

# **CONSOLIDATED EXPERT OPINION ON THE DRAFT ANTI-CORRUPTION STRATEGY OF UKRAINE FOR 2018-2020**

Kyiv, 25 October 2017

The Expert Opinion is jointly prepared and submitted to the National Agency for Corruption Prevention by the European Union Anti-Corruption Initiative in Ukraine (EUACI), the United Nations Development Programme (UNDP), and the Support to Anti-Corruption Champion Institutions Program in Ukraine (SACCI) funded by USAID.

The Expert Opinion is based on the draft text of the Anti-Corruption Strategy for 2018-2022 prepared by the National Agency for Corruption Prevention (version of 1 October 2017). It takes into account comments to the draft Strategy by the Ukrainian NGOs, technical assistance projects and international organisations, ministries and other public agencies.

The views expressed in this publication do not necessarily reflect the views of the EU Commission and EU country governments, United States Agency for International Development or the United States Government, UN system as well as other international organizations.

## Table of contents

<b>Executive summary</b> .....	<b>3</b>
<b>Acronyms</b> .....	<b>6</b>
<b>Introduction</b> .....	<b>7</b>
<b>International standards</b> .....	<b>7</b>
<b>General comments</b> .....	<b>9</b>
<b>Process</b> .....	<b>9</b>
<b>Status and scope</b> .....	<b>9</b>
<b>Structure and priorities</b> .....	<b>10</b>
<b>Evidence-based policy</b> .....	<b>11</b>
<b>Reference to international monitoring reports and recommendations</b> .....	<b>12</b>
<b>Dedicated budget</b> .....	<b>13</b>
<b>Key policy measures that are missing from the draft Strategy</b> .....	<b>13</b>
<b>Specific section-by-section comments</b> .....	<b>15</b>
<b>Chapter 1. General provisions</b> .....	<b>15</b>
<b>Chapter 2. Anti-corruption policy formulation and implementation</b> .....	<b>15</b>
<b>Chapter 3.1. Corruption prevention in the representative public authorities</b> .....	<b>22</b>
<b>Chapter 3.2. Corruption prevention in the activity of executive authorities     and local self-government bodies</b> .....	<b>26</b>
<b>Chapter 3.3. Corruption prevention in the judicial system</b> .....	<b>27</b>
<b>Chapter 3.4. Corruption prevention in the criminal justice bodies</b> .....	<b>29</b>
<b>Chapter 3.5. Corruption prevention in the public prosecution bodies</b> .....	<b>30</b>
<b>Chapter 3.6. Corruption prevention in the state and municipal companies</b>	<b>30</b>
<b>Chapter 3.7. Corruption prevention in the private sector</b> .....	<b>30</b>
<b>Chapter 4. The inevitability of punishment for corruption</b> .....	<b>32</b>
<b>Chapter 5. Forming negative perception of corruption</b> .....	<b>33</b>
<b>Chapter 6. Assessment of results and the Strategy’s implementation     mechanism</b> .....	<b>33</b>

## Executive summary

### Overall findings

- The draft Anti-Corruption Strategy 2018-2020 lacks a consistent approach in drafting, is not built on sufficient evidence and, more importantly, fails to set clear priorities for anti-corruption reform agenda of Ukraine. The draft Strategy should be significantly revised in order to ensure high quality and consistency of this important policy document.

### Key findings

- The draft Strategy has been developed within extremely short timeframe, which heavily reflected on its quality. Limited scale consultations conducted during the development of the draft text with representatives of the civil society, the business sector, and the international community were clearly insufficient for ensuring proper participation of key national and international stakeholders in the process.
- The draft Strategy is not based on sufficient evidence, namely national and regional surveys of how corruption is perceived and experienced by different groups, statistics and analysis of criminal enforcement. The draft Strategy fails to evaluate the impact of the previous anti-corruption strategy, notably by using specific indicators.
- The draft Strategy includes measures of different level of detail and specifics, often overlapping or going beyond the chapter's scope (according to its title). This significantly diminishes the level of consistency and internal coherence of the document.
- Adopting the national anti-corruption strategy as a national law allows setting a broad range of policy measures targeting all branches of power and various sectors through a legal act of the higher authority and wider reach than an act adopted by the Government or the President. It may, however, complicate the process and expose it to unnecessary political influence. In the future policy cycle, Ukraine could consider revisiting current approach, including possibility of merging policy documents into one to avoid delays with the development of the subsequent action plan.
- The draft Strategy has no clear link to the state budget and its implementation would again be dispersed among various public agencies without clear financial obligations to the overall strategy.
- The draft Strategy is not accompanied by any explanatory materials that would explain the sources used during the drafting process, including international standards and recommendations as well as explanations of the structure and selected topics for the strategy.
- While the draft Strategy covers many measures in an improper manner, some important issues are not covered at all. In particular, the draft Strategy fails to address the following important policy issues:
  - 1) Electoral reform to ensure an open electoral system that eliminates corruption risks inherent in the current political system of closed party lists.
  - 2) Regulating political advertisement during electoral campaigns to address the excessive and unaccountable spending on such advertisement that fosters corruption in the political system.
  - 3) Adequate measures and sequencing related to the creation of the Anti-Corruption Court.
  - 4) Increasing transparency and openness of the parliament.

- 5) Access to information and transparency of the public administration and other public bodies, including a review of provisions on the on-line publication of judicial decisions that authorise pre-trial investigative measures and may affect the effective investigation into corruption offences
- 6) Measures to continue civil service reform aimed at ensuring integrity and preventing corruption in the public administration, including a law on integrity testing of public officials and a law on the normative legal acts to improve legal certainty and streamline the process of drafting and enforcing laws.
- 7) Issues related to effective operation and independence of the National Agency for Corruption Prevention.
- 8) Measures related to the law enforcement agencies (Financial Investigations Service, Security Service, etc.).
- 9) Strengthening operational independence and capacity of National Anti-Corruption Bureau of Ukraine.
- 10) Corruption risks assessment in the systems of prosecution service bodies, the national police and other law enforcement agencies.
- 11) Mitigating corruption risks during the privatisation of public assets and public-private partnerships.
- 12) Introducing robust governance and compliance systems in public companies.

## **Recommendations**

### Recommendation 1

*Correct deficiencies of the strategy drafting process by organising comprehensive public consultations with a wide selection of stakeholders:*

- a) *Publish the draft on the NAPC site and invite for the public consultation.*
- b) *When the draft Strategy will be submitted to the Verkhovna Rada, such consultations can and should be organized.*
- c) *Revise the text of the draft Strategy based on such consultations.*

### Recommendation 2

*Prioritise different measures/directions of anti-corruption reforms in the draft Strategy based on the analysis of implementation of the previous policy documents, areas most vulnerable to corruption, surveys of corruption as perceived and experienced by different actors, and the analysis of criminal enforcement statistics.*

*Each separate chapter of the draft Strategy should also include its priorities and timeline for implementation.*

### Recommendation 3

*Consider introducing sectoral measures in the areas most affected by corruption.*

### Recommendation 4

*Reference and commit to compliance with concrete international standards and obligations of Ukraine relevant to issues covered in the draft Strategy*

### Recommendation 5

*The draft Strategy should make its sources of information transparent and explain in particular which suggestions were not taken into account and why. This could be covered in the explanatory note to be attached to the draft Strategy.*

#### Recommendation 6

*Provide in the beginning of each section of the draft Strategy a brief analysis of the implementation and impact of relevant measures from the previous strategy, while including a more detailed analysis in the explanatory note that should be attached to the draft Strategy.*

#### Recommendation 7

*The draft Strategy should contain a separate section dealing with the past and future international monitoring reports and clearly commit to integrating all the recommendations into concrete action plans, including timelines that ensure implementation before the next reporting deadline of the respective monitoring body.*

*The draft Strategy should make correct references to the implementation status of past GRECO Reports and the OECD ACN monitoring reports. Implementation of the international recommendations should be one of the key performance indicators of the Strategy.*

#### Recommendation 8

*The draft Strategy, or at least an explanatory note attached to it, should contain an overview of the reports from various anti-corruption projects in Ukraine. Relevant recommendations should be analysed, reviewed and taken into account in the draft Strategy (and the subsequent action plan).*

#### Recommendation 9

*The draft Strategy should address the issue of funding of the Strategy and Action Plan implementation; it could instruct the Government to allocate necessary funding or submit proposals on amending the State Budget Law to finance specific measures included in the Strategy and the Action Plan.*

#### Recommendation 10

*Review the scope and content of the draft Strategy to include key anti-corruption policy measures (as suggested in the expert opinion below) that so far are missing from the text and to address the section-by-section comments from this opinion.*

#### Recommendation 11

*Revise Chapter 2 of the draft Strategy to eliminate overlap with other parts of the document and to focus this Chapter on the process and institutions involved in the anti-corruption policy making. Most of the specific measures mentioned in the Chapter should be moved to other parts of the draft Strategy.*

#### Recommendation 12

*The draft Strategy should address the current situation concerning the anti-corruption policy co-ordination and define concrete measures for overcoming existing problems.*

