civil service (contractual obligations, salary and codes of conduct etc), to develop state financial controls, to reform administrative procedures and regulation, to avoid functional conflicts in the executive branch (for example by clearly separating execution and control), to limit direct contact between civil servants and members of the public etc. Furthermore, the paper foresees judicial reform, including of the status of judges. Another area of concern is the need for increasing the transparency of public administration and to enhance the role of civil society, including the media. The Concept Paper also discusses the need to generally strengthen the effectiveness of, and the cooperation between, public authorities and law enforcement, amending the criminal legislation, establishing reliable statistics etc.

18. The Concept Paper states that those aspects identified as most important in fighting corruption must be addressed in the "nearest future". However, it leaves it to the Cabinet of Ministers to set out the specific implementation of the measures, their timing etc. The GET was informed during the visit that the Cabinet of Ministers was in charge of elaborating an action plan on the basis of the Concept Paper.

19. The establishment of an action plan is the focus of the ACN monitoring of Ukraine and providing assistance to developing such an action plan is the paramount objective of the Council of Europe/European Commission Project against Corruption in Ukraine (UPAC).

<u>Criminal legislation</u>

20. Corruption is criminalised when it involves public sector officials and employees of private entities[6]. The Criminal Code (CC) establishes the offences of both active and passive bribery, abuse of authority or office as well as specific offences such as embezzlement. However, trading in influence is not criminalised and legal persons cannot be held criminally liable for corruption.

[6] The term "officials" refers to persons who permanently or temporarily exercise functions of representatives of the state authority, as well as permanently or temporarily occupy positions in enterprises, institutions or organisations of any type of ownership, which are related to organisational, managerial, administrative and executive functions, or are specifically authorised to perform such functions. Persons referred to in Article 364 of the CC, whose positions pursuant to Article 25 of the Law of Ukraine "On Civil Service" are included into the third, fourth, fifth and sixth categories, as well as judges, prosecutors and investigators, heads and deputy heads of state authorities and administrative bodies, local self-administration bodies, their structural divisions and units are deemed to be officials occupying responsible positions. Persons referred to in paragraph one of Article 9 of the Law of Ukraine "On Civil Service" and persons whose positions are included in the first and second categories pursuant to Article 25 of this Law are deemed to be officials occupying especially responsible positions.

The GET was informed, however, that a draft law on the liability of legal persons for corruption offences was pending before Parliament[7].

Abuse of authority or office (Article 364)

"Abuse of authority or office, i.e. a deliberate use of authority or official position contrary to the official interests by an official for mercenary motives or other personal benefit or benefit of any third parties, where it caused any substantial damage to legally protected rights, freedoms and interests of individual citizens, or state and public interests, or interests of legal entities, shall be punished by correctional labour for a term up to two years, or arrest for a term up to six months, or restriction of freedom for a term up to three years, with the waiver of the right to occupy certain positions or engage in certain activities for a term up to three years. The same action that caused any grave consequences, shall be punished by imprisonment for a term of five to eight years with the waiver of the right to occupy certain positions or engage in certain activities for a term up to three years. Acts provided for by paragraph one or two of this Article, if committed by a law enforcement officer, – shall be punished by imprisonment for a term of five to twelve years with the waiver of the right to occupy certain positions or engage in certain activities for a term up to three years and the forfeiture of property.

Article 365. Excess of authority or official powers

"Excess of authority or official powers, i.e., the deliberate commission of acts, by an official, which obviously exceed the rights and powers vested in him/her, where it caused any substantial damage to the legally protected rights and interests of individual citizens, or state and public interests, or interests of legal entities, – shall be punished by the correctional labour for a term up to two years, or restriction of freedom for a term up to five years, or imprisonment for a term of two to five years, with the waiver of the right to occupy certain positions or engage in certain activities for a term up to three years. Excess of authority or official powers accompanied with violence, use of weapons, or actions that caused pain or were derogatory to the victim's personal dignity, – shall be punished by imprisonment for a term of three to eight years with the waiver of the right to occupy certain positions or engage in certain activities for a term up to three years. Acts provided for by paragraph one or two of this Article, if they resulted in grave consequences, – shall be punished by imprisonment for a term of seven to ten years with the waiver of the right to occupy certain positions or engage in certain activities for a term up to three years".

Article 368. Taking a bribe

"Taking a bribe of any kind, by an official, in return for taking, or refraining from, any action for the benefit of the person who gives the bribe or for the benefit of any third party by means of authority or official powers vested in this official,– shall be punished by a fine of seven hundred and fifty to one thousand and five hundred non-taxable individual minimum income amounts, or the imprisonment for a term of two to five years, with the waiver of the right to occupy certain positions or engage in certain activities for a term up to three years.
Taking a bribe of a large amount[8] or by an official who occupies a responsible position, or by a group of persons upon their prior conspiracy, or if repeated, or accompanied with a request for a bribe, – shall be punished by imprisonment for a term of five to ten years with the waiver of the right to occupy certain positions or engage in certain activities for a term up to three years and the forfeiture of property. Taking a bribe in an especially large amount or by an authorised person in especially responsible position, - shall be punished by imprisonment for a term of eight to twelve years with the waiver of the right to occupy certain positions or engage in certain activities for a term up to three years and with the forfeiture of property."

Article 369. Giving a bribe

"Giving a bribe shall be punished with a fine of two hundred to five hundred non-taxable individual minimum income amounts or the restriction of freedom for a term of two to five years. Repeated giving of a bribe, shall be punished with the imprisonment for a term of three to eight years with or without the forfeiture of property.
A person who gave a bribe shall be discharged from criminal liability, if the bribe was requested from this person, or if, after giving the bribe and before any criminal prosecution was initiated against him/her, this person voluntarily reported the fact of bribing to the agency competent to undertake criminal prosecution".

[7] The draft had been subject to a first reading in Parliament at the time of the adoption of this report.
[8] A bribe of a large amount shall mean a bribe that equals or exceeds two hundred non-taxable individual minimum income amounts, and a bribe in an especially large amount shall mean a bribe that equals or exceeds five hundred non-taxable individual minimum income amounts.

Article 370. Provocation of a bribe

Provocation of a bribe, i.e. an intentional creation, by an official, of circumstances and conditions that cause the giving or taking of a bribe, for the purposes of uncovering those who gave or took the bribe, shall be punished with the restriction of freedom for a term up to five years or with the imprisonment for a term of two to five years. The same act committed by a law enforcement official, shall be punished with the imprisonment for a period of three to seven years."

21. The CC (Article 366) provides criminal liability for falsification in public service, the entry of false information into official documents etc. The GET was informed that this provision is similarly applicable to the private sector. In addition, Article 212 of the CC makes the evasion of taxes, duties and other statutory fees a criminal offence.

22. Money laundering ("legalisation of proceeds from crime") is established as a criminal offence in the CC, Article 209. The same Article also contains a provision which sanctions the failure to report financial transactions or to provide false information in this respect.

Article 209. Legalisation (laundering) of proceeds of crime

"The performance of a financial transaction or the conclusion of a deal involving monies or other property being obtained as a result of the commission of a socially dangerous illegal act[9] *preceding the legalisation (laundering) of proceeds, as well as use of such money and other property in business or other economic activities, and creation of organised groups in or outside Ukraine for the purpose of legalisation (laundering) of money and other property known to be proceeds from a socially dangerous act preceding the legalisation (laundering) of the proceeds, as well as the commission of acts aimed at concealing or masking the illegal origin of such monies or other property, or the possession thereof, rights to such monies or property, sources of their origin, their location, their movement, as well as the acquisition, the possession or the utilisation of monies or other property obtained as a result of the commission of a socially dangerous illegal act that preceded the legalisation (laundering) of proceeds – shall be punished by imprisonment for a term of three to six years with the waiver of the right to occupy certain positions or engage in certain activities for a period up to two years with the forfeiture of monies or other property being proceeds of crime, and with the forfeiture of property.*
Acts provided for by paragraph one of this Article, if repeated or committed on the basis of a prior conspiracy by a group of persons, or committed at a large scale, – shall be punished by imprisonment for a term of seven to twelve years with the waiver of the right to occupy certain positions or engage in certain activities for a term up to three years with the forfeiture of monies or other property being proceeds of crime, and with the forfeiture of property.
Acts provided for by paragraph one or two of this Article, if committed by an organised group or committed at an especially large scale, – shall be punished by imprisonment for a term of eight to fifteen years with the waiver of the right to occupy certain positions or engage in certain activities for a term up to three years with the forfeiture of monies or other property being proceeds of crime, and with the forfeiture of property. "

Article 209^{1}. Deliberate violation of requirements of the legislation on preventing and combating legalisation (laundering) of proceeds of crime

"The repeated deliberate failure to provide information about financial transactions or the repeated deliberate provision of the knowingly false information about financial transactions subject to the internal or statutory financial monitoring to the specifically authorised executive agency in charge of the financial monitoring shall be punished with the penalty in the amount of one to two thousand non-taxable individual minimum income amounts, or the restriction of freedom for a term up to two years, or the imprisonment for the same term, with the waiver of the right to occupy certain positions or engage in certain activities for a term up to three years.
The illegal divulgation, in any form, of the information provided to the specifically authorised executive agency in charge of the financial monitoring by a person, to whom this information has become known in connection with the professional or service activities, shall be punished with the penalty in the amount of two to three thousand non-

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[9] A socially dangerous illegal act that preceded the legalisation (laundering) of proceeds under this article shall be understood as an act, in case of which the Criminal Code of Ukraine provides for the punishment in the form of the imprisonment for a term of three and more years (except for acts covered with Articles 207 and 212 of the Criminal Code of Ukraine), or an act considered to be an offence under the criminal law of another state, if the Criminal Code of Ukraine provides for the liability for the same act, and as a result of the commission of which the proceeds have been obtained illegally.

taxable individual minimum income amounts, or the restriction of freedom for a term up to three years, or the imprisonment for the same term, with the waiver of the right to occupy certain positions or engage in certain activities for a period up to three years".

23. The establishment, management of, and the participation in, an *organised crime group* is criminalised as a separate offence pursuant to Article 255 of the CC. Moreover, the repeated commission of corruption offences, in an organised manner or as part of a conspiracy, are aggravating circumstances which justify more severe sanctions.

24. With regard to Ukrainian courts' jurisdiction over corruption offences, Article 6 of the CC covers all offences committed on the territory of Ukraine and states that an offence shall be considered to have been committed on the territory of Ukraine if it has been initiated, continued, completed or discontinued there, or where the principal to such an offence or at least one of the accomplices, has acted on the territory of Ukraine. Article 7 of the CC states that citizens of Ukraine and stateless persons permanently residing in Ukraine, who have committed offences outside Ukraine, shall be criminally liable under Ukrainian law, unless otherwise provided for by international treaties to which Ukraine is a party. However, in cases where the offender is sentenced outside Ukraine, s/he shall not be criminally liable in Ukraine. Article 8 of the CC provides that foreign nationals or stateless persons not residing permanently in Ukraine, who have committed criminal offences outside Ukraine, shall be criminally liable in Ukraine in cases covered by international treaties, or if they have committed any grave or especially grave offence(s) against the rights and freedoms of any citizen of Ukraine or the interests of Ukraine as provided for by this Code.

Administrative "criminalisation"

25. In addition to the criminal legislation on corruption offences (i.e. mainly active and passive bribery) contained in the Criminal Code, the Law on Combating Corruption (1995), as amended, provides for administrative liability for corruption. This law broadly defines corruption as the unlawful active or passive use, reception or granting of advantages, privileges by a person of authority. "A person of authority" includes government ministers, including the Prime Minister, members of Parliament, civil servants, local self government officials and military officers. The sanctions (as pronounced by a court) are a "penalty" (fine) of between 15-50 non-taxed minimum incomes and dismissal from office, sometimes combined with a bar preventing a return to public duties. (As to the procedure to be followed, please see below, Chapter II, "Administrative investigation and adjudication of corruption".) A draft law on the Principles of Prevention and Counteraction of Corruption, aimed at replacing the 1995 law also includes the President within the definition of "a person of authority" for the purposes of administrative liability for corruption.

b. Analysis

26. The information gathered by the GET, broadly reflected in the Concept Paper adopted by the President in September 2006, indicates that Ukraine is considerably affected by corruption and that the problem is widespread throughout the country and its public institutions, at central as well as local level. Corruption appears to be a systemic wide-scale problem. Public confidence in public institutions - including the justice system - and their representatives is critically low and there are few signs that this is changing for the better.

27. Consequently, the GET is of the firm opinion that corruption cannot be considered as an isolated problem in Ukraine. Corruption affects the whole of society and at its current levels constitutes a real threat to the basic principles of democracy and the rule of law. This situation is particularly worrying in a country where there is a general need to consolidate the democratic foundations, its

basic rules and institutions. Consequently, reforms to fight corruption in Ukraine need to be - above all – about consolidating democratic principles, the rule of law and institutional reforms. This requires a long term, considered approach and strong political commitment.

28. Having met with a large number of Ukrainian officials, there appears on the one hand to be real political acknowledgement of the magnitude of the problem as well as strong consensus for the urgent need for change. On the other hand, however, there is no consensus on how the problems of corruption should be addressed and it appears to be politically difficult to establish a structure to effectively coordinate and consistently monitor the necessary reforms. The GET notes that past anti-corruption measures in Ukraine have focused to a large extent on corruption as an isolated phenomenon, using tools to detect and repress. It seemed that among the officials met during the on-site visit, the central issue in fighting corruption remained focused on making these "traditional" tools more effective, for example through a centralised law enforcement structure or body.

29. The GET believes that a long term approach must focus much more on prevention and that the problems of corruption have to be dealt with as part of the transition of public institutions and their officials towards transparency and the rule of law. The GET is therefore pleased that the Concept Paper "On the Way to Integrity", issued by the President, has, by and large, taken this approach. In the GET's view, the Concept Paper properly describes the pressing problem of corruption in Ukraine and provides a solid basis and an appropriate framework to begin the process of substantial reform. However, the GET was not made aware of any consensus on <u>how</u> to implement the Concept Paper and hopes that the present political polarisation in Ukraine will not undermine the necessary reforms as highlighted. The task of formulating an action plan based on the Concept Paper lies with the Cabinet of Ministers. In the view of the GET, an effective action plan requires a long term perspective combined with targeted medium term measures.

30. The fight against corruption is not at present the responsibility of any one particular body. However, in the field of law enforcement, there are four main actors responsible for corruption detection and investigation, i.e. the Prosecutor General, the Ministry of the Interior, the Security Service and the State Tax Administration. The GET noticed that the discussion about establishing a new centralised anti-corruption structure seemed primarily to be about centralising the functions of the law enforcement bodies. Moreover, the GET heard ideas to include corruption prevention functions in a new centralised law enforcement body or structure. The GET is of the opinion that a clear distinction needs to be made between the implementation of overall preventive reforms as enshrined in the Concept Paper on the one hand, and improving the law enforcement on the other. These two functions are separate and ought not to be mixed up. Moreover, a general anti-corruption body should preferably broadly reflect Ukrainian society by including representatives of public authorities as well as civil society, for example, private business, non-governmental organisations, media etc. **The GET recommends to establish a body, distinct from the law enforcement functions, with the responsibility of overseeing the implementation of the national anti-corruption strategies and related action plans as well as proposing new strategies and measures against corruption. Such a body should represent public institutions as well as civil society and be given the necessary level of independence to perform an effective monitoring function.**

31. The GET was pleased to note that the international community is active in Ukraine as there is clearly a massive need for assistance and support. The GET was made aware of numerous initiatives and projects to assist reforms in almost every field of public administration. It noted, however, that there is a need to focus on projects that promote cooperation and to coordinate

between the various initiatives and organisations if these contributions are to lead to a coherent reform process rather than remaining individual, *ad hoc* initiatives.