#### Recommendation 13

*The Strategy should clearly name a body responsible for its implementation.*

#### Recommendation 14

*The draft Strategy should describe how the reporting by implementing bodies is to be done (by whom within the implementing bodies, to whom, how often, and in what form).*

#### Recommendation 15

*The role of the National Council for Anti-Corruption Policy should be clarified in the draft Strategy.*

#### Recommendation 16

*The Government should support the NACP in establishing an on-line monitoring system of the anti-corruption policy implementation.*

### Recommendation 17

*The draft Strategy should set clear and comprehensive mechanisms for civil society monitoring of the Strategy.*

## Acronyms

ACN	Anti-Corruption Network for Eastern Europe and Central Asia
ARMA	Asset Recovery and Management Agency
DFID	Department for International Development of the United Kingdom
EBRD	European Bank of Reconstruction and Development
EU	European Union
EU ACI	EU Anti-Corruption Initiative in Ukraine
MP	member of parliament
NABU	National Anti-Corruption Bureau of Ukraine
NACP	National Agency for Corruption Prevention
NGO	non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
RAI	Regional Anti-Corruption Initiative
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development

## Introduction

This expert opinion was prepared based on the draft version of the Anti-Corruption Strategy developed by the National Agency for Corruption Prevention (version of 1 October 2017). The opinion cannot take into account further revisions of the text that may be made by the NACP before its submission to the Government. The authors of this opinion had very limited time to prepare it due to the rather hasty drafting process of the strategy. Thus, this opinion provides only a preliminary overview and does not explore all issues in full detail.

This opinion aims to inform the drafters and decision-makers, as well as other stakeholders, about the changes that are recommended to improve this key anti-corruption policy document in Ukraine.

The opinion also takes into account:

- The analysis of implementation of the previous strategy commissioned by the EU ACI<sup>1</sup>;
- Relevant reports by Ukrainian NGOs<sup>2</sup>;
- Written comments provided by technical assistance projects and international organizations.

## International standards

International standards recognise the necessity of policy anti-corruption documents (strategies and/or action plans). This includes, in particular, the following:

- **European Union** “Ten Principles for Improving the Fight against Corruption in Acceding, Candidate and other Third Countries”, Principle 1: “To ensure credibility, a clear stance against corruption is essential from leaders and decision-makers. Bearing in mind that no universally applicable recipes exist, national anti-corruption strategies or programmes, covering both preventive and repressive measures, should be drawn up and implemented. These strategies should be subject to broad consultation at all levels.”<sup>3</sup>
- **United Nations** Convention against Corruption, Article 5 “Preventive anti-corruption policies and practices”: “Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anticorruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”

In its 2016 Summary Report, the **OECD** Anti-Corruption Network for Eastern Europe and Central Asia (of which Ukraine is a participant) recommended countries to:

- Develop anti-corruption policy documents through a meaningful consultation with a wide range of the relevant stakeholders from civil society, academia, international partners and donors, business and the general public.

---

<sup>1</sup> Prepared by Borys Malyshev for the EU ACI (2017).

<sup>2</sup> Centre for Political and Legal Reforms, Opinion on the draft Law of Ukraine on the Anti-Corruption Strategy for 2018-2020, October 2017, available at <https://goo.gl/AnpXPo>; Anti-Corruption Headquarters, Analysis of implementation of the Anti-Corruption Strategy for 2014-2017, May 2017, available at <https://goo.gl/676J6R>; Alternative report on the assessment of implementation of anti-corruption policy, May 2017, available at <https://goo.gl/2RFmYQ>.

<sup>3</sup> Annex to the Communication from the [European] Commission to the Council, the European Parliament and the European Economic and Social Committee - On a comprehensive EU policy against corruption (COM/2003/0317 final). Available at <https://goo.gl/C6Dw7>.

- Ensure that anti-corruption policy documents are realistic, affordable and enforceable, accompanied by necessary budget for implementation.
- Ensure that policy documents are practical instruments, with clear measures and specific time frames and measurable result-focused indicators.
- Ensure that anti-corruption policy documents are based on a needs assessment and target the actual risks of corruption; to achieve this, conduct assessments of existing challenges using a wide range of sources, including risk analysis.
- Regularly review and update anti-corruption policy documents taking into account changing context, challenges and needs.
- Ensure an operational mechanism for co-ordinating and monitoring the implementation of measures and for assessing the efficiency of the anti-corruption policy documents with the involvement of the civil society. Publish the results of the monitoring to ensure accountability.<sup>4</sup>

Detailed guidance in terms of good practice in drafting and implementing anti-corruption policies based on applicable international standards can be found in the following publications:

- **Council of Europe**/Eastern Partnership Project/Tilman Hoppe, Handbook on Designing and Implementing Anti-Corruption Policies, 2013;<sup>5</sup>
- **UNODC**, National Anti-Corruption Strategies: A Practical Guide for Development and Implementation, 2015;<sup>6</sup>
- **RAI**/Tilman Hoppe, Monitoring and Evaluation of the Implementation of National Anti-Corruption Strategies and Action Plans, 2015.<sup>7</sup>

---

<sup>4</sup> OECD (2016), Anti-corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges, 2013-2015. Available in English (<https://goo.gl/jxtAoD>), Russian (<https://goo.gl/v63dzf>).

<sup>5</sup> Council of Europe Handbook. Available in English (<https://goo.gl/DZuqcz>), Russian (<https://goo.gl/NLdHAF>).

<sup>6</sup> UNODC Guide, available at <https://goo.gl/krNBor>; de facto replacing the somewhat outdated “United Nations Guide on Anti-Corruption Policy” (2003).

<sup>7</sup> Regional Anti-Corruption Initiative, available at <https://goo.gl/ZPKmA>.

## General comments

### Process

The draft Strategy has been developed within extremely short time with the actual drafting starting in early September 2017 and the first draft presented by the end of September. The rather hasty process poorly reflected on the quality of the document.

Consultations conducted during the development of the draft text with the representatives of civil society, the business sector, and the international community were very limited in scope and clearly insufficient for allowing proper participation of key national and international stakeholders in the process.

Some surveys which should have been used to design the strategy were obtained late during the drafting process when they could no longer influence the structure of the document.

### **Recommendation 1**

***Correct deficiencies of the strategy drafting process by organising comprehensive public consultations with a wide selection of stakeholders:***

- a) Publish the draft on the NAPC site and invite for the public consultation.***
- b) When the draft Strategy will be submitted to the Verkhovna Rada, such consultations can and should be organized.***
- c) Revise the text of the draft Strategy based on such consultations.***

### Status and scope

The draft Anti-Corruption Strategy of Ukraine builds on the previous national policy document – the Anti-Corruption Strategy for 2014-2017 which was adopted for the first time as a national law in October 2014. Adopting an anti-corruption strategy as law complicates the procedure and may expose the draft to influence of political interests in the parliament. However, it also allows setting a broad range of policy measures targeting all branches of power and various sectors through a legal act of the higher authority and wider reach than a legal act adopted by the Government or the President.

TABLE 1. ANTI-CORRUPTION STRATEGIES IN UKRAINE

Name	Period	Coverage (years)	Legal act, date
National programme on fighting corruption	1997	1	Presidential decree, 10 April 1997
Concept of fighting corruption in 1998-2015	1998-2005	7	Presidential decree, 24 April 1998
Concept of eradicating corruption in Ukraine "On the Way to Integrity"	2007-2010	4	Presidential decree, 11 September 2006
National Anti-Corruption Strategy for 2011-2015	2011-2015	5	Presidential decree, 21 October 2011
Principles of the state anti-corruption policy in Ukraine (Anti-Corruption Strategy) for 2014-2017	2014-2017	4	Law, 14 October 2014
<i>Anti-Corruption Strategy for 2018-2020</i>	<i>2018-2020</i>	<i>3</i>	<i>Law, draft</i>

Often, anti-corruption policies are divided into two subsequent documents: a strategy and an action plan. Strategies usually define the objectives, whereas action plans break the strategic objectives down into concrete measures, implementing agencies, timelines, indicators, etc. One should also keep in mind that some countries follow a one-document policy containing strategic objectives and respective measures at once. There are clear advantages of such consolidated policies:

- They are easier to use by the stakeholders and the public than two documents that need to be consulted in reference to each other.
- Consultations and adoption of two consecutive documents consume more time and produce overlaps in discussions of objectives and respective actions.
- Without seeing concrete actions, it is hard to evaluate whether a draft strategy is complete. However, at the stage of drafting the action plan, the lack of certain objectives or their narrow formulation can be used as a pretext for excluding necessary reform steps from the action plan.

One could argue that the legal quality of the strategy being a law requires a two-stepped approach: action plans hardly appear – at least at first sight – as a fitting format for being adopted as laws.

Anti-corruption policies have, among others, the following functions:<sup>8</sup>

- create transparency in need for action;
- facilitate coordination among institutions;
- commit government and society;
- document commitment domestically and internationally;
- allow measuring of delivering on commitment.

All of above functions require first and foremost that actions and indicators are formulated in a clear, precise, and committed way, specified responsibilities, and realistic time-lines. In other words: The real “battle” about the anti-corruption commitment of Ukraine will take place around the wording of the action plan. Any delay in reforms by waiting unnecessarily for the action plan should be avoided.

Even if the Strategy document is kept limited to policy objectives and broadly defined measures. It would also help resolve the issue of the strategy priorities (see below); it would be appropriate for the parliament to determine in the strategy what measures/directions are of the highest priority and when the actions should be delivered.

### *Structure and priorities*

The draft new Strategy mainly repeats the structure of individual chapters used in the previous strategy. As regards its content, it no longer covers issues of corruption prevention in the civil service as well as issues related to access to information (as separate sub-sections in the chapter on corruption prevention). Instead, it covers a new topic of corruption prevention in public companies.

Many chapters lack coherent approach and include measures of the different level of detail and specifics, often overlapping or going beyond the chapter’s scope as mentioned in the chapter’s title.

The draft new Strategy fails to set clear priorities of the anti-corruption policy for the next three years. This is one of its main weaknesses. In addition to repressive anti-corruption measures and public awareness raising and education, it covers broad areas of corruption prevention in the political bodies, executive authorities, judiciary, criminal justice bodies, prosecution service, and the private sector. While these broad areas do merit attention in the anti-corruption policy document of Ukraine, the Strategy fails to target any specific sectors (for example, customs, tax, energy) that are most vulnerable to corruption (with the exception of public companies).

The prioritisation exercise should be based on the assessment of corruption risks and vulnerabilities in various areas, surveys of corruption practices and perceptions, etc. It should also take into account an in-depth analysis of the implementation of the previous policy documents and the level of attainment of their objectives. Otherwise, the Strategy may appear

---

<sup>8</sup> Council of Europe Handbook, cited above, page 27.

being disconnected from real needs on the ground and instead simply trying to cover every possible sphere. This weakens its focus and may thus undermine its successful implementation.

Many references to international standards on issues covered in the draft Strategy are missing, as, for example, the Council of Europe recommendations on the protection of whistle-blowers (2014) and on the regulation of lobbying (2017).

In order to support readers, it would be also useful to include in the document a table of contents.

### **Recommendation 2**

***Prioritise different measures/directions of anti-corruption reforms in the draft Strategy based on the analysis of implementation of the previous policy documents, areas most vulnerable to corruption, surveys of corruption as perceived and experienced by different actors, and the analysis of criminal enforcement statistics.***

***Each separate chapter of the draft Strategy should also include its priorities and timeline for implementation.***

### **Recommendation 3**

***Consider introducing sectoral measures in the areas most affected by corruption.***

### **Recommendation 4**

***Reference and commit to compliance with concrete international standards and obligations of Ukraine relevant to issues covered in the draft Strategy.***

### **Evidence-based policy**

The lack of priorities can be partly explained by the insufficient evidence that was fed into the development of the draft document. The NACP commissioned a survey of the population, businesses and experts on some aspects related to corruption. The survey's results were delivered just few days before the finalisation of the document and could not impact the scope of issues covered in the document. Other surveys mentioned in the text were conducted in 2015-2016 by various pollsters under different projects and did not allow to track progress under specific indicators.

The findings of the above-mentioned survey were included in the draft Strategy. Namely, that the population of Ukraine perceives as the most corrupt ones the following sectors/areas: health and education sectors, “contacts with the state authorities and local self-government” and the judiciary. Business representatives indicated as the most corrupt ones: the services provided by the energy sector companies, “contacts with the state authorities and local self-government”, public procurement, and the judiciary. From these specific areas with the high level of perceived corruption, only the judiciary is specifically covered in the draft Strategy.

The draft Strategy also does not take into account statistics and analysis of criminal enforcement related to corruption and patterns of corruption crime. For instance, it could have included statistics on prevalence of corruption in various areas of public life and used analysis of the proceedings investigated by the NABU which deals with high-profile cases and systemic corruption.

Importantly, the draft new Strategy provides a brief overview of the status of implementation of the previous strategy. In particular, it mentions the analysis commissioned by the EU ACI. This, however, is insufficient. It is the second national anti-corruption policy document that is proposed to be adopted by the law. Thus, it is essential that is based on a clear understanding where the previous strategy was successful and where it failed, its level of impact and the status of implementation of the measures in each section of the document.

The draft Strategy only partially shows the sources that informed the drafting of the Strategy. Which state bodies have been asked for input? How many responded? Which other stakeholders were consulted? Were any suggestions not taken into account, and if so, why?

When did the process of drafting start? These matters should be explained. If not in the strategy itself than at least in the explanatory note that accompanies the draft Strategy. Such explanatory note is missing from the document altogether.

#### **Recommendation 5**

***The draft Strategy should make its sources of information transparent and explain in particular which suggestions were not taken into account and why. This could be covered in the explanatory note to be attached to the draft Strategy.***

#### **Recommendation 6**

***Provide in the beginning of each section of the draft Strategy a brief analysis of the implementation and impact of relevant measures from the previous strategy, including a more detailed analysis in the explanatory note that should be attached to the draft Strategy.***

#### **Reference to international monitoring reports and recommendations**

Regarding the state of implementation of international monitoring reports, the draft Strategy states: “According to the results of the first, second and third rounds of evaluation performed by the Group of States Against Corruption (GRECO), Ukraine has no non-implemented recommendations [...]”

This description is not accurate. For example, the last GRECO report on the compliance with the Third Evaluation Round recommendations of March 2017 stated that the five remaining recommendations had been partly implemented.<sup>9</sup> The GRECO final (fifth) report on the compliance with the Joint First and Second Evaluation Round stated at the end of a painstaking process of nine years: “Four [recommendations] have been partly implemented and one not implemented”.<sup>10</sup> An anti-corruption strategy should take a more self-critical position and not paint a rosy picture.

It should also be noted that according to the latest progress report on Ukraine to the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN), Ukraine failed to show progress on five out of 18 recommendations.<sup>11</sup> The draft Strategy does not mention the OECD ACN monitoring reports even though they cover a broad range of issues and provide specific recommendations. The latest report on Ukraine (Fourth Monitoring Round) was adopted by the OECD/ACN in September 2017.

The draft Strategy also fails to mention other commitments undertaken by Ukraine towards international organisations, e.g. with regard to the International Monetary Fund and the European Union (state-building grant, macro financial assistance, etc.).

#### **Recommendation 7**

***The draft Strategy should contain a separate section dealing with the past and future international monitoring reports and clearly commit to integrating all the recommendations into concrete action plan, including timelines that ensure implementation before the next reporting deadline of the respective monitoring body.***

***The draft Strategy should make correct references to the implementation status of past GRECO Reports and to the status of implementation of the OECD ACN monitoring reports. Implementation of the international recommendations should be one of the key performance indicators of the Strategy.***

Another issue that is missing in the strategy is the inclusion of recommendations and technical advice provided to Ukraine by various technical assistance projects. A large number

---

<sup>9</sup> GRECO (2017), Addendum to the Second Compliance Report on Ukraine, Third Evaluation Round, GrecoRC3(2017)8, 24 March 2017, paragraph 39. Available at <https://goo.gl/b4SPg4>.

<sup>10</sup> GRECO (2015), Fifth Addendum to the Compliance Report on Ukraine, Joint First and Second Evaluation Round, Greco RC-I/II (2009) 1E 5<sup>th</sup> Addendum, 23 March 2012, paragraph 55. Available at <https://goo.gl/CmWn9i>.

<sup>11</sup> OECD (2016), Progress Update of Ukraine, September 2016, available at <https://goo.gl/mcCokC>.

of organisations/countries work in Ukraine and provide assistance in this area directly or through implementers. Among the outputs of these projects are assessments providing recommendations for the improvement of the integrity and governance framework. Ukraine would benefit from taking advantage of this assistance and feed their input in the policy making process.

#### **Recommendation 8**

***The draft Strategy, or at least an explanatory note attached to it, should contain an overview of the reports from various anti-corruption projects in Ukraine. Relevant recommendations should be analysed, reviewed and taken into account in the draft Strategy (and the subsequent action plan).***

#### ***Dedicated budget***

One of the key shortcomings of the draft Strategy is the lack of dedicated resources to implement its measures. A good policy document should be supported by clear funding commitments that are sufficient to achieve its objectives. Under the previous Strategy of 2014, funding issue was regulated by the State Programme implementing the Strategy as adopted by the Government. However, in reality no special funds were allocated to implement the Strategy and the Programme. Funding was to be provided within the regular state budget funding of the public authorities and technical assistance projects. The draft Strategy should address this issue and at least instruct the Government to allocate necessary funding or submit proposals on amending the State Budget Law to finance specific measures included in the Strategy and the Action Plan.