32. The coordination of these efforts needs to be dealt with by the Ukrainian authorities. Moreover, a primary objective should be to establish the Action Plan to implement the Concept Paper issued by the President, including concrete measures to be taken, dates for implementation and interlocutors to be involved etc. **The GET recommends to urgently develop a detailed plan of action for the implementation of the national anti-corruption strategy (Concept Paper of the President). The plan of action should preferably be subject to international expertise and, to the extent possible, take into account potential cooperation with and assistance from the international community**.

33. The GET notes that a number of points could be made regarding the criminalisation of corruption offences but it is also aware that several changes to the Criminal Code are foreseen. The notion of "bribery" (Articles 368-370) has no clear definition and it appears, for example, that bribery under the Criminal Code only covers tangible advantages. Trading in influence is not criminalised. Liability of legal persons for corruption offences is under review. The GET is of the opinion that criminalising all forms of corruption would send a clear signal to the public that corruption is unacceptable in Ukraine. The GET recalls that the implementation of the Council of Europe Criminal law Convention on Corruption will be further examined in GRECO's Third Round Evaluation. In this regard, the GET was informed that this Convention had been ratified by the Ukrainian Parliament in November 2006 but that the ratification instruments had not yet been deposited with the Secretary General of the Council of Europe. The GET would welcome Ukraine's deposit of the ratification instruments with the Council of Europe in the near future.

34. Another concern of the GET is the fact that corruption is dealt with under two different procedures; the administrative system (according to the Law on Combating Corruption) which provides for a reporting procedure ("protocols") and administrative sanctions, and the criminal justice procedure, as set out in the Code of Criminal Procedure. The former law, with its broad definition of corruption, appears to give the authorities wide discretionary powers on how to deal with individual cases and there seems to be a grey zone where the two systems overlap; not one of the four law enforcement authorities specialised in corruption detection could provide a clear answer to the GET as to the demarcation between these two systems. Even though the GET is aware that in theory the administrative procedure should be used only in cases where the criminal procedure would not be applicable, the GET understood that the existence of these two parallel systems affords opportunities for manipulation, for example, to escape from the justice process. Furthermore, the administrative system can also be used as a tool for political purposes. The GET was particularly concerned to hear that some 70 per cent of all "administrative protocols" appealed against were rejected by the Supreme Court. The GET believes that corruption in all its forms is a serious offence which as a matter of priority needs to be dealt with by the criminal justice system. **The GET recommends to review the system of administrative liability for corruption in order to clearly establish that cases of corruption are to be treated as criminal offences as a main rule, or, at the very least to establish a clear cut distinction between the requirements for applying these two distinct procedures.**

II. INDEPENDENCE, SPECIALISATION AND MEANS AVAILABLE TO NATIONAL BODIES ENGAGED IN THE PREVENTION AND FIGHT AGAINST CORRUPTION

a. Description of the situation

Law Enforcement bodies fighting corruption

35. There are two principal law enforcement agencies which share the overall responsibility for internal security in Ukraine, i.e. the Security Service, which is primarily responsible for intelligence gathering and the Ministry of the Interior, which controls the various police forces (militia). However, according to Article 4 of the Law on Combating Corruption (1995), the following bodies are specially dedicated to investigating cases of corruption:

- The Ministry of the Interior (the Police/Militia)
- the Tax Militia (State Tax Administration);
- the Security Service;
- the Public Prosecution agencies;
- Constabulary Provost Service in the Armed Forces of Ukraine;
- other agencies and units set up to fight against corruption in accordance with the current legislation.

Reform of anti-corruption law enforcement

36. There is an ongoing discussion in Ukraine on the possibility of establishing a new structure to fight corruption by centralising the powers to investigate corruption offences. However, at the time of the visit by the GET, there was no clear common understanding on the format and scope of such a structure or body.

37. The draft law on the Principles of Prevention and Counteraction of Corruption[10], which is supposed to replace the law on Combating Corruption (1995), foresees that the law enforcement function to investigate cases of corruption will rest with the Ministry of the Interior (Militia), the Security Service and the bodies of the Prosecutors office only. The draft law was pending before Parliament at the time of the visit by the GET

38. After the visit, the GET was made aware of another draft law (initiated by Members of Parliament in January 2007) on the establishment of a State Anti-Corruption Committee, which would be "a special purpose law enforcement body authorised to organise and conduct the systemic fight against corruption and offences which are related to corruption and constitute high social danger to vitally important interests of the state and its citizens". It is stated in the draft text that this body would be governed by the Cabinet of Ministers and operate under the control of Parliament and, in questions related to national security, under the control of the President. This draft law was pending before Parliament.

The Ministry of the Interior/Militia

39. The Ministry of the Interior is the national police authority of Ukraine. It is a centralised agency headed by a Minister who is directly subordinate to the Cabinet of Ministers and is a member of the Cabinet of Ministers. Under the Law on Militia, the major militia's tasks are to a) provide personal security for citizens; b) protect their rights and freedoms; c) prevent and combat crime; d) maintain public order; e) reveal and detect crime; f) arrest offenders; g) maintain safety on the

[10] The draft law was awaiting a second reading in Parliament at the time of the adoption of this report.

roads; h) protect public and private property; and i) execute criminal sentences and administrative penalties (Clause 2).

40. The Militia is organised as a single law enforcement system which is incorporated into the structure of the Ministry of Internal Affairs. The Militia is subordinate to the Minister of the Interior and is also accountable to appropriate local councils of the 27 territorial subdivisions.

41. The Law on the Organisational and Legal Fundamentals of Combating Organised Crime provides that departments of the Ministry of the Interior shall specialise in organised crime. The GET was informed that the fight against corruption was handled in the Headquarters by a division under the General Department of Organised Crime and that there were some 60 persons employed in that division. This division deals only with corruption (criminal as well as administrative) with regard to the higher ranking officials, i.e. grades one to four of the seven existing grades). Corruption investigation of lower grades is carried out within the Department of Economic Crime. A similar structure exists at the regional level; around eight specialists on corruption offences committed by the higher ranking officials exist in each of the 27 regions. The GET was told that the specialists receive pertinent training provided by the Ministry of the Interior. The GET was informed that the Militia had submitted 1691 administrative protocols on corruption and investigated 11 criminal cases on bribery during the first 10 months of 2005. In the same period of 2006, the figures were 1592 protocols and 4 criminal cases of corruption.

42. Concerning the violations committed by militia staff (i.e. police officers), the Department of Personnel and Internal Security is in charge. This department receives complaints from the wider public and may initiate administrative proceedings but cannot investigate suspected criminal offences committed by militia staff, this being the responsibility of the Prosecution Service. This department filed some 700 administrative protocols during the first 10 months of 2006. The number of militia staff brought to administrative responsibility during the first 10 months of 2005 were 224 and in 2006, 318.

Security Service

43. The Security Service, which is subordinate to the President and Parliament, is also entrusted with the task of investigating corruption, according to the Law on Combating Corruption as well as according to the Law on the Organisational and Legal Fundamentals of Combating Organised Crime. The Security Service has a special division for investigating corruption and money laundering. The main targets for these investigations are the higher ranked officials in Ukraine, major organised crime cases and cases that concern national security.

44. The GET was informed that some 2000 administrative protocols were filed every year by the Security Service and that some 1000 criminal cases were initiated. Representatives of the Security Service were critical of the present system in which several law enforcement agencies have investigative powers in corruption cases and would prefer that all corruption investigations were handled in a co-ordinated manner.

State Tax Administration

45. The State Tax Administration is one of the four law enforcement bodies currently entrusted with the task of investigating corruption, according to the Law on Combating Corruption (1995). To this end the Tax administration is provided with ordinary law enforcement powers. A special division deals only with investigating cases of corruption within the state tax agencies.

46. The State Tax administration employs some 60 000 staff and many of them have direct contacts with the general public and are often exposed to situations where corruption may occur. The GET was informed that during the first 10 months of 2006, investigations of corruption within the Tax Administration had initiated some 400 administrative protocols and 300 of these were upheld by court. During the same period, 287 criminal cases on bribery were submitted to public prosecution and out of these 53 cases had resulted in criminal charges.

47. The Tax Administration has developed tools to prevent corruption. All job applicants to the service undergo a background check (criminal record etc), there is a Code of Professional Ethics, which *inter alia* obliges staff to report illegal activities, all staff have to declare their assets, all new staff undergo initial training, there are hotlines in each tax agency etc.

48. Representatives of the tax administration were not pleased that the draft law on the Principles of Prevention and Counteraction of Corruption proposes that the investigative functions of the inspectorate should cease, as the tax administration has built up particular expertise in this area.

Procuracy / Office of the Prosecutor General

49. The role and function of the Procuracy is set out in the Constitution (Articles 121-123). The Office of the Prosecutor General is entrusted with all court prosecutions on behalf of the State; representing the interests of citizens or of the State in court in cases determined by law; supervising all bodies that conduct investigative and search activities, inquiry and pre-trial investigation and to ensure they observe the law; supervising the observance of law in the execution of judicial decisions in criminal cases and in the application of other measures of coercion related to the restraint of personal liberty of citizens.

50. The Prosecutor General is appointed to office by the President of Ukraine with the consent of Parliament. The Prosecutor is dismissed from office by the President. Parliament may express that it has no confidence in the Prosecutor General, which results in his/her resignation from office. Although the term of office of the Prosecutor General is five years, the GET was informed that there have been several appointments to this post within shorter periods in recent years.

51. The organisation and operation of the Procuracy is determined by the Law on the Public Prosecutors Office. The organisation is centralised and based on the principle of subordination of junior prosecutors to higher ones. The Procuracy is supposed to act independently of any other state body. It has a co-ordinating role *vis-à-vis* law enforcement bodies in all criminal investigations, including organised crime and corruption.

52. The Procuracy has a hierarchical structure consisting of the Office of the Prosecutor General, public prosecutors offices in 27 regions, including the cities of Kyiv and Sevastopol, towns and districts; in total about 900 prosecution offices. The total number of prosecutors is around 10 000. In addition to the prosecutors, there are investigators attached to the prosecution offices, approximately 1 500 at all levels of the Prosecution Service and 46 of them in the central office. These conduct preliminary investigations in criminal matters. The GET was informed that there were about four prosecutors specialised in corruption cases at the Office of the Prosecutor General and that there were two to four prosecutors specialised in corruption investigations in each of the 27 regions.

53. The GET was informed that the prosecution service submitted more than 5600 administrative protocols concerning corruption to court during the first ten months of 2005 and almost 5300 during the same period in 2006. Around half of these cases had been detected by the

prosecution, closely followed by the Militia. The GET was informed that the number of criminal bribery cases investigated by the Procuracy were 1188 during 10 months in 2005 and 1333 during 10 months in 2006.

Reform of the Procuracy

54. The Procuracy has, for several years, been the subject of much discussion around constitutional and legal reform aimed at bringing it more into line with European standards. A clearer independence from the executive power, a clearer focus on pre-trial investigation and prosecution of cases and fewer general supervisory functions are the core elements of this discussion.

55. Representatives of the Prosecution Service informed the GET that they were in favour of a centralised system for the investigation of corruption cases and that the Prosecution Service should have a coordinating role in such a structure.

The Judiciary/courts

56. The Judicial system of Ukraine, which is established by the Constitution and the Law on the Judicial System, consists of the *Constitutional Court* (the sole body of constitutional jurisdiction) and courts of general jurisdiction. The latter ones form a unified system based on territoriality and specialisation and include general courts, commercial and administrative courts.

57. At the lowest tier there are the *local general courts* which exercise first instance jurisdiction in civil, criminal and administrative cases as well as administrative offences. Most cases are heard by an individual judge. There are 679 local general courts and 4679 judges.

58. The second tier consists of the *appellate general courts*, which are established one in each of the 27 regions. These provide the appeal instance against decisions taken by the local courts. The appellate general courts also serve as first instance courts for the most serious offences. These courts have a civil and a criminal chamber and most cases are heard by a panel of three judges. 1300 judges are appointed for the 27 appellate general courts.

59. The Law on the Judicial System provides for a third tier consisting of a court of appeal and the court of cassation. These courts have never become operational since a ruling by the Constitutional Court in 2003 that the establishment of the court of cassation was unconstitutional.

60. The *Supreme Court* is the highest appeal body of general jurisdiction and it is charged with ensuring the uniform application of the law by all general courts. In this function the Supreme Court establishes case law through adjudication and, moreover, the plenum of the Supreme Court takes decisions on certain policy issues in order to ensure uniform application of the law by other courts. The GET was, *inter alia,* informed of such a decision concerning court practice of corruption cases (Resolution No.13/1998) and a decision on judicial practices in cases of bribery (Decision No. 5/2002). The Supreme Court is divided into four chambers (civil, criminal commercial and administrative). There are 95 judges appointed to the Supreme Court.

Independence of the judiciary

61. The Constitution states that justice in Ukraine is administered exclusively by the Courts (Article 125). The independence of judges is guaranteed by the Constitution and legislation, and influencing judges in any matter is prohibited (article 126). In the administration of justice, judges

are subject only to the law (Article 129). Moreover the principle of judicial self-regulation with respect to the internal management of the courts is established in the Constitution (Article 130).

62. The *High Council of Justice* is in charge of matters relating to the selection and removal as well as the disciplining of judges. This constitutional body comprises 20 members, three representatives selected by each of the Parliament, the President of Ukraine, the Congress of Judges, the Congress of Advocates and the Congress of Higher Legal Educational Establishments and two members appointed by the Conference of the Procuracy. The President of the Supreme Court and the Prosecutor General are members *ex officio*.

63. There are 13 *Qualification Commissions* which administer judicial qualification examinations and hear disciplinary proceedings against judges.

64. The *State Judicial administration* is the executive branch agency of the courts, charged with providing organisational support, material, technical, human resources and logistical support. The administration has its headquarters in Kyiv and local offices in the 27 regions. This administration took over most of the functions that earlier were entrusted to the Ministry of Justice.

Selection of judges

65. A citizen of Ukraine at the age of 25 (30 for appeal court, 35 for Supreme Court) or more with higher legal education and work experience in the field of law for at least three years (five years for appeal court, 10 years for the Supreme Court) and resident in Ukraine for the past 10 years may apply to become a judge. Applications are dealt with by a Qualification Commission, which runs the exams. Successful candidates are either recommended for appointment to the High Council of Justice (or put on a reserve list) which, following its own review of candidates, proposes applicants to the President for appointment. Newly recruited judges hold office on probation for five years, after which they may be appointed for life by Parliament.