#### **Recommendation 9**

***The draft Strategy should address the issue of funding of the Strategy and Action Plan implementation; it could instruct the Government to allocate necessary funding or submit proposals on amending the State Budget Law to finance specific measures included in the Strategy and the Action Plan.***

#### ***Key policy measures that are missing from the draft Strategy***

While the draft Strategy covers broad spectrum of measures, some measures that could be of key importance for the successful fight against corruption are not covered at all. Among the most important issues are:

- 1) Electoral reform to ensure an open electoral system that eliminates corruption risks inherent in the current political system of closed party lists.
- 2) Regulating political advertisement during electoral campaigns to address the excessive and unaccountable spending on such advertisement that fosters corruption in the political system.
- 3) Adequate measures and sequencing related to the creation of the Anti-Corruption Court.
- 4) Increasing transparency and openness of the parliament.
- 5) Access to information and transparency of the public administration and other public bodies, including a review of provisions on the on-line publication of judicial decisions that authorise pre-trial investigative measures and may affect the effective investigation into corruption offences
- 6) Measures to continue civil service reform aimed at ensuring integrity and preventing corruption in the public administration, including a law on integrity testing of public officials and a law on the normative legal acts to improve legal certainty and streamline the process of drafting and enforcing laws.
- 7) Issues related to effective operation and independence of the National Agency for Corruption Prevention.

- 8) Measures related to the law enforcement agencies (Financial Investigations Service, Security Service, etc.).
- 9) Strengthening operational independence and capacity of National Anti-Corruption Bureau of Ukraine.
- 10) Corruption risks assessment in the systems of prosecution service bodies, the national police and other law enforcement agencies.
- 11) Mitigating corruption risks during the privatisation of public assets and public-private partnerships.
- 12) Introducing robust governance and compliance systems in public companies.

**Recommendation 10**

***Review the scope and content of the draft Strategy to include key anti-corruption policy measures (as suggested in the expert opinion below) that so far are missing from the text and to address the section-by-section comments from this opinion.***

## Specific section-by-section comments

### *Chapter 1. General provisions*

Comments to this Chapter are covered above in the general part of this opinion.

### *Chapter 2. Anti-corruption policy formulation and implementation*

The Chapter lacks clear focus and covers a broad range of questions overlapping with other specific sections of the document. It also duplicates Chapter 1 by describing previous measures and the status quo in the anti-corruption reforms.

It is hard to understand the logic behind this Chapter, which should have dealt with the process and institutions involved in the anti-corruption policy making. For example, the Chapter includes specific measures concerning the system of e-declarations which should have been covered elsewhere; no other sections of the document address e-declarations which is an important reform area.

It seems that drafters included in the Chapter 2 all measures that they could not fit in other parts of the draft Strategy.

#### **Recommendation 11**

***Revise Chapter 2 of the draft Strategy to eliminate overlap with other parts of the document and to focus this Chapter on the process and institutions involved in the anti-corruption policy making. Most of the specific measures mentioned in the Chapter should be moved to other parts of the draft Strategy.***

The Chapter covers a number of specific measures from almost all possible anti-corruption areas but it fails to address the key issue that should have been covered based on its title (Anti-corruption policy formulation and implementation), namely the system of co-ordination in this area. The current system of policy coordination and monitoring of implementation is ineffective. The National Anti-Corruption Council that was set up by the President in October 2014 ceased to be active. The NACP has no capacity and sufficient mandate to co-ordinate other agencies. The Government has not abolished the position of its Agent on Anti-Corruption Policy that also has a co-ordination mandate. It would have been appropriate if policy coordination and monitoring related issues would have been addressed under Chapter 2 of the Strategy.

#### **Recommendation 12**

***The draft Strategy should address the current situation concerning the anti-corruption policy co-ordination and define concrete measures for overcoming existing problems.***

Specific comments to measures included in the chapter:

<i>Measure</i>	<i>Comments</i>
1) to ensure improvement of the anticorruption legislation, including its stability and systematic nature as well as the general legislation in terms of corruption-related factors through monitoring, analysis and assessment of the application practice thereof through NACP as well as development of amendments and annexes thereto. For this matter, there is a need to establish a scientific and consulting council at NACP which is to involve leading scientists in the sphere of corruption	<p>This measure mixes different issues – certainty of legislation and corruption proofing (screening) of legislation. The measure is vague and too general, and it is not clear what it should achieve. “Improvement of the anti-corruption legislation” overlaps with most of the specific measures included in the draft Strategy that concern legislative changes. It is not clear how creating a “scientific and consulting council” would help in reaching this objective.</p> <p>The measure is not relevant for this Chapter.</p>

prevention and elimination as well as criminal law.	
2) to further implement the standards in the Code of Good Practice for Civil Participation in the Decision-Making Process approved by the Council of Europe's Conference of International Non-Governmental Organizations as of 1 October 2009 in practice as well as to introduce new forms of cooperation, namely, dialogue, partnership and joint public-private online discussions;	This measure repeats almost word for word a similar one from the previous Strategy. There is no analysis whether the previous measure was implemented, to what extent and why it should be again repeated in the new Strategy. The measure is very broad and vague. It would be hard to translate it into specific activities in the action plan and to measure its implementation. The Governments of Ukraine for many years have been trying to draft a law on public consultations (recently, as a commitment under the Open Government Partnership Initiative); the Ministry of Justice has prepared a draft law and consulted it with the public; however, no progress has been made to submit and advance the draft law in Parliament. All this is not mentioned in the draft Strategy.
3) to ensure consistent distribution of political and legal functions within the system of executive bodies; functions of administrative service provision, control and surveillance over compliance with the procedures as well as law enforcement functions; functions of public property administration.	This measure is extremely broad and unclear. It would need a separate chapter in the Strategy to explain the problem and the ways of advancing reforms in this regard. Just to insert the measure like this in the section among many other more specific activities will probably achieve nothing.  The measure is also not relevant for this Chapter.
4) to continue introducing electronic document management at all public administrations and local self-governance bodies, which would enable to provide access to open documents through information-recording systems and Internet access as well as to ensure financing for introduction of the above system.	The measure is not relevant for this Chapter. It could be moved to the chapter on corruption prevention in the executive authorities and local self-government.
5) to boost NACP institutional capacity by legally assuring its organizational, financial and HR independence, specifically:	It would be appropriate to include measures related to the institutional building of the NACP in a separate section of the draft Strategy (see also above).
to provide NACP with access to all the national and regional databases;	This measure is mostly not about legislative basis, but also about practical implementation. It is not clear what "regional databases" are that the NACP should have access to. The measure could also mention that access should be ensured to all necessary databases, including those containing information with restricted access, and that the NACP should be able to organize an electronic/automated data exchange with external databases to allow

	automated verification of e-declarations and financial reports of political parties/electoral candidates.
to develop measures of regulatory nature for improvement of transparency, independence and integrity during the NACP decision-making process;	This measure is too vague. “Measures of regulatory nature” does not seem an appropriate term in this context.
to design detailed, clear and objective working rules for NACP which would specifically cover the sphere of constant monitoring, coordination and performance assessment in terms of anticorruption laws executed by NACP and audits carried out to ensure proper transparency and accountability of NACP activities;	Again, this measure is too broad and vague. Does this mean that the Corruption Prevention Law has to be amended? Or other laws need to be amended or adopted? Or this concerns only bylaws adopted by the NACP itself? If so, which ones?
to spell out the mechanisms of harmonization and verification of NACP in terms of proper compliance with anticorruption programs at public administrations and local self-governance bodies;	Again, this is formulated vaguely (“mechanisms”, etc.)
to regulate the implementation of verifications on proper declaration of assets and lifestyle monitoring as well as integrity tests for public officials while ensuring respect for human rights;	<p>Issues covered in this measure should have received much more attention in the draft Strategy than just one line in the chapter that is not appropriate for this measure. This measure deals with three very distinct legal procedures (verification of e-declarations, lifestyle monitoring, integrity testing). Each of these procedures is important enough to receive separate attention and explanation in the Strategy. They also have different histories and levels of development.</p> <p>For example, the verification procedure was adopted by the NACP in February 2017 and implemented, but it has a number of critical deficiencies which should be urgently addressed. The EU ACI provided a detailed analysis of the deficiencies and how to resolve them.</p> <p>The NACP also adopted the lifestyle monitoring procedure but it has not been endorsed by the Ministry of Justice which effectively blocked the implementation of this important anti-corruption instrument.</p> <p>As to the integrity testing, it requires a separate law. Back in October 2014 when adopting the Law on NABU, the parliament instructed the Government to submit the draft law on the integrity testing by the end of February 2015. The Government failed to do this. The Strategy should explain what is required in this regard and whether this</p>

	remains a priority. Several laws in Ukraine mention the integrity tests as an anti-corruption tool, but without proper legal procedure and safeguards this tool cannot be properly enforced. A Council of Europe Project provided Ukraine with a Model Law on Integrity Testing. <sup>12</sup> Furthermore, the European Court of Human Rights underpinned this tool with its decision. <sup>13</sup>
to ensure efficient coordination of activities of specially authorized units (persons) on corruption detection and prevention;	
to finalize NACP recruiting process with qualified employees as well as provide the National Agency with proper material resources, including development of automated databases accompanied with necessary software for their operations;	This is clearly not an issue of legislative regulation, contrary to what is stated in the opening paragraph. It goes into practical capacity building of the NACP, the key institution responsible for the implementation of the anti-corruption policies. Also, it is not clear what “automated databases” and “software” are required, and why these two tools are so important to be mentioned in the Strategy.
to allocate specific funds from the state budget to NACP activities on involvement of both national and foreign analytical centres, specialists and independent experts to format the state anticorruption policy as well as assessment of its performance;	There is no justification why additional funding should be allocated to hire additional experts or analytical centres to perform key functions that are vested with the NACP itself (formulation of the state anti-corruption policy and assessment of its results).
6) NACP to implement mandatory regular, institutional and operational activities to ensure proper control over implementation of the declaration process for persons authorized with the functions of the state and local self-governance bodies in accordance with the Law of Ukraine “On Corruption Prevention”, which would allow:	<p>The whole part does not fit this chapter. As the asset declarations system covers various groups of public officials and authorities they work in, the drafters probably could not place it in one of the sectoral chapters. It seems as if an additional separate chapter on “prevention issues across sectors” (or similar) is needed. It would be the appropriate place for measures related to asset declarations (and other issues touching on more than one sector).</p> <p>The draft Strategy does not mention several other issues that are important for the effective functioning of the asset declarations system in Ukraine. For example, the following issues are missing:</p> <ul style="list-style-type: none"> <li>- revising the procedure for the control and full verification of the asset declarations in order to remove existing bottlenecks and</li> </ul>

<sup>12</sup> Available at <https://goo.gl/eLovKj>.

<sup>13</sup> ECtHR, Rotaru v. Roumanie, Application no. 27797/10, Decision of 15 April 2014.

	<p>deficiencies that undermine the verification procedure;<sup>14</sup></p> <ul style="list-style-type: none"> <li>- ensuring a stable and sustainable operation of the e-declarations system in terms of the IT systems;</li> <li>- correcting and improving e-declaration form to facilitate electronic verification of data;</li> <li>- removing the obligation of members and managers of anti-corruption NGOs, recipients of technical assistance in the anti-corruption area to file asset declarations under the Corruption Prevention Law. Such obligation contradicts international standards and has a chilling effect on NGOs exercising their watchdog function;</li> <li>- clearly define in the law the scope of declarants in the public companies (definition of the term “official and service persons”);</li> <li>- ensuring that all public authorities that are subject to the financial disclosure under the Corruption Prevention Law comply with the relevant provisions (this concerns notably the Security Service of Ukraine);</li> <li>- developing and enforcing regulations on the asset declaration system for officers of intelligence bodies and classified personnel (under Article 52-1 of the Corruption Prevention Law).</li> </ul>
<p>introducing automatic verification of declarations as well as ensuring database interoperability while ensuring compliance with personal data security requirements;</p>	<p>The wording should be streamlined, as the Corruption Prevention Law provides for several types of control and full verification of electronic declarations of public officials. Different types of control and full verification require different automation. It would be also more appropriate to speak about “automated” verification, not “automatic”.</p> <p>This objective also contradicts a finding of a recent EU-ACI Study (Business process of verifying e-asset declarations at NACP, 2017). The problem is not a lack of compliance with personal data restrictions, but an excess in personal data restrictions.</p>
<p>spelling out detailed, clear and objective rules for filling electronic declarations that would exclude their ambiguous interpretation or misinterpretation;</p>	<p>Such rules and guidelines have been adopted by the NACP; they should be updated and extended.</p>

<sup>14</sup> EU ACI provided the NACP with detailed recommendations on the improvement of the business processes of e-declarations verification and control.

<p>ensuring the rights of declarants and introducing the ways to challenge the imposed sanctions;</p>	<p>It is not clear what rights of the declarants have not been ensured and why this is an issue at all. The same concerns the sanctioning regime. Current legislation of Ukraine provides several avenues for challenging decisions of the NACP or other authorities that can be taken with regard to asset declarations. It is not clear what new ways should be introduced or how the existing ones should be changed.</p> <p>This objective also opposes a finding of the mentioned EU-ACI Study which observes an excess also regarding “several rights of the declarant that only criminal suspects should have”.</p>
<p>improving the practical skills of authorized persons (units) in the sphere of corruption prevention and detection.</p>	<p>Not clear what practical skills should be improved. If it is about asset declarations then anti-corruption officers could be trained on the asset declaration system to provide guidance and assistance to the declarants. If training is mentioned, then declarants themselves should be also covered.</p>
<p>7) NACP to ensure:</p>	
<p>development of status and performance indicators for the Anticorruption Strategy 2018-2020 as well as their further submission for adoption to the Cabinet of Ministers of Ukraine;</p>	<p>This instruction should be part of the Law that adopts the Strategy, not of the Strategy itself.</p>
<p>development of detailed rules for the members of the Parliament, judges and prosecutors to accept gifts while considering decreased thresholds for their admissible value; provision of clearer definitions covering all the possible types of gifts, including non-material ones;</p>	<p>This issue should not be in this chapter. It is also vaguely formulated (rules to accept gifts?).</p>
<p>development of detailed rules for the person covered with the effect of the Law of Ukraine “On Corruption Prevention”, considering the following:</p>	<p>This measure duplicates the previous one and should also be excluded from this chapter.</p>
<p>lowering the thresholds of admissible value for the above gifts; provision of clearer definitions covering all the possible types of gifts, including intangible ones;</p>	
<p>clarifying the concept of “admissible hospitality”;</p>	<p>The term “admissible hospitality” does not exist in the Ukrainian legislation. The Law on Corruption Prevention allows public officials to accept gifts that conform to the “generally accepted notion of hospitality”, if the gift does not exceed certain threshold and it is not related to the performance of</p>

	official functions and is not given by a subordinate official. It would be useful indeed to clarify some of the terms used and the NACP could do it without amending the law. Such clarification should not be limited to the “hospitality” rule.
introducing internal evaluation and notification procedures for gifts as well as return of non-accepted gifts;	
maintaining the Unified Register of Persons who Committed Corruption or Corruption-Related Offences as well as the Unified State Register of Declarations of Persons Authorized to Implement the Functions of the State and Local Self-Governance Bodies;	It is again not clear why this measure is included in this chapter.
8) to boost institutional capacity of the newly established and specially authorized body on asset recovery and management (ARMA) while ensuring its organizational and financial independence on the legal level, specifically through the following:	This measure does not belong to the issues addressed in this chapter. It overlaps with measures in Chapter 4 on the punishment.
improving the laws related to the National Asset Recovery and Management Agency based on the results of implementation of the above laws as well as ensuring efficient ARMA’s operations authorized in the area of detection, tracking and management of assets, including procurement of asset recovery services from foreign jurisdictions;	Very general and vague provision.
Establishing mandatory implementation into the Ukrainian legislation of related EU legal and regulatory acts and best practices in the spheres of investigation of assets that can be arrested under a judicial proceeding in civil and criminal cases; recovery (collection) of assets gained through illicit as well as corruption-related activities for the benefit of the state; recovery of assets directly and indirectly originated from Ukraine that were gained through illicit, including corruption-related, activities that can be subsequently enforced for the benefit of foreign jurisdictions; allocation of the above assets between third jurisdictions and the state of Ukraine;	Very general and vague provision.
implementing a separate survey and introducing a related legal regulation on ARMA’s representation of Ukraine in foreign jurisdictions for settling disputes related to recovery of directly or	Very general and vague provision.

indirectly Ukraine-originated assets that were gained through illicit as well as corruption-related practices that are under a foreign jurisdiction at the moment; allocation of the above assets between third jurisdictions and the state of Ukraine after they have been recovered for the benefit of a third jurisdiction;	
9) to continue finding ways of communication and consulting as well as to draft related recommendations on implementation of the Law of Ukraine “On Corruption Prevention” for each of the above spheres of activities in cooperation with public authorities and general public;	It is not clear what is the purpose of this measure, it seems just like a mix of different words without any specific meaning.
10) to continue regular information campaigns focused on various social groups and aimed at elimination of tolerance towards corruption, raising the rates of cooperation between public administrations, citizens and businesses in the anticorruption sphere.	This is very general and duplicates Chapter 5 that deals specifically with forming a negative attitude towards corruption.

### *Chapter 3.1. Corruption prevention in the representative public authorities*

The chapter, like all others, starts with an analysis of the current status quo. However, it fails to capture the real situation and impact of political corruption on the country and only hints at the main problems (e.g. a deficient electoral system or weak integrity mechanisms for MPs and local council deputies).

While it is commendable that this chapter was included in the draft Strategy, it should be more explicit in identifying priorities addressing key challenges in this area:

- The failure of the parliament to set electoral rules in advance of the elections that would allow new political forces entering the parliament and local councils through an open electoral system;
- The damaging effect on the political system caused by the unrestricted political advertising;
- The dysfunctional system of enforcing the parliamentary ethics and integrity;
- The poor enforcement of the restrictions on the political party financing, notably with regard to the biggest parties as their finances appear to be opaque and virtually uncontrolled, despite the NACP’s mandate for oversight.

Some measures are duplicating and overlapping, e.g. on integrity-related rules and restrictions for elected public officials.