Training

66. Judicial candidates or judges are not required to undergo any special training. There are, however, law schools that offer a one-year Master's in Law for future judges. Moreover, the Academy of Judges, which is an educational institution created in 2002 pursuant to the law on Judicial System, provides training courses every year to judges on probation. Moreover, there are several seminars and conferences available for judges every year, organised by state institutions, NGO's and, in particular, international organisations. The GET was not made aware of any training provided for judges concerning corruption related matters.

Judicial reforms

67. It should be noted that the judiciary has been subject to reforms over several years and that there is ongoing discussion on the need to further reform the judiciary. The GET was made aware of a Concept Paper "For the improvement of the Judiciary in order to ensure fair trials in Ukraine in line with European standards" approved by the National Commission for Strengthening Democracy and the Rule of Law in March 2006 and subsequently approved by the President. This Concept deals with questions of the efficiency and independence of the judiciary, selection and status of judges and suggests extensive changes to the judiciary in the future.

68. It should also be noted that draft legislation concerning the judiciary, selection, status and training of judges was underway at the time of the adoption of this report; the draft law on the Judiciary

and the draft law on the Status of Judges were subject to legal expertise by the Council of Europe. These drafts were pending before Parliament at the time of the adoption of this report.

Criminal investigation and adjudication of corruption

69. Criminal proceedings in Ukraine are based on both the inquisitorial and adversarial justice principles. While preliminary investigations generally follow the inquisitorial scheme, the adversarial principle dominates in the court trial. Criminal proceedings are primarily governed by the Criminal Code (CC), the Criminal Procedure Code (CPC) and the Law on the Judiciary.

70. Article 94 of the CPC provides the following grounds for the initiation of criminal proceedings:

1) statements or notices of enterprises, institutions, organisations, officials, state officials, representatives of the general public or individual citizens;
2) notices of representatives of the state power, the general public or individual citizens, who have detained a suspect at the scene of a crime ;
3) surrender;
4) notices published in the press;
5) the direct detection of offence indications by an investigation agency, an investigator, a prosecutor or court.

71. The initiation of criminal proceedings is based on the principle of *mandatory prosecution*; Article 4 of the CPC provides for a *duty* of a prosecutor, an investigator or an investigation agency within the scope of their competence to initiate criminal proceedings in each event of the detection of offence indications, to take all measures envisaged by law aimed at investigating a suspected offence. On the other hand, under Article 99 of the CPC, a prosecutor, an investigator, an investigation agency or a judge, lacking grounds for the initiation of criminal proceedings, may not initiate criminal proceedings, but must notify thereof the persons or institutions concerned.

72. The pre-trial investigation ends with a decision to close the case or to send the case to court. Having drawn up the indictment, the investigator sends the case to the prosecutor. After approval of the indictment or having compiled a new indictment, the prosecutor or the deputy prosecutor sends the case to the competent court and notifies the court whether s/he considers it necessary to support the public prosecution.

73. Under the Constitution of Ukraine and the law of Ukraine "On Public Prosecution Office", the Procuracy is vested with the duty to *supervise* the agencies that carry out the pre-trial investigation. In addition, the prosecutor supervises the legality of the initiation of criminal proceedings under Article 100 of the CPC. Furthermore, the legislation provides for the possibility of appealing against actions and decisions of pre-trial investigation agencies and the prosecutor. For instance, actions and resolutions of investigation agencies may be disputed with the prosecutor or court under Article 110 of the CPC. Article 99 of the CPC provides for the possibility of disputing a resolution of the investigator and the investigation agency to deny the initiation of criminal proceedings with the appropriate prosecutor or, if such a resolution has been issued by the prosecutor, with the superior prosecutor or court. Actions of the investigator may be disputed under Article 234 of the CPC, either directly to the prosecutor, or via the investigator or before court. Article 236 of the CPC provides that actions taken by a prosecutor in the course of the performance of the pre-trial investigation or specific investigative actions, may be disputed with the superior prosecutor or before court.

74. According to Article 66 of the CC, surrender, repentance or active assistance in detecting a crime shall be considered by the court as mitigating circumstances. According to Article 369 of the CC, a person who has given a bribe shall be discharged from criminal liability if this person voluntarily reports the offence to the competent agency.

Special investigative techniques

75. According to Article 97.5 of the CPC, special investigative techniques may be applied to examine the reports and suspicions of any criminal activity. The law on Special Investigative Activity regulates the use of special investigative techniques. According to Article 5 of that law, the operational units of the Militia, the Security Service and the State Tax Police may use these measures, which comprise tapping and recording of telephone conversation, taking photographs, and making video recordings, intercepting mail, covert entry, using informers, infiltrators, controlled delivery etc (Article 8). The use of most of these techniques requires court authorisation and the techniques can only be applied in respect of serious crime, i.e. crime with a sanction of more than five years of imprisonment (Article 12 of the CC), for example, aggravated forms of abuse of authority and bribery.

Confidentiality

76. Article 121 of the CPC provides that, as a main rule, the disclosure of pre-trial investigation data is not allowed and that such disclosure can be allowed only with the permission of the investigator or the prosecutor. If necessary, the investigator shall inform ("warn") in writing witnesses, victims, civil claimants, defenders, and other participants of the pre-trial investigation about their duty not to divulge any pre-trial investigation information without permission.

77. Article 62 of the Law on Banks and Banking Activities determines the process of disclosure of banking secrecy. Banks are required to provide information related to banking secrecy with regard to natural or legal persons to a court in response to its written request or to it executing its judgment; to the prosecution bodies, to the Security Service or other law enforcement officials etc, in response to their written request. According to the provisions of Article 66 of the CPC, the person instituting an inquiry, the investigator, the prosecutor, and the court conducting a trial are entitled to order inspections, disclosure of information pertaining to banking secrecy regarding natural and legal persons. These requirements are obligatory for all citizens, enterprises, institutions and organisations. According to Article 14 of the CPC, disclosure of information pertaining to bank secrecy is only allowed upon written permission of the owner of such information or by the judgment of a court.

Protection of victims, witnesses etc in the criminal process

78. Protection of persons participating in criminal proceedings is determined by Article 52 of the CPC, which states, *inter alia*, that such persons are entitled to protection if there is real threat to their life and health, their residence or property. The following persons are entitled to safety measures: persons notifying an offence, victims of crime, suspected and accused persons, defenders and their official representatives, witnesses, experts, specialists, interpreters as well as their close relatives if need be. The police, the investigator, the prosecutor or the court having received a request or a notice of a threat to a person shall verify this request within three days, and in exceptional cases immediately take a decision to take or refuse to take safety measures. The institution in charge of implementation of safety measures decides on the scope of the measures and the ways of their implementation.

79. According to Article 52 of the CPC non-disclosure of information in respect of a person taken under protection can be ensured by limiting of mentions of his/her name in documents (statements, explanatory documents) and protocols of investigation actions and court sessions. Having taken the decision to apply safety measures, the police, the investigator, the prosecutor, the court (the judge) takes a reasoned decision to exchange the name of the person taken under protection for a pseudonym. Thus, only the pseudonym of the person is indicated in documents of the file, while the real name (and other personal data of the person taken under protection) is only indicated in the resolution about change of personal data. In addition, Article 292 of the CPC provides that in exceptional cases, the court is entitled to grant the right of non-attendance to court sessions to a witness taken under protection if there is a written acknowledgement of the evidence given by this witness beforehand. Article 85 of the CPC determines the using of audio recording in the process of pre-trial inquiry. Audio recording can be used during interrogation of the suspect, the accused, the witness and the victim, in the course of confrontation, reconstruction of situation and circumstances of the incident, and other pre-trial investigation procedures. According to Article 303 of the CPC, in order to provide protection for the witness, the court (the judge) can take a reasoned decision at its own discretion or in response to a request of the prosecutor, the lawyer or the witness himself to question the witness from other premises using technical equipment, even from premises outside the court building, and to allow the participants of the proceedings to listen to the witness's evidence, ask questions and listen to the replies. If there is a risk of identification of the witness's voice, acoustic disturbance can be applied. All of these measures can also be taken in respect of other participants of the proceedings requiring protection.

80. There is no public organisation specialised in the protection of or support to victims of crime, nor any information or statistics on victimisation.

Administrative investigation and adjudication of corruption

81. The description of the criminal procedure in respect of corruption would not be complete without a reference also to the system of administrative liability for corruption, which is governed by the Law on Combating Corruption of 1995. This system, which is not considered a disciplinary procedure, is a mechanism which largely covers all public officials and civil servants, which may lead to sanctions similar to fines and dismissal from service, and the final decision is always taken by a court. According to the said law, authorities that discover acts of corruption as defined by the law[11] shall file a protocol either to the Militia, the Security Service, the State Tax Administration or to the Public Prosecution, these authorities being the only authorities competent to deal with administrative investigations.

82. The filing of a protocol must be done within three days to one of the designated law enforcement authorities, or to the Public Prosecutor. The law enforcement body/prosecutor has then to decide on initiating a criminal process and, if not, whether to submit an administrative protocol to the

[11] **Article 1. Determination of Corruption and Corruptive Actions**
Corruption, as referred to in the present Law, means the criminal actions of persons authorized to act on behalf of the government, that are intended for use of the powers they are invested with for acquiring material values, services, privileges or other benefits.
The following actions are recognised as the corruptive ones:
(a) illegal acquisition by a person authorized to act on behalf of the government, in connection with exercising the authority, of material values, services, privileges or other benefits, including the receiving or accepting things (services) by means of their purchase at a price (or tariff) that is clearly lower than their actual values (in effect);
(b) receiving by a person authorized to act on behalf of the government, of credits or loans, or purchasing securities, immovables or other property, with making use of preferences or privileges beyond the ones determined by the legislation in effect.

court, this also must be done within three days. The GET understood that the administrative procedure was only to be used in corruption cases where the criminal law could not be justified. Officials claimed that there were clear rules for making the distinction between the two processes, however, the GET understood that the application of these rules was not uniform. The GET was informed that the administrative procedure was by far the most applied in Ukraine to deal with suspected cases of corruption and that a considerable number of the administrative protocols were rejected by the courts on the basis of incomplete investigations and a lack of sufficient proof. Some officials stated that the "protocols" were used by authorities "to demonstrate their efficiency". The GET was also told there was a risk that this procedure was used to avoid the more cumbersome criminal procedure.

b. Analysis

83. The current law enforcement system of Ukraine consists of a number of different agencies, which are - or have the authority to become - involved in the detection and investigation of corruption. This system does not only seem to be confusing as to who does what, it brings a considerable risk of duplication of efforts. However, more importantly, the present system makes it difficult to have a common policy against corruption as there appears to be very little co-ordination between the various agencies. Moreover, the legal framework dealing with corruption offences is not uniform. The GET understands the reasons for having a system of "non criminal" administrative liability for acts of corruption, in addition to the criminal law procedure for bribery. However, this system has proved to be difficult for the many authorities involved to manage. The result is a generally inefficient law enforcement reaction to corruption in Ukraine.

84. The GET was led to conclude that the present system of legal instruments and the organisation of the law enforcement authorities are so diverse that this can be misused to cover up corruption. Consequently, the GET is of the opinion that radical changes are called for if the detection, investigation and adjudication of corruption is to become more effective in the future. As already, stated in this report, many of the necessary improvements go hand in hand with general reforms towards European standards. It also has to be acknowledged that many reforms are underway and need to be supported and that the international community has an important role to play in this respect.

85. The GET shares the views expressed by most officials met that the present situation where several law enforcement agencies have particular responsibility to investigate corruption needs to be improved. At present there is a lack of overall coordination of the investigation of cases of corruption. It would be beneficial if a mechanism aimed at co-ordinating efforts in detection and investigation was introduced, which could also set the standards for investigating corruption, including specialist competence and training. Such a law enforcement mechanism would need an appropriate level of specialisation and be clearly separate from any anti-corruption body set up to implement the overall national strategy against corruption. It should be added that better coordination between law enforcement agencies would also provide a basis for measuring the effectiveness of detection, investigation and adjudication of corruption and to provide comprehensive statistics, instead of the current approach to data collection of each individual agency. **The GET recommends to strengthen the coordination between the various law enforcement authorities involved in the investigation of corruption offences and to enhance the compilation, analysis and dissemination of comprehensive statistics on all cases of corruption dealt with by the law enforcement agencies concerned, as well as information on the outcome of these cases.**

86. The GET is of the opinion that reforming the Procuracy towards European standards is important in effectively and efficiently fighting corruption. Aware of the draft law on Amending the Constitutional Provisions on the Procuracy as well as the legal opinion on the draft provided by the European Commission for Democracy through Law (Venice Commission (CDL-AD(2006)029), and information gathered during the on-site visit, the GET is very concerned that the Procuracy appears to be at risk from political influence. It is the GET's view that this Office therefore needs to be made more independent from such influence and better protected against unjustified political interferences. Moreover, the main competence of the Prosecutor General's Office should be focused on criminal prosecution, and to leading pre-trial investigations in close co-operation with the law enforcement agencies. The system of an investigation agency attached to the Procuracy appears unnecessary and could cease operation in its entirety or be incorporated into the law enforcement or the prosecution service. The GET is of the opinion that such a modernised Public Prosecutor's Office would be the natural coordination platform for the investigation of corruption offences. **The GET recommends to enhance the independence of the Procuracy from political influence and to provide it with a clearer mandate focused on the leading of pre-trial criminal investigations and prosecutions.**

87. Although, the primary law enforcement agencies engaged in the investigation of corruption (i.e. the Secret Service and the Militia) have specialised structures and specialised personnel to deal with the detection and investigation of corruption, the GET understood that this is true with regard to corruption when it is part of organised crime or threatens national security. The level of specialisation for the detection of other forms of corruption is less developed. In a situation where Ukraine appears to be heavily affected by corruption at all levels, there is a need to develop law enforcement specialisation on a broader scale. The need to train law enforcement staff and prosecutorial staff in the fight against corruption should be addressed through massive awareness campaigns and training. Such training should be included in the curriculum of all newly recruited staff as well as be part of in-service training. Moreover, specific training is called for with respect to law enforcement staff specialised in investigating corruption offences. **The GET recommends that the law enforcement staff and prosecutors are provided uniform training on a regular, rolling and permanent basis with regard to detecting and investigating corruption offences and to establish specialised training for those directly involved in the fight against corruption.**

88. Various pieces of information gathered by the GET indicate that public trust in the judiciary is low and that the perception of judicial corruption is widespread. Ever since the independence of Ukraine there have been reforms of the judiciary aiming at establishing the judicial power as an independent branch. Many positive results have been achieved. But despite constitutional and other protection, improper influence/interference in the judicial decision making process is widely considered one of the most serious obstacles to establishing a judiciary governed by the rule of law. The GET is of the opinion that if the courts manage to ensure fair trials, they will play a crucial role in the fight against corruption as the ultimate instance in the criminal justice process. However, justice must not only be done but must also be seen to be done. The current low level of public trust in the judiciary is therefore alarming.

89. The Constitution provides for the independence of judges and establishes that influencing judges in any manner is prohibited. Yet, it appears to be common in Ukraine that judges are subject to improper interference from governmental structures, from prosecutors, lawyers and the media. Moreover, the system within courts is extremely hierarchical and court chairmen tend to have strong influence over individual judges. The independence, impartiality and professionalism of judges are preconditions for a functional judiciary and the GET is of the opinion that particular efforts are called for with regard to the selection of judges, their training and their status.

90. The information gathered by the GET suggests that the current procedure for selecting and promoting judges is not sufficiently transparent; a situation which may create favourable conditions for abuse or the suspicion of abuse. Information on vacant posts needs to be announced publicly and the nomination of candidates needs to be based on competitive grounds. The independence of the High Council of Justice, which is responsible for the nomination of judges, must be provided for through its selection of members. At present only four of the 20 members are judges. Moreover, the GET understands that newly recruited judges have to undergo a probationary period. It finds that five years of probation is excessive and that this system may be used to exert undue pressure on individual judges. Finally, the GET cannot disregard the fact that judges in Ukraine are not well remunerated and work in poor conditions. It goes without saying that the status of judges is linked to this. **The GET recommends that the independence of the judiciary is further enhanced and that the transparency of the judicial recruitment process is increased; that the independence of the High Council of Justice *vis-à-vis* the executive and legislative powers is strengthened and that it be composed of a higher proportion of judges; and that improvements to the material conditions of judges, including fair remuneration, necessary to provide for their independence and compatible with their level of responsibility, are considered.**

91. Moreover, the GET heard repeatedly that there was a need to improve the professionalism of judges. In this respect the GET noted that at present there is no obligation for newly recruited judges to undergo any special training. The GET is of the opinion that obligatory training for judges should be introduced, particularly as the judiciary is subject to extensive reforms. It should, however, be highlighted that judges' training should be carried out with full acknowledgement of, and respect for their independence from the executive branch. The establishment of the Justice Academy in 2002, was an important step, however, this institution appears not to be fully operational yet. **The GET recommends to further develop the operation of the Justice Academy and that a training curriculum for judges, comprising theoretical as well as practical modules, including ethics and topics relevant for dealing with corruption issues, be introduced shortly after appointment as well as part of judges' ongoing career development.**

92. The GET was concerned about the two parallel procedures - criminal and administrative – for the handing of cases of corruption and has expressed its opinion in this respect under chapter I, Overview of Anti-corruption Policy in Ukraine (paragraph 34)

III. <u>EXTENT AND SCOPE OF IMMUNITIES</u>

a. Description of the situation

93. According to the Constitution, the following categories of high-ranking officials benefit from immunity in criminal proceedings:

- the President of Ukraine (Article 106);
- Members of Parliament (Article 80);
- Judges (Article 126).

94. <u>The President of Ukraine</u> enjoys the right of immunity during the term of office. According to the official interpretation of this provision made by the Constitutional Court of Ukraine in its decision 19/2003 of 10 December 2003, this should be understood as meaning the President cannot be liable to criminal proceedings during his term of office. The President may be removed from office

by Parliament by impeachment for reasons of state treason or other crimes. Such an accusation requires a two–thirds' Parliamentary majority and a decision to remove the President from office requires a three-quarters' majority.

95. Members of Parliament (Verkhovna Rada) (but not candidates for election) are guaranteed parliamentary immunity by Article 80 of the Constitution; they are not legally liable for the results of voting or for statements made in Parliament, with the exception of insult or defamation. Members of Parliament shall not be held criminally liable, detained or arrested without the consent of Parliament. According to Article 27 of the Law of Ukraine on the Status of People's Deputy, the search or detention of an MP or the inspection of his/her personal belongings and private premises or office, the interception of private correspondence, telephone conversations, electronic and other correspondence and the taking of any other measures restricting his rights and freedom is only possible with the consent of Parliament to criminal prosecution, and only if it is impossible to obtain the information by other methods. However, these restrictions do not, in principle, prevent the initiation of an investigation.

96. Judges (at all levels) also enjoy immunity from criminal prosecution and a judge cannot be detained or arrested without the consent of Parliament (Constitution, Article 126). According to Article 13 of the Law on the Status of Judges, a judge shall not be detained on suspicion of a crime or be compulsorily brought to any state institution for an administrative offence. A judge, suspected of a crime or an administrative offence, shall be released as soon as his identity is established. Intrusion into private premises or the office of a judge, conducting an investigation, search or seizure, telephone tapping, the examination and seizure of his correspondence, belongings and documents are only possible by a reasoned decision of a court or a judge.

97. The procedure for lifting the immunity of a Member of Parliament or a judge is established by the Regulations of Parliament, as approved by its Decree of 16 March 2006 (No. 3547). A request for lifting the immunity of an MP must be submitted and supported by the Prosecutor General, whereas a request concerning a judge must be supported and introduced by the President of the Supreme Court. It should be noted that each measure, such as seizure, arrest, prosecution etc, requires a separate request (article 213). The above Regulations of Parliament also provide some guidelines concerning the legality and grounds for granting the prosecutor's request in the parliamentary decision making process (article 215).

98. The person subject to the request will normally be asked to submit a written explanation within five days to the Parliamentary committee dealing with the matter (214). The Committee shall urgently deal with the matter, within no more than 20 days. The Committee holds a hearing at which the person subject to the request as well as the Prosecutor General or the President of the Supreme Court are present, depending on whether it concerns an MP or a judge. The Committee may also ask for additional information, proof etc. At this stage the Head of Parliament may return the matter to the requesting authority, with a motivated conclusion by the Committee.

99. In case the lifting of immunity is considered by the Committee the request is submitted to the plenary meeting of Parliament for a presentation of the Committee's position and debate, within seven days. The decision to lift the immunities is taken by simple majority during an open name voting procedure.

100. A criminal case against an MP follows the ordinary rules on court jurisdiction. Criminal proceedings in respect of judges start in one of the courts of appeal as decided by the President of the Supreme Court.

101. The GET was informed that, since 1999, there had been three requests for the lifting of parliamentary immunity, two of which were granted and one rejected; these cases concerned embezzlement. The GET was also informed that in respect of judges, immunity had been lifted in three cases in 2006 and in one case during the first two months of 2007.

b. Analysis

102. The GET was pleased to learn that immunities from investigation, prosecution and adjudication in Ukraine are provided only for a limited range of categories of officials. Having said that, the GET is of the opinion that a system of immunity should not go beyond what is absolutely necessary in a democracy as there is always a risk that officials may use the protection for inappropriate reasons.

103. Having a closer look at the immunities provided, the GET noted with concern that they are "absolute" in their character with regard to all officials concerned. There is no exception in respect of situations where officials are caught in the act of committing a crime ("*flagrante delicto*""). In particular with regard to serious crime, including corruption, this provides officials with an unnecessarily high level of protection. **The GET recommends to consider introducing measures to ensure the securing of evidence in situations where persons enjoying immunity are caught in the act of committing a serious crime, including corruption**.

104. The procedure for lifting immunity is regulated in some detail, however, the lifting of immunity may in reality be a lengthy procedure. In fact, the procedure, as described by the Ukrainian authorities, may well take more than a month, and even longer, as a request must be submitted for each and every measure requested, for example, search, detention, prosecution etc, in the same case. Some criteria in the form of guidelines have been established in order to provide for reasoned decisions. **The GET recommends to consider reviewing the system of immunities in such a way as to provide for speedier decisions on the lifting of immunities.**

105. The GET does not question the need for judges to enjoy such far-reaching immunity, however, it is of the opinion that the procedure for lifting their immunity appears unnecessarily cumbersome and complicated.

IV. PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

106. Property confiscation (forfeiture) in the Ukrainian legal system is a supplementary sanction. Article 59 of the CC provides that confiscation of property as a punishment shall be imposed for grave and particularly grave crimes and shall only be applied in cases specifically provided for in the CC. For example, with regard to passive bribery (CC, Article 368), confiscation of property is possible when the bribe corresponds to "large amounts" (exceeding two hundred non-taxable minimum income amounts). This is the only corruption-related crime where confiscation as a sanction is available. The sanction is not linked to the proceeds of crime; it is a sanction which can be applied in respect of any property of the offender (except certain types of belongings necessary for the offender or persons in his/her care).

107. Confiscation of instrumentalities ("real evidence") is possible according to Articles 78 and 81 of the CPC. This type of confiscation, which is relating to the gathering of evidence, is mandatory.

108. Confiscation of the proceeds from crime is according to the Ukrainian authorities also possible under Article 81.4 of the CPC ("Settlement of the question of real evidence"), which reads: "money, values and other goods from crime are being passed as state profit".

109. Value confiscation is not possible and the law does not make a distinction between primary and secondary proceeds from crime.

110. Confiscation requires a criminal conviction and is not possible in *in rem* situations.

111. In general it is not possible to confiscate property from a third person who has acquired the property in good faith.

112. The GET received no statistics about the use of confiscation in any form.

Interim measures

113. According to Articles 125 and 126, CPC, the investigator of a case is obliged to take the necessary steps in order to provide for interim measures. This means that the investigator requests before the court through a resolution that certain property be seized or put under arrest in order to secure a future confiscation. The interim measures described apply to the general confiscation of property as a sanction.

114. With regard to interim measures, Article 80 of the CPC provides that material evidence is retained until a final judgment has acquired legal force. The investigator or the prosecutor takes the decision on seizure in respect of any property, except with regard to bank accounts, where the provisional measure is decided by a court.

115. Currently, there are some rules with regard to the management of seized property in criminal cases; Articles 79-81 of the CPC provides that perishable material proofs ("real evidence") and those that cannot be handed over to the owner, should be handed over to the proper authorities for realisation.

116. The GET was informed that the total value of seized property in cases of corruption was 13.602.000 UAH (≈2,000,000 EUR) in 2005 and 6 204 000 UAH (≈885,000 EUR) in 2006.

Mutual legal assistance

117. As a general rule, mutual assistance is provided subject to the availability of an international treaty. However, the lack of an international mutual assistance treaty does not exclude assistance. However, in the absence of mutual legal agreements, requests for legal assistance are provided on the basis of the reciprocity principle via diplomatic channels.

118. Ukraine is party to several multilateral and bilateral agreements concerning mutual legal assistance in criminal matters. It is a contracting party to, *inter alia*, the European Convention on Mutual Assistance in Criminal Matters (ETS 030), to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS198) and to the European Convention on the International Validity of Criminal Judgments (ETS 070). Ukraine has not finalised the ratification process in respect of the Criminal Law Convention on Corruption (ETS 173).

119. Ukraine is a party to the 1993 (CIS) Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, dealing with search seizure etc. Moreover, a large number of bilateral agreements in the field of judicial co-operation have been concluded with other countries, including, in particular, neighbouring countries.

120. Mutual assistance requests by Ukraine are prepared by the competent Ukrainian bodies and transmitted to the concerned states via the Ministry of Justice and the Office of the Prosecutor General, which both act as the Central Authority (Ministry of Justice in cases at court level and the Prosecutor General in cases at pre-trial stage). When Ukraine is the requested State concerning confiscation/interim measures, the Prosecutor General's Office would act as Central Authority to assess the eligibility of the request in the light of the relevant international agreements to which the requesting State and Ukraine are party and submit such a request to the relevant law enforcement agency. The GET was made aware that the Ukrainian authorities were in the process of drafting a new CPC including regulations on mutual legal assistance.

121. No statistics are maintained with regard to requests for legal assistance in cases of corruption.

Money Laundering

122. As mentioned above, money laundering is established as a criminal offence in the CC, Article 209 ("legalisation of proceeds from crime"). All forms of bribery criminalised in Ukraine are predicate offences to money laundering. It should, however, be noted that trading in influence is not criminalised.

123. In 2001, Ukraine lagged behind the international community in terms of implementing effective steps to fight money laundering and was placed by the FATF on the list of non-cooperating states. Following strong international pressure, anti-money laundering legislation entered into force in 2003 and a financial intelligence unit (FIU) was established. Ukraine was taken off the "blacklist" and became a member of the Egmont Group in 2004. Ukraine participates in co-operation with the Council of Europe/European Commission to improve the anti-money laundering system (MOLI-UA-2) and is a member of the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL).

124. The State Committee for Financial Monitoring (SCFM) provides the functions of a financial intelligence unit (FIU). It is an independent body working under the auspices of the Cabinet of Ministers. It has a staff of more than 330 persons divided between the headquarters and the 25 regional offices. The GET was informed that this body has built a functional cooperation with the actors in the system: the National Bank, the Ministry of the Interior (Militia), the Security Service, the State Tax Administration, the Procuracy etc as well as with FIUs in other countries. The actions of the SCFM are coordinated by the Interagency Working Group, which is a formal body established by the Cabinet of Ministers, chaired by the Head of the SCFM. A Single Information System has been established as an on-line data base to which numerous agencies are connected. Parts of the 3rd EU anti-money laundering directive have been incorporated into draft legislation. The GET was informed that the anti-money laundering system, *inter alia*, lacks a modern regime of seizure and confiscation of criminal assets and a system for asset management.

125. There were no statistics available on the number of suspicious transaction reports (STRs) where corruption offences were the predicate.

b. Analysis

126. The concept of confiscation in Ukraine stems from the former Soviet system where confiscation of property was used as a general punishment in addition to other sanctions. This type of confiscation is aimed at depriving offenders of their belongings whether these are linked to the crime or not.

127. It is possible to seize and to confiscate the instrumentalities of a crime in Ukraine. Even if such a seizure and subsequent confiscation is part of the gathering of evidence, it appears to be a measure that could be sufficiently efficient, if applied. However the GET received no statistics on how often this measure is applied in reality.

128. The possibility to use seizure or confiscation as foreseen in the Twenty Guiding Principles for the Fight against Corruption or in the Criminal Law Convention on Corruption is based on the idea that confiscation of the proceeds of the crime is an efficient measure to combat any crime. Having regard to the fact that undue advantages in corruption offences are often of some kind of material nature, it is of crucial importance that the confiscation of these particular proceeds is provided for.

129. In Ukraine, it appears that confiscation of the proceeds of a crime in a strict sense is not provided for under the criminal legislation. This fact was also highlighted when discussing the efficiency of the anti-money laundering system. Consequently, there is neither a possibility to order the confiscation or seizure of the value of proceeds of crime, nor any regulations on confiscation/seizure of proceeds held by a third person. Even if it would be possible to apply the existing rules on confiscation in particular situations in order to confiscate the proceeds from a crime, the GET was of the opinion that the legal framework for confiscation and seizure needs to be modernised in a holistic way in order to comply with European standards. Moreover, it appears not to be possible to order confiscation when there is no conviction (*in rem*). **The GET recommends to introduce regulations with respect to confiscation and seizure of proceeds from crime which would make it possible to apply measures with regard to direct as well as indirect (converted) proceeds, the value of the proceeds and in respect of proceeds held by a third party in conformity with the Criminal Law Convention on Corruption (ETS 173).**

130. The GET noted furthermore that some rules were available for the management of seized property, but was told that in practice there were no effective means available to deal with property, the value of which is diminishing rapidly, in order to preserve the value. Consequently, the value of the property is not safeguarded in a sufficient way during the pre-trial and trial process which may be to the detriment of the State or the owner. **The GET recommends to introduce regulations on the management of seized property, which can be applied in a flexible way in order to sufficiently preserve the value of such property.**

131. The anti-money laundering system in Ukraine appears to be developing in a positive direction and information gathered by the GET indicates that the FIU of Ukraine has - in a fairly short period of time - established efficient cooperation with the relevant authorities. The GET also welcomes the fact that Ukraine is considering implementing the 3rd EU anti-money laundering directive. The GET is convinced that increased training for those involved in investigations of corruption cases will further improve the efficiency of the anti-money laundering system and the GET has recommended that law enforcement agencies undertake such professional training (cf above). It would like to add that entities obliged to submit STRs to the State Committee for Financial Monitoring should also be knowledgeable with respect to the detection of corruption.