<i>Measure</i>	<i>Comments</i>
1) to continue reforming the electoral legislation of Ukraine in order to prevent corruption violations during elections and ensure inevitability of punishment for the above crimes;	This measure is contradictory. It mentions the reform of the electoral legislation but then focuses solely on the corruption violations during elections and punishment for such crimes. Sanctions for electoral fraud and bribery are regulated in the Criminal Code, which is not part of the electoral legislation. The draft Strategy does

	<p>not explain why the current sanctions are insufficient and should be amended. Moreover, there is a special offence of voter bribery in the Criminal Code. It very well may be that the issue here is not the law as such but its enforcement.</p> <p>Most importantly, this is the only measure that mentions electoral reform and, as was mentioned above, it should be one of the key points of the new anti-corruption strategy. The measure, however, is too limited in scope and fails to address key problems in this regard, it lacks ambition.</p>
2) to take the necessary legal measures which contain clear and unbiased criteria preventing activities of bringing Ukrainian MPs to criminal liability for their political activities as well as render evasion of liability for committed criminal offences impossible;	The draft Strategy covers the issue of immunity of members of parliament in several parts: twice in this chapter and then again in more detail in Chapter 4 on the punishment for corruption. All of these provisions are not coordinated among themselves, they overlap and contradict each other. It is recommended to remove the issue of immunities from this chapter and regulate it consistently in the relevant Chapter 4.
3) to improve the anticorruption screening mechanism for valid legal acts and their drafts by amending the legislation with related provisions to establish the necessity to take the conclusions made by an anticorruption screening into account or their justified dismissal;	Anti-corruption proofing or screening of draft legal acts and adopted legal acts is an important anti-corruption instrument that goes beyond the activity of the representative bodies covered by this chapter. If this measure concerns only the parliament then it should be formulated respectively, even though it would limit its scope. It is also worth reviewing proposals in this area made by civil society experts and incorporate some of the specific proposals, e.g. with regard to extending the NACP mandate in this area. <sup>15</sup>
to ensure unbiased review at public administrations and local self-governance bodies of all the conclusions made after an independent anticorruption screening they received;	
to introduce wide-scale public awareness initiatives of draft laws developed, their purpose and estimated results;	It is not clear how this measure is at all related to the anti-corruption area and this chapter specifically.
4) to improve the current political party state financing system, specifically:	Measures in the area of party financing should target not only the state financing but address a broader list of issues that should be corrected, both in the legislative framework and on the implementation

<sup>15</sup> See proposals by the Centre for Political and Legal Reforms to the Draft Strategy, available at <https://goo.gl/ZWc9Ck>.

	<p>level, regarding the system of political party and election campaign financing.</p> <p>In this respect, it should be noted that GRECO in its Third Evaluation Round report provided a number of specific recommendations that have not been fully implemented yet. They should be covered by the Strategy.</p> <p>The implementation practice of the Law of October 2015 that was aimed at curbing political corruption also revealed some issues in the legislative framework that should be addressed (e.g. extensive requirement to undergo external audit, definition of the term “statutory activity”, ensuring dissuasive sanctions).</p>
to strengthen financial discipline of political parties and ensure compliance with the legal commitments taken by political parties regarding public reporting on their property, income, expenditures and financial liabilities as well as compliance with the set order for receiving contributions from physical persons and legal entities;	
to introduce an electronic reporting system for political parties;	
to introduce limitations in terms of participation in the election process and acceptance of contributions for the parties that do not report on their financial activities;	
5) to regulate the procedure of bringing the members of Ukrainian Parliament to responsibility for committing corruption violations;	This overlaps with measure no. 2 above and with Chapter 4. This measure is also broadly and vaguely formulated, it should be removed from this chapter.
6) to adopt the laws on legal mechanisms for preventing the conflict of interests among elected public officials; specifically, to define possible forms of the conflict of interests, the rules of prevention thereof and behaviour in a situation when a conflict of interest occurs as well as an institutional monitoring mechanism over the laws on the conflict of interests and proportional/preventive sanctions for violations thereof;	Basic provisions in this area have already been adopted. The Strategy, therefore, should explain what the remaining issues are and how they should be addressed. Instead, this measure repeats word for word a similar measure from the previous Strategy which no longer corresponds to the reality.
7) to draft and adopt amendments to the laws of Ukraine for more proper regulation of the basic rules of professional ethics and fair conduct of the members of Ukrainian Parliament and elected officials of local	Conflict of interest regulation is also mentioned in the previous measure. GRECO made a number of specific recommendations to Ukraine in its Fourth

self-governance; this relates to the issues related to prevention of a conflict of interests among the above persons, compliance with incompatibility criteria, limited use of proprietary information, etc.;	Evaluation Round report which should be reflected in this chapter.
8) to adopt the laws on the legal principles of lobbying, specifically:	Lobbying concerns also the executive and possibly the judicative branch of power, and should also address the issue of advisory bodies. This is missing in the draft Strategy. Furthermore, it should be clarified that rules on lobbying concern two aspects: ethics and transparency (registers). Again, it is noteworthy that any reference to international guidance is missing, as well as reference to the “Legislative Toolkit on Lobbying” (Council of Europe, 2016), developed for a regional project to which Ukraine is a member.
to define the concept of lobbying, its legal forms and methods;	
to approve the rules regulating relations of the members of the Parliament of Ukraine, local councils and other elected officials at the local self-governance level with lobbyists and other third parties willing to influence the law-making process;	
to regulate the order for public awareness initiatives of lobbying agents at public administrations, local self-governance bodies as well as whose interests they push and on what conditions;	
to establish lobbying control mechanisms, including involvement of civic society institutions;	
to introduce legal responsibility for participants of lobbying relations for violations of the law in the course of the lobbying process;	
9) to take measures on improving awareness of integrity at the Parliament of Ukraine and local self-governance bodies at both personal (consulting activities) and institutional levels (training, institutional discussions on ethical issues, etc.);	It’s not clear whom such awareness raising should target – the broader public or members of the parliament and of local councils, or both.
10) to introduce a mechanism of preliminary public debates for socially important issues with both the use of positive national experience and best international practice.	This duplicates a similar measure from Chapter 2 and it is a copy-paste from the previous Strategy.

### Chapter 3.2. Corruption prevention in the activity of executive authorities and local self-government bodies

In the problem-setting section, the Chapter is limited to issues of anti-corruption programmes, anti-corruption officers (units) and civil service reform.

The measures provided in this Chapter lack any actions related to further civil service reform which is crucial for building integrity and preventing corruption in the public administration of Ukraine. For instance, according to the proposals of the civil society experts<sup>16</sup>, among others, the following measures could be introduced:

- significantly reduce the number of civil servants;
- reorganise secretariats of the ministries;
- introduce practice of policy analysis and strategic planning;
- set up an integrated system of HR management in the civil service;
- revise the competition procedure for recruitment of civil servants based on the implementation practice of the current regulations.

<i>Measure</i>	<i>Comments</i>
1) to improve the implementation mechanism of efficient anticorruption programs at public administrations as well as legal entities under public law;	This measure also targets legal entities of public law, which goes beyond the executive authorities or local self-government bodies. It makes the exact scope of the chapter ambiguous.  The measure itself is too broad and vague.
2) to strengthen independence and efficiency of authorized units (persons) in the area of corruption detection as well as those authorized with implementation of anticorruption programs;	
to bring legal and regulatory acts of the Cabinet of Ministers of Ukraine within the part related to legal status of authorized units (persons) in the sphere of corruption prevention and detection in conformity with the Law of Ukraine “On Corruption Prevention”;	
the improve the appointment and dismissal procedure of authorized units (persons) in the sphere of corruption prevention and detection by harmonizing it with a public agency responsible for anticorruption policy formulation;	It would be useful to directly mention the NACP and not a “state body that formulates the state anti-corruption policy” to avoid confusion.
3) to improve the laws on implementation of the state anticorruption policy at legal entities under public law and initiate a special verification by extending the special verification requirements to persons authorized with numerous duties at various positions by specifying the “implausible	This again concerns public law entities and thus goes beyond the executive authorities or local self-government bodies. The measure itself is incoherent, it includes various elements but some of them are unclear and confusing.

<sup>16</sup> See proposals by the Centre for Political and Legal Reforms to the Draft Strategy, available at <https://goo.gl/ZWc9Ck>.

data”, which provides grounds for random use of the implementation and performance evaluation procedure of the special verification;	
4) to establish commissions at executive bodies and state enterprises containing the employees of the above and headed by a deputy head of a public administration/state enterprise. The commissions should be authorized with setting proper priorities, coordinating and monitoring over program implementation, consulting and advisory assistance on corruption prevention;	This is a controversial proposal. The draft Strategy does not explain why this is a good idea, how such commissions would correlate with the anti-corruption officers/units that the draft Strategy proposes to strengthen just a few paragraphs above. It does not seem to be a carefully thought out measure. Again, it covers state enterprises, which is outside of the scope of this chapter.
5) to ensure implementation of further practical measures related to development of administrative service provision centres as well as extension of the list of services provided by the above centres;	The whole administrative reform was reduced to this one short sentence. This can hardly be considered enough as a policy direction.
6) to amend the valid customs laws in order to raise transparency and accountability of customs workers, limit opportunities for discretionary decisions as well as improve operability and predictability of customs procedures;	This is the only sectoral measure included in the chapter and it concerns customs. While the customs service is indeed considered a highly corrupt sector, the measure is formulated in a very general way and appears to be inadequate.
7) to adopt the new Law of Ukraine “On the Service at Local Self-Governance Bodies”, ensure further implementation and its monitoring;	
8) to pursue the policy of subsequent remuneration improvement for public officials in order to increase their consciousness regarding implementation of related service duties in order to prevent corruption-related behaviour at the same time.	