The GET observes that the State Committee for Financial Monitoring (SCFM) should coordinate training on typologies of corruption and detection for entities which are obliged to report suspicious transactions (STR) to the SCFM, using suitable agencies involved in the work of the Inter Agency Working Group, which is entrusted with the coordination of actions of the SCFM .

V. PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

132. The Constitution of Ukraine was adopted in 1996 and amended in 2004 by law 2222-IV, which entered into force on 1 January 2006. The present Constitution provides for a State based on a parliamentary-presidential regime. The Constitution determines the principles of the execution of state powers and its division into legislative, executive and judicial powers (Article 6). Moreover, local self-government is guaranteed in the Constitution (Article 7).

133. Bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds within the limits of authority of, and in the manner envisaged by, the Constitution and the laws of Ukraine (Article 19).

134. The system of administrative and territorial structure of Ukraine is composed of the central government administration and the 27 regions (oblasts), districts, cities, city districts, settlements and villages. The cities of Kyiv and Sevastopol have regional status determined by law (Article 133). The Public administration is divided between the central and local administrations, but there is neither a constitutional nor a legal definition of the concept of public administration. While there is no general law on administrative procedures at the central level (only a draft law), there is a Law on Local Governments. This law makes a distinction between self governing and delegated competences (i.e. state powers).

135. Public functions in Ukraine are characterised as civil service or public service. Public service covers the positions of officials governed by special regulation, such as judges, prosecutors and military. The civil service covers the more general positions in state service. The civil service is regulated by the Law on Civil Service of 1993 (LCS). The scope of the LCS covers to some extent the service of local authority staff insofar as this does not conflict with the Law on the Service in Local Self-government. The LCS deals with the status of the civil service and servants, categorisation of positions, responsibilities and rights, ethics of the service, disciplinary measures etc. The State Civil Service Administration is a centralised coordinating state body of the Civil Service under the Cabinet of Ministers. There are some 260 000 civil servants in Ukraine, two thirds of them employed in the central administration and one third in local authorities.

136. Civil servants do not represent a majority of public officials[12] in Ukraine. Teachers, health personnel and office personnel in the public sector fall outside the scope of the LCS. These categories are instead covered by the Labour Code (1971).

137. The civil service has been the subject of reform since 2004. A draft law on the Civil Service was presented to the GET.

[12] The notion "public officials" is used in this report to cover all categories of staff of public administration.

Anti-Corruption Policy

138. There is no single anti-corruption policy for public administration, however, the Constitution and a large number of laws provide for the prevention of corruption in various branches of government. The Act on Combating Corruption (1995) is aimed at determining legal and institutional arrangements to prevent corruption in public administration as well as for the detection, investigation and adjudication of such. The law contains a definition of corruption (which is much wider than the criminal law provisions) and covers practically all public officials, including civil servants. The law has a section on corruption prevention, which states clearly what public officials cannot do; and in general terms, how to avoid situations of conflicts of interest and to ensure impartiality. The main part of the law deals with the control of, and liability for, corruption offences.

139. The GET was also provided with a draft law on the Principles of Prevention and Counteraction of Corruption, which is meant to replace the 1995 Law. This draft text widens the scope of public officials covered (for example to include the President of Ukraine), and contains basic principles for corruption prevention, restrictions with regard to gifts, guidelines to establish codes of conduct and relations with the public etc. The part on administrative liability is maintained.

140. With the adoption of Decree 742/2006 "On the Way to Integrity", the President of Ukraine has summarised a wide range of shortcomings of the public administration as well as a list of improvements to be implemented in state authorities and in the bodies of local self-government. The implementation of the measures suggested in the Concept Paper were, at the time of the visit of the GET, under consideration by the Prime Minister's Office, the aim being to establish a Plan of Action, including concrete steps to be taken, identifying the timetable and the implementing authorities.

Transparency

141. Access to official information is regulated in the Constitution, Article 34, which states that everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his/her choice. However, these rights may be restricted by law in the interest of national security, territorial indivisibility or public order, with the purpose of preventing disturbances or crime, protection of health, reputation of others, preventing publication of information received confidentially, or supporting the authority and impartiality of the justice system.

142. The basic legal framework for access to official information is set out in the Law on Information (LOI). According to Article 2 of the LOI the objective of the law is to establish the general legal principles for receiving, using, disseminating and storing information, affirming the right of the person to information in all spheres of public and political life.

143. Article 9 of the LOI provides that all citizens, legal persons and state authorities of Ukraine have the right to information, envisaging the possibility of free receipt, use, dissemination and storage of data. Article 10 of the same law establishes that the right to information shall be secured by public authorities at central and local levels through information services and special mechanisms for information as well as control of, and liability for, those who do not follow the law.

144. The LOI provides for a classification of various types of information, such as statistical information, mass information, information provided by central and local government authorities

(a variety of information reaching from legislation to public speeches), information about persons, reference information, primary and secondary information etc.

145. Article 29 of the LOI envisages that open information is provided through the publication of official editions, dissemination through media or through the provision directly to the interested persons. Article 30 deals with restricted access information, categorised as confidential (private) or secret. Private information is information held by physical or legal persons, which is disseminated at their discretion. Secret information shall be understood as information held by the state, the disclosure of which will damage persons, society or the state. Separate legislation, the law on State Secrets, determines what information should be secret and furthermore classifies information as “secret”, “top secret” and “extremely secret”.

146. According to Article 22 of the law on State Secrets, access to state secrets may be granted to legally capable citizens who are 18 years old or more, who need such access by virtue of their service, productive, scientific or research work or studies, with an order or a written instruction of a head of a state authority, a local self-administration body, an enterprise, an institution or an organisation, where the citizen in question works, serves or studies. Article 23 stipulates that access to state secrets cannot be granted to a citizen who does not have a justified need for the information, foreigners, citizens who refuse to make a written undertaking to maintain secrecy, citizens who have been convicted of grave offences, mentally disturbed persons etc. The compliance of the law on State Secrets is monitored by the Security Service.

147. Requests for access to official documents/information shall always be submitted in writing, including full name, address and which document/information is requested. (Article 32 of the LOI). Such requests shall be dealt with within 10 days (Article 33) and the access to documents, if granted, provided for within a month. A refused request can be appealed before a higher authority in the administration and, ultimately, before court.

148. The main requirements of the bodies of the executive of holding public consultations are determined by the “procedure of consultations with the community on the questions of forming and realization of the state politics”, which is adopted by the Resolution of the Cabinet of Ministers (No 1378 of 15 October 2004). Consultations with the community are held on questions dealing with social and economic development of the State and vital other interests of society. The consultations are obligatory in terms of drafting statutory legal acts, which refer to citizens' rights, liberties and legal interests, drafts of state and regional programmes of economic, social, cultural development and decisions, reports on the State budget on expenditure of the budget, information about work of the Cabinet of Ministers, central and local bodies of executive power.

149. The organisation of consultations with the community is normally directly provided by the body of executive power that proposes new legislation. For the coordination of measures connected with holding of consultations with the community and with the monitoring of the public opinion, consultative-advisory organs, public councils, may be attached to the bodies of executive power. Representatives of public organisations, trade union organisations and other citizens' associations, bodies of local government and mass media should be members of these public councils. The consultations with the community are to be held in the form of public discussions (direct form) and studying of public opinion (mediate form). The public discussions may consist of conferences, seminars, forums, public hearings, round-table discussions, meetings with the community, public receptions, TV and radio debates, internet conferences, telephone hot lines, on-line communication in other forms etc. Every year bodies of the executive power make an approximate plan for the consultations in accordance with this procedure, which is approved before the beginning of the year and disseminated in the media, on web-sites etc. Civil society

representatives may suggest public consultations. The GET was also informed that, to a large extent, state authorities such as ministries and agencies have established their own Internet sites, through which the general public may directly access a variety of information.

Challenging administrative decisions

150. The GET was told that there is no common legal basis for the actions of the various administrative institutions when exercising their powers. The hierarchy of norms is not always clear and there are often no standardised procedures to be followed by the public authorities. The GET could not find out to what extent decisions etc of administrative bodies should be challenged through appeal to the same body, to the subordinate body or not at all within the administration. The GET was informed that a draft Code of Administrative Procedures was pending before Parliament aiming at, *inter alia,* regulating the issuing of administrative acts, to avoid discretionary powers, arbitrariness and possibilities of corruption. The draft law also provides for internal review of decisions and for appeal to higher administrative authorities.

151. The Constitution provides that everyone is guaranteed the right to challenge in court the decisions, actions or omissions of bodies of state power, bodies of local self-government, officials and officers (Article 55). More particularly, decisions, etc of the public administration can be challenged by the party concerned through an administrative appeal. Such a procedure is regulated by the Code of Administrative Procedure (2005). At the time of the visit of the GET a system of administrative courts had been established, but had not become fully operational. The first instance was provided by general courts and the second instance, as a temporary measure, by the general appeal courts. The High Administrative Court had become operational to some extent in 2005. The GET understood that the Supreme Court was the highest instance for administrative appeals. The GET was informed that there was a pressing need to implement a fully fledged court system – including specialised judges - for handling administrative justice.

Control mechanisms

Parliamentary Commissioner for Human Rights (Ombudsman)

152. The Constitution, Article 55 states that everyone has the right to appeal for the protection of his or her rights to the Authorised Human Rights Representative of Parliament (The Commissioner for Human Rights). This institution, regulated by the Law on the Authorised Human Rights Representative of the Verkhovna Rada (Parliament), exercises parliamentary control over the observance of constitutional human rights and freedoms (Article 101). The Commissioner is appointed by Parliament, following proposals by the Chairman of Parliament or proposals supported by no less than one forth of the MPs. The mandate of the Commissioner is not linked to that of Parliament. The Commissioner has the right to initiate cases at the Constitutional Court on the constitutionality of legal acts. The Commissioner used this right in 2004 when she lodged an appeal about citizens' electoral rights in relation to amendments to the Law on the Election of the President, which led to the annulment by the Constitutional Court of several provisions of the law as being unconstitutional and paved the way for the so called "Orange Revolution".

153. The Commissioner has a broad jurisdiction that extends to all areas and bodies of state authority, including courts, as well as local self-government bodies and their officials. The Commissioner exercises his/her functions on the basis of information from complaints by individuals, requests from Parliamentarians and at his/her own initiative. Considering a complaint/request, the Commissioner explains what measures the applicant shall take after which the Commissioner submits the complaint/request, as appropriate, to the body competent to consider the case

(normally the authority complained about) The Commissioner monitors the consideration of the complaint/request by the competent body.

154. The Commissioner reports annually to Parliament about his/her observations and interventions. Should the need arise, the Commissioner shall provide Parliament with special reports. Parliament may issue resolutions based on these reports. The Representatives of the Commissioner explained to the GET that the Commissioner received some 100 000 complaints in 2006 from individuals. Although the Commissioner is not dealing with corruption offences as such, many of the complaints were about situations where some form of corruption was alleged. Several of the complaints are about the courts and the process of justice (fair trials and the professionalism of judges). There are frequently complaints about the administration in local authorities, corruption in relation to a variety of issues, such as land registry matters, privatisation, medical assistance, adoption of children, education etc. Moreover, the GET was told that many complaints concern local authorities, which lack transparency and public monitoring. The GET was furthermore informed that the level of corruption in Ukraine seems to be increasing, that law enforcement appears to be more active in this area but that the measures taken are not enough to sufficiently address the problem. It was, *inter alia,* mentioned that bribes to traffic police are very common in Ukraine but that often law enforcement authorities did not do enough to establish any liability for the corruption committed by the officers.

Citizens' appeal

155. It is possible for citizens to trigger a law enforcement investigation against public officials who are suspected of illegal activities, in accordance with the law on Citizens' Appeal (1999).

External Audit: The Accounting Chamber

156. The Accounting Chamber is the supreme external audit body of Ukraine. It is a controlling body, established by Parliament, to which it is subordinate and responsible. The Constitution provides that the Accounting Chamber shall execute control over revenues and expenditures of the State Budget of Ukraine on behalf of Parliament. (Article 98). The Accounting Chamber shall execute control on the grounds of legality, planning, objectivity, independence and transparency.

157. The Accounting Chamber was established in 1996 under the Act on the Accounting Chamber, but has only been carrying out full audits since 2004 i.e. administrative, financial and performance audits. Any public institution that receives state funding falls under its purview. This means that the Chamber also audits local administrations with regard to the funds they receive from the State budget (Otherwise, local authorities are audited by "the KRU", see below). Every state institution should be audited once within a two year period.

158. The tasks of the Accounting Chamber, according to the law are to organise and execute external control over timely execution of the expenditure of the State Budget of Ukraine; the spending of national budget funds, the amounts, the structure and the allocation; to exercise control over internal and external national debt; to judge on the appropriateness and efficiency of the expenditure of public monies; to exercise control over the financing of national programmes, and the legality of lending money and rendering economic assistance, and to exercise control over the legality and timeliness of the State Budget and over budget flows at the National Bank of Ukraine and other authorised banks.

159. The Accounting Chamber has a staff of more than 400, of which 260 are inspectors. It has its headquarters in Kyiv and regional offices. The Chamber is led by a Chairperson, who is elected

by Parliament for seven years (one re-election is possible), and who is assisted by a First Deputy, a Deputy, a Secretary and ten Chief Inspectors. These officials form the collegial decision making body of the Chamber. During the period of 1997-2005, 4188 entities were audited. During this period the illegal use of funds equivalent to 25.2 billion UAH (≈3.7 billion EUR) was discovered and the ineffective use of 15.7 billion UAH (≈2.2 billion EUR) was identified. Article 26 of the law on the Auditing Chamber provides that in cases of detected administrative or criminal offences, the Accounting Chamber shall submit relevant materials to law-enforcement bodies. The Chamber has submitted more than 100 audit files to the Procuracy since its inception and 33 of these were submitted during 2005 and the first half of 2006.

160. There is no particular expertise on corruption within the Chamber and corruption is not dealt with as a separate matter. Nevertheless, the Chamber comes across suspicious conduct and potential cases of corruption from time to time during its audits. The Audit Chamber works closely with the law enforcement agencies as well as with the Procuracy and has established a memorandum of understanding with the Ministry of the Interior (Militia).

161. The audit reports of the Accounting Chamber are made public as soon as they are adopted by the Chamber.

162. The Accounting Chamber is a member of the INTOSAI since 1998 and EUROSAI since 1999.

Internal financial control: Ministry of Finance

163. The Ministry of Finance is responsible for internal state financial control in Ukraine. At present this consists of a centralised *ex post* control, carried out by the State Treasury and the State Control and Revision Authority (KRU), the latter directed by the Cabinet of Ministers through the Ministry of Finance. In addition, each ministry has the power to carry out internal audits within its field of competence. There are plans to replace the present control system by a management accountability system based on modern European principles.

164. *The State Treasury* was incorporated into the Ministry of Finance in 2005 (it had previously been an independent body). It has a staff of more than 400 at its headquarters and more than 16 000 spread throughout various institutions, at central as well as local institutions. The State Treasury is in charge of budgetary execution and supervises the financial commitments and local budgets. The State Treasury, together with the Accounting Chamber and the Ministry of Finance, establishes common rules for reporting on the execution of the State budget.

165. *The State Control and Revision Office (KRU)* is - since 2000 - a central body of the Ministry of Finance, directed and coordinated by the Cabinet of Ministers. The law on the KRU defines the status and activities of this body. The KRU monitors the compliance of the budget executions during scheduled and *ad hoc* inspections at central as well as local levels. The KRU controls 92 000 entities during a cycle of three years. Approximately 20 per cent of these are *ad hoc* inspections triggered by reports from, in particular, the law enforcement authorities.

166. The KRU has a staff of 9 000, distributed among the central office and regional offices. The GET was informed that in order to meet problems of corruption in the service, the KRU has developed their own selection procedure for staff and an appraisal system. Inspectors are trained by KRU staff internally. A manual on Training is provided to the staff. The GET received the information that the inspectors of the KRU were to a large extent influenced by their superiors in their work. Moreover, the KRU had no influence over the internal audit carried out by the ministries

themselves. There is an internal control section at the Ministry of Finance to deal with complaints against staff.

Public Procurement

167. Public procurement in Ukraine is regulated mainly by the Law on Procurement of Goods, Works and Services for Public Funds. This law covers entities within state and local governments as well as public enterprises and private enterprises where the State owns a minimum of 50 per cent. Certain areas, such as energy, water and telecommunications are excluded from the scope of the law. The procurement rules apply to service contracts of at least 30 000 UAH (≈6,000 EUR) and works of at least 300 000 UAH (≈60,000 EUR).

168. The institutional framework of the public procurement system has changed with amendments to the procurement legislation which came into force in March 2006. It was explained to the GET that the main reasons for the changes were to increase the control and transparency of a system which was affected by corruption and related activities. Prior to these changes, the *Public Procurement Department (PPD*) of the Ministry of Economy was designated as the authorised central agency of the executive for the co-ordination of procurement. However, not an independent authority, it was responsible for ensuring the implementation of the state policy in procurement, i.e. the development of regulations for procurement, reporting to Cabinet of Ministers, Parliament and the Accounting Chamber, training, and international co-operation etc. The PPD was also a control body with regard to accounting and the review of complaints submitted by participants prior to the conclusion of a procurement agreement and could submit materials to law enforcement agencies when violations were observed. The PPD was also responsible for the company that publishes the Procurement Bulletin for the procurement notices. The Tender Chamber (TC) was established as a means for public participation in the formulation and implementation of state policy in public procurement (transparency, efficiency etc). This NGO with a staff of 70 was said to be funded through modest membership fees of voluntary organisations. The Chamber includes representatives of the authorised agency and one representative each from the Ministries of Finance and Justice, the Accounting Chamber, State Treasury, as well as Members of Parliament.

169. With the institutional changes of the procurement legislation, which entered into force in March 2006, the PPD was abolished as the authorised body for the co-ordination of public procurement in Ukraine and its various functions were transferred to other bodies. The Anti-monopoly Committee (AMC) has become the central authorised body with regard to procurement. Moreover, a new Special Control Commission on Public Procurement Issues has been established, operating with representatives of the Accounting Chamber, the State Control and the Revision Office and the State Treasury and three MPs. The Commission is also implicated in the decision-making process itself. Finally, in addition to its previous functions, the Tender Chamber was authorised to carry out the publications of authorised tenders, through an Internet page as well as a publication.

170. Tenderers who wish to complain about violations of the procurement procedure address their complaints to the Special Control Commission on Public Procurement Issues, which is responsible for the review procedure (in the past it was done by the PPD). A complaint must also be submitted to the Tender Chamber for its opinion before a decision is taken. The control over public procurement is essentially carried out by the State Treasury, the State Control and Revision Office (KRU) and the Accounting Chamber. The GET noted in this respect that the KRU and the State Treasury are involved in all stages of the procurement control process.

Recruitment, career and preventive measures

171. As mentioned above, there are different categories of public officials; those who are regulated by the Labour Code and special legislation and those who are covered by the law on Civil Service (LCS). There are seven categories of civil servants and these are divided into 15 ranks. The categories are related to the level of the position (cat. 1 the highest; for example, head of a central body, cat. 7 the lowest). The ranks are related to benefits such as salary and pension.

172. The LCS defines when an individual is barred from entering the civil service as follows: legally incapable persons, persons with a criminal conviction which is incompatible with the post, and anyone who would be subordinated to one or more relatives in the service applied for.

173. Recruitment of staff to positions of the public administration, which are not part of the civil service falls under the Labour Code, which provides no regulations in this respect. With regard to civil servants, the LCS contains the principle that citizens of Ukraine have the right to equal access to the civil service provided they have the appropriate education and training (Article 13). Moreover, the LCS provides that competition shall be organised for the recruitment to positions of categories three to seven and that vacancies for these categories of posts shall be published one month before the competition. Categories one and two are excluded as these posts are subject to political appointments, together with some other posts, such as personal advisors and press service heads of ministers. Moreover, the Cabinet of Ministers has stipulated that recruitment shall be carried out by the individual state bodies and agencies.

174. The GET learned that civil service positions at the entry levels are not considered very attractive, partly because of the low salaries as compared with the private sector but also as a result of poor working conditions and a perception that civil service work is not stimulating nor creative. The GET was told that as a consequence, recruiting qualified staff is generally difficult.

175. Promotions in the civil service are, according to the LCS, governed by the principles of competition.

Training

176. The LCS provides that one of the basic duties of a civil servant is to improve his/her professional qualifications (Article 10). Furthermore, Article 29 states that civil servants shall be provided conditions for training and that s/he shall study at appropriate educational institutions at least every five years during service. In 1995, the President of Ukraine established the National Academy of Public Administration (NAPA) for training civil servants at central and local levels. The head of the Academy, the Rector, is appointed by the President and reports to the President. This institution provides induction training as well as in-service training. It is also a research institution and must develop international relations and cooperation. In 1997, the Cabinet of Ministers established a training curriculum. A training programme for civil servants at central and local levels was endorsed by the President of Ukraine in a Decree in 2000 (No.1212). Specific training for civil servants on matters such as democratic values and transparency is being developed by the State Civil Service Administration. Furthermore, the GET was informed that there are regulations providing for training of civil servants in matters relating to the prevention of corruption.

177. The GET heard that in reality training was less developed than expected in legislation and regulations. Neither was it informed about any in-depth training programmes focused on the

problems relating to corruption and the fight against it, reactions to corruption etc by public officials, including civil servants.

Conflicts of interest

178. The Constitution and various laws establish limitations to avoid a conflict of interest/incompatibilities in the activities of the President of Ukraine, parliamentarians, deputies of the local governments (Articles 78 and 103 of the Constitution, Articles 6 and 7 of the Law on Status of Deputies of Local Councils, Articles 12, 50, 51, 55 and 56 of the law on Local Self-Government.).

179. Moreover, the law on Combating Corruption (1995) contains obligations for "civil servants or other persons authorised to act on behalf of the Government" to prevent situations where a conflict of interest could arise (Section II). Article 5 of the law lists what a public official cannot do on behalf of the government. The list prohibits making any favour to any person, using his/her powers to be involved in business activities related to the function or activity of the state body for which s/he is working; to refuse access to public information. It is, however, stated that these requirements do not apply to elected representatives at the local level who combine an elected position with other professional activity. Moreover, public officials have no right to grant favours to anybody with the purpose of acquiring material or other benefits, nor to interfere illegally by misusing their position with an intent to cause impediments, to act as a third party in affairs relating to the public function, or to provide illegal preferences in the course of regulatory enactments or decisions.

180. The GET was also made aware of a draft law on the Code of Integrity for Persons Authorised to Perform State Functions, which contains rules about public officials' behaviour as well as rules aimed at preventing and avoiding conflicts of interest.

181. At the time of the visit by the GET there were no rules or practices in place to limit opportunities of public officials moving between the public and the private sector ("*revolving doors*"). However, the draft law on the Code of Integrity for Persons Authorised to Perform State Functions includes rules to regulate this area.

182. There are systems of *rotation of staff* in place within the public administration. The GET was told that this is applied in respect of, for example, customs officers. The introduction of periodic rotation of public officials is provided by the Decree of the President of Ukraine No 367 of 24 April 1998 and also by the Strategy of the system's reformation of the Ukrainian public service (Decree of the President of Ukraine No 599 of 14 April 2000).

Gifts

183. The law on Combating Corruption (1995) provides that illegal acquisition in connection with exercising authority of material values, services, privileges or other benefits, including the receiving of things or services by means of their purchase at a price clearly below the actual value is considered as corruption, an administrative offence sanctioned with a fine and possibly the loss of position, as described above in this report. Such gifts or rewards shall be considered as belongings of the State (Section 1, Article 1).

184. In the draft law on the Principles of Prevention and Counteraction of Corruption (pending before Parliament), which is supposed to replace the above law on Combating Corruption, the

administrative liability provisions are maintained, however, an explicit general prohibition to accept gifts, except for specific situations as provided for in law is set out in this draft text.

185. Moreover, in the draft law on the Code of Integrity for Persons Authorised to Perform State Functions, a full section is devoted to gifts and rewards. The text includes a definition of the notion of gift, it distinguishes between official and personal gifts, direct and indirect gifts etc. It also establishes the minimum value of an individual gift as well as the collective value of gifts over a year etc. As this is a draft text, details are not provided.

Codes of conduct/ethics

186. Article 10 of the LCS states that civil servants are obliged to comply with the rules of the Constitution and legislation in order to ensure, *inter alia*, efficiency of the activities of state bodies, to execute decisions of state officials and state bodies, to secure state secrets, to improve their professional skills and to be responsible and take initiatives.

187. The LCS also establishes some ethical norms, such as that civil servants should fulfil their professional duties with due diligence, treat citizens, executives and colleagues with respect and ensure good communication and prevent action or behaviour that damage the civil service.

188. At the time of the GET's visit, there were in place some general rules of behaviour of civil servants at the State level (No 58/2000, registered in the Ministry of Justice No 783/5004 of 2000). These rules are based on principles contained in the Constitution and legislation, such as fairness, impartiality and respect of citizens and are aimed at enhancing the image of the public service and the reputation of state employees as well as to inform citizens about the kind of behaviour they should expect from state employees. Non-compliance with these rules may, according to the same rules lead to sanctions as provided for in the LCS, the Labour Code or the Act on Combating Corruption.

189. The GET was informed that special state employees, for example, prosecutors, judges, militia and customs officers have their own codes of ethics. These are, like most other codes, accompanied by disciplinary sanctions, ranging from reprimand to dismissal.

190. The GET was informed by representatives of the State Civil Service Administration that the draft law on the Code of Integrity for Persons Authorised to Perform State Functions (prepared by the Ministry of Justice) was seen as the future Code of Ethics for public officials, including civil servants. Section 2 of the draft text contains a list of "general requirements to integrity behaviour". The GET was informed that if this draft text is adopted, it should lead to the abolishment of more than 3 000 regulatory acts of various executive bodies.

Reporting corruption

191. Pursuant to Article 10 of the law on Combating Corruption, leading officers of ministries, and departments, state-owned enterprises, institutions and organisations and their structural units must take steps within their scope of authority to prevent corruption (as defined by this law). Moreover, they must immediately inform one of the law enforcement bodies specified in the law, i.e. militia, secret police, state tax administration or the Procuracy, about suspicions of corruption.

192. No other form of whistle-blowing rules is foreseen in the present regulations, except in cases of organised crime - and there is no specific regulation on the protection of those who report corruption (whistleblowers).

193. The draft law on the Code of Integrity for Persons Authorised to Perform State Functions contains the rule that public officials shall independently assess the lawfulness of a decision or an order and in case it is deemed to be unlawful, s/he shall promptly notify the superior or the body responsible for the adherence to the Code in writing. If the official receives a reply from the superior with a reasonable explanation s/he may implement the order, without liability if s/he informs the supervisory body again. On the other hand, if the official believes the decision is unlawful and there is a real threat to public and state interest, s/he should report the matter to the law enforcement authorities.

Disciplinary proceedings

194. Disciplinary measures may be applied against civil servants according to the LCS, Article 14, for not properly fulfilling their tasks, for abuse of office, infringements of civil service rules or actions discrediting the reputation of civil servants or the civil service. Moreover, Article 22 stipulates that abuse of power that causes damage to citizens or the state provides the basis for internal investigation. The LCS provides for certain punishments in respect of civil servants, such as a reprimand, refused promotion etc. However, a civil servant may also be dismissed from his position, in accordance with the rules of the Labour Code, which are applicable, according to the LCS, Article 30.

195. There are specific disciplinary proceedings and sanctions foreseen with regard to certain categories of public officials, such as militia, prosecutors and judges. Public officials who do not have special status, fall under the rules of the Labour Code.

196. The hierarchy of various liability mechanisms for corruption-type activity is that a case should be primarily dealt with as a criminal case (under the Criminal Procedure Code) and, secondly, as an administrative case or, thirdly, as a disciplinary matter. The GET understood that disciplinary proceedings do not prevent the initiation of a criminal or an administrative process for the same facts. Moreover, facts indicating disciplinary liability can be submitted for disciplinary measures by the criminal justice authorities as well as by law enforcement.

b. Analysis

197. The general perception of an inefficient, biased and opaque public administration in Ukraine, which is considerably affected by corruption and different forms of political influence, gives rise to serious concerns about the whole system in its present form. Ukraine is in the middle of a transition period towards a democratic model and many extensive changes and reforms have been carried through. Consequently, the public administration currently represents a mix of old inherited features and modern principles. The result is a patchwork of legislation and other rules, often lacking a coherent structure and open to abuse. Some reforms, such as the establishment of the Accounting Chamber, appear to be very successful, but there are other reforms which have been introduced in order to remedy unforeseen shortcomings. The GET is of the opinion that basic reforms in the future must be based on a clear underlying vision and a long term strategy and the Concept Paper “On the Way to Integrity” could, if refined into a strategy with clear objectives, serve as the basis for public service reform.