### Chapter 3.3. Corruption prevention in the judicial system

Unlike other chapters, the problem setting part is limited to one general paragraph, which can only scratch the surface of the problems in this area.

The Chapter does not include any measures aimed at strengthening the integrity of individual judges and judicial bodies’ members (e.g. High Council of Justice, High Qualification Commission of Judges), except for training on relevant issues. Not all GRECO recommendations from its Fourth Evaluation Round of Ukraine are covered by the draft Strategy.

<i>Measure</i>	<i>Comments</i>
1) to initiate the process of establishment of the anti-corruption court elements.	This is hardly sufficient for such an important issue and for a 3-year strategy. It would even be unacceptable for a 1-year strategy. A strategy should not anticipate its own failure by only aiming for initiating

	<p>reforms without ever achieving the ultimate goal. Earlier drafts provided additional details in this regard in the Chapter dedicated to the punishment for corruption, but they were cut out from the final draft text.</p> <p>This measure also duplicates similar measure in Chapter 4.</p> <p>The draft Strategy even fails to mention the High Anti-Corruption Court, even though it has already been specifically introduced through the Law on the Judicial System and Status of Judges. Instead it speaks about “anti-corruption court elements” which is ambiguous.</p> <p>Setting up the Anti-Corruption Court to try cases investigated by the National Anti-Corruption Bureau should be one of the key priorities of the new Strategy and it therefore should be prominently mentioned in its text. The draft Strategy should also provide specifics on the procedure for selection of the new court’s judges (open competitive selection with the important role of independent experts nominated by international organisations and foreign donor countries) and other specifics. The draft Strategy should reflect the recent opinion of the Venice Commission on the draft laws proposing to set up such court.<sup>17</sup></p>
<p>2) to design and adopt amendments to the laws on the judicial system and procedural legislature while doing specifically the following:</p>	
<p>to consider an idea that the lower number of bodies responsible for appointing judges might be useful;</p>	<p>This issue is not explained in the draft Strategy. The draft could at least make a reference to the GRECO Fourth Evaluation Round report from which this measure was copied.</p>
<p>to clarify the task and authorities of the Public Integrity Council; to ensure it contains various social groups, strengthen the norms against the conflict of interests, specifically, at the cost of an efficient control mechanism over compliance with the above norms;</p>	

<sup>17</sup> See Opinion on the Draft Law on Anticorruption Courts and on the Draft Law on Amendments to the Law on the Judicial System and the Status of Judges (concerning the introduction of mandatory specialisation of judges on the consideration of corruption and corruption-related offences) adopted by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017). Available at <https://goo.gl/bJZ3Bo>.

to exclude the multiple nature of public administrations evaluating judges and specify that a regular evaluation should be implemented mainly by other judges on the basis of pre-defined integrated and objective criteria related to their daily work;	This issue is not explained in the draft Strategy.
to extend the list of conditions for challenging the decisions on appointment/dismissal of judges by related candidates to ensure an opportunity for appealing decisions made under a process as such both essentially and due to violations of the decision-making procedure;	
to clarify the content of disciplinary violations related to judges' professional conduct (e.g., "tarnishing conduct or the one undermining the concept of justice" and "complying with other norms of judicial ethics and standards of conduct ensuring public trust towards the court") in order to set a well-shaped and foreseeable decision-making process as well as prevent possible abuse of disciplinary proceedings;	
to introduce the necessary limitations and controlling measures over compliance with formal relations between participants of judicial proceedings, specifically, between judges, advocates, investigators and prosecutors;	This issue is not explained in the draft Strategy.
3) to introduce a specialized regular training practice for all the judges in terms of ethics and integrity, prevention of conflicts of interests and corruption (with the results of the above training should be included into regular evaluation of judges); to define authorized bodies of judicial self-governance implementing the above training activities;	
4) to develop and introduce practical means to provide efficient security for judges of all jurisdictions.	This issue is not explained in the draft Strategy. The draft could at least make a reference to the GRECO Fourth Evaluation Round report from which this measure was copied.

### *Chapter 3.4. Corruption prevention in the criminal justice bodies*

As with the previous chapter, the description of the status quo is limited to a very general paragraph.

The set goal of "reforming the criminal justice bodies" describes rather the task and process but does not explain what should be achieved as a result of such reforming.

The Chapter includes only measures that concern the police and does not even mention other law enforcement agencies and related reforms, e.g. setting up of the Financial Investigations Service to replace the tax police; abolishing the investigative mandate of the Security Service and ensuring its transparency (including through submission and publication of asset declarations of its non-classified staff as required by the Corruption Prevention Law) and that it does not abuse its powers. For instance, the Chapter could address the findings of the systemic report on “Abuse of powers by the law enforcement authorities in their relations with business”, produced by the Business Ombudsman of Ukraine.<sup>18</sup>

### *Chapter 3.5. Corruption prevention in the public prosecution bodies*

The chapter includes a relatively comprehensive set of measures aimed at the institutional reform of the public prosecution system. Measures in this chapter mostly copy recommendations of the GRECO Fourth Evaluation Round report on Ukraine.<sup>19</sup>

The chapter also covers the role of prosecutors in the administrative proceedings related to corruption offences. It appears to be too technical and minor to be included in the Strategy and, in any case, these issues belong to the chapter on the liability for corruption.

### *Chapter 3.6. Corruption prevention in the state and municipal companies*

The description of problems in this area focuses on the economic importance of public companies, instead of analysing serious corruption and governance issues that these companies face in Ukraine. There is also no mentioning of the previous efforts to improve governance and prevent corruption in this sector.

This chapter is a good example of the overall problems of the draft Strategy. The chapter could have been one of the key components of the new policy document, but it appears to be inadequate and insufficient:

The scope of the chapter is unclear, as a lot of attention is dedicated to the management of public property, which is often a different issue from the governance in public companies.

Measures are contradictory (e.g.: “enhancement and centralisation of the management systems of state assets, which provides for allocating specific functions to each of the state agencies”) and/or unclear (e.g.: “introduction of restrictions with regard to assigning to state enterprises of the non-profit status”).

One of the goals of the chapter as stated is “countering corruption in the privatisation process”, but there is no single measure concerning the privatisation. The latter indeed poses a significant risk of corruption and deserves a set of targeted policy measures, especially in view of the upcoming large-scale privatisation of the public assets that was announced by the State’s top politicians. This is an example of poor or even absent priority-setting in the draft Strategy.

The chapter does not include any measures actually aimed at preventing corruption, such as improving governance and compliance systems in the public companies. This is a major gap, as it should have been the main focus of this chapter.

### *Chapter 3.7. Corruption prevention in the private sector*

<i>Measure</i>	<i>Comments</i>
1) to develop and adopt the Code of Administrative Procedures of Ukraine as a top priority;	This measure does not fit this Chapter. The Code (Law) of Administrative Procedure should regulate how the public administration operates. It is an important legislative act, and its adoption is long

<sup>18</sup> Available at <https://goo.gl/WKmX9t>.

<sup>19</sup> Available at <https://goo.gl/fwH94S>.

	overdue and should be promoted. It should be mentioned in the Strategy but in another chapter (e.g. on corruption prevention in the executive bodies and local self-government).
2) to finalize (in case of conformity to international standards and business association proposals) the procedure of approving the law on a business ombudsman institution, which is to extend its authorities and, specifically, provide responses to the business ombudsman's requests.	
3) support to the establishment of the National Integrity System that was presented by the Business Ombudsman Council jointly with the OECD and EBRD and mainly focused on promotion of ethical and responsible business conduct, which would eventually contribute to business reputation, integrity standards improvement in accordance with the best international practices, corruption elimination, mitigation of regulatory pressure, easier access to crediting as well as international markets;	It is commendable that this new initiative found its place in the draft Strategy, although it is not clear who should support it and how.
4) to complement the Unified Register of Persons who Committed Corruption or Corruption-Related Crimes with the Register of Economic Agents who Committed Corruption or Corruption-Related Crimes in order to prevent their participation in public procurements;	The measure to complement the State Register of Corruption Offenders with information about legal entities that committed corruption or related offences is irrelevant because such information is already required by the Law on Corruption Prevention to be included in the said Register. The problem lies with the implementation (the NACP should take over the management of the register from the Ministry of Justice). A proper measure in this regard is already included in the following Chapter on the punishment for corruption.
5) to create efficient mechanisms for group business interest lobbying at public administrations;	This measure duplicates a similar task in the chapter on corruption in the political bodies. It is another example of the inconsistent and incoherent drafting of the document.
6) to introduce competitive and transparent rules for procurement of goods and services by state enterprises in accordance with the valid law;	This measure should be moved to the Chapter on public companies.
7) to carry on with reforming the sphere of public procurements through the following:	It is not clear why the bloc of measures related to the further reform of public procurement was put in this Chapter. It appears as if public procurement should have been dealt with in a separate chapter of

	the draft Strategy as it remains one of the priority areas for further reform building on the success of the renowned “Prozorro” system.
to extend the electronic procurement system in order to cover all the public procurements;	
to decrease the number of cases allowing for non-competitive tender procedures;	
to strengthen state control and monitoring over legal enforcement in the sphere of public procurements;	
to provide an executive body authorized with the monitoring functions over public procurements with all the necessary technical and financial resources as well as professional staff with competitive wages;	
8) to ensure NACP cooperation with the business environment in terms of clarifications of the practice of use for new anticorruption standards set by the laws on liability of legal entities for corruption offences;	
9) to hold information events for the business environment in order to promote business integrity and extend the number of the National Integrity System participants;	
10) to implement regular trainings in integrity issues for representatives of the private sector and procurers when implementing public procurements at the central and local levels as well as trainings for law enforcement and controlling facility employees in the public procurement and corruption prevention procedures;	
11) to ensure an efficient response mechanism of public administrations to detection of corruption relations in the public procurement sector through termination or voiding of procurement contracts.	Again, this measure does not belong in this Chapter.