198. The fight against corruption in Ukraine exemplifies this lack of a stated overall vision. Every official met by the GET was of the opinion that corruption had become a systemic social phenomenon which represented one of the most pressing problems facing public administration and the country as a whole. Notwithstanding this, the problem has largely been addressed by

control, detection and repression. The GET has already expressed its view that Ukraine needs to focus on corruption prevention rather than detection and punishment. A long term preventative approach is even more important in respect of reforms in areas such as the public or civil service. The fight against corruption must be an integral part of the reforms, and cannot be treated as an isolated phenomenon. Moreover, there is an obvious need to inform the public at large about these reforms. **The GET recommends to establish an overall strategy with clear objectives for future reforms of the public administration in Ukraine in order to provide a common understanding for the necessity of change and to make this known to the wider public through awareness campaigns.**

199. The GET found that the public administration in Ukraine was lacking a solid and coherent legal basis. Leaving the Constitution aside, the GET noted that the current legal framework of public administration consists of many different laws; the Labour Code, for the majority of public officials, the law on the Civil Service for civil servants and particular laws for the local self governed administrations. To this must be added thousands of different decrees, resolutions and orders issued by the President, the Prime Minister, or special agencies, such as the State Civil Service Administration. In the present situation where new legislation and regulations are enacted frequently, it is difficult for the public officials concerned to know exactly which rules apply, in particular when contradictory regulations are not unusual. Moreover, the hierarchy of legal norms is not always clear. A general law governing administrative hierarchy and procedure would represent an important achievement as it would have the potential to guide public officials in their decision making as well as to provide the general public with a tool to better understand their rights. It would also contribute to a more uniform administrative process and decision making in public administration and would thus strengthen the rule of law. **The GET recommends to adopt a clear set of rules governing the administrative process and decision making as well as clear guidelines with regard to the hierarchy of different legal norms and standards governing public administration.**

200. Transparency is crucial to preventing corruption. The GET was pleased to learn that Ukraine belongs to the majority of European countries which have established particular legislation on access to official information. This is already provided for in the Constitution; in addition, the adoption of the law on Information in 2001 was an important achievement. Having said that, the GET was concerned to hear from various representatives of civil society and the media that, even though the right to access to public information is provided for in the Constitution and legislation, there is no common approach to requests and it is often difficult in practice to obtain the information requested in a timely manner or at all as a result of not very helpful officials or lengthy procedures. The GET was also told that the rules concerning the classification of secret information gave considerable discretionary powers to public officials and was concerned that this may lead to an unnecessarily conservative approach in a number of cases.

201. The GET is of the opinion that the law on Information could be improved in order to facilitate and simplify the process for obtaining official information. For example, the requirement that all requests have to be in written form is questionable. Such a requirement seems unnecessary with respect to a request for readily available documents. Moreover, the stipulated maximum time for taking a decision (10 days) as well as for submitting the information (one month) appears to be excessive. It might be helpful if the competent officials had a clear obligation to assist the wider public in tracing and submitting information. The GET is also of the opinion that the right to information, accompanied by an effective complaints mechanism (prior to the possibility to go to court), would further improve the system. There are several good examples in other GRECO member States of specialised bodies, with an appropriate level of independence, where the public has an appeal against negative decisions dealt with in a reasonable period of time. Such

bodies may also assist authorities in developing a uniform practice. **The GET recommends to enhance the public's right to access to official information; to introduce less cumbersome request procedures; to emphasise the authorities' obligation to assist the public in obtaining information within a reasonable time and to consider the introduction of an independent special (pre-court) review mechanism for decisions refusing access to official information.**

202. Administrative decisions are normally subject to appeal to a court of law. The GET was aware that an administrative justice system had been established in Ukraine and that at the time of the visit it had not become fully operational. The High Administrative Court has been operational since 2005. The first instance general courts were given the task to adjudicate administrative cases. However, administrative appeal courts have not been established, contrary to what is provided in law and the general appeal courts have temporarily this task. As significant numbers of corruption cases in the present system are dealt with as administrative matters, it appears important that administrative appeals are dealt with appropriately. **The GET therefore recommends to implement a functional administrative justice system as provided for in law.**

203. The GET was rather impressed by the achievements of the Accounting Chamber, which provides for external audit of all authorities entitled to funding from the state budget. Its remit also partly extends to local authorities. The Accounting Chamber has developed into a modern institution, which does full audits, including performance audits. It has clear public accountability duties, reporting directly to Parliament and the President and to the state bodies whose budgets it scrutinises. Its default is open reporting and the results of its investigations are available on its website and some are press-released. Information about the Chamber's organisation is made fully publicly available. Though not all state bodies perform such an external oversight role, the Chamber provides an instructive model on openness and transparency that others would do well to emulate. The GET was told that the Chamber comes across corruption from time to time and that it has established close cooperation with the law enforcement. The GET is of the opinion that the Accounting Chamber would be well placed to broaden its expertise with regard to corruption (typologies, forms etc) and thereby enhance its ability to identify corruption in the course of its audits. This could be done, for example through the provision of adequate training to existing staff or through the appointment of specialised staff. **The GET recommends to enhance the competencies of the staff of the Accounting Chamber to be better prepared to detect instances of corruption in the course of their ordinary work.**

204. As noted above, local authorities are subject to external audit by the Accounting Chamber only insofar as their state funding is concerned. The remaining control is carried out by the internal audit bodies of the Ministry of Finance, in particular, the State Control and Revision Office (KRU). The GET heard repeatedly that local authorities are perceived to be more affected by corruption than central administration and understood that decision making in local authorities is generally less transparent than at central level. Furthermore, local authorities own a large part of the local media. This is of serious concern, especially as it is at the local level that most citizens are directly affected by a variety of government decisions, such as those on land reforms, utility costs, pensions etc. The GET is of the opinion that this area should be subject to more public scrutiny and independent auditing of all its activities. **The GET recommends that the external independent audit of local authorities be extended to cover all their activities and that such an audit is built on the same principles of independence, transparency and control which apply to the Accounting Chamber.**

205. Public procurement systems as that part of public administration where public and private interest mixes often involving high economic values are in all countries an area of critical importance in terms of corruption risk. Ukraine is not an exception in this respect and the GET was informed that recent changes in the system had the overall objective of increasing the control and transparency of the procurement process. The GET notes that the new Public Procurement Law has provided a structure where the governmental powers, previously executed through the Public Procurement Department have been transferred to various other bodies outside the influence of the Government to the Anti-monopoly Committee, the Special Control Commission and the Tender Committee. Members of Parliament have influence over all these bodies, and furthermore the Tender Chamber is a non-governmental organisation which is not subject to the same control and transparency requirements as those which apply to public bodies. The recent changes to the procurement system have been heavily criticised by the international community[13] as being exceptional and controversial as the new model introduced may be vulnerable to politicisation in that the decision and control functions are mixed. The GET shares this view and **recommends that public procurement legislation be thoroughly reviewed in order to bring it into compliance with European norms and standards in respect of policy, accountability and transparency.**

206. Reform of the civil service is urgently needed. Reforms will have to be aimed at enhancing the professionalism of the civil servants and addressing fundamental principles such as the legal framework of the civil service; fair and open recruitment and promotion procedures of all grades as a main rule; training of all staff, measures to prevent unsuitable appointments being made or maintaining the employment of corrupt individuals; clear guidance on what is acceptable conduct (rather than what is prohibited) and unequivocal sanctions for breaches, consistent and fair pay and salary scales etc. Statistics on disciplinary measures taken against civil servants need to be collected in a coherent way in order to ensure adequate basis for policy and reform. All this will require strong political commitment.

207. Reforms of the civil service are recognised in Ukraine as a priority and work is currently underway in order to have a new Code of the Civil Service in place. The GET supports this process, however, it should not be forgotten in this respect that the majority of public officials are not part of the civil service. The GET wishes to stress that reform to public administration must involve as wide a range of public officials as possible. At present, public officials other than civil servants are covered by the Labour Code, which is largely inherited from the past and which lacks detailed provisions for important matters such as recruitment, training etc. **The GET recommends to introduce a reform process covering an appropriate range of all public officials – and not only civil servants – following the principles foreseen with respect to civil service reforms.**

208. Moreover, it is worth considering that all ministries and state bodies gather and report consistent and basic information on staffing matters to the Civil Service Department, to monitor the effectiveness of such reforms and plan for future management of the civil service. For example, no information was available on any disciplinary measures taken against civil servants nor were there any statistics on the numbers of civil servants found criminally liable of crime.

209. The GET also noted and supported the current reforms to address potential conflicts of interest including, gift giving, the movement of civil servants from the public to the private sector etc. Public officials are under various obligations to report illegal activities they come across. However, it was noted with concern that it appears that currently there are no clear rules or

[13] For example, by the OECD and SIGMA (2006).

guidelines for all public officials to report suspected corruption they may come across in the course of their work. Moreover, public officials who report suspected corruption (whistle-blowers) are not offered any particular protection in law. Such protection is key if staff are to be encouraged to report corruption openly and early enough for any effective action to be taken and this should be remedied. **The GET recommends to introduce clear rules/guidelines for all public officials to report suspicions of corruption and to introduce protection of those who report in good faith (whistle-blowers) from adverse consequences.**

210. Codes of Ethics are important in setting standards of acceptable behaviour within the public administration. Even though this is recognised in Ukraine, the GET noted that codes of conduct or ethics often take the form of legislation and that they are drafted in such a way as to spell out prohibited behaviour. The GET believes that codes of ethics – as soft law – would be more useful if they express positively how public functions should be carried out, for example, to install a sense of public service with respect to providing access to official information, to an e-government policy and to reporting suspected corruption. Obviously, such codes must be living instruments tailored to each service and be accompanied by appropriate training and retraining. The GET is of the firm opinion that such a pedagogic approach would be invaluable in Ukraine to, over the long term, transform public administration into a service provider. **The GET recommends to establish a new model code of conduct/ethics for public administration to strengthen the education and instruction of public officials on their obligations and related appropriate behaviour with regard to their service, in particular, with respect to reporting suspected corruption, conflicts of interest and properly assisting the public. It also recommends to enhance the regular rolling training for public officials on anti-corruption measures and ethical conduct in public life as provided for in law, regulations and policy (soft law).**

211. In the absence of any statistics concerning the use of disciplinary proceedings and measures, it was not possible to assess the efficiency of the disciplinary system. Such information is also necessary for the authorities themselves. **The GET recommends to record and gather reliable statistics on the use of disciplinary proceedings and sanctions in public administration.**

VI. LEGAL PERSONS AND CORRUPTION

a. Description of the situation

Definition of legal persons (legal entity)

212. The Civil Code of Ukraine (2004), subsection 2, Articles 80 - 166 provides the basic regulation of legal persons. A legal person (or legal entity, according to the Code) is an organisation established and registered according to the procedure specified by law. It is vested with legal capacity and capability and may act as a party in court proceedings. Legal entities have civil rights and obligations and exercise them through their statutory bodies. A legal entity incurs independent liability with regard to its obligations, but members (founders) of the legal entity do not incur direct liability on the legal entity's obligations, however, there might be a secondary liability. Legal entities are not responsible for the obligations of its members. Persons who create a legal entity are jointly liable for obligations that arise prior to the full establishment of the legal person (registration).

213. Legal entities are either subject to private law or to public law. While legal entities of public law are established by a state authority or a local self-government body, legal entities of private law

are established on the bases of the Civil Code. The following description concerns private law legal entities.

214. Legal entities may be created in the form of partnerships, institutions and other forms established by law. A partnership is an organisation normally created by two or more persons with the right to participate in the activities of the partnership. *Partnerships* are either entrepreneurial (profit making) or non-entrepreneurial (non-profit making, such as consumer cooperatives, citizens' associations etc.). An *Institution* is an organisation created by one or several persons who do not participate in the management thereof.

215. Entrepreneurial partnerships (profit making) are the most common form of business legal entities. These may be established with various degrees of liability. The most important types of business in Ukraine take the following form:

a) **Entrepreneurship** is the most common form for doing business in Ukraine. This form does not acquire legal personality but is closely connected to the rights and obligations of its owner.

b) **General partnerships** (Article 119, Civil Code) acquire legal personality. The members carry out the activity on behalf of the partnership and incur joint additional (subsidiary) liability on its obligations by all property it owns. A person may be a member of only one general partnership. A member of a general partnership shall not be entitled to take legal actions on its behalf and in its interests or in the interests of third parties, without the approval of its other members. The name of a general partnership must include the names of at least one of its members and the words "general partnership". It shall be created and act on the basis of the foundation agreement, which must be signed by all its members. The foundation agreement of a general partnership shall include information on the amount and composition of the total capital.

c) **Limited partnerships** (Article 133, Civil Code) acquire legal personality, but are composed of full partners and, contrary to general partnerships, limited partners. Full partners administer and represent the limited partnership and have unlimited liability. The liability of limited partners is, as a rule, limited to the amount of capital they promise to contribute to the partnership under the partnership agreement. However, if their names are included in the trade name of the partnership they may incur unlimited liability. Normally, limited partners are not entitled to represent the partnership and to participate in the administration of the partnership

d) **Limited liability companies** (Article 140, Civil Code) which have legal personality are business associations of at least two partners having natural or legal personality. These companies should have a fixed capital of at least 100 minimum monthly wages (approximately 3 000 Euros) and must register to acquire existence. Liabilities of the partners are limited to their promised capital shares.

e) **Joint Stock Companies** are business associations with legal personality. A joint–stock company has a fixed capital. The agreement to incorporate must specify a legally required minimum capital (at least 1 250 times the minimum wage amount (approximately 30 000 Euros). The amount of this stated capital reflects the initial financial strength of the corporation and is divided into shares on which share (stock) certificates are issued. Persons, either physical or legal, contribute or promise to contribute a certain amount of capital to the corporation in return for shares. A corporation must be registered to acquire its existence.

Corporations may be incorporators of other corporations. A joint stock company may be either open (publicly held) or closed (privately held). While the shares of an open joint stock company are distributed through open subscription on the stock exchange, the shares of a closed joint stock company are divided among the founders. Joint stock companies must engage an independent auditor.

f) **Production Co-operatives** (Article 163, Civil Code) also acquire legal personality. The Co-operatives are voluntary associations of citizens on the grounds of membership for joint production or other economic activities based on their own labour participation and on the pooling of property share contributions. Members of production co-operatives bear secondary liability for the obligations of the co-operative.

Establishment - registration

216. A legal entity shall be considered to exist as from the date of its state registration (Article 87, Civil Code).

217. A legal entity (as well as "entrepreneurs" - natural persons) shall be subject to state registration, according to procedures specified in the law on State Registration of Legal Entities and Natural Person Entrepreneurs. A registration form has to be filled in and accompanied by required establishing documents of the legal person as well as names of the founders and address of the legal entity. Non compliance with the procedure constitutes grounds for denial of registration. Such a decision may be appealed in court. Modifications of the constituent documents of a legal entity shall enter into force with respect to third parties as from the date of their registration or in certain cases from the date of the notification to the registration authority.

218. Registration is carried out at the regional level by a state registrar. The GET was informed that the system is under reform with the aim of establishing a "one stop shop" service, which means a simplified procedure where applicants can register with one single authority and the necessary coordination between authorities is carried out internally. Registration is normally done within two to three days provided that all the necessary information and paperwork is submitted.

219. The registration process is primarily procedural, however, the founding documents have to be validated beforehand by a notary (public or private). The state registration of a legal person is confirmed with a certificate. Newly established legal entities must register with the tax authorities as payers of corporate taxes, within 20 days from receipt of the state registration certificate.

220. It is planned that all registered legal entities and "entrepreneurs" will be included in a single state register, held by the State Committee on Entrepreneurship. The Registry is open to the public but not available on the Internet. The register contains information about the organisational form of the entity, its address and activities, constitutional bodies etc. Furthermore, according to Article 17 of the law on State Registration of Legal Entities and Natural Person Entrepreneurs the names and addresses of the founders/owners and directors are indicated.