#### *Chapter 4. The inevitability of punishment for corruption*

The draft Strategy does not address most relevant issues, among others, the sensitive issues of the anti-corruption court and the NABU’s independence and powers.

The draft Strategy does not include the measure of actually setting up the court and selecting its professional and independent judges through an open and transparent competition that guarantees broad public trust and confidence in the process. As already elaborated earlier by international partners of Ukraine in the “Common Understanding on the Basic Principles for Establishing the High Anti-Corruption Court in Ukraine”, the selection of judges for the court

should include a panel of independent members nominated by the international organisations and foreign donors.

In addition, Chapter 4 of the draft Strategy does not include the following essential measures:

- Setting up a central register of bank accounts to facilitate tracing and arrest/confiscation of corruption proceeds.
- Revoking statute of limitations for serious corruption crimes or extending it to at least five years, as recommended by the OECD ACN monitoring reports.
- Revoking release from criminal liability of a bribe-giver who reported the bribery act if there was no request or extortion from the bribe-taker.

The EU ACI Study (Business process of verifying e-asset declarations at NACP, 2017) states that administrative offences as well as disciplinary liability are subject to incredibly short statutes of limitations (administrative: two years maximum after commission of offence; disciplinary: maximum one year). Since asset declarations work mostly only ex post, such a sanctioning regime will be largely ineffective for violations aside from late or non-submission. In addition, protocols have to be served to declarants in person within the deadline. All in all, this procedure requires a completely disproportionate effort, while deadlines are not suspended. The draft Strategy needs to address this important issue.

The draft Strategy should further include specific measures to strengthen operational independence and capacity of the NABU by:

- authorising the NABU to autonomously carry out interception of information from communication networks without having to rely on the Security Service;
- ensuring free access of the NABU to complete information contained in the register of e-declarations of public officials, including access to the whole dataset of declarations in machine-readable format for analysis purposes;
- ensuring that the NABU can autonomously carry out undercover operations without compromising them through disclosure to the government agencies involved;
- ensuring that NABU can autonomously receive and provide mutual legal assistance in its criminal proceedings;
- improving legal provisions on plea agreements to make their application more effective in the NABU proceedings;
- ensuring that the NABU can effectively use investigative measure of the bank account monitoring.

#### *Chapter 5. Forming negative perception of corruption*

No comments.

#### *Chapter 6. Assessment of results and the Strategy's implementation mechanism*

##### **Implementation mechanism**

This Chapter mentions that the Government should develop the state programme (an implementation plan) for the Strategy. The latter should include, among other things, clear, transparent and objective indicators. This is commendable. However, such instructions should also be included in the text of the draft law by which the Strategy is to be approved.

The draft strategy does not specify the implementation mechanism as such. While monitoring implementation and being responsible for implementation are closely related, they are not the same. The reference to the Government developing a state programme is not enough. Probably the Cabinet of Ministers would be the proper body responsible for implementation. Implementation bodies are in particularly necessary for issues of “inter-institutional

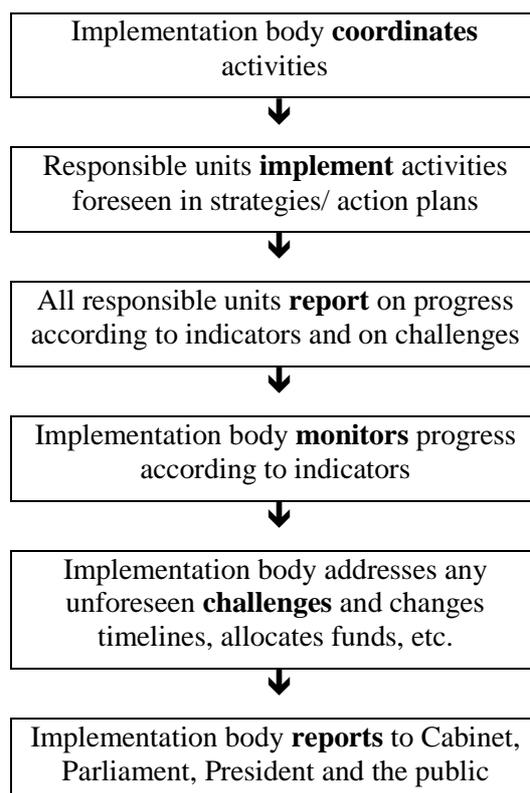
coordination”,<sup>20</sup> and for ensuring that there is one stakeholder assuming political responsibility for the implementation.

### **Recommendation 13**

*The Strategy should clearly name a body responsible for its implementation.*

### **Monitoring**

It is a standard recommendation by GRECO and an omnipresent feature of action plans in Europe to foresee an explicit monitoring mechanism.<sup>21</sup> The steps in monitoring are as follows:<sup>22</sup>



The draft Strategy states in this regard:

“The National Agency for Corruption Prevention, jointly with non-governmental centers, independent experts, business representatives, international organizations and offices implements expert surveys every half a year related to performance of specific directions under the Anticorruption Strategy as well as initiates public discussions of their results. The Anticorruption Strategy implementation status assessment is carried out by the National Agency for Corruption Prevention in its Annual Activity Report.”

This needs to be clarified. It is not clear how reporting by implementing bodies is done, to whom, how often, in what form, etc. If there is any meaning for a separate anti-corruption strategy in addition to an anti-corruption plan, it is the description of the monitoring mechanism.

### **Recommendation 14**

<sup>20</sup> Council of Europe Handbook, cited above, page 56.

<sup>21</sup> RAI Guide, cited above.

<sup>22</sup> Council of Europe Handbook, cited above, page 56.

***The draft Strategy should describe how the reporting by implementing bodies is to be done (by whom within the implementing bodies, to whom, how often, and in what form).***

The frequency of the monitoring (annually) appears to be insufficient: “State bodies should ideally report at least twice a year to ensure public scrutiny of progress (based on information publicly released).”<sup>23</sup> A good practice in many European countries is quarterly monitoring.

On 14 October 2014, an advisory body – the National Council for Anti-Corruption Policy – was established by a decree of the President of Ukraine. This followed a recommendation by GRECO. According to the decree, the first main objective of the National Council is “preparation and representation to the President of Ukraine of offers on determination, updating and enhancement of anti-corruption strategy”. While this Council might be an outdated institution ever since the NACP has been established, its (lack of) role should be clarified in the draft Strategy. Overlapping competencies and unclear responsibilities have been one of the major reasons for lack of implementation (not only) in Ukraine.

#### **Recommendation 15**

***The role of the National Council for Anti-Corruption Policy should be clarified in the draft Strategy.***

With comprehensive donor support available in Ukraine, establishing an electronic monitoring system would have been manageable for the Ukrainian government, since the NACP had been established. For example, Macedonia and Serbia have established online systems of reporting on progress towards indicators in action plans.<sup>24</sup>

#### **Recommendation 16**

***The Government should support the NACP in establishing an online monitoring system of the anti-corruption policy implementation.***

Ukraine has a wide variety of civil society participation mechanisms in the field of anti-corruption, from participating in the selection committees to long standing Civil Society Boards at the main anti-corruption institutions. Several academic and civil society institutions published reports regarding the National Anti-corruption Strategy in the past.

The Strategy should describe mechanisms for civil society monitoring of the Strategy as well as obligation of the public bodies to respond to the monitoring efforts of the civil society. The process should be transparent and accessible to the public, not only organized civil society, ensuring the Government’s accountability to the public on the implementation of the strategy. Keeping civil society groups and citizens involved in the evaluation and monitoring process can help maintain their support for the strategy.<sup>25</sup>

#### **Recommendation 17**

***The draft strategy should set clear and comprehensive mechanisms for civil society monitoring of the Strategy.***

---

<sup>23</sup> RAI Guide, cited above, page 34.

<sup>24</sup> Ibid, page 34.

<sup>25</sup> UNODC, cited above, page 49.