221. The GET was informed that Ukraine is a member of the European Business Register.

Limitations on exercising functions in legal persons

222. According to the law on Business Associations, 1991 as amended, persons who have been barred by court from carrying out certain activities are disqualified from occupying leading posts within organisations of that kind of activity. Individuals who have been convicted for economic

crime, including bribery cannot occupy leading posts or posts connected with financial responsibility (Part 3 of the Article 23). The GET was informed that the implementation of such restrictions is monitored by the Criminal Executive Inspection (Ministry of Justice) and the Procuracy in respect of the person concerned and pertinent authorities. Moreover, courts should provide relevant authorities with a decision on such restrictions. The GET was also informed that such restrictions should normally be checked during the registration of any form of new business entity.

Liability and sanctions of legal persons

223. Under present Ukrainian law only natural persons can commit crimes.

224. Legal persons are, according to Article 96 of the Civil Code, independently liable for their obligations. Thus a legal entity can be sued for damages.

225. There are moves in Ukraine towards making legal persons liable for corruption offences and the GET was made aware of the draft law on Liability of Legal Entities for Corruption Offences.

Tax deductibility

226. Although not explicitly prohibited in tax legislation, the GET was informed by the authorities that "facilitation payments", bribes and other expenses linked to corruption offences cannot be deducted for tax purposes since there is no provision to allow for such deductibility.

Tax authorities

227. As has already been explained above, the State Tax Administration is, in accordance with the Law on Combating Corruption (1995), designated as one of the four law enforcement bodies to control and investigate corruption. The Tax Administration has for this purpose established a special anti-corruption unit. The Tax Administration investigates all types of corruption offences and it may submit protocols to the courts under the administrative procedure, but has to submit criminal law cases to the Procuracy for investigation.

228. The GET was informed that according to the laws on Militia and Security Service, both these agencies may request full information necessary for criminal investigations from any state body, including the State Tax Administration. The law on Procuracy gives this body a similar right to access to information. Moreover, the GET was informed of a draft State Programme on the development of an integrated information system of law enforcement agencies providing for direct access to existing databases.

Accounting rules

229. The law on Bookkeeping and Financial Accounting (Article 8.3), states that financial accounting is mandatory for all enterprises, and that the obligation to maintain accounting data applies to all types of legal persons regardless of their legal structure. The accounting documents must be kept for at least three years.

Account offences

230. The creation or the use of an invoice or any other accounting document or record containing false or incomplete information, or unlawfully omitting to make a record of a payment are criminal

offences under the current legislation of Ukraine. *Article 366 of the Criminal Code* provides for criminal liability for committing any false or fraudulent acts in the course of employment, knowingly entering false information into official documents, other falsification of documents as well as the compilation and the issuing of false documents by an official. The sanction for such an offence is up to five years' imprisonment in serious cases. The GET was informed that this Article applies equally to the private sector. In addition, Article 212 of the Criminal Code of Ukraine provides for criminal liability for the evasion of taxes, duties and other statutory fees, while Article 222 of the Criminal Code provides for criminal liability for fraud involving financial resources. If these acts are committed by officials using their powers of office, they shall be subject to the punishment as foreseen under Article 364 of the said Code ("Abuse of Authority or Office") i.e up to eight years of imprisonment for public officials and up to twelve years for law enforcements officials.

Role of accountants, auditors and legal professions

231. Accountants, auditors and legal professionals are not, according to the present legislation, obliged to report suspicions of criminal offences or disclosing information acquired in the course of performing their duties.

232. The GET was informed that the draft law on Amendments to the law on Counteraction and Prevention of Money Laundering includes an obligation upon accountants and auditors to report suspected money laundering. This draft was pending before Parliament at the time of the adoption of this report.

b. Analysis

233. The Civil Code provides a modern legal framework in respect of various types of legal persons, private and public. These are all subject to registration. The GET recalls that it is important that the information available in a company registry is correct and reliable if the registry is to effectively prevent legal persons from being used to shield the misconduct of the individual behind the legal entity and/or inappropriate activities, such as corruption. The GET was informed that it is required, as part of the registration process, that all documents necessary for the establishment of a legal person, including the identity behind all the signatories, are verified by a notary. The GET is of the opinion that these stringent registration requirements are reasonable.

234. The information held in the registries of legal persons is in principle open to the public. The GET was not in a position to check to what extent access to information contained in the state registry of legal persons is available in reality, but was not made aware of any major problems in this respect.

235. The GET notes with interest that there are moves in Ukraine towards making legal persons liable for corruption offences. The GET was made aware of the draft Law on Liability of Legal Entities for Corruption Offences, but was not in a position to comment on the draft legislation, which had been subject to legal expertise by experts appointed by the Council of Europe. It welcomes, however, that the introduction of liability of legal persons for corruption is under consideration. **The GET recommends to introduce liability of legal persons for corruption offences, including effective, proportionate and dissuasive sanctions, and to consider establishing a registration system for legal persons which would be subject to corporate sanctions.**

236. In the current system for detecting and investigating administrative corruption, the State Tax Administration plays an important role as a specially designated law enforcement body. It has for

this purpose developed an anti-corruption unit and it appears to be well equipped for this task. With the possible changes in legislation, this function might cease to exist. The GET was not in a position to establish whether this would be a wise decision or not. It is however of the opinion that it is important to ensure that the know-how built up in the Tax Administration with respect to fighting corruption is not lost in the event that a new anti-corruption law enforcement mechanism is established. This would imply, for example, that law enforcement agencies should have relevant access to tax records and that functional cooperation between the Tax Administration and other law enforcement agencies should be provided for. *The GET observes that functional cooperation between the State Tax Administration and the law enforcement agencies responsible for the detection and investigation of corruption should be ensured, involving, inter alia, efficient access to tax files.*

237. In the GET's view, infringements of accounting obligations are satisfactorily dealt with in the tax legislation which appears to provide appropriate sanctions, including deprivation of liberty for account offences.

238. The GET recalls that accounting records and books can be crucial sources of information in detecting possible corruption and money laundering and emphasises the importance of raising awareness among accountants and auditors on how this would work in the course of exercising their duties. The GET noted that accountants and auditors were not covered by any obligation to report. It was informed, however, that the introduction of reporting obligations in accordance with the EU 3rd Anti-money laundering directive was under discussion. **The GET recommends to take adequate measures, including of a legal/regulatory nature, in order to actively involve accountants and auditors in detecting/reporting money laundering offences**.

CONCLUSIONS

239. Ukraine is perceived as being considerably affected by corruption, the problem being spread throughout the country and its public institutions, at central and local levels. Corruption appears to be a systemic wide-scale problem. Public trust and confidence in public institutions - including the justice system - and their representatives is critically low. Where corruption affects the whole of society, it cannot be considered an isolated problem – and this is so in Ukraine. The current levels of corruption constitute a real threat to the principles of democracy and the rule of law. This situation is particularly difficult as there is a general need in Ukraine to consolidate democratic foundations, legislation and institutions. It is therefore of particular importance that the overall strategy against corruption - as provided in the Concept Paper "On the Way to Integrity" - has largely taken this approach, and it will be crucial that the future implementation of the strategy is given a similar perspective. In this respect, the GET also noted that anti-corruption legislation was under preparation and was made aware of a significant number of draft legal texts, many of which prepared by the Ministry of Justice.

240. Consequently, reforms to fight corruption should - above all – be about consolidating democratic principles, the rule of law and institutional reforms. This requires a long term approach, strong political commitment and the creation of a mechanism for implementing and promoting preventative measures which is sufficiently independent from unjustified interference and the inevitable set-backs that struggles for political power can cause. Overall it is important that the transparency of public institutions be significantly improved and equally important that it is recognised that the prevention of, corruption is not primarily a task for law enforcement and repression but must involve all parts of Ukrainian society.

241. The law enforcement system of Ukraine consists of several agencies all active in the detection and investigation of corruption. This system not only appears confusing as to who does what, but brings considerable risk of duplication, and makes it difficult to set and maintain a common policy against corruption. Moreover, there is no uniform legal framework for dealing with corruption offences and criminal justice legislation and the procedure for administrative liability for acts of corruption has proved, in practice, difficult for the many authorities involved. Measures to make the law enforcement more professional in corruption investigation are called for. Moreover, there is a need to introduce a system to effectively deprive criminals from the proceeds of corruption. It is to be welcomed that immunities from law enforcement measures and prosecution are only afforded to a limited number of officials and for justifiable reasons. However, immunities should not apply in situations where officials are caught in the middle of committing a crime ("*inflagrante delicto*") and the procedure for lifting immunities could be accelerated.

242. There is a need to continue the reform process of the Prosecution Office, to limit it from political influence and to refine its role as the leading pre-trial investigation and prosecution body; this, in turn, would position this authority as the natural overall coordinator for corruption investigations. Moreover, the independence, impartiality and professionalism of judges are necessary preconditions for a functional judiciary and particular efforts are called for in this respect. That the judiciary is perceived to be corrupt is serious.

243. Public administration currently represents a mix of old inherited features and modern principles. The result is a patchwork of legislation and other rules, often lacking a coherent structure, ensuring numerous opportunities for misuse and abuse. A general legislative framework on the administrative hierarchy and procedures would represent an important achievement. Reforms to the civil service are urgently needed in order to professionalise the service by enhanced recruitment and promotion procedures, appropriate training of staff, and establishing codes of conduct/ethics. However, such reforms should be extended to cover all relevant public officials. The external audit function as provided for by the Accounting Chamber appears to be successful, although it only covers areas subject to funding from the state. Local authorities are not subject to such an external control with respect to their activities that are not state-funded. Moreover, recent changes in the public procurement system appear highly controversial as they combine decision making functions with control and involve non-governmental structures which fall outside the framework of public accountability.

244. Legal persons are well defined in law and all of them are obliged to register in order to be established. The registration system appears adequate and relevant data on legal persons is publicly available in a central state registry. Corporate liability has not yet been introduced, though Ukraine is making an effort in this respect.

245. In view of the above, GRECO addresses the following recommendations to Ukraine:

i) **to establish a body, distinct from the law enforcement functions, with the responsibility of overseeing the implementation of the national anti-corruption strategies and related action plans as well as proposing new strategies and measures against corruption. Such a body should represent public institutions as well as civil society and be given the necessary level of independence to perform an effective monitoring function** (paragraph 30);

ii) **to urgently develop a detailed plan of action for the implementation of the national anti-corruption strategy (Concept Paper of the President). The plan of action should preferably be subject to international expertise and, to the extent**

possible, take into account potential cooperation with and assistance from the international community (paragraph 32);

iii) **to review the system of administrative liability for corruption in order to clearly establish that cases of corruption are to be treated as criminal offences as a main rule, or, at the very least to establish a clear cut distinction between the requirements for applying these two distinct procedures** (paragraph 34);

iv) **to strengthen the coordination between the various law enforcement authorities involved in the investigation of corruption offences and to enhance the compilation, analysis and dissemination of comprehensive statistics on all cases of corruption dealt with by the law enforcement agencies concerned, as well as information on the outcome of these cases** (paragraph 85);

v) **to enhance the independence of the Procuracy from political influence and to provide it with a clearer mandate focused on the leading of pre-trial criminal investigations and prosecutions** (paragraph 86);

vi) **that the law enforcement staff and prosecutors are provided uniform training on a regular, rolling and permanent basis with regard to detecting and investigating corruption offences and to establish specialised training for those directly involved in the fight against corruption** (paragraph 87);

vii) **that the independence of the judiciary is further enhanced and that the transparency of the judicial recruitment process is increased; that the independence of the High Council of Justice *vis-à-vis* the executive and legislative powers is strengthened and that it be composed of a higher proportion of judges; and that improvements to the material conditions of judges, including fair remuneration, necessary to provide for their independence and compatible with their level of responsibility, are considered** (paragraph 90);

viii) **to further develop the operation of the Justice Academy and that a training curriculum for judges, comprising theoretical as well as practical modules, including ethics and topics relevant for dealing with corruption issues, be introduced shortly after appointment as well as part of judges' ongoing career development** (paragraph 91);

ix) **to consider introducing measures to ensure the securing of evidence in situations where persons enjoying immunity are caught in the act of committing a serious crime, including corruption** (paragraph 103);

x) **to consider reviewing the system of immunities in such a way as to provide for speedier decisions on the lifting of immunities** (paragraph 104);

xi) **to introduce regulations with respect to confiscation and seizure of proceeds from crime which would make it possible to apply measures with regard to direct as well as indirect (converted) proceeds, the value of the proceeds and in respect of proceeds held by a third party in conformity with the Criminal Law Convention on Corruption (ETS 173)** (paragraph 129);

xii) **to introduce regulations on the management of seized property, which can be applied in a flexible way in order to sufficiently preserve the value of such property** (paragraph 130);

xiii) **to establish an overall strategy with clear objectives for future reforms of the public administration in Ukraine in order to provide a common understanding for the necessity of change and to make this known to the wider public through awareness campaigns** (paragraph 198);

xiv) **to adopt a clear set of rules governing the administrative process and decision making as well as clear guidelines with regard to the hierarchy of different legal norms and standards governing public administration** (paragraph 199);

xv) **to enhance the public's right to access to official information; to introduce less cumbersome request procedures; to emphasise the authorities' obligation to assist the public in obtaining information within a reasonable time and to consider the introduction of an independent special (pre-court) review mechanism for decisions refusing access to official information** (paragraph 201);

xvi) **to implement a functional administrative justice system as provided for in law** (paragraph 202);

xvii) **to enhance the competencies of the staff of the Accounting Chamber to be better prepared to detect instances of corruption in the course of their ordinary work** (paragraph 203);

xviii) **that the external independent audit of local authorities be extended to cover all their activities and that such an audit is built on the same principles of independence, transparency and control which apply to the Accounting Chamber** (paragraph 204);

xix) **that public procurement legislation be thoroughly reviewed in order to bring it into compliance with European norms and standards in respect of policy, accountability and transparency** (paragraph 205);

xx) **to introduce a reform process covering an appropriate range of all public officials – and not only civil servants – following the principles foreseen with respect to civil service reforms** (paragraph 207);

xxi) **to introduce clear rules/guidelines for all public officials to report suspicions of corruption and to introduce protection of those who report in good faith (whistle-blowers) from adverse consequences** (paragraph 209);

xxii) **to establish a new model code of conduct/ethics for public administration to strengthen the education and instruction of public officials on their obligations and related appropriate behaviour with regard to their service, in particular, with respect to reporting suspected corruption, conflicts of interest and properly assisting the public. To enhance the regular rolling training for public officials on anti-corruption measures and ethical conduct in public life as provided for in law, regulations and policy (soft law)** (paragraph 210);

xxiii) **to record and gather reliable statistics on the use of disciplinary proceedings and sanctions in public administration** (paragraph 211);

xxiv) **to introduce liability of legal persons for corruption offences, including effective, proportionate and dissuasive sanctions, and to consider establishing a registration system for legal persons which would be subject to corporate sanctions** (paragraph 235);

xxv) **to take adequate measures, including of a legal/regulatory nature, in order to actively involve accountants and auditors in detecting/reporting money laundering offences** (paragraph 238).

246. GRECO invites the Ukrainian authorities to take account of the *observations* (paragraphs 131 and 236) in the analytical parts of this report.

247. In conformity with Rule 30.2 of the Rules of procedure, GRECO invites the Ukrainian authorities to present a report on the implementation of the above-mentioned recommendations by 30 September 2008.

248. Finally, GRECO invites the authorities of Ukraine to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.